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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

STANLEY MOSK COURTHOUSE

CONSUMER ADVOCACY GROUP, INC., in the public interest, Plaintiff, v. EL MONTE SUPERSTORE, INC., a California Corporation, et. al., Defendants.	CASE NO. 18STCV02562 **CONSENT JUDGMENT [PROPOSED]** Health & Safety Code §25249.5 Dept. 61 Hon. Gregory Keosian Filing Date: 10/26/2018 Trial Date: 8/11/2020

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest of the public, and Defendant, ORIENTAL FOODBANK, INC. ("Defendant" or "ORIENTAL") with each a Party to the action and collectively referred to as "Parties."

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1.2 **Defendants and Covered Products**

1.2.1 CAG alleges that ORIENTAL is a California corporation which employs ten or more persons. For purposes of this Consent Judgment only, ORIENTAL is deemed a person in the course of doing business in California and 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").

1.2.2 CAG alleges that ORIENTAL manufactures, causes to be manufactured, sells, or distributes certain dried anchovies and broken rice products in California.

1.3 **Listed Chemicals**

1.3.1 Lead and Lead Compounds ("Lead") have been listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

1.3.2 Cadmium and Cadmium Compounds ("Cadmium") have been listed by the State of California as known to cause cancer and developmental, male reproductive toxicity.

1.3.3 Inorganic Arsenic Oxides have been listed by the State of California as known to cause reproductive toxicity.

1.3.4 Inorganic Arsenic Compounds have been listed by the State of California as known to cause cancer.

1.4 **Notices of Violation.**

1.4.1 On or about April 18, 2018, CAG served ORIENTAL and various public enforcement agencies with a document titled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" (AG#2018-00592) ("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, Cadmium, and Inorganic Arsenic Oxides and Inorganic Arsenic Compounds ("Arsenic"), contained in certain dried anchovies products sold by ORIENTAL in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.4.2 On or about August 29, 2019, CAG served ORIENTAL and various public enforcement agencies with a document titled "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" (AG#2019-01682) ("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 certain broken rice products sold by ORIENTAL in California. No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.5 **Complaint.**

1.5.1 On October 26, 2018, CAG filed a Complaint against ORIENTAL for civil penalties and injunctive relief in Los Angeles County Superior Court, Case No. 18STCV02562, alleging that Defendants violated Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to Lead, Cadmium, and Arsenic in certain dried anchovies products ORIENTAL distributed and/or sold in California.

1.5.2 On November 19, 2019, CAG filed its First Amended Complaint against ORIENTAL for civil penalties and injunctive relief (the "Complaint") in Los Angeles County Superior Court, Case No. 18STCV02562, adding allegations that Defendant violated Proposition 65 for allegedly failing to give clear and reasonable warnings of alleged exposure to Lead in certain broken rice products ORIENTAL distributed and/or sold in California.

1.6 **Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over ORIENTAL 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 against the ORIENTAL 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 by the Parties of any material allegation in the Notices or the Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including without limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including but not limited 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 by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by ORIENTAL, 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 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:

2.1.1 Dried Anchovies, which includes but is not limited to: "SEASONED ANCHOVIES WITH SESAME" "IMPORTED BY: ORIENTAL FOODBANK, INC." "COMMERCE, CA 90040" "PRODUCT OF THAILAND" "NET WEIGHT 3.5 OZ. (100 g.)" "Seasoned Anchovy w/Sesam (OP) 0 49884 01142 6"; UPC 049884011436; UPC 049884040917." ("Dried Anchovies")

2.1.2 Broken Rice, which includes but is not limited to: ""Thai Hom Mali Broken

Rice"; "Gao Tam So1"; "Net Weight: 5 Lbs. (2.27KGS.)"; "Imported by Oriental Food Bank Inc. Commerce, CA 90040"; "UPC 0 49884 91106 4." ("Broken Rice")

Dried Anchovies and Broken Rice are referred to collectively as "Covered Products." The Covered Products are limited to those sold by or supplied by ORIENTAL.

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 "Cadmium" means Cadmium and Cadmium Compounds.

2.5 "Arsenic" means Inorganic Arsenic Oxides and Inorganic Arsenic Compounds.

2.6 "Listed Chemicals" means Lead, Cadmium, and Arsenic.

2.7 "Notices" means Plaintiff's April 18, 2018 Notice and August 29, 2019 Notice.

3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS.

3.1 After the Effective Date, ORIENTAL shall not sell, offer for sale in California, or ship for sale in California any Dried Anchovies unless the level of Lead does not exceed 10 parts per billion ("ppb") and the level of Cadmium does not exceed 85 ppb and the level of Arsenic does not exceed 20 ppb. ORIENTAL further agrees that after the Effective Date, ORIENTAL shall not sell, offer for sale in California, or ship for sale in California any Broken Rice unless the level of Lead does not exceed 56 ppb. For any Covered Products that exceed those respective levels that are sold in California after the Effective Date, ORIENTAL must provide a Proposition 65 compliant warning for the Covered Products as set forth below.

The Parties agree that the following warning language shall constitute compliance with Proposition 65 with respect to the alleged Listed Chemicals in the Dried Anchovies distributed and/or sold by the Defendant after the Effective Date:

⚠ **WARNING**: Consuming this product can expose you to chemicals, including Lead, Cadmium and Arsenic, which are 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

The Parties agree that the following warning language shall constitute compliance with Proposition 65 with respect to the alleged Listed Chemicals in the Broken Rice distributed and/or sold by the Defendant after the Effective Date:

> ⚠ **WARNING**: Consuming this product can expose you to chemicals, including Lead, which is 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

3.2 For any Covered Products still existing in Defendants' inventory as of the Effective Date, Defendants shall place a Proposition 65 compliant warning on them. 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. The equilateral triangle pictogram shall be in yellow with a black exclamation mark; provided however, the pictogram may be in white instead of yellow if the Covered Product label does not contain the color yellow. The Parties agree that the foregoing warning language shall constitute compliance with Proposition 65 with respect to the alleged Listed Chemicals in the Covered Products existing in Defendants' inventory as of the Effective Date.

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date**: After the Effective Date, Defendants shall pay a total of two hundred forty-five thousand dollars and zero cents ($245,000.00) in full and complete settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or could have been asserted in the Notices or Complaint; the apportionment of this payment is to be made as follows:

4.1.1 **Civil Penalty**: Defendants shall issue two separate checks totaling fifty-seven thousand two hundred dollars and zero cents ($57,200.00) as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

(a) Defendants will issue one check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of forty-two thousand nine hundred dollars and zero cents ($42,900.00) and representing 75% of the total civil penalty and Defendants will issue a second check to CAG in the amount of fourteen thousand three hundred dollars ($14,300.00) representing 25% of the total civil penalty;

(b) Separate 1099s shall be issued for each of the above payments: Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of forty-two thousand nine hundred dollars and zero cents ($42,900.00) Defendants will also issue a 1099 to CAG in the amount of fourteen thousand three hundred dollars and zero cents ($14,300.00) and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

4.1.2 **Additional Settlement Payments:** ORIENTAL shall issue one check for forty-two thousand eight hundred dollars and zero cents ($42,800.00) 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 portion of the Total Settlement 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 Fees and Costs:** Defendants shall pay one hundred forty-five thousand dollars and zero cents ($145,000.00) payable to "Yeroushalmi & Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of investigating, bringing this matter to the ORIENTAL's attention, litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval of this Consent Judgment.

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 directly to Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. ORIENTAL shall provide written confirmation to CAG concurrently with payment to OEHHA.

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 ORIENTAL and their officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister

companies, and their successors and assigns ("Defendant Releasees"), and all entities to whom ORIENTAL directly or indirectly distribute or sell Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensees, and the successors and assigns of any of them, including but not limited to, EL MONTE SUPERSTORE INC., a California Corporation, SF SUPERMARKET, INC., a California Corporation and TAWA SUPERMARKET, INC. dba 168 MARKET, who may use, maintain, distribute or sell Covered Products ("Downstream Defendant Releasees"), of all claims for alleged or actual violations of Proposition 65 for alleged exposures to the Listed Chemicals from the Covered Products manufactured, distributed or sold by ORIENTAL up through the Effective Date as set forth in the Notices and Complaint. ORIENTAL and Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to the Listed Chemicals from the Covered Products sold by Defendant Releasees or Downstream Defendant Releasees after the Effective Date. Nothing in this Section affects CAG's right to commence or prosecute an action under Proposition 65 against any person other than ORIENTAL, Defendant Releasees, or Downstream Defendant Releasees. ORIENTAL, Defendant Releasees and Downstream Defendant Releasees are hereafter collectively referred to as the "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 actual or alleged violation of Proposition 65 or any other statutory or common law claim regarding the Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date

regarding any actual or alleged failure to warn about exposure to the Listed Chemicals from the Covered Products. In furtherance of the foregoing, 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 regarding the Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to the 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 Covered Products manufactured, distributed or sold by the Released Parties through the Effective Date regarding the failure to warn about actual or alleged exposure to the Listed Chemicals from the Covered Products, CAG will not be able to make any claim for those damages, penalties or other relief against the 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 the Listed Chemicals from the 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). The Parties will act in good faith in order to obtain the Court's approval of this Consent Judgment. Upon entry of the Consent Judgment, CAG and ORIENTAL waive their respective rights to a hearing and trial on the allegations in the Notices and Complaint.

6.2 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.

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 § 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. SERVICE ON THE ATTORNEY GENERAL

9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General so that the Attorney General may review this Consent Judgment prior to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, CAG may then submit it to the Court for approval.

10. ATTORNEY FEES

10.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

11. GOVERNING LAW

11.1 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.

11.2 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 ORIENTAL 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 ORIENTAL from any obligation to comply with any other pertinent state or federal law or regulation.

11.3 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 § 1654.

12. EXECUTION AND COUNTERPARTS

12.1 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.

13. NOTICES

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

If to CAG:
Reuben Yeroushalmi, Esq.
Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

If to Defendant ORIENTAL FOODBANK, INC.:
Curtis C. Jung
JUNG & YUEN, LLP
888 S. Figueroa Street, Suite 720
Los Angeles, CA 90017

14. AUTHORITY TO STIPULATE

14.1 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:

Date: Nov 26, 2019

Name: Michael Marcus

Title: Director

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: NOV, 26, 2019

Name: EZA CHAN

Title: DIRECTOR

ORIENTAL FOODBANK, INC.

IT IS SO ORDERED.

Date: _____

_____

JUDGE OF THE SUPERIOR COURT