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8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 TAWA SUPERMARKET, INC. dba 99
17 RANCH MARKET and dba 168 MARKET,
18 a California corporation; WALONG
19 MARKETING, INC., a California
20 corporation;
21 TAKAOKAYA, U.S.A., INC., a
22 California Corporation;
23 and DOES 1-250,

24 Defendants.

CASE NO. BC634011

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT TAKAOKAYA
U.S.A., INC.**

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, TAKAOKAYA, U.S.A., INC. (hereinafter referred to as
5 “Defendant”), with 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 which employs ten or more persons.
8 Defendant distributes, and sells Seaweed including but not limited to: “TAKAOKAYA
9 U.S.A.”, “Koufuku Nori”, “Ajitsuke Momi Nori, Seasoned Seaweed”, “Packed In Los
10 Angeles”, “Printed In Japan”, Net Wt: 1.41 Oz (40g), “Packed By Takaokaya U.S.A. Inc.”,
11 “UPC: 7 35407 00451 0” (Hereinafter referred to as the “Covered Products”)

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

16 **1.3 Chemicals of Concern**

17 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
18 California to cause cancer and/or birth defects or other reproductive harm.

19 **1.4 Notices of Violation**

20 1.4.1 On or about November 3, 2014, CAG served Defendant and various
21 public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
22 “Notice 1”) that provided the Defendant with notice of alleged violations of Health & Safety
23 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
24 Seaweed sold and/or distributed by Defendant. No other public enforcer has commenced or
25 diligently prosecuted the allegations set forth in the Notice. (referred to as the “Notice”)

26 **1.5 Complaint**

1 1.5.1 On September 14, 2016 CAG filed a complaint for civil penalties and
2 injunctive relief in Los Angeles Superior Court, Case No. BC634011 against Retailer Defendant
3 Tawa Supermarket, Inc. The initial Complaint alleges, among other things, that Retailer
4 Defendant violated Proposition 65 by failing to give clear and reasonable warnings of exposure
5 to Lead, from Covered Products.

6 1.5.2 On December 8, 2020 CAG filed a second amended complaint for civil
7 penalties and injunctive relief adding Defendant TAKAOKAYA USA INC. That Complaint
8 alleges, among other things, that Retailer Defendant Tawa and Defendant violated Proposition 65
9 by failing to give clear and reasonable warnings of exposure to Lead from Covered Products.

10 1.5.3 On October 21, 2022, CAG filed a third amended complaint for civil
11 penalties and injunctive relief (the “Complaint”). The Complaint alleges, among other things,
12 that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of
13 exposure to Lead from Covered Products.

14 **1.6 Consent to Jurisdiction**

15 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
16 has jurisdiction over the allegations of violations contained in the Complaint and personal
17 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
18 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
19 full settlement and resolution of the allegations contained in cause of action one of the Complaint
20 and of all claims which were or could have been raised by any person or entity based in whole or
21 in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

22 **1.7 No Admission**

23 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
24 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
25 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
26 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
27 the Complaint (each and every allegation of which Defendant denies), any fact, conclusion of
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1 law, issue of law or violation of law, including without limitation, any admission concerning any
2 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
3 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
4 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
5 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
6 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
7 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
8 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
9 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
10 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
11 other or future legal proceeding, except as expressly provided in this Consent Judgment.

12 **2. DEFINITIONS**

13 2.1 “Covered Products” means products specifically identified in Paragraph 1.2.1 sold
14 or supplied by Defendant TAKAOKAYA, U.S.A., INC.

15 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
16 Court.

17 2.3 “Lead” means Lead and Lead Compounds.

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

20 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
21 California, or ship for sale in California any Covered Products unless the level of Lead does not
22 exceed 75 parts per billion (“ppb”), unless Proposition 65 compliant warnings are used as set
23 forth in the following paragraphs.

24 3.2 For any Covered Products that exceed their respective levels of Lead that are
25 placed into the stream of commerce in California after the Effective Date, Defendant must
26 provide a Proposition 65 compliant warning for the Covered Products as set forth below. Any
27 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
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1 Covered Products, and be prominently placed with such conspicuousness as compared with other
2 words, statements, designs, or devices as to render it likely to be read and understood by an
3 ordinary individual under customary conditions before purchase or use. The warning must be set
4 off from other surrounding information, enclosed in a box. Where the packaging of the Covered
5 Product includes consumer information as defined by California Code of Regulations title 27
6 §25600.1(c) in a language other than English, the warning must also be provided in that language
7 in addition to English. Should Defendant sell or distribute any Covered Product through the
8 internet, the warning will be posted in the manner provided for with respect to internet sales, as
9 provided for in 27 CCR sections 25601 and 25602, as they may be subsequently amended. The
10 Parties agree that the following warning language shall constitute compliance with Proposition
11 65 with respect to the alleged Lead in the Covered Products placed into the stream of commerce
12 by Defendant after the Effective Date:

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

16 3.3 For any Covered Products still existing in the Defendant's inventory as of the
17 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
18 Covered Products does not exceed their respective levels of Lead. Any warning provided
19 pursuant to this section shall comply with the warning requirements under Section 3.2 above.

20 3.5 For any Covered Product where the Defendant uses a consumer product sign, or
21 label, to provide a warning, which includes consumer information in a language other than
22 English, the warning must also be provided in that foreign language in addition to English.

23 3.6 Changes in the law and regulations applicable to Prop 65 occurring after this date
24 shall be incorporated into the terms of this Consent Judgment.

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 five hundred thousand dollars (\$500,000.00) in full and complete settlement
4 of all monetary claims by CAG related to the Notices, as follows:

5 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling fifty-seven
6 thousand one hundred and sixty dollars (\$57,160.00) as penalties pursuant to Health & Safety
7 Code § 25249.12:

8 (a) Defendant will issue a check made payable to the State of California’s
9 Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of forty-two
10 thousand eight hundred and seventy dollars (\$42,870.00) representing 75% of the total penalty
11 and Defendant will issue a separate check to CAG in the amount of fourteen thousand two
12 hundred and ninety dollars (\$14,290.00) representing 25% of the total penalty; and

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

17 4.1.2 **Additional Settlement Payments:** Defendant shall make a separate
18 payment, in the amount of forty-two thousand eight hundred and forty dollars (\$42,840.00) as an
19 additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety
20 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue
21 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as
22 follows, eighty percent (80%) for fees of investigation, purchasing and testing for Proposition 65
23 listed chemicals in various products, and for expert fees for evaluating exposures through various
24 mediums, including but not limited to consumer product, occupational, and environmental
25 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining
26 experts who assist with the extensive scientific analysis necessary for those files in litigation and
27 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees;
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1 twenty percent (20%) for administrative costs incurred during investigation and litigation to
2 reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or
3 entities believed to be responsible for such exposures and attempting to persuade those persons
4 and/or entities to reformulate their products or the source of exposure to completely eliminate or
5 lower the level of Proposition 65 listed chemicals including but not limited to costs of
6 documentation and tracking of products investigated, storage of products, website enhancement
7 and maintenance, computer and software maintenance, investigative equipment, CAG's
8 member's time for work done on investigations, office supplies, mailing supplies and postage.
9 Within 30 days of a request from the Attorney General, CAG shall provide to the Attorney
10 General copies of documentation demonstrating how the above funds have been spent. CAG
11 shall be solely responsible for ensuring the proper expenditure of such additional settlement
12 payment.

13 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay one
14 four hundred thousand dollars (\$400,000.00) to "Yeroushalmi & Yeroushalmi" as
15 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
16 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
17 negotiating a settlement in the public interest.

18 4.2 Other than the payment to OEHHA described above, all payments referenced in
19 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
20 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
21 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
22 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
23 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
24 payment to OEHHA was delivered.
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26 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

27 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
28 behalf of itself and in the public interest and Defendant for failure to provide Proposition 65

1 warning of exposure to Lead from the Covered Products as set forth in the Notices, and fully
2 resolves all claims that have been or could have been asserted against Defendant in this action up
3 through the Effective Date for failure to provide Proposition 65 warnings for the Covered
4 Products regarding Lead. CAG, on behalf of itself and in the public interest, hereby discharges
5 Defendant, and their respective officers, directors, insurers, employees, parents, shareholders,
6 divisions, subdivisions, subsidiaries, and their successors and assigns (“Defendant Releasees”)
7 and all customers, distributors, retailers, and downstream entities in the distribution chain of the
8 Covered Products, and the predecessors, successors and assigns of any of them, and all of their
9 respective officers, directors, shareholders, members, managers, employees, agents only as to
10 Covered Products sold by the Defendant (collectively, “Downstream Releasees”), for all
11 Covered Products placed into the stream of commerce up through the Effective Date for
12 violations of Proposition 65 based on exposure to Lead from the Covered Products. Defendant’s
13 compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
14 with Proposition 65 regarding alleged exposures to Lead from the Covered Products. Nothing in
15 this Section affects CAG’s right to commence or prosecute an action under Proposition 65
16 against any person other than Defendant Releasees or Downstream Releasees after the Effective
17 Date. The scope of the released products is limited to Covered Products sold, supplied and/or
18 distributed for sale by TAKAOKAYA, U.S.A., INC. only. The foregoing release includes
19 Retailer Defendant Tawa but only as to the Takaokaya Covered Products and not as to any other
20 products alleged in the Complaint.

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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,
26 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
27 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
28 fixed or contingent (collectively “Claims”), against the Released Parties arising from any

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

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

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

2 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
4 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

5 6.2 The Parties shall make all reasonable efforts possible to have the Consent
6 Judgment approved by the Court.

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

15 **7. MODIFICATION OF JUDGMENT**

16 7.1 This Consent Judgment may be modified only upon written agreement of the
17 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
18 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

19 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
20 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

21 **8. RETENTION OF JURISDICTION**

22 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
23 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

24 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
25 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.
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1 **10. DUTIES LIMITED TO CALIFORNIA**

2 9.1 This Consent Judgment shall have no effect on Covered Products sold by
3 Defendant outside the State of California.

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

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

11 **11. ATTORNEY FEES**

12 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
13 own costs and attorney fees in connection with this action.

14 **12. GOVERNING LAW**

15 12.1 The validity, construction and performance of this Consent Judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts of law
17 provisions of California law.

18 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California. In the event that Proposition 65 is amended, repealed, preempted, or is otherwise
20 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
21 Judgment are rendered inapplicable or are no longer required as a result of any such amendment,
22 repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered
23 Products, then any Defendant subject to this Consent Judgment may provide written notice to
24 CAG of any asserted change in the law, and shall have no further obligations pursuant to this
25 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.
26 Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any obligation
27 to comply with any pertinent state or federal law or regulation.
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1 12.3 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
6 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
7 agrees that any statute or rule of construction providing that ambiguities are to be resolved
8 against the drafting Party should not be employed in the interpretation of this Consent Judgment
9 and, in this regard, the Parties hereby waive California Civil Code § 1654.

10 **13. EXECUTION AND COUNTERPARTS**

11 13.1 This Consent Judgment may be executed in counterparts and by means of
12 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
13 one document and have the same force and effect as original signatures.

14 **14. NOTICES**

15 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

16
17 If to CAG:

18 Reuben Yeroushalmi
19 YEROUSHALMI & YEROUSHALMI
20 9100 Wilshire Boulevard, Suite 240W
21 Beverly Hills, CA 90212
22 (310) 623-1926
23 Email: lawfirm@yeroushalmi.com

24 If to Defendant.:


25 George Salmas
26 george.salmas@thefoodlawyers.com
27 Michael R. Hambly
28 michael.hambly@thefoodlawyers.com
 THE FOOD LAWYERS
 1880 Century Park East, Suite 611
 Los Angeles, CA 90067

Tel: (310) 556-0721
Fax: (310) 788-8923

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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: Date: _____, 2023 Name: _____ Title: _____ CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: <u>2/15</u> , 2023  Name: <u>Hirochika Tsuido</u> Title: <u>President</u> TAKAOKAYA, U.S.A., INC.
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Tel: (310) 556-0721
Fax: (310) 788-8923

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: Date: <u>February 21</u> , 2023 <u>Michael Marcus</u> Name: <u>Michael Marcus</u> Title: <u>Director</u> CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: _____, 2023 _____ Name: <u>Hirochika Tsuido</u> Title: <u>President</u> TAKAOKAYA, U.S.A., INC.
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT