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8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 Coordination Proceeding
13 Special Title (Rule 3.550)

Case Number: 21STCV01324

14 **PROPOSITION 65 RICE PRODUCT**
15 **CASES**

JCCP NO. 4816

Filed in Case No. BC553427

16 This Document Relates To:

Coordinated with: 34-2014-00165277,
CGC-13-536301, BC549137, BC549139,
BC553427, BC553852, BC554810, and
BC571487.

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

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

19 Plaintiff

20 v.

21 MERCADO LATINO, INC., dba FARAON
22 FOODS CORPORATION, a California
23 Corporation;
24 C & F FOODS, INC., a California
25 Corporation;
26 RHEE BROS., INC., a Maryland
27 Corporation;
28 KOREAN FARM, INC., a California
Corporation;
And DOES 1-50;

Defendants.

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
3 ADVOCACY GROUP, INC. (referred to as “CAG”) acting on behalf of itself and in the interest
4 of the public, on the one hand, and defendants, Rhee Bros., Inc. (“Rhee Bros.”), and Korean
5 Farm., Inc. (“Korean Farm”), (hereinafter jointly referred to as “Defendants”), on the other hand,
6 with each a Party to the actions referenced below, and collectively referred to as “Parties.”

7 **1.2 Defendants and Products**

8 1.2.1 Korean Farm is a California corporation which employs ten or more
9 persons. Rhee Bros. is a Maryland corporation. Defendants distribute, and sell: **Rice**
10 (hereinafter referred to as the “Covered Products”)

11 1.2.2 For purposes of this Consent Judgment, Korean Farm is deemed to be a
12 person in the course of doing business in California and is subject to the provisions of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
14 25249.6 et seq. (“Proposition 65”). Rhee Bros. disputes the allegation that it is a person in the
15 course of doing business in California, subject to the provisions of Proposition 65. However,
16 for purposes of this Consent Judgment only, Rhee Bros. consents to be subject to the provisions
17 of Proposition 65.

18 **1.3 Chemicals of Concern**

19 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
20 California to cause cancer and/or birth defects or other reproductive harm.

21 **1.4 Notices of Violation**

22 1.4.1 On or about September 10, 2013, CAG served Defendants and various
23 public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
24 the “2013 Notice”) that provided the Defendants with notice of alleged violations of Health &
25 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead in Rice
26 sold and/or distributed by Defendants. No other public enforcer has commenced or diligently
27 prosecuted the allegations set forth in the 2013 Notice.
28

1 1.4.2 On or about August 25, 2020, CAG served Defendants and various public
2 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter the
3 “2020 Notice”) that provided the Defendants with notice of alleged violations of Health & Safety
4 Code § 25249.6 for failing to warn individuals in California of exposures to Lead in Rice sold
5 and/or distributed by Defendants. No other public enforcer has commenced or diligently
6 prosecuted the allegations set forth in the 2020 Notice.

7 **1.5 Complaints**

8 1.5.1 On December 19, 2013, CAG filed a complaint for civil penalties and
9 injunctive relief (the “2013 Complaint”) in San Francisco Superior Court, Case No. CGC-13-
10 536301 against Defendants. The 2013 Complaint alleges, among other things, that Defendants
11 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to Lead
12 from Covered Products.

13 1.5.2 On or about February 17, 2015, the 2013 Complaint was coordinated and
14 assigned Judicial Council Coordination Proceeding number 4816 (the “JCCP Action”).

15 1.5.3 On January 12, 2021, CAG filed a complaint for civil penalties and
16 injunctive relief (the “2021 Complaint”) in Los Angeles Superior Court, Case No.
17 21STCV01324 (the “2021 Action”), against Defendants. The 2021 Complaint alleges, among
18 other things, that Defendants violated Proposition 65 by failing to give clear and reasonable
19 warnings of exposure to Lead from Covered Products. The 2013 Complaint and the 2021
20 Complaint are hereinafter referred to as the “Complaints.”

21 1.5.4 On June 21, 2022, the 2021 Action was deemed related to the JCCP
22 Action and is now pending before Judge Berle in Department 6 of the Los Angeles Superior
23 Court, Complex Division.

24 **1.6 Consent to Jurisdiction**

25 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
26 has jurisdiction over the allegations of violations contained in the Complaints and personal
27 jurisdiction over Defendants as to the acts alleged in the Complaints, that venue is proper in the
28

1 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
2 full settlement and resolution of the allegations contained in the Complaints and of all claims
3 which were or could have been raised by any person or entity based in whole or in part, directly
4 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

5 **1.7 No Admission**

6 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
7 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
8 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
9 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
10 the Complaints, any fact, conclusion of law, issue of law or violation of law, including without
11 limitation, any admission concerning any violation of Proposition 65 or any other statutory,
12 regulatory, common law, or equitable doctrine, or the meaning of the terms “knowingly and
13 intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code
14 section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall
15 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
16 law, or violation of law, or of fault, wrongdoing, or liability by Defendants, their officers,
17 directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as
18 evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum.
19 Furthermore, nothing in this Consent Judgment shall prejudice, waive, or impair any right,
20 remedy, argument, or defense the Parties may have in any other or future legal proceeding,
21 except as expressly provided in this Consent Judgment.

22 **2. DEFINITIONS**

23 2.1 “Covered Products” means Rice sold or supplied by Defendants.

24 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
25 Court.

26 2.3 “Lead” means Lead and Lead Compounds.

27 2.4 “Listed Chemical” means Lead.
28

1 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
2 **WARNINGS.**

3 3.1 The injunctive relief set forth herein will mirror the injunctive relief as set out in
4 the Consent Judgment between CAG and the California Rice Commission in the JCCP Action
5 and the Consent Judgment between CAG and Defendant Mercado Latino, Inc. in the 2013
6 Action. After the Effective Date, Defendants shall not, without the warning referenced below,
7 sell in California, offer for sale in California, or ship for sale in California any Rice unless the
8 level of Lead contained therein does not exceed 56 parts per billion (“ppb”).

9 3.5 For any Covered Products that exceeds 56 ppb for the Listed Chemical, that are
10 sold in California, offered for sale in California, or shipped for sale in California after the
11 Effective Date, Defendants must provide a Proposition 65 compliant warning for the Covered
12 Products as set forth below. Nothing is intended herein to provide for a permanent warning on
13 Defendants’ product if the concentration levels of Lead do not exceed 56 ppb. Any warning
14 provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered
15 Products, and be prominently placed with such conspicuousness as compared with other words,
16 statements, designs, or devices as to render it likely to be read and understood by an ordinary
17 individual under customary conditions before purchase or use. The warning must be set off from
18 other surrounding information, enclosed in a box. Where the packaging of the Covered Product
19 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)
20 in a language other than English, the warning must also be provided in that language in addition
21 to English. The Parties agree that the following warning language shall constitute compliance
22 with Proposition 65 with respect to the alleged Lead, in the Covered Products sold, offered for
23 sale, or shipped for sale in California by Defendants after the Effective Date:

24
25 ///

26 ///

27 ///

28 ///

1 **WARNING:** Consuming this product can expose you to chemicals including
2 Lead, which are known to the State of California to cause cancer and birth defects
3 or other reproductive harm. For more information go to
4 www.P65Warnings.ca.gov/food.

5 Or:

6 ⚠ Cancer and Reproductive Harm - www.P65Warnings.ca.gov

7
8
9 3.6 For any Covered Products still existing in the Defendants' inventory as of the
10 Effective Date, that will be sold, offered for sale, or shipped for sale, in California,
11 Defendants shall place a Proposition 65 compliant warning on them, unless the Covered Products
12 do not exceed their respective levels of Lead.

13 **4. SETTLEMENT PAYMENT**

14 4.1 **Payment and Due Date:** Defendants shall pay a total of one hundred thousand
15 dollars (\$100,000) in full and complete settlement of all monetary claims by CAG related to the
16 Notices, as follows:

17 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling eight
18 thousand five hundred and eighty dollars (\$8,580.00) as penalties pursuant to Health & Safety
19 Code § 25249.12:

20 (a) Defendants will issue a check made payable to the State of California's
21 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of six thousand
22 four hundred and thirty-five dollars (\$6,435.00) representing 75% of the total penalty and
23 Defendants will issue a separate check to CAG in the amount of two thousand one hundred and
24 forty-five dollars (\$2,145.00) representing 25% of the total penalty; and

25 (b) Separate 1099s shall be issued for each of the above payments:
26 Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-

1 0284486). Defendants will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
2 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

3 **4.1.2 Additional Settlement Payments:** Defendants shall make a separate
4 payment, in the amount of six thousand four hundred and twenty dollars (\$6,420.00) as an
5 additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety
6 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendants will
7 issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
8 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
9 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating
10 exposures through various mediums, including but not limited to consumer product,
11 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
12 hiring, consulting and retaining experts who assist with the extensive scientific analysis
13 necessary for those files in litigation and to offset the costs of future litigation enforcing
14 Proposition 65 but excluding attorney fees; fifteen percent (15%) for administrative costs
15 incurred during investigation and litigation to reduce the public’s exposure to Proposition 65
16 listed chemicals by notifying those persons and/or entities believed to be responsible for such
17 exposures and attempting to persuade those persons and/or entities to reformulate their products
18 or the source of exposure to completely eliminate or lower the level of Proposition 65 listed
19 chemicals including but not limited to costs of documentation and tracking of products
20 investigated, storage of products, website enhancement and maintenance, computer and software
21 maintenance, investigative equipment, CAG’s member’s time for work done on investigations,
22 office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney
23 General, CAG shall provide to the Attorney General copies of documentation demonstrating how
24 the above funds have been spent. CAG shall be solely responsible for ensuring the proper
25 expenditure of such additional settlement payment.
26

27 **4.1.3 Reimbursement of Attorneys’ Fees and Costs:** Defendants shall pay
28 eighty-five thousand dollars (\$85,000.00) to “Yeroushalmi & Yeroushalmi” as reimbursement

1 for reasonable investigation fees and costs, attorneys’ fees, and any other costs incurred as a
2 result of investigating, bringing this matter to Defendants’ attention, litigating, and negotiating a
3 settlement in the public interest.

4 4.2 Other than the payment to OEHHA described above, all payments referenced in
5 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
6 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
7 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
8 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
9 with payment to OEHHA, Defendants shall provide CAG with written confirmation that the
10 payment to OEHHA was delivered.

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

12 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
13 behalf of itself and in the public interest and Defendants for failure to provide Proposition 65
14 warning of exposure to Lead, from the Covered Products as set forth in the Notices, and fully
15 resolves all claims that have been or could have been asserted against Defendants in the 2013
16 Action, the 2021 Action, and the JCCP Action up through the Effective Date for failure to
17 provide Proposition 65 warnings for the Covered Products regarding Lead. CAG, on behalf of
18 itself and in the public interest, hereby discharges Defendants and their respective officers,
19 directors, insurers, employees, parents, shareholders, members, divisions, subdivisions,
20 subsidiaries, and their successors and assigns (“Defendant Releasees”) and all customers,
21 retailers and downstream entities in the distribution chain of the Covered Products to whom
22 Defendants distributed or sold Covered Products, and the predecessors, successors and assigns of
23 any of them, and all of their respective officers, directors, shareholders, members, managers,
24 employees, agents only as to Covered Products sold by the Defendants, including without
25 limitation Amazon.com, LLC and Amazon Services, Inc. (collectively, “Downstream
26 Releasees”) (Defendant Releasees and Downstream Releasees are collectively referred to herein
27 as the “Released Parties”), for all Covered Products placed into the stream of commerce up
28

1 through the Effective Date for violations of Proposition 65 based on exposure to Lead from the
2 Covered Products. Defendant’s compliance with the terms of this Consent Judgment shall be
3 deemed to constitute compliance with Proposition 65 regarding alleged exposures to Lead from
4 the Covered Products. Nothing in this Section affects CAG’s right to commence or prosecute an
5 action under Proposition 65 against any person other than Defendant Releasees or Downstream
6 Releasees after the Effective Date. The scope of the release for the Downstream Releasees is
7 limited to the “Covered Products” distributed for sale by Defendants only.

8 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
9 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
10 indirectly, any form of legal action and releases all claims, including, without limitation, all
11 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
12 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
13 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
14 fixed or contingent (collectively “Claims”), against the Released Parties arising from any
15 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
16 about exposure to Lead from the Covered Products. In furtherance of the foregoing, as to alleged
17 exposures to Lead from the Covered Products, CAG on behalf of itself only, hereby waives any
18 and all rights and benefits which it now has, or in the future may have, conferred upon it with
19 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
20 law regarding the failure to warn about exposure to Lead from the Covered Products by virtue of
21 the provisions of section 1542 of the California Civil Code, which provides as follows:
22

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

CAG understands and acknowledges that the significance and consequence of this waiver of
California Civil Code section 1542 is that even if CAG suffers future damages arising out of or

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
2 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
3 about exposure to Lead from the Covered Products, including but not limited to any exposure to,
4 or failure to warn with respect to exposure to Lead from the Covered Products, CAG will not be
5 able to make any claim for those damages against Released Parties. Furthermore, CAG
6 acknowledges that it intends these consequences for any such Claims arising from any violation
7 of Proposition 65 or any other statutory or common law regarding the failure to warn about
8 exposure to Lead from Covered Products as may exist as of the date of this release but which
9 CAG does not know exist, and which, if known, would materially affect their decision to enter
10 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
11 ignorance, oversight, error, negligence, or any other cause.

12 **6. ENTRY OF CONSENT JUDGMENT**

13 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
14 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
15 Defendant waive their respective rights to a hearing or trial on the allegations of the 2013
16 Complaint or the 2021 Complaint.

17 6.2 The Parties shall make all reasonable efforts possible to have the Consent
18 Judgment approved by the Court.

19 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
20 Judgment and any and all prior agreements between the Parties merged herein shall terminate
21 and become null and void, and the actions shall revert to the status that existed prior to the
22 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
23 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
24 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
25 purpose in the 2013 Action, 2021 Action, the JCCP Action, or in any other proceeding; and (c)
26 the Parties agree to meet and confer to determine whether to modify the terms of the Consent
27 Judgment and to resubmit it for approval.
28

1 **7. MODIFICATION OF JUDGMENT**

2 7.1 This Consent Judgment may be modified only upon written agreement of the
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **8. RETENTION OF JURISDICTION**

8 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
9 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

10 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
11 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

12 **9.. DUTIES LIMITED TO CALIFORNIA**

13 9.1 This Consent Judgment shall have no effect on Covered Products sold by
14 Defendants outside the State of California.

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

16 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment
18 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
19 has received the aforementioned copy of this Consent Judgment, and in the absence of any
20 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
21 approve this Consent Judgment.
22

23 **11. ATTORNEY FEES**

24 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
25 own costs and attorney fees in connection with this action.
26
27
28

1 **12. GOVERNING LAW**

2 12.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

5 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
6 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
9 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
10 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
11 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
12 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
13 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
14 or federal law or regulation.

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

24 **13. EXECUTION AND COUNTERPARTS**

25 13.1 This Consent Judgment may be executed in counterparts and by means of
26 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
27 one document and have the same force and effect as original signatures.
28

1 **14. NOTICES**

2 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

3
4 If to CAG:


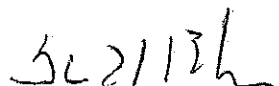
5 Reuben Yeroushalmi
6 YEROUSHALMI & YEROUSHALMI
7 9100 Wilshire Boulevard, Suite 240W
8 Beverly Hills, CA 90212
9 (310) 623-1926
10 Email: lawfirm@yeroushalmi.com

11 If to Defendants.:

12 David C. Bolstad
13 Christopher Foster
14 SAFARIAN CHOI & BOLSTAD LLP
15 555 S. Flower Street, Suite 650
16 Los Angeles, CA 90071
17 (213 481 6565
18 dbolstad@safarianchoi.com

19 **15. AUTHORITY TO STIPULATE**

20 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
21 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
22 the party represented and legally to bind that party.
23

AGREED TO:	AGREED TO:
Date: <u>1/11</u> , 2022 ²⁰²³	Date: <u>1/11</u> , 2022 ²⁰²³
	
Name: <u>ROBIN RHEE</u>	Name: <u>STEVEN RHEE</u>
Title: <u>PRESIDENT</u>	Title: <u>PRESIDENT</u>
RHEE BROS, INC.	KOREAN FARM, INC.
AGREED TO:	AGREED TO:

1 Date: 1/13/2023, ~~2022~~

2 Michael Marcus

3 Name: Michael Marcus

4 Title: Director

5
6
7 CONSUMER ADVOCACY GROUP, INC.

8
9 **IT IS SO ORDERED.**

10
11 Date: _____

12 _____
13 JUDGE OF THE SUPERIOR COURT