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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

AS YOU SOW, Plaintiff, v. JFC INTERNATIONAL, INC. Defendant.	Case No. *** **[PROPOSED] CONSENT JUDGMENT** Civil case

This Consent Judgment is entered into by and between Plaintiff As You Sow ("AYS" or "Plaintiff") and Defendant JFC International, Inc. ("JFC" or "Defendant"), to resolve claims against the Defendant raised in the Plaintiff's Complaint in the above-captioned action, which was filed on _____, 2016. This Consent Judgment shall be effective upon entry. AYS and the Defendant (collectively "the Parties") agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in Oakland, California and is incorporated under the laws of the State of California.

1.2 The Defendant produces, distributes, and/or sells Wel-Pac Fueru Wakame Dried Seaweed (the "Covered Product").

1.3 AYS alleges in the Complaint that the Covered Product contains cadmium and lead, which are chemicals listed by the State of California as known to cause cancer and birth defects, or other reproductive harm, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), California Health and Safety Code §25249.5 *et seq.*

1.4 On September 17, 2014, AYS sent 60-day Notices of Violation to the Defendant and to public enforcers as required by Health and Safety Code section 25249.7, alleging that the Defendant violated Proposition 65 by failing to provide clear and reasonable warnings before exposing persons to cadmium and lead contained in the Covered Product.

1.5 The Parties have agreed to enter into this Consent Judgment to settle Plaintiff's claims with regard to the Covered Product and to avoid prolonged and costly litigation.

1.6 By executing and complying with this Consent Judgment, neither Party admits any facts or conclusions of law alleged in the Complaint, or the existence of any other statutory, common law, or equitable claim or requirement relating to or arising from the production, sale, or distribution of the Covered Product in California.

1.7 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense that AYS and the Defendant may have in any other, or in future, legal proceedings unrelated to this action. This paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent Judgment.

1.8 The term "Effective Date" means the date of entry of this Consent Judgment.

1.9 The only product covered by this Consent Judgment is the Covered Product, and the only chemicals covered by this Consent Judgment are the chemicals lead and cadmium as

related to the Covered Product only.

2. JURISDICTION

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations contained in the Complaint and personal jurisdiction over the Defendant; venue is proper in Alameda County; the Court has jurisdiction to enter this Consent Judgment as a resolution of all claims alleged in the Complaint; and the Court shall retain jurisdiction to enforce the Consent Judgment.

3. INJUNCTIVE RELIEF

3.1 Beginning no later than ninety days from the Effective Date of this Consent Judgment ("Compliance Date"), all Covered Products produced, distributed, and/or sold by the Defendant in the State of California shall provide the following warning statement in English:

> **WARNING**: Consuming this product will expose you to chemicals, including cadmium and lead, known to the State of California to cause cancer and birth defects and other reproductive harm. The exposure amount is significantly reduced when the instructions for soaking and draining are followed.

3.2 Defendant shall prominently affix or print the warning statement on the Covered Product's packaging and labeling. The warning statement shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the packaging or labeling of the Covered Product, so as to render the warning statement likely to be read and understood by an ordinary individual under customary conditions of purchase and use.

3.3 The Parties agree, and the Court so finds, that the content and the placement of the warning statement as shown in Exhibit A hereto meets the requirements of Paragraphs 3.1 – 3.2 of this Consent Judgment.

3.4 If Defendant sells the Covered Product via an internet site to customers located in California, Defendant shall also prominently display the warning statement as required in Paragraph 3.1 on the internet site in conjunction with the Covered Product. The warning statement shall be displayed in the same type size as the surrounding, non-heading text, either: (a) on the same page, without scrolling, as the order form for the Covered Product; (b) on the same page, without scrolling, as the price for the Covered Product; or (c) in a dialogue box which

appears and is visible when a California address for delivery is provided by the consumer, so long as the dialogue box appears prior to the completion of the internet sale and requires the consumer to affirmatively accept receipt of the warning set forth in the dialogue box (the warning language in the dialogue box shall be displayed in the same type size as the surrounding, non-heading text on the screen at the time of the appearance of the dialogue box), as a condition precedent to completing the sale.

3.5 If Defendant sells the Covered Product to California consumers through the website of any internet retailer, Defendant shall send by first class mail or overnight delivery prior to the Compliance Date, a letter instructing the internet retailer to provide warning in the same manner as required under Paragraph 3.4. Defendant shall also send any internet retailer that begins to sell the Covered Product after the Compliance Date a letter instructing the internet retailer to provide warning in the same manner as required under Paragraph 3.4. The letter shall state that failure to provide these warnings may result in legal liability. In the letter, Defendant shall request that the internet retailer customer respond with a written acknowledgement that it will comply with Defendant's instructions. If Defendant complies with the requirements of this Paragraph, Defendant shall not be in violation of this Consent Judgment where an internet retailer fails to provide the warnings required under Paragraph 3.4.

3.6 If Defendant sells the Covered Product via mail order to customers located in California, Defendant shall prominently display the warning statement as required in Paragraph 3.1 in the mail order catalogue in conjunction with the Covered Product. The warning shall appear either on the same page as the order form for the Covered Product, or on the same page upon which the Covered Product's price is listed, in the same type size as the surrounding, non-heading text. The warning shall be added in the first print run of the mail order catalogue on or after the Effective Date.

3.7 Except as provided for in Paragraphs 5.6-5.8, any changes to the language or format of the warnings required under Paragraph 3.1-3.6 shall be made only after Court approval and following written notice to Plaintiff and to the Attorney General.

4. INVESTIGATION OF ALTERNATIVE SOURCES AND REDUCTION METHODS

4.1 Defendant shall make a good faith and diligent effort to identify an alternative source for the Covered Product and/or methods of cultivation, harvesting, processing, packaging, and distribution that reduce or avoid levels of cadmium and lead in the Covered Product.

4.2 Within one year of the Effective Date of this Agreement, Defendant shall provide a report to AYS describing the investigation provided for in Paragraph 4.1. The report shall include a full description of the results of the investigation and any action the company has taken, or will take, in response. The report shall be deemed and treated by AYS as confidential information. Notwithstanding the foregoing, in order to not divulge highly sensitive trade secret or proprietary information and/or not breach any agreements with suppliers or potential suppliers, the report will not include information that Defendant considers highly sensitive, including, but not limited to, names and addresses of suppliers or potential suppliers.

5. TESTING AND REPORTING

5.1 Beginning on the Effective Date of this Agreement, and continuing for a period of two years thereafter, at least once every twelve months, Defendant shall have three randomly selected samples of the Covered Product (in the form intended for use by the end-user, which in this case means rehydrated and drained pursuant to the package directions) from a single lot tested for lead and cadmium content. The term "lot," as used herein, means a manufacturing cycle or series of manufacturing cycles producing the Covered Product. Each sample to be tested shall be randomly selected using a sound statistical sampling plan, and shall be identified in Defendant's request to the laboratory for testing as being submitted pursuant to this Consent Judgment.

5.2 Testing for lead and cadmium content under Paragraph 5.1 shall be performed using the protocols set forth in EPA Methods 6020, 6020a. The laboratory must digest at least 0.5 grams of each sample with a level of detection of at least 4 parts per billion. The sample preparation method must use a microwave- or heat-assisted acid digestion method. In the event testing protocols change such that those in EPA Methods 6020, 6020a are not commonly performed by testing laboratories, the Parties will agree to alternative protocols.

5.3 Testing for lead and cadmium content under Paragraph 5.2 shall be performed 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 registered with the United States Environmental Protection Agency.

5.4 Defendant shall retain all test results and documentation for the Covered Product for a period of five years from the date of the test.

5.5 Defendant agrees to deliver full laboratory reports for the Covered Product, including all accompanying quality assurance/quality control ("QA/QC") documentation, with results of testing for lead and cadmium content under this Section to AYS within 14 days of receipt from the laboratory. These reports shall be deemed and treated by AYS as confidential information.

5.6 Provided that Defendant successfully reduces both the level of cadmium in the Covered Product to below 4.1 micrograms per 1/4 cup serving and the level of lead in the Covered Product to below .5 micrograms per 1/4 cup serving for two consecutive tests conducted pursuant to this Section that occur at least six months apart, Defendant may, subject to Paragraph 5.10, modify the warning in Section 3.1 of this Consent Judgment to state:

> **WARNING:** Consuming more than the stated serving size of this product, or consuming this product without first soaking and draining, will expose you to levels of chemicals, including cadmium and lead, that may cause cancer and birth defects and other reproductive harm. The exposure amount is significantly reduced when the instructions for soaking and draining are followed.

5.7 If for two consecutive tests conducted pursuant to this Section that occur at least six months apart, Defendant successfully reduces the level of cadmium to below 4.1 micrograms per 1/4 cup serving or the level of lead in the Covered Product to below .5 micrograms per 1/4 cup serving, but is not successful in reducing the level of the other chemical, Defendant may, subject to Paragraph 5.10, modify the warning in Section 3.1 to warn for only the chemical that has not been successfully reduced.

5.8 Provided that Defendant successfully reduces both the level of cadmium in the Covered Product to below 2.05 micrograms per 1/4 cup serving and the level of lead in the Covered Product to below .25 micrograms per 1/4 cup serving for two consecutive tests conducted

pursuant to this Section that occur at least six months apart, Defendant may, subject to Paragraph 5.10, remove the warning label set forth in Section 3.1 or 5.6 of this Consent Judgment. Defendant shall, however, include a statement in the use instructions for the Covered Product stating: "Failure to soak and drain the product before consuming it may expose you to harmful levels of cadmium and lead."

5.9 Any modification of the warning as provided for in Paragraphs 5.6 – 5.8 shall also apply to internet and mail order warnings specified in Paragraphs 3.4 – 3.6.

5.10 In the event Defendant reduces the level of cadmium and/or lead to levels that would permit it to modify the warning in Section 3.1, as set forth in this section, Defendant shall provide As You Sow with notice of its intent to modify the warning sixty days prior to doing so. In the event As You Sow believes that a modification of the warning is not permitted under the terms of this section, it shall so notify Defendant and, if the parties are unable to resolve their dispute, the provisions of Section 7.1 shall apply.

6. SETTLEMENT PAYMENTS

6.1 Within thirty days of the Effective Date, Defendant shall pay $24,000.00 in the form of a check made payable to As You Sow, as a civil penalty pursuant to Health and Safety Code section 25249.7(b). AYS shall remit seventy-five percent (75%) of this amount to the State of California pursuant to Health and Safety Code section 25249.12(b).

6.2 In Lieu Payment: Within thirty days of the Effective Date, Defendant shall pay $24,000.00, in the form of a check made payable to AYS, with this amount to be used by AYS for grants to California non-profit organizations and by the AYS Environmental Enforcement Fund. These funds shall be used to reduce or remediate exposures to toxic chemicals and to increase consumer, worker, and community awareness of the health hazards posed by toxic chemicals in California. In deciding among grant proposals, the As You Sow Board of Directors ("Board") takes into consideration a number of important factors, including: (1) the nexus between the harm done in the underlying case(s) and the grant program work; (2) the potential for toxics reduction, prevention, remediation, or educational benefits to California citizens from the proposal; (3) the budget requirements of the proposed grantee and the alternate funding sources available to it for

its project; and, (4) the Board's assessment of the proposed grantee's chances for success in its program work. AYS shall ensure that all funds will be disbursed and used in accordance with AYS' mission statement, articles of incorporation, bylaws, and applicable state and federal laws and regulations.

6.3 Within thirty days of the Effective Date, Defendant shall pay $27,000.00, in the form of a check made payable to Altshuler Berzon LLP, as reimbursement for Plaintiff's attorneys' fees, investigation costs, and other reasonable litigation costs and expenses.

7. ENFORCEMENT OF CONSENT JUDGMENT

7.1 The Parties may, by motion filed in this Court, enforce the terms and conditions of this Consent Judgment. In the event a dispute arises with respect to any of the provisions of this Consent Judgment, and prior to the filing of any such motion, the Parties shall meet and confer within ten days after either Party receives written notice of an alleged violation of this Agreement.

7.2 AYS is entitled to seek recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding in any dispute regarding compliance with the terms of this Consent Judgment pursuant to the provisions of Code of Civil Procedure section 1021.5.

8. CLAIMS COVERED AND RELEASE

8.1 As to the Covered Product, this Consent Judgment is a full, final, and binding resolution between AYS and the Defendant, its parents, subsidiaries and shareholders, officers, directors, employees, agents, customers, insurers and representatives, and its successors and assigns ("Releasees"), of all claims brought by AYS pursuant to Proposition 65 for the alleged failure to provide clear and reasonable warnings of exposure to cadmium and lead in the Covered Product produced, distributed or sold by the Defendant prior to the Effective Date.

8.2 Defendant hereby releases AYS from, and waives any claims against, AYS and its parents, subsidiaries, officers, directors, employees, agents, insurers and representatives, and its successors and assigns ("AYS Releasees") for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters related to the Notices or Complaint.

8.3 Upon entry of the Consent Judgment, the Parties waive their respective rights to a hearing or trial on the allegations of the Complaint.

9. GOVERNING LAW AND CONSTRUCTION

This Consent Judgment shall be governed by, and construed in accordance with, the laws of the State of California.

10. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified only upon written agreement of the Parties with approval of the Court, or pursuant to a court order issued upon noticed motion of a Party for good cause shown and upon entry of a modified Consent Judgment by the Court. Any Party seeking to modify this Consent Judgment shall meet and confer in good faith with the other Party prior to filing a motion to modify the Consent Judgment and attempt to resolve any differences.

11. COURT APPROVAL

11.1 Unless otherwise stipulated by the Parties, the Court shall either approve or disapprove of this Consent Judgment in its entirety, without alteration, deletion or amendment.

11.2 Unless otherwise stipulated by the Parties, if the Court fails to approve and order entry of the Consent Judgment without any alteration, deletion or amendment, this Consent Judgment shall become null and void upon the election of either Party, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

11.3 Defendant agrees not to oppose this Consent Judgment.

12. ENTIRE AGREEMENT

The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any Party except those contained herein and that this agreement contains the entire agreement pertaining to the subject matter hereof.

13. DURATION OF CONSENT JUDGMENT

This Consent Judgment shall terminate within five years of the Effective Date unless the term of this Consent Judgment is extended. This Consent Judgment shall be extended only by a stipulation of the Parties that is entered by the Court.

14. APPLICATION OF CONSENT JUDGMENT

This Consent Judgment shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

15. ATTORNEYS' FEES

Except as specifically provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs incurred in connection with the 60-day Notices and Plaintiff's Complaint.

16. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7

16.1 Plaintiff shall comply with the reporting requirements referred to in Health and Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections 3000-3008), and shall move for approval of this Consent Judgment pursuant to the terms thereof.

16.2 Upon request by AYS, Defendant shall provide a declaration in support of a motion to approve this Consent Judgment.

17. PROVISION OF NOTICE

All correspondence and notices required by this Consent Judgment to the Parties shall be sent to:

Plaintiff As You Sow

As You Sow Foundation
Attn: Danielle Fugere, President and Chief Counsel
1611 Telegraph Street, Suite 1450
Oakland, CA 94612
Tel: (510) 735-8158

With a copy to:

Barbara Chisholm
Tony LoPresti
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Tel: (415) 421-7151

Defendant JFC International Inc.

JFC International Inc.
Attn: Corporate Administration Manager
7101 East Slauson Avenue
Los Angeles, CA 90040
Tel: (323) 887-5240

With a copy to:

Elizabeth Shoemaker
Teraoka & Partners LLP
One Embarcadero Center
Tenth Floor, Suite #1020
San Francisco, CA 94111
Tel: (415) 981-3100

18. EXECUTION AND COUNTERPARTS

This Consent Judgment may be executed in one or more counterparts and by means of facsimile or portable document format (.pdf), which taken together shall be deemed to constitute one document.

19. AUTHORIZATION

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

APPROVED AS TO FORM:

Dated: Feb. 18, 2016 **ALTSHULER BERZON LLP**

By _____
BARBARA J. CHISHOLM

Attorneys for Plaintiff AS YOU SOW

Dated: Feb. 4, 2016 **TERAOKA & PARTNERS LLP**

By _____
ELIZABETH SHOEMAKER

Attorneys for Defendant JFC INTERNATIONAL INC.

SO AGREED:

Dated: 2/15, 2016

AS YOU SOW

By: _____

Name: Andrew Behar
Title: CEO

Dated: 2/9, 2016

JFC INTERNATIONAL INC.

By: _____

Name: Yoshiyuki Ishigaki
Title: President

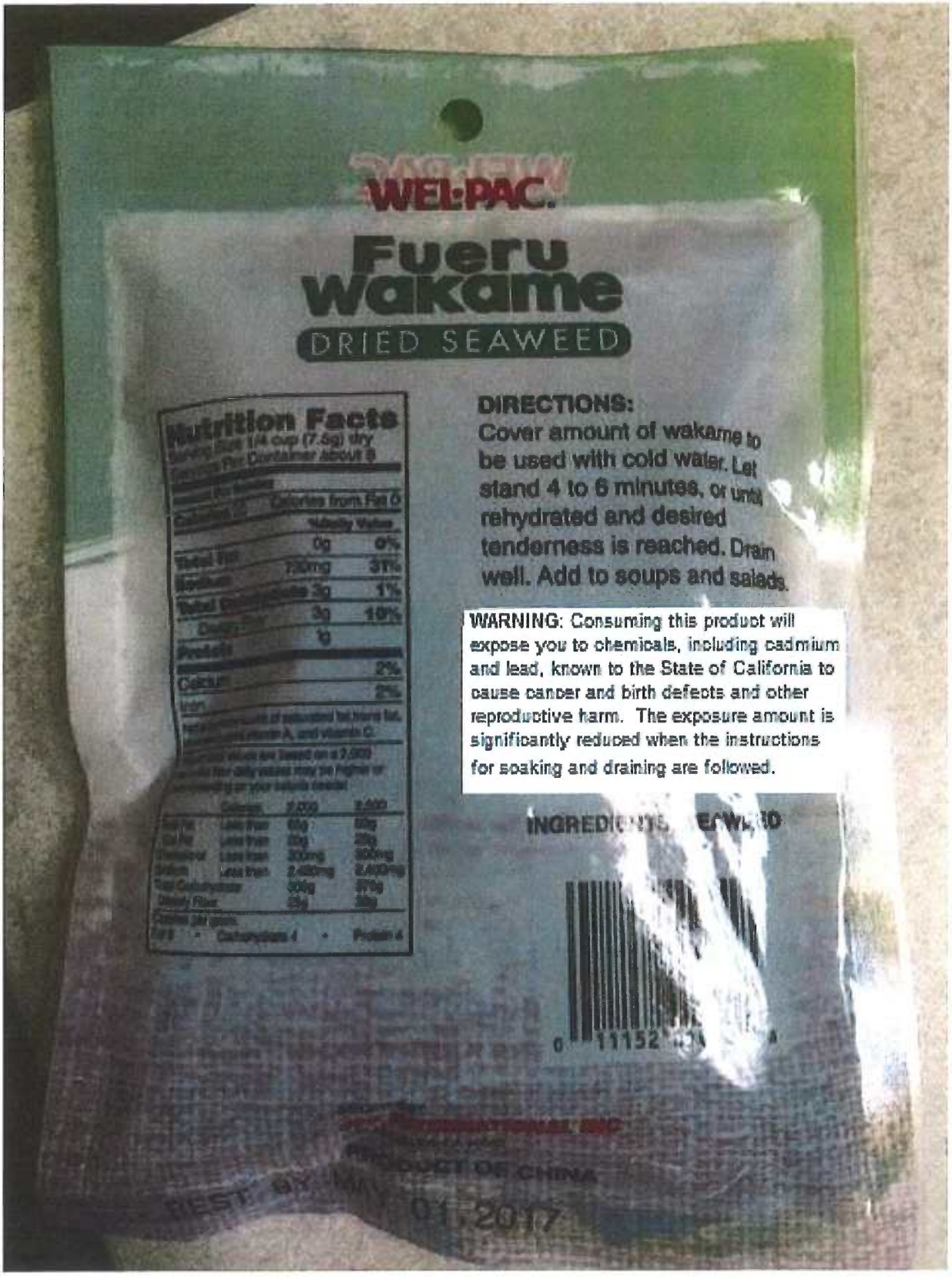
IT IS SO ORDERED AND ADJUDGED:

The Court hereby incorporates the terms of this Consent Judgment into this Order. If a Party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: _____, 2016

_____
JUDGE OF THE SUPERIOR COURT

EXHIBIT A


WEI-PAC.
Fueru Wakame
DRIED SEAWEED
Nutrition Facts
DIRECTIONS:
Cover amount of wakame to be used with cold water. Let stand 4 to 6 minutes, or until rehydrated and desired tenderness is reached. Drain well. Add to soups and salads.
WARNING: Consuming this product will expose you to chemicals, including cadmium and lead, known to the State of California to cause cancer and birth defects and other reproductive harm. The exposure amount is significantly reduced when the instructions for soaking and draining are followed.
PRODUCT OF CHINA
BEST BY 01.2017