

SETTLEMENT AGREEMENT  
BETWEEN  
CONSUMER ADVOCACY GROUP, INC.  
AND  
NAGAI NORI USA, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Nagai Nori USA, Inc. (“Nagai”) (CAG and Nagai collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Nagai violated Proposition 65. The effective date of this Settlement Agreement shall be the date upon which it is fully executed by all Parties hereto (the “Effective Date”).

**1.0 Introduction**

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial Product. Nagai previously sold, at various times, Seaweed, including : Nagai's Roasted Seaweed Sushi Nori; Net Wt.1.0 oz (28 g); 10 sheets; Product of China; Exported by Nagai Nori USA, Inc.; UPC #: 0 11152 15297 4 (referred to throughout as the “Covered Product”). The Covered Product is with respect to and limited to those sold by Nagai only.

1.1 CAG alleges that Covered Product contain Cadmium and Cadmium Compounds, and that Nagai did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)).

1.2 On October 1, 1987, the Governor of California added Cadmium and Cadmium Compounds to the list of chemicals known to the State to cause cancer, and on May 1, 1997, the Governor added Cadmium to the list of chemicals known to the State to cause developmental toxicity and male reproductive toxicity. These additions took place more than twenty (20) months before CAG served its “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” which is further described below.

1.3 Cadmium and Cadmium Compounds are referred to hereafter as the “Listed Chemical.”

1.4 On or about March 9, 2016 CAG served, Kjjkoman Corporation; JFC International Inc.; Nagai Nori USA, Inc.; 99 Ranch Market; Tawa Supermarket; and certain relevant public enforcement agencies with documents entitled “Sixty-Day Notice of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding Seaweed containing the Cadmium (“Notice”).

1.5 The Notice alleged that Nagai and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Product exposes persons to the Listed Chemical.

1.6 On September 14, 2016, CAG filed a Complaint for civil penalties and injunctive relief against Tawa Supermarket (“Tawa”), Los Angeles County Superior Court Case No. BC634011, alleging violations of Proposition 65 (“Complaint”) related to Tawa’s sale of seaweed products supplied by various vendors, including the Covered Product.

1.7 On February 16, 2018, Tawa filed a Cross-Complaint against various seaweed vendors, including Nagai and JFC International Inc. (“JFC”), for indemnity and negligence in connection with CAG’s allegations of Proposition 65 in the Complaint.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below, which form the basis of the Complaint and Cross-Complain described in Sections 1.6 and 1.7, concerning the Parties’ and the Covered Product’s compliance with Proposition 65 (the “Dispute”).

1.9 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory,

regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of fault, wrongdoing, or liability by Nagai, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Nagai may have against one another in any other pending legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Release and Dismissal**

2.1 This Settlement Agreement is a full, final, and binding resolution between CAG, acting in its individual capacity, on the one hand, and Nagai, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Product, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Tawa and JFC (“Downstream Releasees”), on the other hand, of any violation(s) or claimed

violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Product manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Covered Product is limited to those sold by Nagai. CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Product all rights to institute or participate in, directly or indirectly, any form of legal action, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), whether known or unknown, suspected or unsuspected, against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Product sold up to the Effective Date, only to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Product or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Product.

CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER 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.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth in Section 4.0 below are paid in full.

2.2 Within 10 days of receipt of the full amount of payments set forth in Section 4.0 below, CAG shall execute the Stipulated Request for Dismissal of Complaint of Consumer Advocacy Group, Inc. for Penalty and Injunction and Cross-Complaint of Defendant Tawa Supermarket, Inc. for Indemnity and Negligence, Without Prejudice, as to Nagai Nori USA, Inc. and JFC International Inc. (“Stipulation”), attached hereto as Exhibit A, and transmit the executed document to Nagai for filing. This Stipulation shall dismiss, without prejudice, CAG’s twentieth cause of action in the Complaint against Tawa

and Tawa's thirteenth, fourteenth, fifteenth, and sixteenth causes of action in the Cross-Complaint against Nagai and JFC.

### **3.0 Nagai's Duties**

3.1 Nagai agrees, promises, and represents that commencing on the Effective Date, and continuing thereafter, Nagai will manufacture, distribute, sell, or offer for sale in California only (a) Covered Products that are Reformulated Products pursuant to Section 3.2, or (b) Covered Products that are labeled with a clear and reasonable warning pursuant to Section 3.3. Covered Products subject to such requirement shall include Covered Products in Nagai's inventory as of the Effective Date.

3.2 Reformulation Standard: Reformulated Products are those Covered Products for which the level of Listed Chemicals do not exceed 85 parts per billion ("Default Reformulation Standard"). However, in the event that the California Attorney General determines a different reformulation level to be in the public interest and sets forth guidelines specifying a maximum level for the Listed Chemicals, the Default Reformulation Standard will be superseded by that standard set by the Attorney General's office ("Attorney General Standard"), and the Attorney General Standard will thereafter become the standard for Reformulated Products.

3.3 Clear and Reasonable Warnings: Nagai shall provide clear and reasonable warnings on any Covered Products that it manufactures, distributes, sells, or offers for sale in California and that are not Reformulated Products. The

warnings shall be provided in such a conspicuously and prominent manner that will ensure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling stating that: “WARNING: This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.” shall constitute compliance with Proposition 65 with respect to the Listed Chemicals in the Covered Product. Alternatively, Nagai may elect to provide product labelling pursuant to the requirements of 27 California Code of Regulations, Section 25607.2 regarding warnings for food exposures.

#### **4.0 Payments**

4.1 Nagai agrees, to pay a total of Eighty-five thousand dollars (\$85,000) within ten (10) business days of the Effective Date by separate checks apportioned as follows:

4.1.1 Penalty: Nagai shall issue two separate checks for a total amount of Twelve thousand dollars (\$12,000) as follows: (a) one check made payable to the State of California’s Office of Environmental Health Hazard Assessment (OEHHA) in the amount of Nine thousand dollars, (\$9,000), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of Three thousand dollars (\$3,000), representing 25% of the total penalty. OEHHA’s check shall be delivered to Office of Environmental Health Hazard Assessment P.O. Box



4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$9,000. The second 1099 shall be issued in the amount of \$3,000 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: Seventy-three thousand dollars (\$73,000) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Nagai's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Nagai with its Employer Identification Number.

## **5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Nagai represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Nagai to this Settlement Agreement.

**6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

**7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

**8.0 Entire Agreement**

8.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind any of the Parties.

**9.0 Modification of Settlement Agreement**

9.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

**10.0 Application of Settlement Agreement**

10.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above.

**11.0 Enforcement of Settlement Agreement**

11.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 11.2 and 11.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

11.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Product may be served or filed against Nagai by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action or Notice of Violation and the entity receiving the notice fails to comply with the requirements set forth in Section 11.3 below. Any notice to Nagai must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

11.3 Within 30 days of receiving the notice described in Section 11.2, Nagai shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Nagai for full credit, including shipping costs, or (2) refute the information provided under Section 11.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 11.1.

## **12.0 Notification Requirements**

12.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

Reuben Yeroushalmi, Esq.  
YEROUSHALMI & YEROUSHALMI  
9100 Wilshire Boulevard, Suite 240W  
Beverly Hills, CA 90212

For Nagai:

Mark E. Elliott  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
725 South Figueroa Street, Suite 2800  
Los Angeles, CA 90017

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.


**13.0 SEVERABILITY**

13.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**14.0 GOVERNING LAW**

14.1 The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Product, then Nagai shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Product is so affected.

CONSUMER ADVOCACY GROUP, INC.

Dated: August 31, 2018 By:   
Printed Name: Michael Marcus  
Title: Director

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NAGAI NORI USA, INC.

Dated: 27/08/2018

By:  \_\_\_\_\_

Printed Name: Shinji Nagai

Title: President