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7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF MARIN**

10
11 **CONSUMER ADVOCACY GROUP, INC.,**
12 in the public interest,

13 Plaintiff,

14 v.

15 **YAMAMOTO OF ORIENT, INC.,** a
16 California Corporation; **JFC**
17 **INTERNATIONAL INC.,** a California
18 Corporation; **GREEN FARM MARKET,** a
business entity form unknown; and **DOES 1-**
20;

19 Defendants.

CASE NO. CIV1501046

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: March 19, 2015

21 **I. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
23 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the
24 public, and defendant, Yamamoto of Orient, Inc. (hereinafter referred to as "Yamamotoyama" or
25 Defendant), with each referred to as a "Party" and collectively referred to as "Parties." By
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1 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of
2 Civil Procedure § 664.6.

3 **1.2 Defendants and Products**

4 1.2.1 Defendant employs ten or more persons, is a person in the course of doing
5 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
6 Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and causes to be manufactured,
7 distributed, or sells Seaweed, including but not limited to Yamamotoyama Roasted Seaweed; Net
8 Wt. 0.88 oz (25 g); 10 Sheets; Distributed by JFC International, Inc., Los Angeles, CA 90040;
9 Packed by Yamamotoyama® of America, Pomona, CA 91768; Barcode: 0 11152 01358 9
10 ("Covered Products").

11 **1.3 Chemical Of Concern**

12 1.3.1 Lead is a chemical known to the State of California to cause cancer and/or
13 birth defects or other reproductive harm.

14 **1.4 Notices of Violation**

15 1.4.1 On or about September 16, 2014, CAG served Yamamotoyama and various
16 public enforcement agencies with a document entitled "60-Day Notice of Violation" (the
17 "September 16, 2014 Notice") that provided the recipients with notice of alleged violations of
18 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
19 in Seaweed, including but not limited to Yamamotoyama Roasted Seaweed; Net Wt. 0.88 oz (25
20 g); 10 Sheets; Distributed by JFC International, Inc., Los Angeles, CA 90040; Packed by
21 Yamamotoyama® of America, Pomona, CA 91768; Barcode: 0 11152 01358 9. No public
22 enforcer has commenced or diligently prosecuted the allegations set forth in the September 16,
23 2014 Notice. On or about January 23, 2015, CAG served Yamamotoyama and various public
24 enforcement agencies with a document entitled "60-Day Notice of Violation" (the "January 23,
25 2015 Notice") that provided the recipients with notice of alleged violations of Health & Safety
26 Code § 25249.6 for failing to warn individuals in California of exposures to Lead in Seaweed.
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1 including but not limited to Yamamotoyama Roasted Seaweed; Net Wt. 0.88 oz (25 g); 10 Sheets;
2 Distributed by JFC International, Inc., Los Angeles, CA 90040; Packed by Yamamotoyama® of
3 America, Pomona, CA 91768; Barcode: 0 11152 01358 9. No public enforcer has commenced or
4 diligently prosecuted the allegations set forth in the January 23, 2015 Notice.

5 **1.5 Complaint**

6 On March 19, 2015, CAG filed a Complaint for civil penalties and injunctive relief
7 (“Complaint”) in Marin Superior Court, Case No. CIV1501046. The Complaint alleges, among
8 other things, that Defendant violated Proposition 65 by failing to give clear and reasonable
9 warnings of exposure to Lead from the Covered Products.

10 **1.6 Consent to Jurisdiction**

11 For purposes of this Consent Judgment, the Parties stipulate that this Court has
12 jurisdiction over the allegations of violations contained in the Complaint and personal
13 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
14 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment,
15 pursuant to Code of Civil Procedure Section 664.6, as a full settlement and resolution of the
16 allegations contained in the Complaint and of all claims which were or could have been raised by
17 any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein
18 or arising therefrom or related thereto.

19 **1.7 No Admission**

20 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
21 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
22 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
23 shall be construed as an admission by the Parties of any material allegation of the Complaint
24 (each and every allegation of which Defendant denies), any fact, conclusion of law, issue of law
25 or violation of law, including without limitation, any admission concerning any violation of
26 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or the
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1 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
2 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
3 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
4 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
5 any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations,
6 or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in
7 any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice,
8 waive or impair any right, remedy, argument, or defense the Parties may have in any other or
9 future legal proceeding, except as expressly provided in this Consent Judgment.

10 **2. DEFINITIONS**

11 2.1 "Covered Products" means Seaweed sold, manufactured, or distributed by
12 Yamamotoyama, including but not limited to Yamamotoyama Roasted Seaweed; Net Wt. 0.88 oz
13 (25 g); 10 Sheets; Distributed by JFC International, Inc., Los Angeles, CA 90040; Packed by
14 Yamamotoyama® of America, Pomona, CA 91768; Barcode: 0 11152 01358 9. "Covered
15 Products" are limited to the products sold, manufactured, and/or distributed by Yamamotoyama.

16 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
17 Court.

18 **3. INJUNCTIVE RELIEF / CLEAR AND REASONABLE WARNINGS**

19 3.1 From the Effective Date through August 1 2016, Yamamotoyama will not
20 manufacture, distribute, or sell the Covered Products in California containing more than 75 ppb
21 (parts per billion) of Lead unless the Covered Products have been affixed with Proposition 65
22 compliant warnings, which state: "WARNING: THIS PRODUCT CONTAINS A CHEMICAL
23 KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER AND/OR BIRTH
24 DEFECTS OR OTHER REPRODUCTIVE HARM (CALIFORNIA LAW REQUIRES THIS
25 WARNING TO BE GIVEN TO CUSTOMERS IN THE STATE OF CALIFORNIA)." After
26 August 1, 2016, Yamamotoyama will not manufacture, distribute, or sell the Covered Products in
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1 California containing more than 75 ppb (parts per billion) of Lead unless the Covered Products
2 have been affixed with Proposition 65 compliant warnings, which state: "WARNING:
3 PURSUANT TO THE PROVISIONS OF THE CALIFORNIA HEALTH AND SAFETY CODE,
4 THIS PRODUCT CONTAINS A CHEMICAL KNOWN TO THE STATE OF CALIFORNIA TO
5 CAUSE CANCER AND/OR BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM"

6 **4. SETTLEMENT PAYMENT**

7 **4.1 Payment and Due Date:** Within ten (10) days of the Effective Date,
8 Yamamotoyama shall pay a total of seventy-five thousand dollars and zero cents (\$75,000) in full
9 and complete settlement of all monetary claims by CAG related to the Notice, as follows:

10 **4.1.1 Civil Penalty:** Yamamotoyama shall issue separate checks totaling twenty
11 thousand dollars (\$20,000) as penalties pursuant to Health & Safety Code § 25249.12:

12 (a) Yamamotoyama will issue a check made payable to the State of
13 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
14 fifteen thousand dollars (\$15,000) representing 75% of the total penalty and Yamamotoyama will
15 issue a check to "Consumer Advocacy Group, Inc." in the amount of five thousand dollars (\$5,000)
16 representing 25% of the total penalty; and

17 (b) Separate 1099s shall be issued for each of the above payments:
18 Yamamotoyama will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
19 0284486) in the amount of \$15,000. Yamamotoyama will also issue a 1099 to CAG c/o
20 Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
21 90212 in the amount of \$5,000.

22 **4.1.2 Payment In Lieu of Civil Penalties:** Yamamotoyama shall pay ten
23 thousand dollars (\$10,000) in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG
24 will use this payment for investigation of the public's exposure to Proposition 65 listed chemicals
25 through various means, including laboratory fees for testing for Proposition 65 listed chemicals,
26 administrative costs and fees related to such activities, expert fees for evaluating exposures through
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1 various mediums, including but not limited to consumer product, occupational, and environmental
2 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts
3 who assist with the extensive scientific analysis necessary for those files in litigation, as well as
4 administrative costs and fees related to such activities in order to reduce the public's exposure to
5 Proposition 65 listed chemicals by notifying those persons and/or entities believed to be
6 responsible for such exposures and attempting to persuade those persons and/or entities to
7 reformulate their products or the source of exposure to completely eliminate or lower the level of
8 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant
9 Action. Further, should the court require it, CAG will submit under seal, an accounting of these
10 funds as described above as to how the funds were used. The check shall be made payable to
11 "Consumer Advocacy Group, Inc." and delivered to Reuben Yeroushalmi, Yeroushalmi &
12 Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

13 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Yamamotoyama shall pay
14 forty-five thousand dollars (\$45,000) to "Yeroushalmi & Yeroushalmi" as reimbursement for
15 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
16 investigating, bringing this matter to Yamamotoyama's attention, litigating, and negotiating a
17 settlement in the public interest. The check shall be made payable to "Yeroushalmi &
18 Yeroushalmi" and delivered to Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire
19 Boulevard, Suite 240W, Beverly Hills, California 90212.

20 **4.2 All payments shall be delivered to:** Reuben Yeroushalmi, Yeroushalmi &
21 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

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

23 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
24 behalf of itself and in the public interest and Yamamotoyama and its officers, directors, insurers,
25 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
26 companies and their successors and assigns ("Defendant Releasees"), including but not limited to
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1 each of its manufacturers, suppliers, customers, distributors, wholesalers, retailers, or any other
2 person in the course of doing business, and the successors and assigns of any of them, who may
3 use, maintain, distribute or sell Covered Products ("Upstream and Downstream Defendant
4 Releasees"), for all claims for violations of Proposition 65 up through the Effective Date based on
5 exposure to Lead from Covered Products as set forth in the Notice. Defendant and Upstream and
6 Downstream Defendant Releasees' compliance with this Consent Judgment shall constitute
7 compliance with Proposition 65 with respect to Lead from Covered Products as set forth in the
8 Notice. Nothing in this Section affects CAG's right to commence or prosecute an action under
9 Proposition 65 against any person other than Defendant Releasees or Upstream and Downstream
10 Defendant Releasees.

11 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
13 indirectly, any form of legal action and releases all claims, including, without limitation, all
14 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
15 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
16 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
17 contingent (collectively "Claims"), against Yamamotoyama, Defendant Releasees, and/or
18 Upstream and Downstream Defendant Releasees arising from any violation of Proposition 65 or
19 any other statutory or common law regarding the failure to warn about exposure to Lead from the
20 Covered Products. In furtherance of the foregoing, as to alleged exposures to Lead from the
21 Covered Products, CAG on behalf of itself only, hereby waives any and all rights and benefits
22 which it now has, or in the future may have, conferred upon it with respect to Claims arising from
23 any violation of Proposition 65 or any other statutory or common law regarding the failure to warn
24 about exposure to Lead from the Covered Products by virtue of the provisions of section 1542 of
25 the California Civil Code, which provides as follows:
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27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
28 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER

1 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
2 BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR.

4 CAG understands and acknowledges that the significance and consequence of this waiver of
5 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
6 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
7 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
8 about exposure to Lead from the Covered Products, including but not limited to any exposure to,
9 or failure to warn with respect to exposure to Lead from the Covered Products, CAG will not be
10 able to make any claim for those damages against Released Parties. Furthermore, CAG
11 acknowledges that it intends these consequences for any such Claims arising from any violation
12 of Proposition 65 or any other statutory or common law regarding the failure to warn about
13 exposure to Lead from Covered Products as may exist as of the date of this release but which CAG
14 does not know exist, and which, if known, would materially affect their decision to enter into this
15 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
16 oversight, error, negligence, or any other cause.

17 **6. ENFORCEMENT OF JUDGMENT**

18 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
19 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
20 California, Marin County, giving the notice required by law, enforce the terms and conditions
21 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
22 only after that Party first provides 90 days' notice to the Party allegedly failing to comply with the
23 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
24 comply in an open and good faith manner.

25 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
26 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
27 ("NOV") to Yamamotoyama. The NOV shall include for each of the Covered Products: the date(s)
28 the alleged violation(s) was observed and the location at which the Covered Products were offered

1 for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered
2 Products, including an identification of the component(s) of the Covered Products that were tested.

3 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
4 alleged violation if, within 60 days of receiving such NOV, Yamamotoyama serves a
5 Notice of Election ("NOE") that meets one of the following conditions:

6 (a) The Covered Products were shipped by Yamamotoyama for sale in
7 California before the Effective Date, or

8 (b) Since receiving the NOV Yamamotoyama has taken corrective
9 action by either (i) requesting that its customers or stores in California, as applicable,
10 remove the Covered Products identified in the NOV from sale in California and destroy or
11 return the Covered Products to Yamamotoyama or vendor, as applicable, or (ii) providing
12 a clear and reasonable warning for the Covered Products identified in the NOV pursuant
13 to 27 Cal. Code Regs. § 25603.

14 **6.2.2 Contested NOV.** Yamamotoyama may serve an NOE informing CAG of
15 its election to contest the NOV within 30 days of receiving the NOV.

16 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, such
17 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
18 violation of Proposition 65 or this Consent Judgment.

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20 **7. ENTRY OF CONSENT JUDGMENT**

21 **7.1** CAG shall file a motion seeking approval of this Consent Judgment pursuant to
22 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
23 Yamamotoyama waive their respective rights to a hearing or trial on the allegations of the
24 Complaint.

25 **7.2** If this Consent Judgment is not approved in its entirety by the Court, (a) this
26 Consent Judgment and any and all prior agreements between the parties merged herein shall
27 terminate and become null and void, and the actions shall revert to the status that existed prior to

1 the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
2 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
3 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
4 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
5 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

6 **8. MODIFICATION OF JUDGMENT**

7 8.1 This Consent Judgment may be modified only upon written agreement of the
8 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
9 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

10 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
11 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

12 **9. RETENTION OF JURISDICTION**

13 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
14 of this Consent Judgment.

15 **10. DUTIES LIMITED TO CALIFORNIA**

16 10.1 This Consent Judgment shall have no effect on Covered Products sold by
17 Yamamotoyama outside the State of California.

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

19 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
20 California Attorney General so that the Attorney General may review this Consent Judgment prior
21 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney
22 General has received the aforementioned copy of this Consent Judgment, and in the absence of
23 any written objection by the Attorney General to the terms of this Consent Judgment, the parties
24 may then submit it to the Court for approval.

25 **12. ATTORNEY FEES**

26 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own costs
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1 and attorneys' fees in connection with this action.

2 **13. ENTIRE AGREEMENT**

3 13.1 This Consent Judgment contains the sole and entire agreement and understanding
4 of the Parties with respect to the entire subject matter hereof, and supersedes any and all prior oral
5 or written agreements, discussions, negotiations, commitments and understandings related hereto.
6 No representations, oral or otherwise, express or implied, other than those contained herein have
7 been made by any party hereto. No other agreements not specifically referred to herein, oral or
8 otherwise, shall be deemed to exist or to bind any of the Parties.

9 **14. GOVERNING LAW**

10 14.1 The validity, construction and performance of this Consent Judgment shall be
11 governed by the laws of the State of California, without reference to any conflicts of law provisions
12 of California law.

13 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
15 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
16 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
17 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
18 subject to this Consent Judgment may provide written notice to CAG of any asserted change in the
19 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
20 to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment shall
21 be interpreted to relieve a Defendant from any obligation to comply with any pertinent state or
22 federal law or regulation.

23 14.3 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 or
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1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
2 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
3 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
4 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
5 this regard, the Parties hereby waive California Civil Code § 1654.

6 **15. EXECUTION AND COUNTERPARTS**

7 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile
8 or portable document format (pdf), which taken together shall be deemed to constitute one
9 document and have the same force and effect as original signatures.

10 **16. NOTICES**

11 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
12 Class Mail.

13 If to CAG:

14 Reuben Yeroushalmi
15 9100 Wilshire Boulevard, Suite 240W
16 Beverly Hills, CA 90212
(310) 623-1926

17 If to Yamamoto of Orient, Inc.:

18 Kazuya Aburano, President
19 Yamamoto of Orient, Inc.
122 Voyager Street
20 Pomona, CA 91768

21 With a copy to:

22 Mark E. Elliot
23 Pillsbury Winthrop Shaw Pittman LLP
24 725 South Figueroa Street, Suite 2800
25 Los Angeles, CA 90017
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17. AUTHORITY TO STIPULATE

17.1 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: 08/18/15, 2015

Date: 08/18/, 2015

Michael Marcus

Kazuya Aburano

Name: Michael Marcus

Name: KAZUYA ABURANO

Title: Director
CONSUMER ADVOCACY GROUP,
INC.

Title: President
YAMAMOTO OF ORIENT, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT