Reuben Yeroushalmi (SBN 193981)
Ben Yeroushalmi (SBN 232540)
Peter T. Sato (SBN 238486)
YEROUSHALMI & YEROUSHALMI
An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
Telephone: (310) 623-1926
Facsimile: (310) 623-1930
Attorneys for Plaintiff
Consumer Advocacy Group, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

v.

VIVA BARGAIN CENTER, INC., a California Corporation; VIVA BARGAIN CENTER, a business entity form unknown; CRAZY Q BARGAIN, a California Corporation; ATLAPAC TRADING COMPANY, INC., a California Corporation; LA LUO CHENG, INC., a business entity form unknown; ACME FOOD SALES, INC., a Washington Corporation; TRANSACTIONAL FOODS, INC. a Florida Profit Corporation; and DOES 1-70;

Defendant.

CASE NO. BC 642673

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept.: 48
Judge: Hon. Elizabeth Allen White

Complaint filed: December 2, 2016

1. INTRODUCTION

1.1 **Parties.** This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc., (referred to as "CAG") acting on behalf of itself and in the interest of the public, and ATLAPAC TRADING CO INC. ("ATLAPAC") (referred to as "Defendant" or

"Atlapac"), each a Party to the action and collectively referred to as "Parties." This Consent Judgment is intended to fully resolve all claims, demands, and allegations related to this action and the Notice of Violation referred to herein.

1.2 **Atlapac and Products**

1.2.1 CAG alleges that, for purposes of this Consent Judgment only, ATLAPAC is "a person in the course of doing business" in California within the meaning of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.2.2 CAG alleges that Atlapac either manufactures, caused to be manufactured, sells or sold, and/or distributes or distributed "Covered Products" as defined below in California or to California consumers.

1.3 **Chemicals of Concern.** "Lead" and "lead and lead compounds" are listed under Proposition 65 as chemicals known to the State of California to cause cancer and reproductive toxicity, developmental male and female. "Cadmium" and "cadmium compounds" are listed under Proposition 65 as chemicals known to the State of California to cause cancer. Collectively, these listed chemicals are referred to herein as the "Listed Chemicals."

1.4 **Notices of Violation**. By letter dated June 3, 2016 CAG served ATLAPAC and others and certain public enforcement agencies with "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("the Notices") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of alleged exposures to alleged to the Listed Chemicals in "Smoked Mussels," including "Sea Island Smoked Mussels in Cottonseed Oil" distributed by Atlapac Trading Co Inc., UPC 0-52391 55042 8" (the "Covered Products"). The Covered Products are limited to those sold or supplied by Atlapac. No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.5 **Complaint.** On December 2, 2016 CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Superior Court of California County of Los Angeles Case No. 642673, against Atlapac. The Complaint alleges, among other things, that Atlapac and other addressees of the Notice violated Proposition 65 by failing to give clear and reasonable warnings of alleged exposure to the Listed Chemicals from the Covered Products.

1.6 **Consent to Jurisdiction.** For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Atlapac as to the acts alleged in the Complaint, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all claims which were, or could have been raised by, any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

1.7 **No Admission.** This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an admission against interest by any Party, including any material allegation of the Complaint (each and every allegation of which Atlapac denies), any fact, conclusion of law, issue of law or violation of law, including without limitation, any admission concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, or any admission as to the meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission against interest by any Party of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Atlapac, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency or forum.

Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense any Party may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

2. DEFINITIONS

2.1 "Covered Products" means Smoked Mussels as defined in Section 1.4.

2.3 "Effective Date" means the date that CAG serves notice on Atlapac that the Court has approved this Consent Judgment.

3. INJUNCTIVE RELIEF/REFORMULATION/ WARNINGS

3.1 After the Effective Date, Atlapac shall not sell, offer for sale, or distribute for sale in California any Covered Products manufactured after the Effective Date by or for Atlapac, unless such Covered Products bear a clear and reasonable warning as set forth below or unless such products have been reformulated so the Listed Chemicals do not exceed either or both of the following standards: Lead level in 40 parts per billion or Cadmium Level in 326 parts per billion.

3.2 For any Covered Products still existing in Atlapac's inventory as of the Effective Date, Atlapac shall place a Proposition 65 warning which complies with the then-existing warning requirements of Proposition 65. Any warning provided pursuant to this section shall be affixed to the label, or packaging of, or directly on, the Covered Products, and be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. If Atlapac is required to provide a warning, it shall use the "safe harbor" Proposition 65 warning applicable to foods and as applicable to the Listed Chemicals in the Covered Products.

4. SETTLEMENT PAYMENT

4.1 **Payment**: Atlapac shall pay a total of $165,000.00 within ten (10) days of the Effective Date in full and complete settlement of any and all monetary claims arising from the Notice and Complaint in this action. The total sum shall be divided as follows:

4.1.1 **Civil Penalty**: Atlapac shall issue two separate checks totaling $40,000.00 as a civil penalty pursuant to Health & Safety Code § 25249.12:

(a) Atlapac will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of $30,000.00 representing 75% of the total civil penalty and Atlapac will issue a second check to CAG in the amount of $10,000.00 representing 25% of the total civil penalty;

(b) Atlapac will issue a Form 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of the OEHHA civil penalty payment. Atlapac will also issue a Form 1099 to CAG in the amount of the CAG civil penalty payment and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payment:** Atlapac shall pay $30,000.00 as an additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). CAG will use this payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to Proposition 65 Listed Chemicals, and the cost of hiring consulting and retaining experts who assist with the extensive scientific analysis necessary for those files in litigation and to offset the costs of future litigation enforcing Proposition 65, but excluding attorney fees; fifteen percent (15%) for administrative costs incurred during investigation and litigation to reduce the public's exposure to Proposition 65 Listed Chemicals by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of Proposition 65 Listed Chemicals including but not limited to costs of documentation and tracking of products investigated, storage of products, website enhancement

and maintenance, computer and software maintenance, investigative equipment, CAG's member's time for work done on investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall provide to the Attorney General copies of documentation demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional settlement payment.

4.1.3 **Reimbursement of Attorney's Fees and Costs:** Atlapac shall pay a total amount of $95,000.00 to "Yeroushalmi & Yeroushalmi" (EIN [redacted]) as reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Atlapac' attention, litigating, and negotiating a settlement in the public interest.

4.2 **Delivery of Payments**:

4.2.1 All payments to OEHHA shall be delivered to: Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Atlapac shall provide a copy of the payment to OEHHA to CAG when Atlapac makes the payment.

4.2.2 All payments to CAG and Yeroushalmi & Yeroushalmi shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

5. MATTERS COVERED BY THIS CONSENT JUDGMENT/RELEASES OF CLAIMS

5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of itself and in the public interest, and Atlapac and its officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies, and their predecessors, successors and assigns (collectively, the "Atlapac Releasees"), and all entities to whom Atlapac directly or indirectly distributes or sells Covered Products, including but not limited to downstream distributors, wholesalers, customers, retailers,

franchisees, cooperative members, licensees and predecessors, successors or assigns of any of them (collectively, the "Stream of Commerce Releasees"), for all claims by CAG and in the public interest for violations of Proposition 65 up to and including the Effective Date based on alleged exposure to the Listed Chemicals, from Covered Products, as set forth in the Notice and/or Complaint. CAG hereby waives and releases all of the foregoing claims against Atlapac, Atlapac Releasees, and Stream of Commerce Releasees up to and including the Effective Date. Collectively, Atlapac, Atlapac Releasees and Stream of Commerce Releasees shall be referred to as the "Released Parties." After the Effective Date, Atlapac's compliance with this Consent Judgment shall constitute compliance with Proposition 65 by all Released Parties. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person who is not a Released Party.

5.2 In addition, CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against any Released Party arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Listed Chemicals from the Covered Products. In furtherance of the foregoing, as to alleged exposures to Listed Chemicals from the Covered Products, CAG on behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged exposure to Listed Chemicals from the Covered Products by virtue of the provisions of section 1542 of the California 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 understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged exposure to Listed Chemicals from the Covered Products, including but not limited to any exposure to, or failure to warn with respect to exposure to Listed Chemicals from the Covered Products, CAG will not be able to make any claim for those damages or injunctive relief against any Released Party. Furthermore, CAG acknowledges that it intends these consequences for any such Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about alleged exposure to Listed Chemicals from Covered Products as may exist as of the Effective Date but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether the lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

6. ENFORCEMENT OF JUDGMENT

6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. Any Party may, by noticed motion or order to show cause before the Superior Court of California, County of Los Angeles, giving the notice required by law, enforce the terms and conditions contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment only after that Party first provides at least 30 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to comply in an open and good faith manner. Notwithstanding the immediately

preceding sentence CAG may bring a motion or an action to enforce any breach of the settlement payment terms in Section 4 upon five (5) days written notice by CAG to Atlapac.

6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other proceeding to enforce the terms of this Consent Judgment, the Party alleging a violation shall provide written notice ("NOV") to the other Party. The NOV shall include information sufficient for the Party alleged to be in violation to be able to understand and correct the violation. With respect to NOVs from CAG relating to the Covered Products, for each of the Covered Products at issue, notice to Atlapac must contain: (a) the name of the product, (b) specific dates when the product was sold in California, (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.

6.2.1 **Non-Contested NOV.** For NOVs from CAG relating to the Covered Products, CAG shall take no further action regarding the alleged violation if, within 60 days of receiving such NOV, Atlapac serves a Notice of Election ("NOE") that meets at least one of the following conditions:

(a) Atlapac concludes the Covered Products at issue are subject to the releases of claims in Section 5; and/or

(b) Atlapac concludes Atlapac is not obligated under this Consent Judgment to take any action with regard to the Covered Products at issue; and/or

(c) Since receiving the NOV Atlapac has taken corrective action by either (i) taking steps necessary to bring sale of the product into compliance under the terms of this Consent Judgment, or (ii) requesting that its direct customers or stores in California, as applicable, remove the Covered Products identified in the NOV from sale in California or destroy or return the Covered Products to Atlapac or vendor, as applicable, or (iii) otherwise refutes the information provided in paragraph 6.2.

6.2.2 **Contested NOV.** For NOVs from CAG relating to the Covered Products, Atlapac may serve a "Notice of Contest" informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

(a) As part of its Notice of Contest, Atlapac may request that the sample(s) of Covered Products tested by CAG be subject to confirmatory testing at an EPA or State of California accredited laboratory.

(b) If the confirmatory testing establishes that the Covered Products do not contain Listed Chemicals in excess of the levels allowed in Section herein, above, CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 3.1, above, Atlapac may withdraw its initial Notice of Contest to contest the violation and may serve a new NOE pursuant to Section 6.2.1.

(c) If Atlapac does not withdraw a Notice of Contest or take action under Section 6.2.1, above, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Consent Judgment. If CAG seeks such an order, Atlapac may assert any and all available rights and defenses.

6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the prevailing party shall be entitled to seek recovery of its reasonable attorney's fees and costs.

7. ENTRY OF CONSENT JUDGMENT

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

7.2 If this Consent Judgment is not approved in full by the Court, (a) this Consent Judgment and any and all prior agreements between the parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall

have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

8. MODIFICATION OF JUDGMENT

8.1 This Consent Judgment may be modified only upon written agreement of the Parties and, if the modification affects a substantive provision of this Consent Judgment, upon entry of a modified Consent Judgment by the Court thereon, or otherwise upon motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

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

9. RETENTION OF JURISDICTION

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

10. DUTIES LIMITED TO CALIFORNIA

10.1 Atlapac's obligations under this Consent Judgment shall not apply to Covered Products which are not sold or distributed by Atlapac or to Covered Products sold or distributed outside the State of California.

11. SERVICE ON THE ATTORNEY GENERAL

11.1 CAG shall serve a copy of this Consent Judgment, signed by all Parties, on the California Attorney General so that the Attorney General may review this Consent Judgment for at least forty-five (45) days prior to its submittal to the Court for approval.

12. ATTORNEY FEES

12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its own attorneys' fees and costs in connection with this action.

13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14. GOVERNING LAW

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

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

14.3 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result

of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, each Party hereby waives California Civil Code § 1654.

15. EXECUTION AND COUNTERPARTS

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

16. NOTICES

16.1 Any notices under this Consent Judgment shall be by First Class Mail.

If to CAG: Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212; (310) 623-1926; Email: lawfirm@yeroushalmi.com.

If to ATLAPAC:

(1) Sidley Austin, LLP, Judith Praitis and Amy Lally, Suite 4000, 555 West 5th Street, Los Angeles, California, 90013; (213) 896-6000; Email: jpraitis@sidley.com and alally@sidley.com.

(2) ATLAPAC Trading Co Inc., 2240 South Garfield Avenue, Commerce, CA 90040, Attention: Timothy Torrington, Sr. President.

17. AUTHORITY TO STIPULATE

17.1 EACH PARTY STIPULATES THAT IT HAS AUTHORITY TO EXECUTE THIS AGREEMENT.

[SIGNATURES ON NEXT PAGE]

AGREED TO:

Date: November 14, 2018

Name: Michael Marcus

Title: Director
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: November 14, 2018

Name: Timothy Torrington, Sr.

Title: President
ATLAPAC Trading Company, Inc.

IT IS SO ORDERED:

Hon. Elizabeth Allen White
Judge of the Superior Court

Date: _____