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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

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

13 Plaintiff,

14 v.

15 WAL-MART STORES, INC., a Delaware
16 Corporation; WAL-MART ASSOCIATES,
INC., a Delaware Corporation; WALMART
17 STARCO, LLC, a Delaware Limited Liability
Company; WAL-MART STORES EAST, LP, a
18 Delaware Limited Partnership; WAL-
MART.COM USA, LLC, a California Limited
19 Liability Company; AMERICAN ROLAND
FOOD CORPORATION, a New York Domestic
20 Business Corporation; and DOES 1-20;

21 Defendants.
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CASE NO. BC651902

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

[Assigned For All Purposes to Honorable
Stephanie M. Bowick in Dept. 19]

Complaint filed: March 1, 2017

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER
3 ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”), acting on behalf of itself and in the interest of
4 the public, and Defendant, AMERICAN ROLAND FOOD CORPORATION (“AMERICAN
5 ROLAND”), with each a Party to the action and collectively referred to as “Parties.”

6 1.2 **Defendants and Covered Products**

7 1.2.1 CAG alleges that AMERICAN ROLAND is a New York Domestic Business
8 Corporation which employs ten or more persons. For purposes of this Consent Judgment only,
9 AMERICAN ROLAND is deemed a person in the course of doing business in California and subject
10 to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
11 & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

12 1.2.2 CAG alleges that AMERICAN ROLAND manufactures, causes to be
13 manufactured, sells, and/or distributes certain Anchovies in California.

14 1.3 **Listed Chemicals**

15 1.3.1 Lead and lead compounds have been listed by the State of California under
16 Proposition 65.

17 1.4 **Notice of Violation.**

18 On or about December 19, 2016, CAG served AMERICAN ROLAND and various public
19 enforcement agencies with a document titled “60-Day Notice of Intent to Sue for Violation of the
20 Safe Drinking Water and Toxic Enforcement Act of 1986” (“Notice”) that provided the recipients
21 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
22 California of exposures to lead and lead compounds, contained in jarred anchovies fillets
23 manufactured, distributed and/or sold by AMERICAN ROLAND (“Covered Products”) in California.
24 No public enforcer has commenced or diligently prosecuted the allegations set forth in the December
25 19, 2016 Notice.

26 1.5 **Complaint.**

27 On March 1, 2017, CAG filed a Complaint against AMERICAN ROLAND for civil penalties
28 and injunctive relief (the “Complaint”) in Los Angeles County Superior Court, Case No. BC651902,

1 alleging that AMERICAN ROLAND violated Proposition 65 for allegedly failing to give clear and
2 reasonable warnings of alleged exposure to lead and lead compounds in Covered Products that
3 AMERICAN ROLAND manufactured, distributed and/or sold in California.

4 **1.6 Consent to Jurisdiction**

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

13 **1.7 No Admission**

14 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into
15 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
16 Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be
17 construed as an admission by the Parties of any material allegation in the Notice or the Complaint, or
18 of any fact, conclusion of law, issue of law or violation of law of any kind, including without
19 limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other
20 statutory, regulatory, common law, or equitable doctrine, including but not limited to the meaning of
21 the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health
22 and Safety Code § 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall
23 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law,
24 or violation of law, or of fault, wrongdoing, or liability by AMERICAN ROLAND, its officers,
25 directors, employees, or parent, subsidiary or affiliated entities, or be offered or admitted as evidence
26 in any 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, or
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1 defense the Parties may have in any other or future legal proceeding, except as expressly provided in
2 this Consent Judgment.

3 **2. OTHER DEFINITIONS**

4 2.1 "Effective Date" means the date that this Consent Judgment is approved by the Court.

5 2.2 "Listed Chemicals" means lead and lead compounds.

6 2.3 "Notice" means Plaintiff's December 19, 2016 Notice referred to a Section 1.4
7 above.

8 **3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.**

9 3.1 Any Covered Products that are manufactured on and after the Effective Date that
10 AMERICAN ROLAND thereafter distributes for sale in California or sells in the State of California
11 shall either contain no more than 40 parts per billion lead or comply with the warning requirements of
12 Section 3.3

13 3.2 As used in this Agreement, the term "distribute for sale in California" shall mean:
14 AMERICAN ROLAND directly ships any Covered Product into California for sale in California or
15 sells the Covered Product to a distributor or retailer that AMERICAN ROLAND knows will sell the
16 Covered Product in California.

17 3.3 For any Covered Products that exceed those respective levels of lead that are sold in
18 California after the Effective Date, AMERICAN ROLAND must provide a Proposition 65-compliant
19 warning for the Covered Products using one of the following options:

20 Option 1:

21 **WARNING:** Consuming this product can expose you to chemicals
22 including lead, which is known to the State of California to cause
23 cancer and birth defects or other reproductive harm. For more
information, go to www.P65Warnings.ca.gov/food.

24 If the warning is printed on the label, the warning shall be set off from other surrounding
25 information in the label and enclosed in a box.

26 Option 2:

27  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

1 The pictogram specified in Section 3.3 shall be in yellow with a black exclamation mark; provided
2 however, the pictogram may be in white instead of yellow if the Covered Product label does not
3 contain the color yellow.

4 Any warning statement provided under Section 3.3 shall be prominently displayed with such
5 conspicuousness, as compared with other words, statements or designs as to render it likely to be seen
6 by an ordinary individual.

7 **4. SETTLEMENT PAYMENT**

8 **4.1 Payment and Due Date:** Within 10 days of the Effective Date, AMERICAN
9 ROLAND shall pay a total of one hundred thirty thousand dollars (\$130,000.00) (the "Total
10 Settlement Payment") in full and complete settlement of any and all claims for civil penalties,
11 damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any
12 kind for claims that were or could have been asserted in the Notice or Complaint, as follows:

13 **4.1.1 Civil Penalty:** AMERICAN ROLAND shall issue two separate checks
14 totaling Twenty thousand dollars (\$20,000.00) as follows for alleged civil penalties pursuant to
15 Health & Safety Code § 25249.12:

16 (a) AMERICAN ROLAND will issue one check made payable to the State
17 of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
18 Fifteen thousand dollars (\$15,000.00) representing 75% of the total civil penalty. AMERICAN
19 ROLAND will issue a second check to CAG in the amount of five thousand dollars (\$5,000.00)
20 representing 25% of the total civil penalty;

21 (b) Separate 1099s shall be issued for each of the above payments:
22 AMERICAN ROLAND will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN:
23 68-0284486) in the amount of \$15,000. AMERICAN ROLAND will also issue a 1099 to CAG in the
24 amount of \$5,000 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,
25 Suite 240W, Beverly Hills, California 90212.

26 **4.1.2** AMERICAN ROLAND shall issue one check for Fifteen thousand dollars
27 (\$15,000.00) to "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b)
28 and California Code of Regulations, Title 11 § 3203(d). CAG will use this portion of the Total

1 Settlement Payment as follows, eighty five percent (85%) for fees of investigation, purchasing and
2 testing for Proposition 65 Listed Chemicals in various products, and for expert fees for evaluating
3 exposures through various mediums, including but not limited to consumer product, occupational,
4 and environmental exposures to Proposition 65 Listed Chemicals, and the cost of hiring consulting
5 and retaining experts who assist with the extensive scientific analysis necessary for those files in
6 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding attorney
7 fees; fifteen percent (15%) for administrative costs incurred during investigation and litigation to
8 reduce the public's exposure to Proposition 65 Listed Chemicals by notifying those persons and/or
9 entities believed to be responsible for such exposures and attempting to persuade those persons and/or
10 entities to reformulate their products or the source of exposure to completely eliminate or lower the
11 level of Proposition 65 Listed Chemicals including but not limited to costs of documentation and
12 tracking of products investigated, storage of products, website enhancement and maintenance,
13 computer and software maintenance, investigative equipment, CAG's member's time for work done
14 on investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the
15 Attorney General, CAG shall provide to the Attorney General copies of documentation demonstrating
16 how the above funds have been spent. CAG shall be solely responsible for ensuring the proper
17 expenditure of such additional settlement payment.

18 **4.1.3 Reimbursement of Attorney Fees and Costs:** AMERICAN ROLAND shall
19 issue one check for Ninety-five thousand dollars (\$95,000.00) payable to "Yeroushalmi &
20 Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs,
21 attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of
22 investigating, bringing this matter to the AMERICAN ROLAND's attention, litigating, negotiating a
23 settlement in the public interest, and seeking and obtaining court approval of this Consent Judgment.

24 **4.2 Delivery of Payments**

25 4.2.1 The payments to CAG and Yeroushalmi and Yeroushalmi referenced in
26 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &
27 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.
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1 4.2.2 The payment to OEHHA in Section 4.1.1(a) above shall be delivered directly
2 to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop
3 12-B, Sacramento, California 95812. Concurrently with payment to OEHHA, AMERICAN
4 ROLAND shall provide to CAG written confirmation that this payment was delivered to OEHHA.

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

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on behalf
7 of itself and its past and current agents, representatives, attorneys, successors, and assignees
8 (collectively, the "CAG Releasees"), and on behalf of the public interest, and (a) AMERICAN
9 ROLAND and its respective owners, parents, subsidiaries, affiliates, sister and related companies, (b)
10 all entities to which any of them directly or indirectly provide, distribute, or sell the Covered
11 Products, including but not limited to distributors, wholesalers, customers, franchisees, cooperative
12 members, licensees, and retailers, including but not limited to Wal-Mart Stores, Inc., Wal-Mart
13 Associates, Inc., Walmart Starco, LLC, Wal-Mart.com USA, LLC, and (c) employees, shareholders,
14 officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors,
15 and assigns of any of the entities identified in subsections (a) and (b), above (the entities identified in
16 subsections (a), (b) and (c), above, are collectively referred to as "Releasees"). CAG, on behalf of
17 itself and the CAG Releasees, and in the public interest, waives all rights to institute or participate in,
18 directly or indirectly, any form of legal action, and discharges and releases all claims, actions, causes
19 of action (in law or in equity), suits, liabilities, demands, obligations, damages, costs, fines, penalties,
20 losses, expenses and fees (including, but not limited to, investigation fees, expert fees, and attorney's
21 fees), and expenses (collectively, "Claims"), for alleged violations of Proposition 65 alleged in the
22 Notice and the Action from the failure to provide warnings for alleged exposures to the Listed
23 Chemicals, or for causing alleged exposures to the Listed Chemicals, in Covered Products
24 manufactured before the Effective Date. Compliance by AMERICAN ROLAND with Section 3 of
25 this Consent Judgment shall be deemed to constitute compliance with Proposition 65 with respect to
26 any Listed Chemicals in the Covered Products manufactured on or after the Effective Date.

27 5.2 CAG, on behalf of itself and the CAG Releasees, releases and discharges the
28 Releasees from Claims for alleged violations of Proposition 65, or for any other statutory or common

1 law, arising from or relating to alleged exposures to the Listed Chemicals in the Covered Products.
2 It is possible that other Claims not known to the Parties arising out of the facts alleged in the Notice
3 or the Complaint and relating to the Covered Products will develop or be discovered. CAG, on behalf
4 of itself and the CAG Releasees, acknowledges that this Consent Judgment is expressly intended to
5 cover and include all such Claims. CAG has full knowledge of the contents of California Civil Code
6 section 1542. CAG, on behalf of itself and the CAG Releasees, acknowledges that the Claims
7 released in this Section 2 may include unknown Claims, and nevertheless waives California Civil
8 Code §1542 as to any such unknown Claims. California Civil Code section 1542 reads as follows:

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

15 CAG acknowledges and understands the significance and consequences of this specific waiver
16 of California Civil Code section 1542.

17 6. ENFORCEMENT OF JUDGMENT

18 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
19 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
20 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
21 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
22 90-days' prior written notice to the Party allegedly failing to comply with the terms and conditions of
23 this Consent Judgment, and attempts to resolve such Party's failure to comply by meeting and
24 conferring in an open and good faith manner.

25 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
26 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of Violation
27 ("NOV") to AMERICAN ROLAND. The NOV shall include for each of the Covered Products: (a)
28 the name of the Covered Products; (b) specific dates when the Covered Product was sold in
California; (c) the store or other place at which the Covered Product was available for sale to
consumers; (d) analytical sampling results, from a California certified laboratory, of Covered

1 Products that show a concentration of lead that exceeds the level set forth in Section 3.1; (e) evidence
2 establishing the warning required in Section 3.1 was not provided; and (f) any other evidence or
3 support for the allegations in the NOV.

4 **6.2.1 Non-Contested NOV.** CAG shall take no further action of any kind regarding
5 the alleged violation if, within 60 days of receiving such NOV, AMERICAN ROLAND serves a
6 Notice of Election (“NOE”) not to contest the NOV that meets one of the following conditions:

7 (a) A statement that the Covered Product was manufactured or shipped by
8 AMERICAN ROLAND for sale in California before the Effective Date; or

9 (b) A statement that, since receiving the NOV, AMERICAN ROLAND has
10 taken corrective action by either: (i) taking all steps necessary to bring the sale of the product into
11 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores in
12 California, as applicable, remove the Covered Product identified in the NOV from sale in California
13 and destroy or return the Covered Product to Defendant or vendor, as applicable.

14 **6.2.2 Contested NOV.** AMERICAN ROLAND may serve a Notice of Election
15 (“NOE”) informing CAG of its election to contest the NOV within 60 days of receiving the NOV.

16 (a) In its election, AMERICAN ROLAND may request that the sample(s) of
17 Covered Product tested by CAG be subject to confirmatory testing at an EPA-accredited laboratory.

18 (b) If the confirmatory testing establishes that the Covered Products do not
19 contain lead in excess of the levels allowed in Section 3.1, above, CAG shall take no further action
20 regarding the alleged violation. If the testing does not establish compliance with Section 3.1, above,
21 AMERICAN ROLAND may withdraw its NOE to contest the violation and may serve a new NOE
22 pursuant to Section 6.2.1.

23 (c) If AMERICAN ROLAND does not withdraw a NOE to contest the
24 NOV, the Parties shall allow a period of no less than 30 days within which to meet and confer before
25 CAG may seek an order enforcing the terms of this Consent Judgment.

26 **7. ENTRY OF CONSENT JUDGMENT**

27 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
28 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and

1 AMERICAN ROLAND waive their respective rights to a hearing and trial on the allegations in the
2 Notices and Complaint.

3 7.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
5 become null and void, and the actions shall revert to the status that existed prior to the execution date
6 of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
7 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
8 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
9 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the
10 terms of the Consent Judgment and to resubmit it for approval.

11 **8. MODIFICATION OF JUDGMENT**

12 8.1 This Consent Judgment may be modified only upon written agreement of the Parties
13 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as
14 provided by law and upon entry of a modified Consent Judgment by the Court.

15 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
16 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

17 **9. DISMISSAL**

18 9.1 Within five (5) days of the Effective Date, CAG shall dismiss this action in its entirety
19 without prejudice except for AMERICAN ROLAND.

20 **10. RETENTION OF JURISDICTION**

21 10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
22 of this Consent Judgment under Code of Civil Procedure § 664.6.

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

24 11.1 CAG agrees to comply with the reporting requirements referenced in Health and
25 Safety Code section 25249.7(f), including serving a copy of this Consent Judgment, signed by both
26 parties, on the California Attorney General so that the Attorney General may review this Consent
27 Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45) days after
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1 the Attorney General has received the aforementioned copy of this Consent Judgment, CAG may then
2 submit it to the Court for approval.

3 **12. ATTORNEY FEES**

4 12.1 Except as specifically provided in Sections 4.1.3 and 6.3, each Party shall bear its own
5 attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

6 **13. ENTIRE AGREEMENT**

7 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
8 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
9 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
10 express or implied, other than those contained herein have been made by any party hereto. No other
11 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
12 any of the Parties.

13 **14. GOVERNING LAW**

14 14.1 The validity, construction and performance of this Consent Judgment shall be
15 governed by the laws of the State of California, without reference to any conflicts of law provisions
16 of California law.

17 14.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
18 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
19 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
20 rendered inapplicable by reason of law generally as to the Covered Products, then AMERICAN
21 ROLAND may provide written notice to CAG of any asserted change in the law, and shall have no
22 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
23 Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
24 AMERICAN ROLAND from any obligation to comply with any other pertinent state or federal law
25 or regulation.

26 14.3 The Parties, including their counsel, have participated in the preparation of this
27 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
28 Consent Judgment was subject to revision and modification by the Parties and has been accepted and

1 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
2 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
3 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
4 that any statute or rule of construction providing that ambiguities are to be resolved against the
5 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
6 regard, the Parties hereby waive California Civil Code § 1654.

7 **15. EXECUTION AND COUNTERPARTS AND FACSIMILE**

8 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile or
9 portable document format (pdf), which taken together shall be deemed to constitute one document
10 and have the same force and effect as original signatures.

11 **16. NOTICES**

12 16.1 Any notices under this Consent Judgment shall be by delivery of First Class Mail.

13 If to CAG:

14 Reuben Yeroushalmi, Esq.
15 Yeroushalmi & Yeroushalmi
16 9100 Wilshire Boulevard, Suite 240W
17 Beverly Hills, CA 90212

18 If to Defendant AMERICAN ROLAND FOOD CORPORATION:

19 Sarah Esmaili, Esq.
20 Arnold & Porter Kaye Scholer
21 Three Embarcadero Center, 10th Floor
22 San Francisco, CA 94104

23 **17. AUTHORITY TO STIPULATE**

24 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by
25 the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
26 Party represented and legally to bind that party.
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AGREED TO:

Date: August 27, 2018

Michael Marcus

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: August 31, 2018

James D. Wagner

Name: James D. Wagner

Title: Chief Executive Officer and President

AMERICAN ROLAND FOOD CORPORATION

IT IS SO ORDERED.

Date: _____, 2018

Stephanie M. Bowick
JUDGE OF THE SUPERIOR COURT