

1 YEROUSHALMI & ASSOCIATES
2 Reuben Yeroushalmi (SBN 193981)
3 9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, California 90212
5 Telephone: 310) 623-1926
6 Facsimile: (310) 623-1930

7 Attorneys for Plaintiff
8 CONSUMER ADVOCACY GROUP, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 CONSUMER ADVOCACY GROUP,
12 Plaintiff,
13 v.
14 UKA'S BIG SAVER FOODS, INC., dba BIG
15 SAVER FOODS, INC., a California
16 Corporation; SMART COOK, INC., a
17 California Corporation; SUPER-MAX
CORPORATION, a Texas Corporation;
BETTER HOME PLASTICS CORP., a New
Jersey Corporation; and DOES 1-20,
18 Defendant.

Case No. BC503799
Assigned For All Purposes To The
Honorable Ernest Hiroshige
UNLIMITED JURISDICTION
[PROPOSED] CONSENT JUDGMENT

19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
21 Advocacy Group, Inc. ("CAG") acting on behalf of itself and in the interest of the public and
22 defendant Super-max Corporation ("Supermax"), with each a Party and collectively referred to as
23 "Parties."

24 1.2 Supermax is a person in the course of doing business for purposes of the Safe
25 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
26 25249.6 et seq. ("Proposition 65") that distributes or sells razors and disposable razors
27
28

1 (“Razors”). Lead is known to the State of California to cause cancer and/or birth defects or other
2 reproductive harm.

3 1.3 **Notice.** On or about July 12, 2012, CAG served Supermax and various public
4 enforcement agencies with a document entitled “60-Day Notice of Violation” dated June 25, 2012
5 (“Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code
6 § 25249.6 for failing to warn individuals in California of exposures to Lead contained in Razors
7 sold and/or distributed by Supermax. No public enforcer has commenced or diligently prosecuted
8 the allegations set forth in the Notice.

9 1.4 **Complaint.** On March 25, 2013, CAG filed a Complaint for civil penalties and
10 injunctive relief (“Complaint”) in Los Angeles, Superior Court, Case No. BC503799, against
11 Supermax and other defendants. The Complaint alleges, among other things, that Supermax
12 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to Lead from
13 Razors.

14 1.5 **Consent to Jurisdiction** For purposes of this Consent Judgment, the Parties
15 stipulate that this Court has jurisdiction over the allegations of violations contained in the
16 Complaint and personal jurisdiction over Supermax as to the acts alleged in the Complaint, that
17 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter this
18 Consent Judgment as a full settlement and resolution of the allegations contained in the
19 Complaint and of all claims which were or could have been raised by any person or entity based
20 in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
21 related to.

22 1.6 **No Admission.** This Consent Judgment resolves claims that are denied and
23 disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of
24 any and all claims between the parties for the purpose of avoiding prolonged litigation. This
25 Consent Judgment shall not constitute an admission with respect to any material allegation of the
26 Complaint, each and every allegation of which Supermax denies, nor may this Consent Judgment
27 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability
28 on the part of Supermax.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. DEFINITIONS

2.1 "Covered Products" means Razors manufactured, distributed or sold by Supermax Corporation and its affiliated companies

2.2 "Effective Date" means the date that Supermax receives written notice by CAG that this Consent Judgment is approved by the Court.

3. INJUNCTIVE RELIEF/REFORMULATION.

3.1 On or after the Effective Date, Supermax shall not purchase, import, manufacture, distribute, sell, or offer for sale Covered Products intended for sale to California consumers if the Covered Product contains more than 100 parts per million ("ppm") Lead. Supermax also agrees to have an EPA-approved laboratory perform semi-annual testing of a sample of the Covered Products destined for sale to consumers in California for a period of at least two years.

4. SETTLEMENT PAYMENT

4.1 **Settlement Amount:** Supermax shall pay the total sum of \$65,000 as a settlement payment in full and complete settlement of all monetary claims by CAG related to the Notice and Complaint, as follows.

4.1.1 **Reimbursement of Attorney's Fees and Costs:** Supermax shall pay \$50,000 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed relating to this matter.

4.1.2 **Civil Penalty:** Defendant shall issue two separate checks for a total amount of \$7,500 as penalties pursuant to Health & Safety Code § 25192: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of \$5,625, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of \$1,875, representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$5,625. The second 1099 shall be issued in the amount of

1 \$1,875 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard,
2 Suite 240W, Beverly Hills, California 90212.

3 4.1.3 **Payment In Lieu of Civil Penalties:** Supermax shall pay \$7,500 in lieu of
4 civil penalties to "Consumer Advocacy Group, Inc." CAG will use the payments for such
5 projects and purposes related to environmental protection, worker health and safety, or
6 reduction of human exposure to hazardous substances, including but not limited to,
7 administrative and litigation costs and fees (excluding attorneys' fees), laboratory fees for
8 testing samples for Proposition 65 listed chemicals, expert fees for evaluating exposures
9 and merit to each potential violation of Proposition 65, and the cost of hiring consulting
10 and retained experts who assist with the scientific analysis necessary for those files in
11 litigation.

12 4.2 **Delivery of Payments:** Payments shall be delivered to: Reuben Yeroushalmi,
13 Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

15 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
16 behalf of itself and in the public interest and Supermax and its officers, directors, insurers,
17 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
18 companies and their predecessors, successors, and assigns ("Defendant Releasees") and each of
19 their suppliers, customers, distributors, wholesalers, retailers, or any other person in the course of
20 doing business, and the successors and assigns of any of them, who may use, maintain, distribute
21 or sell Covered Products, including but not limited to Uka's Big Saver Foods, Inc. ("Downstream
22 Defendant Releasees"), for all claims for violations of Proposition 65 up through the Effective
23 Date based on exposure to Lead from Covered Products as set forth in the Notice. Supermax's
24 and Defendant Releasees' compliance with this Consent Judgment shall constitute compliance
25 with Proposition 65 with respect to Lead from the Covered Products as set forth in the Notice.

26 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
28 indirectly, any form of legal action and releases all claims, including, without limitation, all

1 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
2 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
3 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
4 contingent (collectively "Claims"), against Supermax, Defendant Releasees, and Downstream
5 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
6 common law regarding the failure to warn about exposure to Lead in Covered Products.

7 5.3 In furtherance of the foregoing, as to alleged exposures to Covered Products, CAG
8 hereby waives any and all rights and benefits which it now has, or in the future may have,
9 conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the
10 California Civil Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
SETTLEMENT WITH THE DEBTOR.

14 CAG understands and acknowledges that the significance and consequence of this waiver of
15 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
16 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
17 including but not limited to any exposure to, or failure to warn with respect to exposure to, Lead
18 or Lead compounds from Covered Products, CAG will not be able to make any claim for those
19 damages against Supermax, Defendant Releasees, or Downstream Defendant Releasees.
20 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
21 exist as of the date of this release but which CAG does not know exist, and which, if known,
22 would materially affect its decision to enter into this Consent Judgment, regardless of whether its
23 lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

24 6. ENFORCEMENT OF JUDGMENT

25 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
26 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
27 California, Los Angeles County, giving the notice required by law, enforce the terms and
28 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent

1 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to
2 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
3 Party's failure to comply in an open and good faith manner.

4 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
5 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a written notice of
6 violation ("NOV") to Supermax. The NOV shall include for each Covered Product: the date(s)
7 the alleged violation(s) was observed and the location at which the Covered Product was offered
8 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
9 Product.

10 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
11 alleged violation if, within 30 days of receiving such NOV, Supermax serves a Notice of
12 Election ("NOE") that meets one of the following conditions:

13 (a) The Covered Product was manufactured or received by Supermax
14 for sale in California before the Effective Date, or

15 (b) Since receiving the NOV Supermax has taken corrective action by
16 removing the Covered Product identified in the NOV from sale in California, or (ii)
17 providing a clear and reasonable warning for the Covered Product identified in the NOV
18 pursuant to 27 Cal. Code Regs. § 25603.

19 **6.2.2 Contested NOV.** Supermax may serve an NOE informing CAG of its
20 election to contest the NOV within 30 days of receiving the NOV.

21 (a) In its election, Supermax may request that the same sample(s) of
22 Covered Product(s) tested by CAG be subject to confirmatory testing at an accredited
23 laboratory.

24 (b) If the confirmatory testing establishes that the Covered Product
25 does not contain lead in excess of the level allowed in Section 3.1, then CAG shall take no
26 further action regarding the alleged violation. If the testing does not establish compliance
27 with Section 3.1, Supermax may withdraw its NOE to contest the violation and may serve
28 a new NOE pursuant to Section 6.2.1.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(c) If Supermax does not withdraw an NOE to contest the NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Consent Judgment.

6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such Party may seek whatever fines, costs, penalties or remedies as may be provided by law for any violation of Proposition 65 or this Consent Judgment.

7. ENTRY OF CONSENT JUDGMENT

7.1 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 Supermax waive their respective rights to a hearing or trial on the allegations of the Complaint, and CAG shall dismiss Uka's Big Saver Foods, Inc. from the complaint without prejudice.

7.2 If this Consent Judgment is not approved by the Court within one year after it is executed by the Parties, (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.

8. MODIFICATION OF JUDGMENT

8.1 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.

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

1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by
6 Supermax outside the State of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, and the
9 motion for approval of this Consent Judgment on the California Attorney General in accordance
10 with 11 C.C.R. § 3003.

11 **12. ATTORNEY FEES**

12 12.1 Except as specifically provided in Section 4.1.1, each Party shall bear its own costs
13 and attorney fees in connection with this action.

14 **13. ENTIRE AGREEMENT**

15 13.1 This Consent Judgment contains the sole and entire agreement and understanding
16 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
17 negotiations, commitments and understandings related hereto.

18 **14. GOVERNING LAW**

19 14.1 The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California, without reference to any conflicts of law
21 provisions of California law.

22 14.2 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
24 Consent Judgment was subject to revision and modification by the Parties and has been accepted
25 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
26 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
27 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
28 agrees that any statute or rule of construction providing that ambiguities are to be resolved against

1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
2 this regard, the Parties hereby waive California Civil Code § 1654.

3 **15. EXECUTION AND COUNTERPARTS**

4 15.1 This Consent Judgment may be executed in counterparts and by means of
5 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
6 one document.

7 **16. NOTICES**

8 16.1 Any notices under this Consent Judgment shall be by personal delivery, overnight
9 courier, or First Class Mail.

10 If to CAG:

11 Reuben Yeroushalmi
12 Yeroushalmi & Associates
13 9100 Wilshire Boulevard, Suite 240W
14 Beverly Hills, CA 90212
15 Tel: (310) 623-1926

14 If to Supermax:

15 SuperMax Corporation
16 11911 San Vicente Blvd., Suite 385
17 Los Angeles, CA 90049

17 With a copy to:

18 Malcolm Weiss, Esq.
19 Hunton & Williams LLP
20 555 South Hope Street, Suite 2000
21 Los Angeles, CA 90071
22 Tel: (213) 532-2000

22 **17. AUTHORITY TO STIPULATE**

23 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
25 the party represented and legally to bind that party.
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

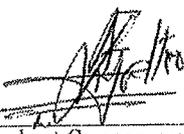
AGREED TO:

Date: July __, 2014

By: _____
Plaintiff CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: July __, 2014

By:  _____
Defendant Supermax Corporation

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: July 25, 2014

By: 
Plaintiff CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: July __, 2014

By: _____
Defendant Supermax Corporation

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT