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Consumer Advocacy Group, Inc.

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

11 Coordination Proceeding  
Special Title (Rule 3.550)

12  
13 PROPOSITION 65  
RICE PRODUCT CASES  
14

15 This Document Relates To:

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

18 Plaintiff,

19 v.

20 UKA’S BIG SAVER FOODS, INC., dba BIG  
21 SAVER FOODS, INC., a California  
22 Corporation; OTIS MCALLISTER, INC., a  
California Corporation; and DOES 1-20;

23 Defendants.  
24

JUDICIAL COUNCIL  
COORDINATION PROCEEDING NO. 4816  
In Los Angeles Case No.: BC553852

Coordinated with: 34-2014-00165277,  
BC549137, BC549139, BC554810, BC553427,  
BC556594, CGC-13-536301, and BC571487

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

[Assigned For All Purposes to Hon. Elihu M.  
Berle in Dept. 323]

Complaint in BC553852 filed: August 6, 2014

25 **1. INTRODUCTION**

26 1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER  
27 ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) acting on behalf of itself and in the interest of the  
28 public, and Defendant, OTIS MCALLISTER, INC., (“OTIS” or “Defendant”), with each a Party to the

1 action and collectively referred to as “Parties.”

2 **1.2 Defendant and Covered Products**

3 1.2.1 CAG alleges that OTIS is a California Corporation which employs ten or more  
4 persons. For purposes of this Consent Judgment only, OTIS is deemed a person in the course of doing  
5 business in California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement  
6 Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

7 1.2.2 CAG alleges that OTIS manufactures, causes to be manufactured, sells, or  
8 distributes rice in California.

9 **1.3 Listed Chemical**

10 1.3.1 Lead and lead compounds have been listed by the State of California as known  
11 to cause cancer and/or birth defects or other reproductive harm.

12 **1.4 Notice of Violation.**

13 1.4.1 On or about February 18, 2014, CAG served OTIS and UKA’s Big Saver  
14 Foods, Inc. [dba Big Saver Foods, Inc.], and various public enforcement agencies with a document,  
15 dated February 17, 2014, titled “60-Day Notice of Intent to Sue for Violation of the Safe Drinking  
16 Water and Toxic Enforcement Act of 1986” (“February 18, 2014 Notice”) that provided the recipients  
17 with notice of alleged violations of Health & Safety Code § 25249.6 for allegedly failing to warn  
18 individuals in California of exposure to lead contained in certain rice currently known as: Super Lucky  
19 Elephant Jasmine White Naturally Scented Rice, “Jasmine Long Grain Fragrant Rice”, “Thai Hom  
20 Mali Rice”, “Net Wt. 2 Lbs (.9072 kg)”, “Product of Thailand” barcode: 0 28571 00409 8, sold by  
21 OTIS in California. No public enforcer has commenced or diligently prosecuted the allegations set  
22 forth in the February 18, 2014 Notice.

23 1.4.2 On or about November 3, 2014, CAG served OTIS, Unified Grocers, Inc., and  
24 UKA’s Big Saver Foods, Inc. [dba Big Saver Foods, Inc.], and various public enforcement agencies  
25 with a document, dated October 31, 2014, titled “60-Day Notice of Intent to Sue for Violation of the  
26 Safe Drinking Water and Toxic Enforcement Act of 1986” (“November 3, 2014 Notice”) that provided  
27 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for allegedly failing  
28 to warn individuals in California of exposures to lead contained in certain rice sold by OTIS in

1 California known as Super Lucky Elephant Jasmine White Naturally Scented Rice, “Jasmine Long  
2 Grain Fragrant Rice”, “Thai Hom Mali Rice”, “Net Wt. 2 Lbs (.9072 kg)”, “Product of Thailand”  
3 barcode: 0 28571 00409 8. No public enforcer has commenced or diligently prosecuted the allegations  
4 set forth in the November 3, 2014 Notice.

5 **1.5 Complaint and Answer.**

6 On August 6, 2014, CAG filed a Complaint against Defendant, and UKA’s Big Saver Foods,  
7 Inc. dba Big Saver Foods, Inc. for civil penalties and injunctive relief (the “Complaint”) in Los  
8 Angeles County Superior Court, Case No. BC553852, alleging that Defendants violated Proposition  
9 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to Lead in certain  
10 rice named above in Section 1.4.1 that Defendants distributed and/or sold in California.

11 On September 17, 2014 OTIS filed its general denial under CCP § 431.30(d) to the Complaint  
12 and setting forth various affirmative defenses. It is OTIS’ position that it has never been in violation  
13 of the warning requirements of Proposition 65 for lead. OTIS therefore reiterates its general denial  
14 herein. Furthermore, OTIS will continue to maintain a proactive food safety and testing protocol for  
15 rice and grains. OTIS has for many years maintained a proactive food safety testing provisions that  
16 predate the Complaint. OTIS denies any wrongdoing in this regard.

17 **1.6 Consent to Jurisdiction**

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

25 **1.7 No Admission**

26 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into  
27 this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties  
28 for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed

1 as an admission by the Parties of any material allegation in the Notices of Violation (see, Sections  
2 1.4.1 and 1.4.2 herein), or the Complaint, or of any fact, conclusion of law, issue of law or violation of  
3 law of any kind, including without limitation, any admission concerning any alleged or actual  
4 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,  
5 including but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear  
6 and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent  
7 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by the  
8 Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or  
9 liability by any Defendant, its officers, directors, employees, shareholders, or parent, subsidiary or  
10 affiliated corporations, or be offered or admitted as evidence in any administrative or judicial  
11 proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent  
12 Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may  
13 have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

## 14 **2. DEFINITIONS**

15 2.1 “Covered Products” means raw uncooked whole rice sold or supplied only by OTIS, or  
16 sold by OTIS vendors or retailers as described further in Section 5.1 of this Consent Judgment, only  
17 for those raw uncooked whole rice sold or supplied by OTIS. Covered Products shall also be  
18 construed to include OTIS Private label brands and to OTIS brand names, or trademark names  
19 including, but not limited to: Akiyama, Angelita, Emerald River, Himalayan Pride, Sierra, Super  
20 Lucky Elephant, Village Harvest, Earthly Grains, Simply Nature, West Creek, Roma, Asian Pride,  
21 Rykoff, Sahar, Jade Mountain, Arrezzo, Simply Balanced, Tierra Latina and Kirkland Signature. In  
22 the event that a new private label brand is created which meets this definition of Covered Products  
23 (e.g. raw uncooked whole rice sold or supplied only by OTIS), OTIS will notify CAG of this  
24 development for this new private label brand to be covered herein.

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

26 2.3 “Lead” means lead and lead compounds.

27 2.4 “Listed Chemical” means Lead.

28 2.6 “Notices” means Plaintiff’s February 18, 2014 and November 3, 2014 Notices.

1 **3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.**

2 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in  
3 California, or ship into California for sale any Covered Products unless the concentration level of the  
4 Listed Chemical does not exceed 56 parts per billion (“ppb”). For any Covered Products that exceed  
5 56 ppb for the Listed Chemical that are sold as set forth above after the Effective Date, Defendant  
6 must provide a Proposition 65 compliant warning for the Covered Products as set forth below.  
7 Nothing is intended herein to provide for a permanent warning on OTIS’ Covered Products if a non-  
8 compliant covered product is thereafter brought into compliance as agreed to herein (e.g. Defendant  
9 may address non-compliance by removing/recalling any lot that is determined through the procedures  
10 set forth herein to not comply with the 56 ppb concentration level for lead).

11 Any warning provided pursuant to this section shall be affixed to the packaging of, or directly  
12 on, the Covered Products, and be prominently placed with such conspicuousness as compared with  
13 other words, statements, designs, or devices as to render it likely to be read and understood by an  
14 ordinary individual under customary conditions before purchase or use. The Parties agree that the  
15 following warning language shall constitute compliance with Proposition 65 with respect to the  
16 alleged Listed Chemical in the Covered Products distributed and/or sold by the Defendant after the  
17 Effective Date:

18 **WARNING:** This product contains chemicals known to the State of California to cause cancer  
19 and birth defects or other reproductive harm.

20 **3.2 Testing and Quality Control Methodology**

21 3.2.1 All testing pursuant to this Consent Judgment, by any party, shall be performed  
22 according to proper and accepted scientific and statistical analysis for each type of rice: sold by OTIS  
23 in California, offered by OTIS for sale in California, or which form the constituents of any Covered  
24 Product(s) sold in California. The testing shall be performed by a laboratory approved for testing food  
25 intended for human consumption employing methodology that complies with the performance and  
26 quality control factors appropriate therefor. The methodology is intended to ensure that any resulting  
27 test reports and analysis properly account for and eliminate the possibility of false positives or  
28 sampling error. Furthermore, OTIS may, in its discretion, utilize, any testing method that meets the

1 above criteria.

2           3.2.2 All testing pursuant to this Consent Judgment, by any party, shall be performed  
3 by an independent third-party laboratory certified by the California Environmental Laboratory  
4 Accreditation Program for the analysis of heavy metals; or an independent third-party laboratory that  
5 is registered with the United States Food & Drug Administration (“FDA”) for the analysis of heavy  
6 metals; and/or that uses methods that are in compliance with FDA regulations for the analysis of heavy  
7 metals. Defendant may perform this testing itself or with a third party laboratory if it provides, in an  
8 attachment to the test results Defendant provides to CAG, proof that its laboratory meets the  
9 requirements in Section 3.2.1 and this Section 3.2.2. Nothing in this Consent Judgment shall limit  
10 Defendant’s ability to conduct, or require that others conduct, additional testing of each type of rice  
11 sold by OTIS which form the constituents of the Covered Products, including the raw materials used in  
12 their manufacture.

13           3.2.3 Within three (3) months following the Effective Date, Defendant will arrange  
14 for testing of at least two (2) randomly selected samples of each type of rice sold by OTIS which form  
15 the constituents of the Covered Products for compliance with the standards set forth in this Consent  
16 Judgment. Each type of rice sold by OTIS which form the constituents of the Covered Products shall  
17 be tested pursuant to this section bi-annually after the Effective Date. Each type of rice sold by OTIS  
18 which form the constituents of the Covered Products shall be tested in the form (e.g. cooked/uncooked  
19 rice) intended for sale to the end-user to be distributed or sold to California. The testing requirements  
20 discussed in Sections 3.2.1 and 3.2.2 are not applicable to any type of rice sold by OTIS which form  
21 the constituents of the Covered Products for which Defendant has provided the warning as specified in  
22 Section 3.1.

23           3.2.4 All parties shall retain the laboratory test data and certifications (if applicable)  
24 for a period of three (3) years from the date of testing. If there is an allegation that a particular  
25 Covered Product is in violation of Section 3.1, CAG may make a written request to Defendant  
26 delivered to the address of Defendant as set forth in Section 15, for data generated in compliance with  
27 Section 3.2.4 concerning the particular Covered Product and shall, concurrently with its written  
28 request, provide Defendant with the testing data that supports the allegation. In response, within thirty

1 (30) days of CAG’s written request and provision of its testing data to Defendant, Defendant will  
2 provide to CAG the date Defendant’s analysis was performed concerning the particular Covered  
3 Product identified by CAG in its request, the name of the laboratory conducting the test, the test  
4 method used by the laboratory, the detection limit used by the laboratory, and the analytical results  
5 concerning the particular Covered Product identified by CAG in its request.

6 **4. SETTLEMENT PAYMENT**

7 4.1 **Payment and Due Date:** Within 10 days of the Effective Date, Defendant shall pay a  
8 total of one hundred and fifty thousand dollars and zero cents (\$150,000.00) in full and complete  
9 settlement of any and all claims for civil penalties, damages, attorney’s fees, expert fees or any other  
10 claim for costs, expenses or monetary relief of any kind for claims that were or could have been  
11 asserted in the Notice or Complaint, as separated into partial payment as follows:

12 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling five thousand  
13 seven hundred and twenty dollars (\$5,720.00) as follows for alleged civil penalties pursuant to Health  
14 & Safety Code § 25249.12:

15 (a) Defendant will issue one check made payable to the State of California’s  
16 Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of four thousand two  
17 hundred and ninety dollars (\$4,290.00) representing 75% of the total civil penalty and Defendant will  
18 issue a second check to CAG in the amount of one thousand four hundred and thirty dollars (\$1,430)  
19 representing 25% of the total civil penalty;

20 (b) Separate 1099s shall be issued for each of the above payments: Defendant  
21 will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the  
22 amount of \$4,290.00. Defendant will also issue a 1099 to CAG in the amount of \$1,430.00 and  
23 deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly  
24 Hills, California 90212.

25 4.1.2 **Additional Settlement Payments:** Defendant shall pay four thousand two  
26 hundred and eighty dollars (\$4,280.00) as additional settlement payments to “Consumer Advocacy  
27 Group, Inc.” pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title  
28 11 § 3203(d). CAG will use this payment as follows, seventy percent (70%) for fees of investigation,

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

17           **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall pay one  
18 hundred and forty thousand dollars (\$140,000.00) payable to "Yeroushalmi & Yeroushalmi" as  
19 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert  
20 fees, and any and all other costs and expenses incurred as a result of investigating, bringing this matter  
21 to the Defendant's attention, litigating, negotiating a settlement in the public interest, and seeking and  
22 obtaining court approval of this Consent Judgment.

23           4.2 Other than the payment to OEHHA described above, all payments referenced in  
24 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &  
25 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to OEHHA  
26 shall be delivered directly to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics,  
27 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall provide written  
28 confirmation to CAG upon payment to OEHHA.



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

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf  
3 of itself and in the public interest, and Defendant and its officers, directors, insurers, employees,  
4 parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies,  
5 attorneys, experts, and their successors and assigns (“Defendant Releasees”), and all entities to whom  
6 Defendant directly or indirectly distribute or sell Covered Products, including, but not limited to,  
7 downstream distributors, wholesalers, vendors, customers, retailers, franchisees, cooperative members,  
8 licensees, and the successors and assigns of any of them, including but not limited to UKA’s Big Saver  
9 Foods, Inc., UKA’s Big Saver Foods, Inc. dba Big Saver Foods, Inc., and to Unified Grocers, Inc.,  
10 who may use, maintain, distribute or sell Covered Products (“Downstream Defendant Releasees”), of  
11 all claims for alleged or actual violations of Proposition 65 for alleged exposures to the Listed  
12 Chemical from the Covered Products manufactured, distributed, packaged, or sold by Defendant,  
13 Defendant Releasees, and/or Downstream Defendant Releasees, up through the Effective Date of this  
14 Consent Judgment, and inclusive of the Notices and Complaint. Defendant, Defendant Releasees, an  
15 Downstream Defendant Releasees’ compliance with this Consent Judgment shall constitute  
16 compliance with Proposition 65 with respect to alleged exposures to the Listed Chemical from the  
17 Covered Products sold by Defendant, Defendant Releasees and/or Downstream Defendant Releasees  
18 individually and/or collectively after the Effective Date. Nothing in this Section affects CAG’s right  
19 to commence or prosecute an action under Proposition 65 against any person other than Defendant,  
20 Defendant Releasees, or Downstream Defendant Releasees. Defendant, Defendant Releasees and  
21 Downstream Defendant Releasees are hereafter individually and/or collectively referred to as the  
22 “Released Parties”.

23 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
24 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
25 indirectly, any form of legal or administrative action and releases all claims, including, without  
26 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
27 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees,  
28 expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or

1 contingent (collectively “Claims”), against the Released Parties arising from any actual or alleged  
2 violation of Proposition 65 or any other statutory or common law claim regarding the Covered  
3 Products manufactured, packaged, distributed or sold by the Released Parties through the Effective  
4 Date regarding any actions or inaction by the Released Parties whatsoever relating to the Covered  
5 Products regarding any actual or alleged failure to warn about exposure to the Listed Chemical from  
6 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself and its officers,  
7 directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
8 affiliates, sister entities, successors in interest, attorneys, and all of their successors and assigns (“CAG  
9 Releasees”), hereby waives any and all rights and benefits which they now have, or in the future may  
10 have, conferred upon them with respect to Claims regarding the Covered Products manufactured,  
11 packaged, distributed or sold by the Released Parties through the Effective Date arising from any  
12 violation of Proposition 65 or any other statutory or common law violation whatsoever relating to the  
13 Covered Products regarding claims arising from the failure to warn about exposure to the Listed  
14 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California Civil  
15 Code, which provides as follows:

16  
17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
18 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR  
19 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR  
20 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
21 WITH THE DEBTOR.  
22

23 CAG Releasees understand and acknowledge that the significance and consequence of this waiver of  
24 California Civil Code section 1542 is that even if the CAG Releasees suffer future damages arising out  
25 of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
26 violation of Proposition 65 or any other statutory or common law regarding the Covered Products  
27 manufactured, packaged, distributed or sold by the Released Parties through the Effective Date  
28 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the

1 Covered Products, CAG Releasees will not be able to make any claim for those damages, penalties or  
2 other relief against the Released Parties. Furthermore, CAG Releasees acknowledge that they intend  
3 these consequences for any such Claims arising from any violation of Proposition 65 or any other  
4 statutory or common law regarding the failure to warn about exposure to the Listed Chemical from the  
5 Covered Products as may exist as of the Effective Date of this release but which the CAG Releasees  
6 do not know exist, and which, if known, would materially affect their decision to enter into this  
7 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,  
8 error, negligence, or any other cause.

9 **6. ENFORCEMENT OF JUDGMENT**

10 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto.  
11 The Parties may, by noticed motion or order to show cause before the Superior Court of California,  
12 Los Angeles County, enforce the terms and conditions contained herein. A Party may enforce any of  
13 the terms and conditions of this Consent Judgment only after that Party first provides 90 days written  
14 notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment,  
15 and attempts to resolve such Party's failure to comply in an open and good faith manner.

16 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
17 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation  
18 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a) the name of the  
19 Covered Products; (b) specific dates, name, barcode and lot number when the Covered Product was  
20 sold in California; (c) the store or other place at which the Covered Product was available for sale to  
21 consumers; (d) any other evidence or support for the allegations in the NOV which must include  
22 copies of complete CAG test results forming the basis for the NOV including, the testing laboratory,  
23 testing method utilized and all analytical results; (e) CAG shall not initiate an NOV without one  
24 sample of a Covered Product exceeding 56 ppb lead; and (f) in association with any NOV, CAG shall  
25 provide split samples of the tested product to OTIS for its own testing together with a copy or copies  
26 of the packaging from which the Covered Product was sampled showing the packaging's barcode, and  
27 the sprayed inkjet writing on the packaging clearly showing the lot number, the listed reference  
28 number, and the expiration date.

1                   **6.2.1 Response to NOV.**

2                   (a) CAG shall take no further action of any kind regarding the alleged violation if,  
3 within 90 days of receiving such NOV, Defendant:

4                   (1) Serves a Notice of Election (“NOE”) not to contest the NOV that meets one  
5 of the following conditions:

6                   (i) A statement that the Covered Product was produced or shipped  
7 by Defendant for sale in California before the Effective Date; or

8                   (ii) A statement that since receiving the NOV Defendant has taken  
9 corrective action by either: (i) taking all steps necessary to bring the sale of the  
10 product into compliance under the terms of this Consent Judgment; or (ii)  
11 requesting that its customers or stores in California, as applicable, remove the  
12 Covered Product identified in the NOV from sale in California and destroy or  
13 return the Covered Product to Defendant or vendor, as applicable; or

14                   (2) Refutes the information provided in the NOV (e.g. with the results of testing  
15 provided for herein, including Section 3.2 above) that reflect compliance. CAG shall  
16 provide Notice of its Acceptance (“NOA”) or Notice of Rejection (“NOR”) of  
17 Defendant’s refutation within 30 days of the date such refutation data is provided to  
18 CAG by Defendant.

19                   **6.2.2 Contested NOV.** Within 60 days following CAG’s NOR or 90 days following  
20 the NOV, whichever is later Defendant may serve a Notice of Election (“NOE”) informing  
21 CAG of its election to contest the NOV.

22                   (a) In its election, Defendant may request that the sample(s) of Covered  
23 Product tested by CAG be subject to confirmatory testing at an independent third-party  
24 laboratory certified by the California Environmental Laboratory Accreditation Program for the  
25 analysis of heavy metals; or an independent third-party laboratory that is registered with the  
26 United States Food & Drug Administration (“FDA”) for the analysis of heavy metals; and/or  
27 that uses methods that are in compliance with FDA regulations for the analysis of heavy  
28 metals.

1 (b) If the confirmatory testing establishes that the Covered Products do not  
2 contain the Listed Chemicals in excess of the levels allowed in Section 3.1, above, CAG shall  
3 take no further action regarding the alleged violation. If the testing does not establish  
4 compliance with Section 3.1, above, Defendant may withdraw its NOE to contest the violation  
5 and may serve a new NOE pursuant to Section 6.2.1(a)(1).

6 (c) If Defendant does not withdraw a NOE to contest the NOV, the Parties  
7 shall meet and confer for a period of no less than 60 days before CAG may seek an order  
8 enforcing the terms of this Consent Judgment.

9 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the  
10 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

11 **7. ENTRY OF CONSENT JUDGMENT**

12 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
13 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
14 Defendant waive their respective rights to a hearing and trial on the allegations in the Notices,  
15 Complaint and Coordination Proceeding stated in the caption above.

16 7.2 If this Consent Judgment is not approved in full by the Court: (a) the Parties agree to  
17 meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it  
18 for approval; or (b) this Consent Judgment and any and all prior agreements between the Parties  
19 merged herein shall terminate and become null and void, and the actions shall revert to the status that  
20 existed prior to the execution date of this Consent Judgment except that the Parties shall petition the  
21 Court for a new trial date and new trial date deadlines; and (c) no term of this Consent Judgment or  
22 any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
23 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose  
24 in this Action, or in any other proceeding.

25 7.3 CAG shall file a request for a dismissal without prejudice as to defendant, UKA's Big  
26 Saver Foods, Inc., dba Big Saver Foods, Inc. in Case No. BC553852 and Coordination Proceeding No.  
27 4816 within ten (10) days of the Effective Date.

28

1 **8. MODIFICATION OF JUDGMENT**

2 8.1 This Consent Judgment may be modified only upon written agreement of the Parties  
3 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as  
4 provided by law and upon entry of a modified Consent Judgment by the Court.

5 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet  
6 and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **9. RETENTION OF JURISDICTION**

8 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of  
9 this Consent Judgment under Code of Civil Procedure § 664.6.

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

11 10.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
12 California Attorney General so that the Attorney General may review this Consent Judgment prior to  
13 its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General  
14 has received the aforementioned copy of this Consent Judgment, CAG may then submit it to the Court  
15 for approval.

16 **11. ATTORNEY FEES**

17 11.1 Except as specifically provided in Sections 4.1.3, and 6.3, each Party shall bear its own  
18 attorneys' fees, costs and expert fees in connection with the claims resolved in this Consent Judgment.

19 **12. ENTIRE AGREEMENT**

20 12.1 This Consent Judgment contains the sole and entire agreement and understanding of the  
21 Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations,  
22 commitments and understandings related hereto. No representations, oral or otherwise, express or  
23 implied, other than those contained herein have been made by any party hereto. No other agreements  
24 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the  
25 Parties.

26 **13. GOVERNING LAW**

27 13.1 The validity, construction and performance of this Consent Judgment shall be governed  
28 by the laws of the State of California, without reference to any conflicts of law provisions of

1 California law.

2           13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
3 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
4 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
5 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant may  
6 provide written notice to CAG of any asserted change in the law, and shall have no further obligations  
7 pursuant to this Consent Judgment 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 Defendant from any  
9 obligation to comply with any other pertinent state or federal law or regulation.

10           13.3 The Parties, including their counsel, have participated in the preparation of this Consent  
11 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent  
12 Judgment was subject to revision and modification by the Parties and has been accepted and approved  
13 as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing  
14 in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the  
15 preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or  
16 rule of construction providing that ambiguities are to be resolved against the drafting Party should not  
17 be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby  
18 waive California Civil Code § 1654.

19 **14. EXECUTION AND COUNTERPARTS**

20           14.1 This Consent Judgment may be executed in counterparts and by means of facsimile or  
21 portable document format (pdf), which taken together shall be deemed to constitute one document and  
22 have the same force and effect as original signatures.

23 **15. NOTICES**

24           15.1 Any notices under this Consent Judgment shall be by delivery of First Class Mail.  
25 If to CAG:

26           Reuben Yeroushalmi, Esq.  
27           Yeroushalmi & Yeroushalmi  
28           9100 Wilshire Boulevard, Suite 240W  
              Beverly Hills, CA 90212

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If to Defendant OTIS:

Richard T. Bowles, Bruce C. Paltenghi and Lawrence D. Goldberg  
BOWLES & VERNA LLP  
2121 North California Boulevard, Suite 875  
Walnut Creek, CA 94596

and to

Royce A. Nicolaisen, CEO  
Otis McAllister, Inc.  
300 Frank H. Ogawa Plaza, Suite 400  
Oakland, CA 94612

**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:

AGREED TO:

Date: 06/22, 2017

Date: 6/26/2017, 2017

*Michael Maurino*

*Denise Bosh*

Name: Michael Maurino

Name: Denise Bosh

Title: Director

Title: COO

CONSUMER ADVOCACY GROUP,  
INC.

OTIS MCALLISTER, INC.

OTIS MCALLISTER, INC.  
INCORPORATED

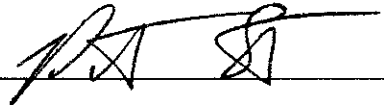
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APPROVED AS TO FORM:

Date: 6-23, 2017

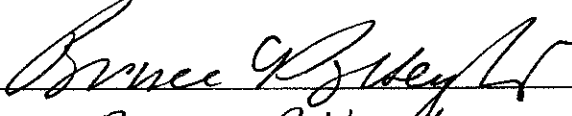


Name: Peter Sato

Title: Attorney for CAG  
Reuben Yeroushalmi  
Peter T. Sato  
Ben Yeroushalmi  
YEROUSHALMI & YEROUSHALMI  
An Association of Independent Law Corporations  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, 90212  
Attorneys for Plaintiffs,  
Consumer Advocacy Group, Inc.

APPROVED AS TO FORM:

Date: June 26, 2017



Name: Bruce C. Paltenghi

Title: Attorney for Otis McAllister, Inc.  
Richard T. Bowles  
Bruce C. Paltenghi  
Lawrence D. Goldberg  
Bowles & Verna, LLP  
2121 N. California Blvd., Suite 875  
Walnut Creek, CA 94596  
Attorneys for Defendant  
Otis McAllister, Inc.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT