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Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Coordination Proceeding
Special Title (Rule 3.550)

JCCP NO. 4816
In Case No. BC571487

**PROPOSITION 65 RICE PRODUCT
CASES**

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

This Document Relates To:

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

Plaintiff

v.

STATER BROS. MARKETS, a California
Corporation;
STATE BROS. HOLDINGS INC., a
Delaware Corporation;
LA CADENA INVESTMENTS, a California
General Partnership; and
DOES 1-20;

Defendants.

**AMENDED CONSENT JUDGMENT
[PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

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, and defendant Stater Bros. Markets (hereinafter referred to as “Defendant”), with
5 each a party to the action collectively referred to as “Parties.”

6 **1.2 Defendant and Products**

7 1.2.1 Defendant is a California corporation that employs ten or more persons.
8 Defendant distributes and sells **rice** (hereinafter referred to as the “Covered Products”).

9 1.2.2 For purposes of this Consent Judgment, Defendant is deemed a person in
10 the course of doing business in California and are subject to the provisions of the Safe Drinking
11 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
12 (“Proposition 65”).

13 **1.3 Chemicals of Concern**

14 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
15 California to cause cancer and/or birth defects or other reproductive harm.

16 **1.4 Notices of Violation**

17 1.4.1 On or about June 5, 2014, CAG served Defendant and various public
18 enforcement agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that
19 purported to provide Defendant with notice of alleged violations of Health & Safety Code §
20 25249.6 for failing to warn individuals in California of exposures to Lead in rice sold and/or
21 distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the
22 allegations set forth in the Notice.

23 **1.5 Complaint**

24 1.5.1 On February 5, 2015, CAG filed a complaint for civil penalties and
25 injunctive relief in Los Angeles Superior Court, Case No. BC571487 against Defendant. The
26 complaint alleges, among other things, that Defendant violated Proposition 65 by failing to give
27 clear and reasonable warnings of exposure to Lead from Covered Products.
28

1 1.5.2 On or about February 17, 2015, the complaint was coordinated and
2 assigned Judicial Council Coordination proceeding number 4816.

3 1.5.3 On or about February 28, 2020, the Parties stipulated that CAG would
4 dismiss and not pursue any allegations in the complaint related to inorganic arsenic.

5 **1.6 Consent to Jurisdiction**

6 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that the Court
7 has jurisdiction over the allegations of violations contained in the complaint and personal
8 jurisdiction over Defendant as to the acts alleged in the complaint, that venue is proper in the
9 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
10 full settlement and resolution of the allegations set forth in the first cause of action in the
11 complaint and of any other claims that were or could have been raised by any person or entity
12 based in whole or in part, directly or indirectly, on the facts alleged in the complaint or arising
13 therefrom or relating thereto.

14 **1.7 No Admission**

15 1.7.1 This Consent Judgment fully and finally resolves claims that are denied
16 and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement
17 of any and all claims between the Parties for the purpose of avoiding prolonged and expensive
18 litigation. Nothing in this Consent Judgment shall be construed as an admission or concession of
19 any material allegation of the complaint, any fact, conclusion of law, issue of law or violation of
20 law, including, without limitation, any admission concerning any violation of Proposition 65 or
21 any other statutory, regulatory, common law or equitable doctrine, or the meaning of the terms
22 “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and
23 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,
24 shall constitute or be construed as an admission or concession of any fact, conclusion of law,
25 issue of law, or violation of law, or of fault, wrongdoing, or liability by Defendant, its officers,
26 directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as
27 evidence in any administrative or judicial proceeding or litigation in any court, agency or forum.
28

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 rice sold or supplied by Defendant.

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

2.3 “Lead” means lead and lead compounds.

2.4 “Listed Chemical” means Lead.

3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE WARNINGS

3.1 The injunctive relief will mirror the injunctive relief set out in the Consent Judgment between CAG and the California Rice Commission in this case and the Consent Judgment between CAG and Mercado Latino, Inc. Specifically, after the Effective Date, Defendant shall not sell in California, offer for sale in California or ship for sale in California any Covered Products unless the level of Lead in those products does not exceed 56 parts per billion (“ppb”) or the Covered Product contains a warning pursuant to section 3.2.

3.2 For any Covered Products that actually exceed 56 ppb for the Listed Chemical that are placed into the stream of commerce in California after the Effective Date, Defendant must provide a Proposition 65 compliant warning for those Covered Products as set forth below. Nothing herein is intended to provide for or require a permanent warning on Covered Products or any of Defendant’s products if the concentration levels of Lead in those products do not actually exceed 56 ppb. Any warning provided pursuant to this Section 3.2 shall be affixed to the packaging of the Covered Products or prominently displayed at the point of purchase of the Covered Products. The warnings required hereby will be prominently placed with such conspicuousness as compared to other words, statements, designs or devices as to render them reasonably likely to be read and understood by a typical consumer under customary

1 conditions before purchase or use. When affixed to packaging, the warning must be set off from
2 other surrounding information and enclosed in a box. Where the packaging of the Covered
3 Product includes consumer information as defined by California Code of Regulations title 27
4 §25600.1(c) in a language other than English, the warning must be provided in that language in
5 addition to being provided in English. Should Defendant sell any Covered Products that actually
6 exceed 56ppb of Lead through the internet, the warning will be posted in the manner provided
7 for with respect to internet sales, as provided for in 27 CCR sections 25601 and 25602, as they
8 may be subsequently amended. The Parties agree that the following warning language shall
9 constitute compliance with Proposition 65 with respect to the alleged Lead in the Covered
10 Products placed into the steam of commerce by Defendant after the Effective Date:



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

21 3.3 The terms of this Consent Judgment shall be enforced exclusively by the
22 Parties hereto and no other person or entity shall have any right to enforce the terms of
23 this Consent Judgment. CAG may enforce any of the terms and conditions of this
24 Consent Judgment only after it first provides 30 days' notice to Defendant and attempts
25 to resolve any failure to comply in an open and good faith manner.

26 3.4 Prior to bringing any complaint, motion, order to show cause or other
27 proceeding to enforce the terms of this Consent Judgment, CAG shall serve a Notice of
28 Violation ("NOV") on Defendant specifying the alleged violation of this Consent

Judgment. Specifically, any NOV to Defendant shall identify each of the Covered Products alleged to be in violation, set forth the location at which each of the Covered Products were offered for sale and shall be accompanied by photographs of product labeling and all test data obtained by CAG regarding the Covered Products.

3.5 CAG shall take no further action regarding the alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of Election ("NOE") that meets one of the following conditions:

(a) The Covered Product(s) identified in the NOV were sold or shipped by Defendant for sale in California before the Effective Date; or

(b) Defendant takes corrective action by either

i. requesting that its customers remove the Covered Product(s) from the lot or lots tested (as identified on the labeling provided with the NOV) from sale in California and destroy or return the Covered Product(s) to Defendant or

ii. providing a clear and reasonable warning for the Covered Product(s) identified in the NOV pursuant to Section 3.2 above or 27 Cal. Code Regs. § 25603 *et seq.* or

iii. Defendant conducts confirmatory testing of samples of the Covered Products by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program for the analysis of heavy metals or an independent third party laboratory that is registered with the United States Food and Drug Administration ("FDA") for the analysis of heavy methods and/or uses methods in compliance with FDA regulations for the analysis of heavy metals. If confirmatory testing establishes that the Covered Products do not contain Lead in excess of 56 ppb, CAG shall withdraw its NOV and will take no further action regarding the alleged violation.

1 **4. SETTLEMENT PAYMENT**

2 **4.1 Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
3 shall pay a total of two-hundred and sixty thousand dollars (\$260,000.00) in full and complete
4 settlement of all monetary claims by CAG relating to the Notice, as follows:

5
6 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling twenty-two
7 thousand eight hundred and sixty dollars (\$22,860.00) as penalties pursuant to Health & Safety
8 Code § 25249.12:

9 (a) Defendant will issue a check made payable to the State of California's
10 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seventeen
11 thousand one hundred and forty-five dollars (\$17,145.00) representing 75% of the total penalty
12 and Defendant will issue a separate check to CAG in the amount of five thousand seven hundred
13 and fifteen dollars (\$5,715.00) representing 25% of the total penalty; and

14 (b) Separate 1099s shall be issued for each of the above payments:
15 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
16 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
17 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

18
19 **4.1.2 Additional Settlement Payments:** Defendant shall make a separate
20 payment, in the amount of seventeen thousand one hundred and forty dollars (\$17,140.00) as an
21 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
22 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue
23 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as
24 follows, eighty percent (80%) for costs of investigation, purchasing and testing for Proposition
25 65 listed chemicals in various products, and for expert fees for evaluating exposures through
26 various media, including consumer product, occupational and environmental exposures to
27 Proposition 65 listed chemicals, and the cost of hiring consultants assist with analysis relating to
28 the litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding

attorneys' fees; twenty percent (20%) for administrative costs incurred during investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of Proposition 65 listed chemicals, including costs of documentation and tracking of products investigated, storage of products, website enhancement and maintenance, computer and software maintenance, investigative equipment, CAG's member's time for work done on 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.

4.1.3 Reimbursement of Attorneys' Fees and Costs: Defendant shall pay two hundred and twenty thousand dollars (\$220,000) to "Yeroushalmi & Yeroushalmi" as reimbursement for reasonable investigation fees and costs, attorneys' fees and any other costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public interest.

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

5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final and binding resolution between CAG, on behalf of itself and in the public interest, and Defendant for alleged failure to provide Proposition

65 warning of exposure to Lead from the Covered Products as set forth in the Notices, and fully and finally resolves and concludes all claims that have been or could have been asserted against Defendant in this action through the Effective Date for failure to provide Proposition 65 warnings for the Covered Products regarding Lead. CAG, on behalf of itself and in the public interest, hereby discharges Defendant and its officers, directors, insurers, indemnitors, employees, parents, shareholders, divisions, subdivisions, subsidiaries and their successors and assigns (“Defendant Releasees”) and all customers, retailers and downstream entities in the distribution chain of the Covered Products to whom Defendant distributed or sold Covered Products, and the predecessors, successors and assigns of any of them, and all of their respective officers, directors, shareholders, members, managers, employees and agents only as to Covered Products sold by the Defendant (collectively, “Downstream Releasees”), for all Covered Products placed into the stream of commerce through the Effective Date for violations of Proposition 65 based on exposure to Lead. Defendant’s compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 regarding alleged exposures to Lead from the Covered Products. Nothing in this Section 5.1 affects CAG’s right to commence or prosecute an action under Proposition 65 against any person other than Defendant Releasees or Downstream Releasees (together, the “Released Parties”) after the Effective Date.

5.2 CAG, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal or administrative action and releases all claims, including, without limitation, all actions and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including investigation fees, expert fees and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively “Claims”), against the Released Parties arising from any violation of Proposition 65 or any other statutory or common law basis regarding in any way exposure to Lead from the Covered Products. In furtherance of the foregoing, as to alleged exposures to

1 Lead from the Covered Products, CAG on behalf of itself only, hereby waives any and all rights
2 and benefits that it now has, or in the future may have, conferred upon it with respect to Claims
3 arising out of or relating to any violation of Proposition 65 or any other statutory or common law
4 regarding the failure to warn about or exposure to Lead from the Covered Products by virtue of
5 the provisions of section 1542 of the California Civil Code, which provides as follows:

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

10 CAG understands and acknowledges that the significance and consequence of this waiver of
11 California Civil Code section 1542 is that, even if CAG suffers future damages or becomes
12 aware of claims for relief arising out of or resulting from, or related directly or indirectly to, in
13 whole or in part, claims arising from any violation of Proposition 65 or any other statutory or
14 common law regarding the failure to warn about exposure to Lead from the Covered Products,
15 including any exposure to or failure to warn with respect to exposure to Lead from the Covered
16 Products, CAG will not be able to make or bring any claim or action for those damages or for
17 any other relief against the Released Parties. Furthermore, CAG acknowledges that it intends to
18 waive any claims arising from or relating to any violation of Proposition 65 or any other
19 statutory or common law claim regarding exposure to or the failure to warn about exposure to
20 Lead from Covered Products as may exist as of the date of this Consent Judgment but that CAG
21 does not know to exist and that, if known, would materially affect CAG's decision to enter into
22 this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
23 oversight, error, negligence or any other cause.

24 **6. ENTRY OF CONSENT JUDGMENT**

25 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
26 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
27 Defendant waive their respective rights to a hearing or trial on the allegations of the complaint.
28

1 6.2 The Parties shall make all reasonable efforts possible to have the Consent
2 Judgment approved by the Court.

3 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate
5 and become null and void, and the litigation shall revert to the status that existed prior to the
6 execution of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof,
7 or of the negotiation, documentation or other part or aspect of the Parties' settlement discussions,
8 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in the
9 litigation or in any other proceeding; and (c) the Parties agree to meet and confer to determine an
10 appropriate trial date for the claims against Defendant and whether to modify the terms of the
11 Consent Judgment and to resubmit it for approval.

12 **7. MODIFICATION OF JUDGMENT**

13 7.1 This Consent Judgment may be modified only upon written agreement of the
14 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
15 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 7.2 Any party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with the other party prior to filing a motion to modify the Consent Judgment.

18 **8. RETENTION OF JURISDICTION**

19 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
20 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

21 8.2 In any proceeding brought by either party to enforce this Consent Judgment, the
22 prevailing party shall be entitled to recover its reasonable attorneys' fees and costs.

23 **10. DUTIES LIMITED TO CALIFORNIA**

24 9.1 This Consent Judgment shall have no effect on any products sold by Defendant
25 outside the state of California.
26
27
28

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

2 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
3 California Attorney General so that the Attorney General may review this Consent Judgment
4 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
5 has received a copy of this Consent Judgment, and in the absence of any written objection by the
6 Attorney General to the terms of this Consent Judgment, may the Court approve this Consent
7 Judgment.

8 **11. ATTORNEYS' FEES**

9 11.1 Except as specifically provided in elsewhere in this Consent Judgment, each party
10 shall bear its own costs and attorneys' fees in connection with the litigation.

11 **12. GOVERNING LAW**

12 12.1 The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the state of California, without reference to any conflicts of law
14 provisions of California law.

15 12.2 In the event that Proposition 65 is repealed, preempted or is otherwise rendered
16 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
17 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
18 rendered inapplicable by reason of law generally as to the Covered Products, Defendant may
19 provide written notice to CAG of any asserted change in the law and shall have no further
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
21 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
22 Defendant from any obligation to comply with any pertinent state or federal law or regulation.

23 12.3 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
25 Consent Judgment was subject to revision and modification by the Parties and has been accepted
26 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
27 or ambiguity existing in this Consent Judgment shall not be interpreted against either party as a
28

1 result of the manner of the preparation of this Consent Judgment. Each party to this Consent
2 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
3 resolved against the drafting party should not be employed in the interpretation of this Consent
4 Judgment and, in this regard, the Parties hereby waive their rights under California Civil Code §
5 1654.

6 **13. EXECUTION AND COUNTERPARTS**

7 13.1 This Consent Judgment may be executed in counterparts and by means of
8 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
9 one document and have the same force and effect as original signatures.

10 **14. NOTICES**

11 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

12
13 If to CAG:

14 Reuben Yeroushalmi
15 YEROUSHALMI & YEROUSHALMI
16 9100 Wilshire Boulevard, Suite 240W
17 Beverly Hills, CA 90212
(310) 623-1926
Email: lawfirm@yeroushalmi.com

18
19 If to Defendant.:

20 Mark C. Goodman
21 **BAKER & MCKENZIE LLP**
22 Two Embarcadero Center, 11th Floor
23 San Francisco, CA 94111
24 Telephone: +1 415 576 3000
Facsimile: +1 415 576 3099
Email: mark.goodman@bakermckenzie.com

15. AUTHORITY TO STIPULATE

15.1 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: _____, 2022	Date: <u>April 16</u> , 2022 <u>2024</u>
_____ Name: _____	 Name: <u>SEAN S. VARNIER</u>
Title: _____	Title: <u>General Counsel</u>
CONSUMER ADVOCACY GROUP, INC.	STATER BROS. MARKETS



IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

15. AUTHORITY TO STIPULATE

15.1 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: <u>May 21</u> , 2022-2024	Date: <u>April 16</u> , 2022-2024
	
Name: <u>Michael Marcus</u>	Name: <u>SEAN S. VARKER</u>
Title: <u>Director</u>	Title: <u>General Counsel</u>
CONSUMER ADVOCACY GROUP, INC.	STATER BROS. MARKETS

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT