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10 Attorneys for Plaintiffs,

11 Consumer Advocacy Group, Inc.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 CONSUMER ADVOCACY GROUP, INC.,

15 in the interest of the Public,

16 Plaintiff,

17 v.

18 SHIRAKO CO., LTD., a Japanese Limited  
19 Corporation; ARCADIA SUPERMARKET,  
20 INC., a California Corporation; TAWA  
21 SUPERMARKET, INC., a California  
22 Corporation; and DOES 1-20;

23 Defendants.

24 CASE NO. RG15780925

25 ASSIGNED FOR ALL PURPOSES TO  
26 JUDGE Delbert C. Gee  
27 DEPARTMENT 510

28 **CONSENT JUDGMENT [PROPOSED]**

Complaint filed: August 6, 2015

1 **1. INTRODUCTION**

1.1 This Consent Judgment is entered into by and between plaintiff Consumer Advocacy Group, Inc. (“CAG”) acting on behalf of itself and in the interest of the public, and defendant SHIRAKO CO., LTD., (“SHIRAKO” or “Defendant”) with each a “Party” and collectively referred to as “Parties.”

1.2 It is alleged that Defendant named in the Complaint employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition

65”), and manufactured, distributed, and/or sold Seaweed, which includes but is not limited to, 1)  
“OKAZUNORI® BRAND SEAWEED 8 PACK; SEASONED ROASTED SEAWEED; 6.25  
INCH x 4.5 INCH; NET WT. 0.79 OZ (8 SHEETS); PACKED FOR SHIRAKO Co., LTD.; 5-9,  
NAKAKASAI, 7-CHROME, EDOGAWA-KU, TOKYO 134-8502, JAPAN; PRODUCT OF  
CHINA; UPC: 4 901673 256083;” and 2) “SHIRAKO ROASTED SEAWEED TOKYO  
TEMAKI NORI; 7.2 INCH x 3.7 INCH; NET WT. 0.23 OZ (6 SHEETS); PACKED FOR  
SHIRAKO CO., LTD.; 5-9 NAKAKASAI, EDOGAWA-KU, TOKYO 134-8502, JAPAN;  
PRODUCT OF CHINA; UPC: 0 92396 00002 3” before the Effective Date of this Consent  
Judgment.

### **1.3 Notice of Violation.**

1.3.1 On or about January 9, 2015 CAG served Defendant SHIRAKO, Tawa  
Supermarket, Inc., 168 Market, and various public enforcement agencies with documents entitled  
“60-Day Notice of Violation” (the “January 9, 2015 Notice”) that provided the recipients with  
notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
California of exposures to Cadmium contained in the Covered Products.

1.3.2 On or about April 15, 2015 CAG served Defendant SHIRAKO and Arcadia  
Supermarket, Inc. and various public enforcement agencies with documents entitled “60-Day  
Notice of Violation” (the “April 15, 2015 Notice”) that provided the recipients with notice of  
alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California  
of exposures to Cadmium contained in the Covered Products.

1.3.4 The January 9, 2015 Notice and April 15, 2015 Notice are collectively referred to  
herewith as the “Notices.”

1.3.3 No public enforcer has commenced or diligently prosecuted the allegations  
set forth in the Notices.

### **1.4 Complaint.**

On August 6, 2015, CAG filed a Complaint for civil penalties and injunctive relief  
 (“Complaint”) in Alameda Superior Court, Case No. RG15780925. The Complaint alleges, among  
other things, that the named Defendant violated Proposition 65 by failing to give clear and

1 reasonable warnings of exposure to Cadmium from the Covered Products.

2 **1.5 Consent to Jurisdiction**

3 While otherwise disputed, for purposes of this Consent Judgment, the Parties consent that  
4 this Court has jurisdiction over the allegations of violations contained in the Complaint and  
5 personal jurisdiction over the named Defendant as to the acts alleged in the Complaint, that venue  
6 is proper in the City and County of Alameda and that this Court has jurisdiction to enter this  
7 Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint  
8 and of all claims which were or could have been raised by any person or entity based in whole or  
9 in part, directly or indirectly, on the prior conduct of the parties or on the facts alleged in the  
10 Complaint or arising therefrom or related to.

11 **1.6 No Admission**

12 1.6.1 This Consent Judgment resolves claims that are denied and disputed. The parties  
13 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims  
14 between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall  
15 not constitute an admission with respect to any material allegation of the Complaint, each and  
16 every allegation of which Defendant denies including jurisdiction, nor may this Consent Judgment  
17 or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability  
18 on the part of Defendant.

19 1.6.2 Nothing in this Consent Judgment shall prejudice, waive or impair any right,  
20 remedy, argument, or defense the Parties may have in any other or future legal proceeding,  
21 except as expressly provided in this Consent Judgment.

22 1.6.3 This Consent Judgment is the product of negotiation and compromise and is  
23 accepted by the Parties, for purposes of settling, compromising, and resolving issues disputed in  
24 this Action, including future compliance by Defendants with Section 2 of this Consent Judgment.

25 **2. DEFINITIONS**

26 **2.1** “Covered Products” means all Seaweed, which includes but is not limited to, 1)  
27 “OKAZUNORI® BRAND SEAWEED 8 PACK; SEASONED ROASTED SEAWEED; 6.25  
28 INCH x 4.5 INCH; NET WT. 0.79 OZ (8 SHEETS); PACKED FOR SHIRAKO Co., LTD.; 5-9,

1 NAKAKASAI, 7-CHROME, EDOGAWA-KU, TOKYO 134-8502, JAPAN; PRODUCT OF  
2 CHINA; UPC: 4 901673 256083;” and 2) “SHIRAKO ROASTED SEAWEED TOKYO TEMAKI  
3 NORI; 7.2 INCH x 3.7 INCH; NET WT. 0.23 OZ (6 SHEETS); PACKED FOR SHIRAKO CO.,  
4 LTD.; 5-9 NAKAKASAI, EDOGAWA-KU, TOKYO 134-8502, JAPAN; PRODUCT OF  
5 CHINA; UPC: 0 92396 00002 3” sold, distributed, processed, packaged, produced, manufactured,  
6 and/or handled by Defendant.

7 **2.2** “Effective Date” means the date that this Consent Judgment is approved by the  
8 Court.

9 **2.3** “Cadmium” means Cadmium and Cadmium Compounds.

10 **3. INJUNCTIVE RELIEF/REFORMULATION**

11 **3.1** After the Effective Date, Defendant shall not sell, offer for sale in California, or  
12 ship for sale in California any Covered Products unless Defendant has either reformulated the  
13 Covered Products to the point where the level of Cadmium does not exceed more than 85 ppb  
14 (parts per billion) or if the Covered Products exceed 85 ppb, provided a Proposition 65 compliant  
15 warning on the Covered Products. Any warning provided pursuant to this section shall be  
16 affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with  
17 such conspicuousness as compared with other words, statements, designs, or devices as to render  
18 it likely to be read and understood by an ordinary individual under customary conditions before  
19 purchase or use. The Parties agree that product labeling stating that:

20 **WARNING:** This product contains a chemical known to the State of California  
21 to cause cancer or birth defects or other reproductive harm; (California law  
22 requires this warning to be given to customers in the state of California.)

23 shall constitute compliance with Proposition 65 with respect to the Cadmium in the Covered  
24 Products distributed and/or sold by the Defendant after the Effective Date.

25 **4. SETTLEMENT PAYMENT**

26 **Total Payment:** Within 10 days after the Effective Date, Defendant shall pay a total of  
27 sixty-five thousand dollars (\$65,000.00) as follows:  
28

1           **4.1 Civil Penalties.** Defendant shall issue two separate checks for a total amount of  
2 seven thousand dollars (\$7,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a)  
3 one check made payable to the State of California’s Office of Environmental Health Hazard  
4 Assessment (OEHHA) in the amount of \$5,250.00 representing 75% of the total penalty; and (b)  
5 one check to Consumer Advocacy Group, Inc. in the amount of \$1,750.00 representing 25% of the  
6 total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be  
7 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
8 \$5,250.00. The second 1099 shall be issued in the amount of \$1,750.00 to CAG and delivered to:  
9 Yeroushalmi & Yeroushlami, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California  
10 90212.

11           **4.2 Payments in Lieu of Civil Penalties**

12           Defendant also shall separately pay five thousand, two hundred and fifty dollars  
13 (\$5,250.00) to CAG as a payment in lieu of civil penalty pursuant to Health & Safety Code  
14 §25249.7(b) and California Code of Regulations, Title 11 § 3203(b). CAG will use this payment  
15 for investigation of the public’s exposure to Proposition 65 listed chemicals through various  
16 means, laboratory fees for testing for Proposition 65 listed chemicals, expert fees for evaluating  
17 exposures through various mediums, including but not limited to consumer product,  
18 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of  
19 hiring consulting and retained experts who assist with the extensive scientific analysis necessary  
20 for those files in litigation, as well as administrative costs incurred during the litigation, in order  
21 to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those persons  
22 and/or entities believed to be responsible for such exposures and attempting to persuade those  
23 persons and/or entities to reformulate their products or the source of exposure to completely  
24 eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the same  
25 public harm as allegedly in the instant Action.

26           **4.3 Reimbursement of Attorneys’ Fees and Costs:** Defendant shall pay fifty-two  
27 thousand, seven hundred and fifty dollars (\$52,750.00) to “Yeroushalmi & Associates” as  
28 reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and

1 other litigation costs and expenses for all work performed through the approval of this Consent  
2 Judgment.

3 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,  
4 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within  
5 the time agreed upon by the Parties.

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

7 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on  
8 behalf of itself and in the public interest and Defendant and its officers, directors, insurers,  
9 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister  
10 companies, agents, contractors, vendors, licensors, including but limited to SHIRAKO and their  
11 successors and assigns (“Defendant Releasees”), and each of their suppliers, customers,  
12 distributors, wholesalers, retailers, including but not limited to Arcadia Supermarket, Inc., Tawa  
13 Supermarket, Inc., and 168 Market, and the successors and assigns of any of them who may use,  
14 maintain, distribute or sell Covered Products (“Downstream Defendant Releasees”), for all  
15 conduct of the named Defendant prior to the Effective Date based on alleged exposure to Cadmium  
16 from Covered Products as set forth in the Notice. Defendant and Defendant Releasees’ compliance  
17 with this Consent Judgment shall constitute compliance with Proposition 65 with respect to  
18 exposure to Cadmium from Covered Products.

19 **5.2** CAG on behalf of itself, its past and current agents, representatives, attorneys,  
20 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
21 indirectly, any form of legal action and releases all claims, including, without limitation, all  
22 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,  
23 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert  
24 fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or  
25 contingent (collectively “Claims”), against Defendant, Defendant Releasees, and Downstream  
26 Defendant Releasees arising from any allegations of violation of Proposition 65 or any other  
27 statutory or common law regarding the failure to warn about exposure to Cadmium from Covered  
28 Products manufactured, distributed, or sold by Defendant and Defendant Releasees. In furtherance

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

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

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

23 **6. ENFORCEMENT OF JUDGMENT**

24           **6.1** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue of the  
26 action in Alameda County is proper, and that this Court has jurisdiction to enter and enforce the  
27 provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a full  
28

1 and binding resolution of all claims that were or could have been raised in the Complaint against  
2 Defendant based on the facts alleged therein and in the Notices

3       **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other  
4 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall  
5 provide a Notice of Violation (“NOV”) to Defendant. The NOV shall include for each of the  
6 Newly Alleged Products (“Newly Alleged Products” means any Covered Product for which CAG  
7 alleges a violation of the Consent Judgment after the Effective Date): the date(s) the alleged  
8 violation(s) was observed and the location at which the Newly Alleged Products were offered for  
9 sale, and shall be accompanied by all test data obtained by CAG regarding the Newly Alleged  
10 Products, including an identification of the component(s) of the Newly Alleged Products that were  
11 tested. Before any destructive testing of any Newly Alleged Products is conducted by or on behalf  
12 of CAG, CAG shall give Defendant(s) an opportunity to inspect and verify at reasonable times and  
13 places the authenticity of any Newly Alleged Product in violation of this Consent Judgment.

14           **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the  
15 alleged violation if, within 60 days of receiving such NOV, Defendant serves a Notice of  
16 Election (“NOE”) that meets one of the following conditions:

17           (a) The Newly Alleged Products were shipped by Defendant for sale in  
18 California before the Effective Date, or

19           (b) Since receiving the NOV Defendant has taken corrective action by  
20 either (i) requesting that its customers in California remove the Newly Alleged Products  
21 identified in the NOV from sale in California and destroy or return the Newly Alleged  
22 Products to Defendant, or (ii) providing a clear and reasonable warning for the Newly  
23 Alleged Products identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

24           **6.2.2 Contested NOV.** Defendant may serve an NOE informing CAG of its  
25 election to contest the NOV within 60 days of receiving the NOV.

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



1 (b) If the confirmatory testing establishes that the Newly Alleged  
2 Products do not contain Cadmium in excess of the level allowed in Section 3.1, CAG shall  
3 take no further action regarding the alleged violation. If the testing does not establish  
4 compliance with Section 3.1, Defendant may withdraw its NOE to contest the violation  
5 and may serve a new NOE pursuant to Section 6.2.1.

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

9 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, the  
10 prevailing party shall be entitled to recover its costs and reasonable attorneys' fees.

## 11 **7. ENTRY OF CONSENT JUDGMENT**

12 **7.1** CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
13 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and  
14 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

15 **7.2** If this Consent Judgment is not approved in full by the Court, (a) this Consent  
16 Judgment and any and all prior agreements between the parties merged herein shall terminate and  
17 become null and void, and the actions shall revert to the status that existed prior to the execution  
18 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the  
19 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
20 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,  
21 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to  
22 modify the terms of the Consent Judgment and to resubmit it for approval.

## 23 **8. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

24 **8.1** This Consent Judgment may be modified only upon written agreement of the  
25 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
26 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any  
27 Party may waive in writing any right it may have under this Consent Judgment.

1           **8.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
2 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

3           **9. RETENTION OF JURISDICTION**

4           **9.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms  
5 of this Consent Judgment under Code of Civil Procedure § 664.6.

6           **10. DUTIES LIMITED TO CALIFORNIA**

7           This Consent Judgment shall have no effect on Covered Products sold outside the State of  
8 California.

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

10           **11.1** CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
11 California Attorney General so that the Attorney General may review this Consent Judgment prior  
12 to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney  
13 General has received the aforementioned copy of this Consent Judgment, and in the absence of  
14 any written objection by the Attorney General to the terms of this Consent Judgment, the Parties  
15 may then submit it to the Court for approval.

16           **12. ATTORNEY FEES**

17           **12.1** Except as specifically provided in Section 4.3 and 6.3, each Party shall bear its own  
18 costs and attorney fees in connection with this action.

19           **13. GOVERNING LAW**

20           **13.1** The validity, construction and performance of this Consent Judgment shall be  
21 governed by the laws of the State of California, without reference to any conflicts of law provisions  
22 of California law.

23           **13.2** 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  
27 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
28 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment

1 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
2 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
3 this regard, the Parties hereby waive California Civil Code § 1654.

4 **14. EXECUTION AND COUNTERPARTS**

5 **14.1** This Consent Judgment may be executed in counterparts and by means of facsimile  
6 or portable document format (PDF), which taken together shall be deemed to constitute one  
7 document.

8 **15. NOTICES**

9 **15.1** Any notices under this Consent Judgment shall be by personal delivery or First  
10 Class Mail.

11 If to CAG:

12 Reuben Yeroushalmi  
13 9100 Wilshire Boulevard, Suite 240W  
14 Beverly Hills, CA 90212  
(310) 623-1926

15 If to Shirako Co. Ltd

16 Julia E. Stein  
17 Pillsbury Winthrop Shaw Pittman LLP  
18 725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017-5406

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3 **16. AUTHORITY TO STIPULATE**

4 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
5 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf  
6 of the party represented and legally to bind that party.

7 **AGREED TO:**


**AGREED TO:**

8 Date: 2-12, 2016

Date: 2/22, 2016

9

10

11 By: 

By: SHIGETOSHI SHINAHAMA

12 Plaintiff, CONSUMER ADVOCACY  
13 GROUP, INC.

Defendant, SHIRAKO CO. LTD.

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16 **IT IS SO ORDERED.**

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18 Date: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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