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Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

IN RE JAYONE FOODS SEAWEEED CASES

LEAD CASE NO. RG15798432
(Consolidated with RG17869797; Related
to RG17849000)

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

Plaintiff,

v.

THE KROGER CO., an Ohio Corporation;
GREEN FARM MARKET, a business entity
form unknown; and DOES 1-20;

Defendants.

ASSIGNED FOR ALL PURPOSES TO
JUDGE PAUL D. HERBERT
DEPARTMENT 20

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Complaint filed: December 31, 2015

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

Plaintiff,

v.

SHUN FAT SUPERMARKET, INC., a
California corporation; SF SUPERMARKET,
INC., a California corporation; TRANS
FAMILY, INC., a California corporation;
TRAN'S GROUP, INC., a California
corporation; JAYONE FOODS, INC., a
California corporation; SAN GABRIEL
SUPERSTORE, a business entity form
unknown and DOES 1-20;

Defendants.

CASE NO. RG17869797

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 of the
4 public, and Defendant Jayone Foods, Inc. (“Jayone” or “Defendant”) with each a Party to the action
5 and collectively referred to as “Parties.”

6 **1.2 Defendant and Products**

7 1.2.1 Jayone is a California corporation which employs ten or more persons. For
8 purposes of this Consent Judgment, Jayone is deemed a person in the course of doing business in
9 California and subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of
10 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

11 1.2.2 Defendant manufactures, causes to be manufactured, sells, or distributes
12 Seaweed, including but not limited to, Seaweed Snacks, Roasted and Seasoned Seaweed and 100%
13 Natural Premium Seaweed.

14 1.2.3 Defendant manufactures, causes to be manufactured, sells, or distributes
15 Anchovies.

16 **1.3 Chemicals of Concern**

17 1.3.1 Lead and lead compounds are known to the State of California to cause
18 cancer and/or birth defects or other reproductive harm.

19 1.3.2 Cadmium and cadmium compounds are known to the State of California to
20 cause cancer and/or birth defects or other reproductive harm.

21 1.3.3 Arsenic (inorganic arsenic compounds) and arsenic (inorganic oxides) are
22 known to the State of California to cause cancer and/or birth defects or other reproductive harm.

23 **1.4 Notices of Violation**

24 1.4.1 On or about September 16, 2014, CAG served a “60-Day Notice of Intent
25 to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“September
26 16, 2014 Notice”) that provided the recipients with notice of alleged violations of Health & Safety
27 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
28

1 100% Natural Premium Seaweed sold by Jayone. No public enforcer has commenced or diligently
2 prosecuted the allegations set forth in the September 16, 2014 Notice.

3 1.4.2 On or about January 9, 2015, CAG served a “60-Day Notice of Intent to Sue
4 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“January 9, 2015
5 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code
6 § 25249.6 for failing to warn individuals in California of exposures to Cadmium contained in
7 Roasted Salted Seaweed Snack sold by Jayone. No public enforcer has commenced or diligently
8 prosecuted the allegations set forth in the January 9, 2015 Notice.

9 1.4.3 On or about June 22, 2015, CAG served a “60-Day Notice of Intent to Sue
10 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“June 22, 2015
11 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code
12 § 25249.6 for failing to warn individuals in California of exposures to Lead contained in Sea’s Gift
13 Sweet Seaweed Snack sold by Jayone. No public enforcer has commenced or diligently prosecuted
14 the allegations set forth in the June 22, 2015 Notice.

15 1.4.4 On or about January 11, 2016, CAG served a “60-Day Notice of Intent to
16 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“January 11,
17 2016 Notice”) that provided the recipients with notice of alleged violations of Health & Safety
18 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
19 Four Seas Seaweed Wasabi Flavour sold by Jayone. No public enforcer has commenced or
20 diligently prosecuted the allegations set forth in the January 11, 2016 Notice.

21 1.4.5 On or about March 14, 2016, CAG served a “60-Day Notice of Intent to Sue
22 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“March 14, 2016
23 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code
24 § 25249.6 for failing to warn individuals in California of exposures to Lead contained in Dried
25 Anchovies sold by Jayone. No public enforcer has commenced or diligently prosecuted the
26 allegations set forth in the March 14, 2016 Notice.

27 1.4.6 On or about April 12, 2016, CAG served a “60-Day Notice of Intent to Sue
28 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“April 12, 2016

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1 Notice”) that provided the recipients with notice of alleged violations of Health & Safety Code
2 § 25249.6 for failing to warn individuals in California of exposures to Lead contained in Seasoned
3 & Roasted Seaweed sold by Jayone. No public enforcer has commenced or diligently prosecuted
4 the allegations set forth in the April 12, 2016 Notice.

5 1.4.7 On or about October 23, 2017, CAG served a “60-Day Notice of Intent to
6 Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“October 23,
7 2017 Notice”) that provided the recipients with notice of alleged violations of Health & Safety
8 Code § 25249.6 for failing to warn individuals in California of exposures to Arsenic contained in
9 Seaweed sold by Jayone. No public enforcer has commenced or diligently prosecuted the
10 allegations set forth in the October 23, 2017 Notice.

11 1.5 Complaints

12 1.5.1 On December 31, 2015, CAG filed a Complaint for civil penalties and
13 injunctive relief (“1st Complaint”) in Alameda County Superior Court, Case No. RG15798432.
14 On September 2, 2016, CAG filed a doe amendment naming Jayone as a doe defendant. The
15 1st Complaint, as amended, alleges, among other things, that Defendant violated Proposition 65 by
16 failing to give clear and reasonable warnings of exposure to Lead from Seaweed. Upon the Court’s
17 entry of this Consent Judgment, the 1st Complaint shall be deemed amended to encompass the
18 allegations in the October 23, 2017 Notice.

19 1.5.2 On August 8, 2016, CAG filed a Complaint for civil penalties and injunctive
20 relief (“2nd Complaint”) in Los Angeles County Superior Court Case No. BC628491, against
21 Defendant. (On July 7, 2017, this case was transferred from Los Angeles Superior Court to
22 Alameda County Superior Court, renumbered as RG17869797, and consolidated with
23 RG15798432.) The Complaint alleges, among other things, that Defendant violated Proposition 65
24 by failing to give clear and reasonable warnings of exposure to Lead from Seaweed.

25 1.5.3 On February 10, 2017, CAG filed a Complaint for civil penalties and
26 injunctive relief (“3rd Complaint”) in Alameda County Superior Court Case No. RG17849000,
27 against Defendant. The Complaint alleges, among other things, that Defendant violated
28

Proposition 65 by failing to give clear and reasonable warnings of exposure to Lead from Dried Anchovies.

1.5.4 For purposes of this Consent Judgment, the 1st Complaint is deemed amended to include the allegations of the 3rd Complaint.

1.5.5 The 1st Complaint, 2nd Complaint, and 3rd Complaint are together referred to herein as the “Complaints.”

1.6 Consent to Jurisdiction

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

1.7 No Admission

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an admission by the Parties of any material allegation of the Complaints or the Notices, each and every allegation of which Defendant denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of Defendant.

2. DEFINITIONS

2.1 “Seaweed Covered Products” means: Seaweed, which includes but is not limited to, (a) “JayOne, 100% Natural Premium Seaweed” Seasoned and Roasted Seaweed” No Sugar, No MSG, No Preservatives, 100% DV of Iodine (Net Wt. 0.17oz (5g) PRODUCT OF KOREA “Imported by Jayone Foods, Inc., Paramount, CA 90723, www.jayone.com” UPC: 6 78108 17117 7,” (b) “FOUR SEAS SEAWEED Wasabi Flavour”; Net Weight: 1.32oz (37.5G); ‘FSC00521’

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Four Seas Mercantile Limited; Four Seas Group Building, No.1 Hong Kong Ting Road, Sai Kung, Hong Kong; Serving Size-5 Pieces; Servings Per Container 10; UPC: 8 888339 005215,” (c) “‘Jayone’ ‘Premium Seaweed Winter Harvest’ ‘Seasoned & Roasted Seaweed’; NET WT. 0.7oz (20g); Freshness Guaranteed; Product of Korea; Imported by Jayone Foods, Inc.; UPC: 6 78108 17111 5,” (d) “Sea’s Gift Sweet Seaweed Snack Net Wt 0.69 Oz (20g) UPC #6 78108 17107 8,” and (e) “fresh & easyTM Roasted Salted seaweed Snack; Net Wt. 0.4 oz (11.3g); Vegan, Gluten Free, No Artificial Flavors, Colors or Preservatives; Produced for: Fresh & Easy Neighborhood Market Inc.; Product Of: South Korea; UPC 5 051379 060909,” sold only by Defendant.

2.2 “Anchovies Covered Products” means Anchovies, which includes but is not limited to, “Dried Anchovy ‘Fresh & Clean’ Product of Korea, Distributed by Jayone Foods, Inc. NET WT 7.05 OZ (200g) UPC: 6 78108 22924 3,” sold only by Defendant.

2.3 “Covered Products” means Seaweed Covered Products and Anchovies Covered Products.

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

2.5 “Lead” means lead and lead compounds.

2.6 “Arsenic” means inorganic arsenic compounds and inorganic arsenic oxides.

2.7 “Cadmium” means cadmium and cadmium compounds.

2.8 “Listed Chemicals” means Lead, Arsenic, and Cadmium.

2.9 “Notices” means the September 16, 2014 Notice, January 9, 2015 Notice, June 22, 2015 Notice, January 11, 2016 Notice, March 14, 2016 Notice, April 12, 2016 Notice, and October 23, 2017 Notice.

3. INJUNCTIVE RELIEF

3.1 Seaweed Covered Products: After the Effective Date, Defendant shall not sell, offer for sale in California, or ship for sale in California any Seaweed Covered Products unless Defendant has either (a) reformulated the Seaweed Covered Products to the point where the level of Lead does not exceed more than 75 ppb (parts per billion), the level of Cadmium does not exceed 95 ppb, and the level of Arsenic does not exceed 15 ppb, or (b) if the Seaweed Covered

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Products exceed either 75 ppb of Lead, or 95 ppb of Cadmium, or 15 ppb of Arsenic, provide a Proposition 65 compliant warning on the Seaweed Covered Products. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Seaweed Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The Parties agree that the following warning language complies with Proposition 65 with respect to the Listed Chemicals in the Seaweed Covered Products, distributed and/or sold by Defendant after the Effective Date:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

In lieu of the preceding warning, Defendant may use any warning language that complies with Title 27, California Code of Regulations, section 25600 et seq., as amended August 30, 2016 or subsequently thereafter.

3.2 Anchovies Covered Products: After the Effective Date, Defendant shall not sell, offer for sale in California, or ship for sale in California any Anchovies Covered Products unless Defendant has either (a) reformulated the Anchovies Covered Products to the point where the level of Lead does not exceed more than 40 ppb, or (b) if the Anchovies Covered Products exceeds 40 ppb of Lead, provide a Proposition 65 compliant warning on the Anchovies Covered Products. Any warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the Anchovies Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. The Parties agree that the following warning language complies with Proposition 65 with respect to the Listed Chemicals in the Anchovies Covered Products, distributed and/or sold by Defendant after the Effective Date:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

In lieu of the preceding warning, Defendant may use any warning language that complies with

Title 27, California Code of Regulations, section 25600 et seq., as amended August 30, 2016 or subsequently thereafter.

3.3 Any Covered Products that have been distributed, shipped or sold by Defendant prior to the Effective Date shall not be subject to the requirements of Section 3.1 or 3.2.

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within fourteen (14) days of the Effective Date, Defendant shall pay a total of five hundred and twenty thousand dollars and zero cents (\$520,000.00) in full and complete settlement of all monetary claims by CAG related to the Notices and Complaints, as follows:

4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling fifty-seven thousand one hundred and fifty dollars (\$57,150.00) as penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendant will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of forty-two thousand eight hundred and sixty-two dollars and fifty cents (\$42,862.50) representing 75% of the total penalty and Defendant will issue a second check to "Consumer Advocacy Group, Inc." in the amount of fourteen thousand two hundred and eighty-seven dollars and fifty cents (\$14,287.50) representing 25% of the total penalty;

(b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$42,862.50. Defendant will also issue a 1099 to CAG in the amount of \$14,287.50 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Defendant shall pay forty-two thousand eight hundred and fifty dollars (\$42,850.00) as additional settlement payments to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 listed chemicals in various

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

17 **4.1.3 Reimbursement of Attorney's Fees and Costs:** Defendant shall pay four
18 hundred and twenty thousand dollars (\$420,000.00) payable to "Yeroushalmi & Yeroushalmi" as
19 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
20 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
21 negotiating a settlement in the public interest.

22 **4.2** Other than the payment to OEHHA described above, all payments referenced in
23 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
24 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
25 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike
26 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with
27 payment to OEHHA, Defendant shall provide CAG with written confirmation that the payment to
28 OEHHA was delivered.

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

2 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
3 behalf of itself and in the public interest, and Defendant and its officers, directors, insurers,
4 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
5 companies, and their successors and assigns (“Defendant Releasees”), and each entity to whom
6 Defendant directly or indirectly distributes or sells the Seaweed Covered Products and Anchovies
7 Covered Products, including, but not limited to, The Kroger Company, Greenland Supermarket,
8 Inc., Greenland Market, Inc., Shun Fat Supermarket, Inc. SF Supermarket, Inc., Trans Family, Inc.,
9 Tran’s Group, Inc., San Gabriel Superstore, downstream distributors, wholesalers, customers,
10 retailers, franchisees, cooperative members, licensees, and the successors and assigns of each of
11 them, who may use, maintain, distribute or sell Seaweed Covered Products and Anchovies
12 Covered Products (“Downstream Defendant Releasees”), for all claims for violations of
13 Proposition 65 up through the Effective Date based on exposure to the Listed Chemicals from
14 Seaweed Covered Products, and Lead from Anchovies Covered Products as set forth in the Notices
15 and Complaints. Defendant’s and Defendant Releasees’ compliance with this Consent Judgment
16 shall constitute compliance with Proposition 65 with respect to exposure to the Listed Chemicals
17 from Seaweed Covered Products, and exposure to Lead in Anchovies Covered Products. Nothing
18 in this Section affects CAG’s right to commence or prosecute an action under Proposition 65
19 against any person other than Defendant, Defendant Releasees or Downstream Defendant
20 Releasees. (Defendant, Defendant Releasees or Downstream Defendant Releasees herein referred
21 to as “Released Parties.”)

22 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
23 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
24 indirectly, any form of legal action and releases all claims, including, without limitation, all
25 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
26 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
27 fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or
28 contingent (collectively “Claims”), against the Released Parties arising from any violation of

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1 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure
2 to the Listed Chemicals from the Seaweed Covered Products and to Lead from the Anchovies
3 Covered Products. In furtherance of the foregoing, as to alleged exposures to the Listed Chemicals
4 from the Seaweed Covered Products and to Lead from the Anchovies Covered Products, CAG on
5 behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the future
6 may have, conferred upon it with respect to Claims arising from any violation of Proposition 65
7 or any other statutory or common law regarding the failure to warn about exposure to the Listed
8 Chemicals from the Seaweed Covered Products and to Lead from the Anchovies Covered Products
9 by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

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

15 CAG understands and acknowledges that the significance and consequence of this waiver of
16 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
17 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
18 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
19 about exposure to the Listed Chemicals from the Seaweed Covered Products and to Lead from the
20 Anchovies Covered Products, including but not limited to any exposure to, or failure to warn with
21 respect to exposure to the Listed Chemicals from the Seaweed Covered Products and to Lead from
22 the Anchovies Covered Products, CAG will not be able to make any claim for those damages
23 against the Released Parties. Furthermore, CAG acknowledges that it intends these consequences
24 for any such Claims arising from any violation of Proposition 65 or any other statutory or common
25 law regarding the failure to warn about exposure to the Listed Chemicals from the Seaweed
26 Covered Products and to Lead from the Anchovies Covered Products as may exist as of the date
27 of this release but which CAG does not know exist, and which, if known, would materially affect
28 their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge

1 is the result of ignorance, oversight, error, negligence, or any other cause.

2 **6. ENFORCEMENT OF JUDGMENT**

3 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
4 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
5 California, Alameda County, giving the notice required by law, enforce the terms and conditions
6 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
7 only after that Party first provides ninety (90) days' notice to the Party allegedly failing to comply
8 with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure
9 to comply in an open and good faith manner.

10 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
11 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
12 ("NOV") to Defendant. The NOV shall include for each of the Covered Products: (a) the name
13 of the product, (b) specific dates when the product was sold in California, (c) the store or other
14 place at which the product was available for sale to consumers, and (d) any other evidence or other
15 support for the allegations in the notice.

16 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
17 alleged violation if, within sixty (60) days of receiving such NOV, Defendant serves a Notice of
18 Election ("NOE") that meets one of the following conditions:

19 (a) The Covered Products were distributed, shipped, or sold by
20 Defendant for sale in California before the Effective Date, or

21 (b) Since receiving the NOV, Defendant has taken corrective action by
22 either (i) taking all steps necessary to bring the sale of the product into compliance with the terms
23 of this Consent Judgment, or (ii) requesting that its customers with stores in California provide a
24 clear and reasonable warning for the Covered Product identified in the NOV in accordance with
25 Section 3 above.

26 6.2.2 **Contested NOV.** Defendant may serve a Notice of Election ("NOE")
27 informing CAG of its election to contest the NOV within sixty (60) days of receiving the NOV.
28

1 (a) In its election, Defendant may request that the same sample(s) of
2 Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited
3 laboratory.

4 (b) If the confirmatory testing establishes that the Seaweed Covered
5 Products do not contain any of the Listed Chemicals in excess of the levels allowed in Section 3.1
6 above or that the Anchovies Covered Products do not contain Lead in excess of the level allowed
7 in Section 3.2 above, CAG shall take no further action regarding the alleged violation. If the
8 testing does not establish compliance with Section 3.1 or 3.2, above, Defendant may withdraw its
9 NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.

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

13 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
14 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

15 **7. ENTRY OF CONSENT JUDGMENT**

16 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
17 California Health & Safety Code § 25249.7(f).

18 7.2 Upon entry of the Consent Judgment, the 1st Complaint shall be deemed to be
19 amended to include the claims identified in the January 9, 2015 Notice and October 23, 2017
20 Notice.

21 7.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
22 Judgment and any and all prior agreements between the parties merged herein shall terminate and
23 become null and void, and the actions shall revert to the status that existed prior to the execution
24 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
25 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
26 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
27 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
28 modify the terms of the Consent Judgment and to resubmit it for approval.

1 7.4 CAG will file a request for a dismissal without prejudice for all named defendants
2 in the 1st Complaint and 2nd Complaint who are not a party to this Consent Judgment but are
3 Downstream Defendant Releasees, within ten (10) days of the receipt of the settlement payment
4 set forth in Section 4. CAG also will file a request for dismissal without prejudice of the 3rd
5 Complaint in its entirety.

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 under Code of Civil Procedure § 664.6.

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

16 10.1 CAG shall serve a copy of this Consent Judgment, signed by both Parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment prior
18 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
19 General has received the aforementioned copy of this Consent Judgment, the Parties may then
20 submit it to the Court for approval.

21 **11. ATTORNEY FEES**

22 11.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its
23 own attorneys' fees and costs in connection with the Notices and Complaints.

24 **12. ENTIRE AGREEMENT**

25 12.1 This Consent Judgment contains the sole and entire agreement and understanding
26 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
27 negotiations, commitments and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any party

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hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

13. GOVERNING LAW

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

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

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

14. EXECUTION AND COUNTERPARTS

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

1 **15. NOTICES**

2 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
3 Class Mail.

4 If to CAG:

5 Yeroushalmi & Yeroushalmi
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
8 (310) 623-1926

9 If to Defendant Jayone:

10 Peg Carew Toledo, Esq.
11 PEG CAREW TOLEDO, LAW CORPORATION
12 3001 Douglas Blvd., Suite 340
13 Roseville, CA 95661-3853
14 Telephone: (916) 462-8950

15 **16. AUTHORITY TO STIPULATE**

16 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
17 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
18 the party represented and legally to bind that party.

19 AGREED TO:

20 AGREED TO:

21 Date: January __, 2018

22 Date: January __, 2018

23 Name: _____

24 Name: _____

25 Title: _____
26 CONSUMER ADVOCACY GROUP, INC.

27 Title: _____
28 JAYONE FOODS, INC.

29 **IT IS SO ORDERED.**

30 Date: _____

31 JUDGE OF THE SUPERIOR COURT

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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: January 26, 2018

Date: January __, 2018

Wm Earl Moore

Name: Michael Marcus

Name: _____

Title: Director
CONSUMER ADVOCACY GROUP, INC.

Title: JAYONE FOODS, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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3 Class Mail.

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7 Beverly Hills, CA 90212
(310) 623-1926

8 If to Defendant Jayone:

9 Peg Carew Toledo, Esq.
10 PEG CAREW TOLEDO, LAW CORPORATION
11 3001 Douglas Blvd., Suite 340
Roseville, CA 95661-3853
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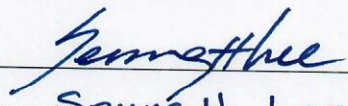
16 AGREED TO:

17 Date: January __, 2018

18
19 _____
20 Name: _____
21 Title: _____
22 CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

17 Date: January 29, 2018

18
19 
20 Name: Seung H. Lee
21 Title: President
22 JAYONE FOODS, INC.

23
24
25 **IT IS SO ORDERED.**

26 Date: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT