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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 ISLAND PACIFIC DISTRIBUTION, INC.,
17 et al.

18 Defendants.

CASE NO. BC638152

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

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22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
24 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
25 of the public, and defendant, PHILIPPINE FOODTRADE CORPORATION (hereinafter
26 referred to as "Defendant PFT"), with each a Party to the action collectively referred to as
27 "Parties."
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1 **1.2 Defendant PFT and Products**

2 1.2.1 Defendant PFT is a California corporation which employs ten or more
3 persons. Defendant PFT previously distributed and sold:

4 (1) Assorted Agar Agar products including but not limited to ““AI Tropics Since
5 1970®; Assorted Agar Agar (Gulaman); “A Filipino Favorite!”; “Product of the Philippines”;
6 Net Weight 1.4 oz (40g) 4 pieces; greed, orange, red, and yellow pieces; PFT/IP15-170; SKU 0
7 30283 00648 2” (Hereinafter referred to as the “Agar Agar”).

8 1.2.2 Agar Agar shall hereinafter be referred to as the “Covered Product”.

9 1.2.3 For purposes of this Consent Judgment, Defendant PFT is deemed a
10 person in the course of doing business in California and is subject to the provisions of the Safe
11 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
12 25249.6 et seq. (“Proposition 65”).

13 **1.3 Chemicals of Concern**

14 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
15 California to cause cancer and/or birth defects or other reproductive harm.

16 **1.4 Notices of Violation**

17 1.4.1 On or about May 24, 2016 CAG served Defendant PFT and various public
18 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter the
19 “Notice”) that provided Defendant PFT with notice of alleged violations of Health & Safety
20 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
21 Agar Agar sold and/or distributed by Defendant PFT. No public enforcer has commenced or
22 diligently prosecuted the allegations set forth in the Notice.

23 **1.5 Complaint**

24 1.5.1 On October 21, 2017 CAG filed a complaint for civil penalties and
25 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. BC638152, and on
26 November 4, 2016, CAG amended the Complaint to add Defendant PFT as a defendant in the
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1 action The Complaint alleges, among other things, that Defendant PFT violated Proposition 65
2 by failing to give clear and reasonable warnings of exposure to Lead from Agar Agar.

3 **1.6 Consent to Jurisdiction**

4 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
5 has jurisdiction over the allegations of violations contained in the Complaint and Notice and
6 personal jurisdiction over Defendant PFT as to the acts alleged in the Complaint and Notice, that
7 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter this
8 Consent Judgment as a full settlement and resolution of the allegations contained in the
9 Complaint and Notice and of all claims which were or could have been raised by any person or
10 entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising
11 therefrom or related thereto.

12 **1.7 No Admission**

13 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
14 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
15 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
16 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
17 the Notice and the Complaint (each and every allegation of which Defendant PFT denies), any
18 fact, conclusion of law, issue of law or violation of law, including without limitation, any
19 admission concerning any violation of Proposition 65 or any other statutory, regulatory, common
20 law, or equitable doctrine, or the meaning of the terms “knowingly and intentionally expose” or
21 “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in
22 this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
23 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
24 fault, wrongdoing, or liability by any Defendant PFT, its officers, directors, employees, or
25 parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any
26 administrative or judicial proceeding or litigation in any court, agency, or forum. Furthermore,
27 nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument,
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1 or defense the Parties may have in any other or future legal proceeding, except as expressly
2 provided in this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 “Covered Product” means products specifically identified in Paragraph 1.2.1 sold
5 or supplied by Defendant PFT.

6 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
7 Court.

8 2.3 “Lead” means Lead and Lead Compounds.

9 2.4 “Listed Chemicals” means Lead.

10 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
11 **WARNINGS.**

12 3.1 Defendant PFT maintains that it does not sell the Covered Product and has not
13 sold the Covered Product since 2016. CAG disputes this claim. As of the Effective Date,
14 Defendant PFT will not sell in California, offer for sale in California, or ship for sale in
15 California agar agar that contains lead in a level exceeding 75 parts per billion unless Proposition
16 65 compliant warnings are provided. Warnings shall be compliant with Title 27, California Code
17 of Regulations, § 25600, et seq. Although Defendant PFT agrees to this provision, Defendant
18 PFT does not agree that 75 parts per billion is the maximum amount of Lead that the Covered
19 Product could contain without exceeding the safe harbor level for Agar Agar.

20 3.2 Any warning provided pursuant to this section shall be affixed to the packaging
21 of, or directly on, the Covered Products, and be prominently placed with such conspicuousness
22 as compared with other words, statements, designs, or devices as to render it likely to be read and
23 understood by an ordinary individual under customary conditions before purchase or use. The
24 warning must be set off from other surrounding information, enclosed in a box. Where the
25 packaging of the Covered Product includes consumer information as defined by California Code
26 of Regulations title 27 §25600.1(c) in a language other than English, the warning must also be
27 provided in that language in addition to English. Should Defendant PFT sell or distribute any
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1 Covered Product through the internet the warning will be posted in the manner provided for with
2 respect to internet sales, as provided for in 27 CCR sections 25601 and 25602, as they may be
3 subsequently amended.

4 3.3 For any Covered Products still existing in Defendant PFT's inventory as of the
5 Effective Date, Defendant PFT shall place a Proposition 65 compliant warning on them, unless
6 the Covered Products does not exceed 75 ppb of Lead. Any warning provided pursuant to this
7 section shall comply with the warning requirements under Title 27, California Code of
8 Regulations, § 25600, et seq.

9 3.4 Changes in the law and regulations applicable to Prop 65 occurring after this date
10 shall be incorporated into the terms of this Consent Judgment.

11 **4. SETTLEMENT PAYMENT**

12 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
13 PFT shall pay a total of Seventy-Five Thousand (\$75,000) in full and complete settlement of all
14 monetary claims by CAG related to the Notice, as follows:

15 4.1.1 **Civil Penalty:** Defendant PFT shall issue separate checks totaling Eight
16 Thousand, Five Hundred and Thirty Dollars (\$8,530) as penalties pursuant to Health & Safety
17 Code § 25249.12:

18 (a) Defendant PFT will issue a check made payable to the State of
19 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
20 Six Thousand Four Hundred and Thirty Five Dollars (\$6,435) representing 75% of the total
21 penalty and Defendant PFT will issue a separate check to CAG in the amount of Two Thousand
22 One Hundred and Forty Five Dollars (\$2,145) representing 25% of the total penalty; and

23 (b) Separate 1099s shall be issued for each of the above payments:
24 Defendant PFT will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
25 0284486). Defendant PFT will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
26 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.
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1 **4.1.2 Additional Settlement Payments:** Defendant PFT shall make a separate
2 payment, in the amount of Six Thousand For Hundred and Twenty Dollars (\$6,420) as an
3 additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety
4 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant PFT will
5 issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
6 payment as follows, eighty percent (80%) for fees of investigation, purchasing and testing for
7 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures
8 through various mediums, including but not limited to consumer product, occupational, and
9 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
10 retaining experts who assist with the extensive scientific analysis necessary for those files in
11 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding
12 attorney fees; twenty percent (20%) for administrative costs incurred during investigation and
13 litigation to reduce the public’s exposure to Proposition 65 listed chemicals by notifying those
14 persons and/or entities believed to be responsible for such exposures and attempting to persuade
15 those persons and/or entities to reformulate their products or the source of exposure to
16 completely eliminate or lower the level of Proposition 65 listed chemicals including but not
17 limited to costs of documentation and tracking of products investigated, storage of products,
18 website enhancement and maintenance, computer and software maintenance, investigative
19 equipment, CAG’s member’s time for work done on investigations, office supplies, mailing
20 supplies and postage. Within 30 days of a request from the Attorney General, CAG shall provide
21 to the Attorney General copies of documentation demonstrating how the above funds have been
22 spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional
23 settlement payment.
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25 **4.1.3 Reimbursement of Attorney’s Fees and Costs:** Defendant PFT shall
26 pay Sixty Thousand Dollars (\$60,000) to “Yeroushalmi & Yeroushalmi” as reimbursement for
27 reasonable investigation fees and costs, attorneys’ fees, and any other costs incurred as a result of
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1 investigating, bringing this matter to Defendant PFT's attention, litigating, and negotiating a
2 settlement in the public interest.

3 4.2 Other than the payment to OEHHA described above, all payments referenced in
4 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
5 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
6 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
7 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
8 with payment to OEHHA, Defendant PFT shall provide CAG with written confirmation that the
9 payment to OEHHA was delivered.

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

11 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
12 behalf of itself and in the public interest and Defendant PFT for failure to provide Proposition 65
13 warning of exposure to Lead from Covered Product as set forth in the Notice, and fully resolves
14 all claims that have been or could have been asserted against Defendant PFT in this action up
15 through the Effective Date for failure to provide Proposition 65 warnings for Covered Product
16 regarding Lead. CAG, on behalf of itself and in the public interest, hereby discharges Defendant
17 PFT, and its respective officers, directors, insurers, employees, parents, shareholders, divisions,
18 subdivisions, subsidiaries, and their successors and assigns ("Defendant Releasees") and all
19 customers, retailers, and downstream entities in the distribution chain of the Covered Products to
20 whom Defendant PFT distributed or sold Covered Products, and the predecessors, successors and
21 assigns of any of them, and all of their respective officers, directors, shareholders, members,
22 managers, employees, agents only as to Covered Products sold by Defendant PFT (collectively,
23 "Downstream Releasees"), for all Covered Products placed into the stream of commerce up
24 through the Effective Date for violations of Proposition 65 based on exposure to Listed
25 Chemicals from the Covered Products. Defendant PFT's compliance with the terms of this
26 Consent Judgment shall be deemed to constitute compliance with Proposition 65 regarding
27 alleged exposures to Lead from Agar Agar. Nothing in this Section affects CAG's right to
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1 commence or prosecute an action under Proposition 65 against any person other than Defendant
2 Releasees or Downstream Releasees after the Effective Date.

3 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
4 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
5 indirectly, any form of legal action and releases all claims, including, without limitation, all
6 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
7 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
8 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
9 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
10 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
11 about exposure to Lead from the Covered Product. In furtherance of the foregoing, as to alleged
12 exposures to Lead from the Covered Product, CAG on behalf of itself only, hereby waives any
13 and all rights and benefits which it now has, or in the future may have, conferred upon it with
14 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
15 law regarding the failure to warn about exposure to Lead from the Covered Product by virtue of
16 the provisions of section 1542 of the California Civil Code, which provides as follows:

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18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
21 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
23 DEBTOR OR RELEASED PARTY.

24 CAG understands and acknowledges that the significance and consequence of this waiver of
25 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
26 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any
27 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
28 about exposure to Lead from the Covered Products, including but not limited to any exposure to,
or failure to warn with respect to exposure to Lead from the Covered Product, CAG will not be
able to make any claim for those damages against Released Parties. Furthermore, CAG

1 acknowledges that it intends these consequences for any such Claims arising from any violation
2 of Proposition 65 or any other statutory or common law regarding the failure to warn about
3 exposure to Lead from Covered Product as may exist as of the date of this release but which
4 CAG does not know exist, and which, if known, would materially affect their decision to enter
5 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
6 ignorance, oversight, error, negligence, or any other cause.

7 **6. ENTRY OF CONSENT JUDGMENT**

8 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
10 Defendant PFT waive their respective rights to a hearing or trial on the allegations of the
11 Complaint.

12 6.3 The Parties shall make all reasonable efforts possible to have the Consent
13 Judgment approved by the Court.

14 6.4 If this Consent Judgment is not approved in full by the Court, (a) this Consent
15 Judgment and any and all prior agreements between the Parties merged herein shall terminate
16 and become null and void, and the actions shall revert to the status that existed prior to the
17 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
18 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
19 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
20 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
21 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

22 **7. MODIFICATION OF JUDGMENT**

23 7.1 This Consent Judgment may be modified only upon written agreement of the
24 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
25 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

26 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
27 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
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1 **8. RETENTION OF JURISDICTION**

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

4 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
5 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

6 **9. DUTIES LIMITED TO CALIFORNIA**

7 9.1 This Consent Judgment shall have no effect on Covered Products sold by
8 Defendant PFT outside the State of California.

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

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

16 **11. ATTORNEY FEES**

17 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
18 own costs and attorney fees in connection with this action.

19 **12. GOVERNING LAW**

20 12.1 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
22 provisions of California law.

23 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California. In the event that Proposition 65 is amended, repealed, preempted, or is otherwise
25 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
26 Judgment are rendered inapplicable or are no longer required as a result of any such amendment,
27 repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered
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1 Products, then any Defendant subject to this Consent Judgment may provide written notice to
2 CAG of any asserted change in the law, and shall have no further obligations pursuant to this
3 Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.
4 Nothing in this Consent Judgment shall be interpreted to relieve a Defendant from any obligation
5 to comply with any pertinent state or federal law or regulation.

6 12.3 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved
13 against the drafting Party should not be employed in the interpretation of this Consent Judgment
14 and, in this regard, the Parties hereby waive California Civil Code § 1654.

15 **13. EXECUTION AND COUNTERPARTS**

16 13.1 This Consent Judgment may be executed in counterparts and by means of
17 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
18 one document and have the same force and effect as original signatures.

19 **14. NOTICES**

20 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

21 If to CAG:

22 Reuben Yeroushalmi
23 YEROUSHALMI & YEROUSHALMI
24 9100 Wilshire Boulevard, Suite 240W
25 Beverly Hills, CA 90212
26 (310) 623-1926
27 Email: lawfirm@yeroushalmi.com
28

If to Defendant.:

Jennifer Gross
Olsson Frank Weeda Terman Matz PC
2000 Pennsylvania Avenue NW
Suite 4003
Washington, DC 20006
(917) 721-6561
jgross@ofwlaw.com

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.

<p>AGREED TO:</p> <p>Date: <u>May 16</u>, 2023</p> <p><u>Michael Marcus</u></p> <p>Name: <u>Michael Marcus</u></p> <p>Title: <u>Director</u></p> <p>CONSUMER ADVOCACY GROUP, INC.</p>	<p>AGREED TO:</p> <p>Date: <u>May 15</u>, 2023</p> <p><u>Demetrio M. Manilob</u></p> <p>Name: <u>Demetrio M. Manilob</u></p> <p>Title: <u>President</u></p> <p>PHILIPPINE FOODTRADE CORPORATION</p>
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT