Reuben Yeroushalmi (SBN 193981)
Tiffine E. Malamphy (SBN312239)
Shannon E. Royster (SBN 314126)
**YEROUSHALMI & YEROUSHALMI**
An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, California 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.

SUPER CENTER CONCEPTS, INC., a California Corporation, CABRERA DISTRIBUTION, INC., a California Corporation, and DOES 1-10,

Defendants.

CASE NO. 19STCV24224

[Assigned for All Purposes to the Hon. Robert S. Draper, Dept. 78]

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: July 11, 2019
Trial Date: October 27, 2020

## 1. INTRODUCTION

1.1 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 defendants, CABRERA DISTRIBUTION, INC. and SUPER CENTER CONCEPTS, INC. (collectively referred to as "Defendants"), with each a Party to the action and collectively referred to as "Parties."

1.2 **Defendants and Products**

1.2.1 Defendant CABRERA DISTRIBUTION, INC. (referred to as "Cabrera") is a California corporation. Cabrera manufactures, causes to be manufactured, distributes, and sells Turmeric Dietary Supplements, identified as: "LAURA'S;" "CURCUMA TURMERIC;" "INGREDIENTES NATURALES;" "NATURAL INGREDIENTS;" "SUPLEMENTO ALIMENTICIO;" "DIETARY SUPPLEMENT;" "CONT. NET. 227.2 G / NET WT. 8 OZ;" "BEST BY 9 17 20;" "DISTRIBUTED BY: CABRERA DISTRIBUTION. INC.;" "0 19962 33670 6."

1.2.2 Defendant SUPER CENTER CONCEPTS, INC. (referred to as "SCC") is a California corporation, which employs ten or more persons. SCC distributed, and sold Turmeric Dietary Supplements, identified as: "LAURA'S;" "CURCUMA TURMERIC;" "INGREDIENTES NATURALES;" "NATURAL INGREDIENTS;" "SUPLEMENTO ALIMENTICIO;" "DIETARY SUPPLEMENT;" "CONT. NET. 227.2 G / NET WT. 8 OZ;" "BEST BY 9 17 20;" "DISTRIBUTED BY: CABRERA DISTRIBUTION. INC.;" "0 19962 33670 6."

1.2.3 For purposes of this Consent Judgment only, Defendants are deemed persons in the course of doing business in California and are subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").

1.3 **Chemicals of Concern**

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

1.4 **Notices of Violation**

1.4.1 On or about December 12, 2018, CAG served Defendants and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("AG2018-02247 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in Turmeric Dietary Supplements sold and/or distributed by Cabrera and sold by retailer SCC. No other public enforcer has commenced or diligently prosecuted the allegations set forth in the AG2018-02247 Notice.

1.5 **Complaint**

1.5.1 On July 11, 2019, CAG filed a complaint for civil penalties and injunctive relief ("Complaint") in Los Angeles Superior Court, Case No. 19STCV24224 against Defendants. The Complaint alleges, among other things, that Defendants violated Proposition 65 by failing to give clear and reasonable warnings of exposure to Lead from Turmeric Dietary Supplements.

1.6 **Consent to Jurisdiction**

1.6.1 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 Defendants 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**

1.7.1 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 by the Parties of any material allegation of the Complaint (each and every allegation of which Defendants deny), 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 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 by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendants, their 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 the Parties may have in any other or future legal proceeding, except as expressly provided in this Consent Judgment.

**2. DEFINITIONS**

2.1 "Covered Products" means Turmeric Dietary Supplements sold or supplied by Defendants.

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

2.3 "Lead" means Lead and Lead Compounds.

2.4 "Notices" means the AG2018-02247 Notice sent by Plaintiff on or about December 12, 2018.

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

3.1 After the Effective Date, Cabrera shall not sell in California, offer for sale in California, or ship for sale in California any Covered Products unless the level of Lead does not exceed 15 parts per billion ("ppb").

3.2 For any Covered Products with Lead levels that exceed 15 ppb sold in California after the Effective Date, Cabrera must provide a Proposition 65 compliant warning for the Covered Products as set forth below. Any warning provided pursuant to this section shall be affixed to the 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. A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall precede the text of the warning. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING". The Parties agree that the following warning language shall constitute compliance with Proposition 65 with respect to the alleged Lead in the Covered Products distributed and/or sold by Defendants after the Effective Date:

> ⚠ **WARNING:** Consuming this product can expose you to Lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

3.3 For any Covered Products still existing in the Defendants' inventory as of the Effective Date, to the extent those Covered Products are sold and/or distributed for sale in California as per Section 9.1 of this Consent Judgment, Cabrera shall place a Proposition 65 compliant warning on them, unless the Covered Products does not exceed a Lead level of 15 ppb. Any warning provided pursuant to this section shall comply with the warning requirements under Section 3.2 above.

## 4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date**: Within ten (10) days of the Effective Date, Cabrera shall pay a total of one hundred and sixty thousand dollars and zero cents ($160,000.00) in full and complete settlement of all monetary claims by CAG related to the Notices, as follows:

4.1.1 **Civil Penalty**: Cabrera shall issue separate checks totaling twenty-two thousand eight hundred and sixty-three dollars ($22,863.00) as penalties pursuant to Health & Safety Code § 25249.12:

(a) Cabrera will issue a check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seventeen thousand one hundred and forty-seven dollars and twenty-five cents ($17,147.25) representing 75% of the total penalty and Cabrera will issue a separate check to CAG in the amount of five thousand seven hundred and fifteen dollars and seventy-five cents ($5,715.75) representing 25% of the total penalty; and

(b) Separate 1099s shall be issued for each of the above payments: Cabrera will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486). Cabrera will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** Cabrera shall make a separate payment, in the amount of seventeen thousand one hundred and thirty-seven dollars ($17,137.00) 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). Cabrera will issue a separate check to CAG for the Additional Settlement Payment. 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 Attorneys Fees and Costs:** Cabrera shall pay one hundred and twenty thousand dollars ($120,000.00) to "Yeroushalmi & Yeroushalmi" as reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Defendants' attention, litigating, and negotiating a settlement in the public interest.

4.2 Other than the payment to OEHHA described above, all payments referenced in paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment 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. Concurrently with payment to OEHHA, Cabrera shall provide CAG with written confirmation that the payment to OEHHA was delivered.

## 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf of itself and in the public interest and Defendants, of any alleged violation of Proposition 65 that was or could have been asserted by CAG against Defendants for failure to provide Proposition 65 warnings of exposure to Lead from the Covered Products as set forth in the Notices, and fully resolves all claims that have been or could have been asserted against

Defendants in this action up to the Effective Date for failure to provide Proposition 65 warnings for the Covered Products regarding Lead. CAG, on behalf of itself and in the public interest, hereby discharges Cabrera and its officers, directors, insurers, shareholders, members, managers, employees, agents, parent companies, predecessors, successors, assigns, subsidiaries, divisions, affiliates, franchisees, licensors, licensees, customers, distributors, wholesalers, retailers, including but not limited to Super Center Concepts, Inc. (d/b/a Superior Grocers), and all downstream entities in the distribution chain of the Covered Products, and the predecessors, successors and assigns of any of them, and all of their respective officers, directors, insurers, shareholders, members, managers, employees, agents, and the suppliers of the Covered Products only as to Covered Products sold by Cabrera (collectively, "Released Parties"), from all claims up through the Effective Date for violations of Proposition 65 based on exposure to Lead from the Covered Products. Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance by the Released Parties with Proposition 65 regarding alleged exposures to Lead from the Covered Products. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person other than Defendants or Released Parties.

5.2 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 the Released Parties arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Lead from the Covered Products. In furtherance of the foregoing, as to alleged exposures to Lead 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 exposure to Lead 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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 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 Products, CAG will not be able to make any claim for those damages against Released Parties. 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 exposure to Lead from Covered Products as may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect their decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

## 6. ENTRY OF CONSENT JUDGMENT

6.1 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 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

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

6.3 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.

**7. MODIFICATION OF JUDGMENT**

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

7.2 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.

**8. RETENTION OF JURISDICTION**

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

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

**9. DUTIES LIMITED TO CALIFORNIA**

9.1 This Consent Judgment shall have no effect on Covered Products sold by Defendants outside the State of California.

**10. SERVICE ON THE ATTORNEY GENERAL**

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

written objection by the Attorney General to the terms of this Consent Judgment, may the Court approve this Consent Judgment.

## 11. ATTORNEY FEES

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

## 12. GOVERNING LAW

12.1 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.

12.2 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 Defendants 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 Defendants from any obligation to comply with any pertinent state or federal law or regulation.

12.3 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint 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, the Parties hereby waive California Civil Code Section 1654.

## 13. EXECUTION AND COUNTERPARTS

13.1 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.

## 14. NOTICES

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

If to CAG:

Reuben Yeroushalmi
YEROUSHALMI & YEROUSHALMI
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212
(310) 623-1926

If to Defendant Cabrera Distribution, Inc.:

Jose Cabrera
Cabrera Distribution, Inc.
5680 Ayala Ave.
Irwindale, CA 91706

With copy to:
Gilliam F. Stewart
CMBG3 LAW, LLC
100 Spectrum Center Drive, Suite 820
Irvine, CA 92618
(415) 957-2322

If to Defendant Super Center Concepts, Inc.:

Super Center Concepts, Inc.
Agent for Service of Process
CSC – Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833

With copy to:
Gilliam F. Stewart
CMBG3 LAW, LLC
100 Spectrum Center Drive, Suite 820
Irvine, CA 92618

(415) 957-2322

**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.

| | |
|---|---|
| **AGREED TO:**<br>Date: May 8, 2020<br>Michael Marcus<br>Name: Michael Marcus<br>Title: Director<br>CONSUMER ADVOCACY GROUP, INC. | **AGREED TO:**<br>Date: May 7, 2020<br>Laura Avila<br>Name: Laura Avila<br>Title: Secretary<br>CABRERA DISTRIBUTION, INC. |
| **AGREED TO:**<br>Date: May 5, 2020<br>Blake Larson<br>Name: Blake Larson<br>Title: CFO<br>SUPER CENTER CONCEPTS, INC. | |

**IT IS SO ORDERED.**

Date: _____

_____
Hon. Robert S. Draper
JUDGE OF THE SUPERIOR COURT