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Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

Plaintiff,

v.

WALMART, INC., an Arkansas
Corporation;
WAL-MART.COM USA, LLC, a California
Limited Liability Company;
ATLAPAC TRADING COMPANY, INC., a
California Company;
and DOES 1-10,

Defendant.

CASE NO. 24CV064793

CONSENT JUDGMENT ~~[PROPOSED]~~

Health & Safety Code § 25249.5 *et seq.*

[Assigned for All Purposes to the Hon.
Rebekah Evenson, Dept. 24]

Complaint Filed: February 21, 2024
Trial Date: September 22, 2025

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER ADVOCACY GROUP, INC. (referred to as “CAG”) acting on behalf of itself and in the interest of the public, and Defendant, ATLAPAC TRADING COMPANY, INC., (hereinafter referred to as “Defendant” and collectively with CAG as “Parties”).

FILED
Superior Court of California
County of Alameda

07/24/2025

Clerk of the Court, Executive Officer / Clerk of the Court

By: V. Garcia Deputy

V. Garcia

1 **1.2 Defendant and Products**

2 1.2.1 CAG alleges that Defendant ATLAPAC TRADING COMPANY, INC. is a
3 California Company which employs ten or more persons. CAG further alleges that Defendant
4 distributes and sells Mackerel to consumers in California, including but not limited to: “California
5 Girl”; “Pacific Mackerel in its Natural Oil”; “Packed in Water”; “Net Wt. 15 oz (425 g)”; “Product
6 of Ecuador”; “Distributed By: Atlapac Trading Co. Inc.”; “L:C5WA26A2”; “Best By:
26/Jan/2025”; “UPC 052391481500” (“Mackerel”). Covered Products are limited to Mackerel
distributed for sale by Atlapac Trading Company.

7 1.2.2 Mackerel is referred to as the “Covered Products”.

8 1.2.3 For purposes of this Consent Judgment only, Defendant is deemed a person
9 in the course of doing business in California and are subject to the provisions of the Safe Drinking
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
 (“Proposition 65”).

11 **1.3 Chemicals of Concern**

12 1.3.1 Cadmium and Cadmium Compounds (hereinafter “Cadmium”) are known
to the State of California to cause developmental and reproductive toxicity.

13 **1.4 Notices of Violation**

14 1.4.1 On or about July 28, 2023, CAG served a “60-Day Notice of Intent to Sue
15 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (AG# 2023-02327)
 (“July Notice”) that provided Defendant with notice of alleged violations of Health & Safety Code
16 § 25249.6 for failing to warn individuals in California of exposures to Cadmium contained in
17 Mackerel sold and/or distributed by Defendant. No other public enforcer has commenced or
diligently prosecuted the allegations set forth in the Notice.

18 1.4.2 On or about April 1, 2024, CAG served a “60-Day Notice of Intent to Sue
19 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (AG# 2024-01325)
 (“April Notice”) that provided Defendant with notice of alleged violations of Health & Safety
20 Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium contained
21

1 in Mackerel sold and/or distributed by Defendant. No other public enforcer has commenced or
2 diligently prosecuted the allegations set forth in the Notice.

3 1.4.3 The July Notice and April Notice are collectively referred to as the
4 “Notices”.

5 1.5 **Complaints**

6 1.5.1 On February 21, 2024, CAG filed a complaint for civil penalties and
7 injunctive relief (“Complaint”) in Alameda Superior Court, Case No. 24CV064793 against
8 Defendants, Walmart, Inc., Wal-Mart.com USA, LLC, and Atlapac Trading Company, Inc. The
9 Complaint alleges, among other things, that Defendant, Atlapac Trading Company, Inc., violated
10 Proposition 65 by failing to give clear and reasonable warnings of exposure to Listed Chemicals
11 from Covered Products.

12 1.6 **Consent to Jurisdiction**

13 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
14 has jurisdiction over the allegations of violations contained in the Complaint and personal
15 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
16 County of Alameda and that this Court has jurisdiction to enter this Consent Judgment as a full
17 settlement and resolution of the allegations contained in the Complaint and of all claims which
18 were or could have been raised by any person or entity based in whole or in part, directly or
19 indirectly, on the facts alleged therein or arising therefrom or related thereto.

20 1.7 **No Admission**

21 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent
Judgment shall be construed as an admission by the Parties of any material allegation of the
Complaint (each and every allegation of which Defendant deny), any fact, conclusion of law, issue
of law or violation of law, including without limitation, any admission concerning any violation

of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, their officers, directors, members, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 “Covered Products” means products as defined in Paragraph 1.2 that are sold, offered for sale, marketed, distributed, and/or supplied by Defendant.

2.2 “Effective Date” means the date that this Consent Judgment is approved by the Court.

2.4 “Cadmium” means Cadmium and Cadmium Compounds.

2.4 “Listed Chemicals” means Cadmium in Mackerel.

2.5 “Notices” means Notices of Violation as defined in Paragraph 1.4.

3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE WARNINGS.

3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in California, or ship for sale in California any of the Covered Products unless the level of Cadmium does not exceed 34 parts per billion (“reformulation level”), unless Proposition 65 compliant warnings are used as set forth in the following paragraphs.

3.2 For any Covered Products that exceeds its reformulation level of Listed Chemicals that are manufactured for distribution and/or sale into California after the Effective Date, Defendant must provide a Proposition 65 compliant warning for the Covered Products as permitted

1 by Proposition 65 and its implementing regulations or as set forth below. The language of the
2 warnings and method for providing any warnings for the Covered Products shall be compliant with
3 Title 27, California Code of Regulations, § 25600, et seq and with Title 27, California Code of
4 Regulations, § 25607.2, et seq. Any warning provided pursuant to this section shall be affixed to
5 the packaging of, or directly on, the Covered Products, and be prominently placed with such
6 conspicuousness as compared with other words, statements, designs, or devices as to render it
7 likely to be read and understood by an ordinary individual under customary conditions before
8 purchase or use. The warning must be set off from other surrounding information, enclosed in a
9 box. Where the packaging of the Covered Products or a sign referring to the Covered Products
10 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)
11 in a language other than English, the warning must also be provided in that language in addition
12 to English. Should Defendant sell or distribute any Covered Products through the internet, the
13 warning will be posted in the manner provided for with respect to internet sales, as provided for in
14 27 CCR sections 25601 and 25602, as they may be subsequently amended, for sales to consumers
15 in California. The Parties agree that the following warning language shall constitute compliance
16 with Proposition 65 with respect to the alleged Cadmium in the Covered Products placed into the
17 stream of commerce by Defendant after the Effective Date:

18 For Covered Products that contain Cadmium:

19 **WARNING:** Consuming this product can expose you to Cadmium, a chemical
20 known to the State of California to cause birth defects or other reproductive harm.
21 For more information go to www.P65Warnings.ca.gov/food

3.3 For any Covered Products still existing in the Defendant' physical custody as of the
Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
Covered Products do not exceed the reformulation level. Any warning provided pursuant to this
section shall comply with the warning requirements under Section 3.2 above.

3.4 Changes in the law and regulations applicable to Proposition 65, including changes resulting from federal and/or state court rulings, occurring after this date may be incorporated into the terms of this Consent Judgment, pursuant to the modification provisions set forth in Section 7.

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant shall pay a total of two hundred thousand dollars (\$200,000.00) in full and complete settlement of all monetary claims by CAG related to the Notices, as follows:

4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling twenty-two thousand nine hundred dollars (\$22,900.00) as penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendant will issue a check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seventeen thousand one hundred seventy-five dollars (\$17,175.00) representing 75% of the total penalty and Defendant will issue a separate check to CAG in the amount of five thousand seven hundred twenty-five dollars (\$5,725.00) representing 25% of the total penalty; and

(b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95812-4010 (EIN: 68-0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Defendant shall make a separate payment, in the amount of seventeen thousand one hundred dollars (\$17,100.00) as an additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as follows, eighty percent (80%) for fees of investigation, purchasing and testing for Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures through various

1 mediums, including but not limited to consumer product, occupational, and environmental
2 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining experts
3 who assist with the extensive scientific analysis necessary for those files in litigation and to offset
4 the costs of future litigation enforcing Proposition 65 but excluding attorney fees; twenty percent
5 (20%) for administrative costs incurred during investigation and litigation to reduce the public's
6 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to
7 be responsible for such exposures and attempting to persuade those persons and/or entities to
8 reformulate their products or the source of exposure to completely eliminate or lower the level of
9 Proposition 65 listed chemicals including but not limited to costs of documentation and tracking
10 of products investigated, storage of products, website enhancement and maintenance, computer
11 and software maintenance, investigative equipment, CAG's member's time for work done on
12 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the
Attorney General, CAG shall provide to the Attorney General copies of documentation
demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
the proper expenditure of such additional settlement payment.

13 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Defendant shall pay one
14 hundred and sixty thousand dollars (\$160,000.00) to "Yeroushalmi & Yeroushalmi" as
15 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
16 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
negotiating a settlement in the public interest.

17 4.2 Other than the payment to OEHHA described above, all payments referenced in
18 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
19 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
20 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike
21 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with

1 payment to OEHHA, Defendant shall provide CAG with written confirmation that the payment to
2 OEHHA was delivered.

3 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

4 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf
5 of itself and in the public interest and Defendant for alleged failure to provide Proposition 65
6 warning of exposure to Listed Chemicals from the Covered Products as set forth in the Notices,
7 and Complaint, and fully resolves all claims that have been or could have been asserted against
8 Defendant in this action up through the Effective Date for failure to provide Proposition 65
9 warnings for the Covered Products regarding Listed Chemicals. CAG, on behalf of itself and in
10 the public interest, hereby discharges Defendant, and their respective officers, directors, insurers,
11 employees, parents, shareholders, divisions, subdivisions, subsidiaries, and their successors and
12 assigns (“Defendant Releasees”) and all customers, retailers, and downstream entities in the
13 distribution chain of the Covered Products to whom Defendant distributed or sold Covered
14 Products, including but not limited to Walmart, Inc., Wal-Mart.com USA, LLC, and their parents,
15 subsidiaries, and affiliated entities, and the predecessors, successors and assigns of any of them,
16 and all of their respective officers, directors, shareholders, members, managers, employees, agents
17 only as to Covered Products sold by the Defendant (collectively, “Downstream Releasees”), for
18 all Covered Products placed into the stream of commerce up through the Effective Date for alleged
19 violations of Proposition 65 based on exposure to Listed Chemicals from the Covered Products.
20 Defendant Releasees and Downstream Releasees are sometimes collectively referred to herein as
21 the “Released Parties.” Defendant’s compliance with the terms of this Consent Judgment shall be
deemed to constitute compliance with Proposition 65 regarding alleged exposures to Listed
Chemicals from the Covered Products. Nothing in this Section affects CAG’s right to commence
or prosecute an action under Proposition 65 against any person other than Defendant Releasees or
Downstream Releasees after the Effective Date. The Settlement Agreement shall inure to the
benefit of Downstream Releasees identified in this section, but is not binding on them.

1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal action and releases all claims, including, without limitation, all
4 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
5 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
6 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
7 contingent (collectively "Claims"), against Defendant Releasees and/or Downstream Releasees
8 arising from any violation of Proposition 65 or any other statutory or common law regarding the
9 alleged exposure of persons to the Listed Chemicals contained in the Covered Products or any
10 failure to warn about exposure to Listed Chemicals from the Covered Products. In furtherance of
11 the foregoing, as to alleged exposures to Listed Chemicals from the Covered Products, CAG on
12 behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the future
13 may have, conferred upon it with respect to Claims arising from any violation of Proposition 65
14 or any other statutory or common law regarding the failure to warn about exposure and any alleged
15 exposure of persons to Listed Chemicals from the Covered Products by virtue of the provisions of
16 section 1542 of the California Civil Code, which provides as follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
19 DEBTOR OR RELEASED PARTY.

16 CAG understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
18 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any
19 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
20 about exposure to Listed Chemicals from the Covered Products, including but not limited to any
21 exposure to, or failure to warn with respect to exposure to Listed Chemicals from the Covered
Products, CAG will not be able to make any claim for those damages against Released Parties.

Furthermore, CAG acknowledges that it intends these consequences for any such claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Listed Chemicals from Covered Products as may exist as of the date of this release but which CAG does not suspect to exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

6. ENTRY OF CONSENT JUDGMENT

6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint. Upon entry of an order approving this Consent Judgment, the Complaint in this action shall be deemed amended to include all the claims raised in the Notices.

6.2 The Parties shall make all reasonable efforts possible to have the Consent Judgment approved by the Court.

6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

7. MODIFICATION OF JUDGMENT

7.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

1 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
2 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

3 **8. RETENTION OF JURISDICTION**

4 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
5 of this Consent Judgment under Code of Civil Procedure § 664.6. The parties also agree that
6 Downstream Releases are intended third-party beneficiaries of this Consent Judgment and may
7 enforce its terms.

8 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
9 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

10 **10. DUTIES LIMITED TO CALIFORNIA**

11 9.1 This Consent Judgment shall have no effect on Covered Products sold by Defendant
12 outside the State of California.

13 **10. SERVICE ON THE ATTORNEY GENERAL**

14 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
15 California Attorney General so that the Attorney General may review this Consent Judgment prior
16 to its approval by the Court. No sooner than forty-five (45) days after the Attorney General has
17 received the aforementioned copy of this Consent Judgment, and in the absence of any written
18 objection by the Attorney General to the terms of this Consent Judgment, may the Court approve
19 this Consent Judgment.

20 **11. ATTORNEY FEES**

21 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
own costs and attorney fees in connection with this action.

12. GOVERNING LAW

 12.1 The validity, construction and performance of this Consent Judgment shall be
governed by the laws of the State of California, without reference to any conflicts of law provisions
of California law.

1 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
2 California. In the event that Proposition 65 is amended, repealed, preempted, or is otherwise
3 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
4 Judgment are rendered inapplicable or are no longer required as a result of any such amendment,
5 repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered
6 Products, then Parties may modify the Consent Judgment in accordance with modification
7 requirements of Section 7 with respect to, and to the extent that, the Covered Products are so
8 affected. Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any
9 obligation to comply with any pertinent state or federal law or regulation.

10 12.3 The Parties, including their counsel, have participated in the preparation of this
11 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
12 Consent Judgment was subject to revision and modification by the Parties and has been accepted
13 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
14 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
15 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
16 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
17 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
18 this regard, the Parties hereby waive California Civil Code § 1654.

15 **13. EXECUTION AND COUNTERPARTS**

16 13.1 This Consent Judgment may be executed in counterparts and by means of facsimile
17 or portable document format (pdf), which taken together shall be deemed to constitute one
18 document and have the same force and effect as original signatures.

18 **14. ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of the
20 Parties with respect to the entire subject matter hereof, and all related prior discussions,
21

negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

15. NOTICES

15.1 Any notice under this Consent Judgment shall be by First-Class Mail or E-mail.

If to CAG:

Reuben Yeroushalmi, Esq.
YERUSHALMI & YERUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
(310) 623-1926
Email: lawfirm@yeroushalmi.com

If to Defendant:

Michael R. Hambly
THE FOOD LAWYERS®
The Food Lawyers
1880 Century Park East, Suite 611
Los Angeles, CA 90067
Tel: (310) 556-0721
Fax: (310) 788-8923
E-mail: michael.hambly@thefoodlawyers.com

16. AUTHORITY TO STIPULATE

16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

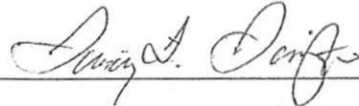
Date: 5-30, 2025



Name: Willard Bayer

AGREED TO:

Date: 4-9-25, 2025



Name: Tim Torrington Sr.

Title: <u>President</u>	Title: <u>President</u>
CONSUMER ADVOCACY GROUP, INC.	ATLAPAC TRADING COMPANY, INC.

IT IS SO ORDERED.

Date: 07/24/2025

Rebekah Evenson
JUDGE OF THE SUPERIOR COURT
Rebekah Evenson / Judge