

1 JAMES KAWAHITO (SBN 234851)
2 KAWAHITO LAW GROUP APC
3 300 Corporate Pointe Ste 340
4 Culver City, CA 90230
5 Telephone: (310) 746-5300
6 Facsimile: (310) 593-2520
7 Email: jkawahito@kawahitolaw.com

8 Attorneys for Plaintiff Pubic Health And Safety Advocates, LLC

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

12 PUBLIC HEALTH AND SAFETY
13 ADVOCATES, LLC,

14 Plaintiff,

15 vs.

16 VENUS FOODS, INC., a California
17 Corporation; and DOES 1 through 50,
18 inclusive,

19 Defendants.

Case Number: 21STCV10268

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1. Public Health and Safety Advocates, LLC. and Venus Foods, Inc.

This Consent Judgment is entered into by and between plaintiff Public Health and Safety Advocates, LLC (“PHSA” or “Plaintiff”) and defendant Venus Foods, Inc. (“VENUS” or “Defendant”) with VENUS and PHSA each individually referred to as a “Party” and collectively as the “Parties.”

1.2. Plaintiff

PHSA is a limited liability company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.3. Defendant

VENUS employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.4. General Allegations

PHSA alleges that VENUS has manufactured, sold, and/or distributed for sale in California, certain products described more specifically below containing lead and cadmium, chemicals listed by the State of California under Proposition 65, without providing a required Proposition 65 warning. Lead and Cadmium shall be referred to hereinafter as the “Listed Chemicals.”

1.5. Product Description

The VENUS products that are the subject of this Consent Judgment are: (1) Cuttlefish Balls, UPC # 032971251990; (2) Fu Zhou Fish Balls, UPC # 032971250139, which were sold and/or distributed for sale in California by VENUS (“Covered Products”).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.6. Notice of Violation

On June 26, 2020, PHSA served VENUS and the requisite public enforcement agencies with two 60-Day Notices of Violation (“Notices”) alleging that VENUS violated Proposition 65. The Notices alleged that VENUS failed to warn its customers and consumers in California that the Covered Products contain lead and cadmium.

1.7. Complaint

On March 12, 2021, Plaintiff, who was and is acting in the interest of the general public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the County of Los Angeles against VENUS and Does 1 through 50, alleging violations of Health & Safety Code §25249.6 based on the alleged exposures to lead and cadmium contained in the Covered Products.

1.8. No Admission

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised or that could have been raised in the Notices, arising out of the facts and/or conduct alleged therein. VENUS denies the material, factual and legal allegations contained in PHSA’s Notice and the Complaint, and maintains that all products, including but not limited to the Covered Products, that it has sold and distributed in California have been and are in compliance with all applicable laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by VENUS of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by VENUS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by VENUS. However, this section shall not diminish or otherwise affect VENUS’s obligations, responsibilities, and duties hereunder.

1.9. Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has jurisdiction over VENUS as to the allegations contained in the Complaint; 2) that venue is proper

1
2
3 in the County of Los Angeles; and 3) that this Court has jurisdiction to enter and enforce the
4 provisions of this Consent Judgment.

5 **1.10. Effective Date**

6 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
7 which the Court approves this Consent Judgment, including any unopposed tentative ruling
8 granting approval of this Consent Judgment.

9 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

10 **2.1. Reformulation Standard and Schedule**

11 Commencing after the Effective Date, VENUS shall not manufacture for consumer sale
12 into the State of California any Covered Product that subsequently exposes a person to a Daily
13 Serving of more than 0.5 micrograms of lead or 4.1 micrograms of cadmium without providing a
14 warning as set forth in Sections 2.3 -2.6. A reformulated Covered Product (“Reformulated
15 Product”) is one for which the Daily Serving contains no more than 0.5 micrograms of lead or 4.1
16 micrograms of cadmium (“Reformulation Standard”).

17 Covered Products that comply with the Reformulation Standard shall not require any
18 warnings. For any Covered Products manufactured after the Effective Date or later that do not
19 meet the Reformulation Standard, VENUS shall provide the warning set forth in Section 2.3-2.6.

20 As long as VENUS complies and remains in compliance with the requirements of Section
21 2.1 – 2.6 for each of the Covered Products, the Parties agree that such Products shall be deemed to
22 comply with Proposition 65 with respect to lead and cadmium, and that compliance with this
23 Consent Judgment shall fully and completely satisfy VENUS’ obligations under Proposition 65 to
24 provide warnings for such Covered Products with respect to the presence of lead or cadmium,
25 regardless of when manufactured, distributed or sold. To the extent that VENUS manufactures
26 other similar products in the future, aside from the Covered Products, its compliance with the
27 obligations set forth herein, Sections 2.1-2.6, shall be deemed to comply with Proposition 65 with
28 respect to lead and cadmium.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Covered Products manufactured as of the Effective Date and/or currently in the channels of distribution may continue to be sold through by VENUS and Releasees. However, as of the Effective Date, VENUS and the Releasees, as defined in Section 5.1, may not sell into California newly manufactured Covered Products that are not Reformulated Products that do not contain the warnings set forth in Paragraph 2.3-2.6.

2.2. Daily Serving

A Daily Serving (for purposes of determining Proposition 65 compliance for chemicals present in the Covered Products) shall be defined as the serving size set forth on the “Nutritional Facts” or “Supplemental Facts”.

2.3. Warning Option

Covered Products that do not meet the standard of Reformulated Products set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.4-2.6 below. This warning shall only be required as to Covered Products that Defendant manufactures, sells or ships to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65 warning for lead and/or cadmium shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

2.4. Warning Language

Covered Products manufactured after the Effective Date for sale in California that do not qualify as Reformulated Products shall contain a Proposition 65 warning affixed to the packaging, labeling, or directly on each Covered Product. The warning shall state either:

[California Proposition 65] WARNING: Consuming this product can expose you to chemicals including lead and cadmium, which are known to the State of California to cause cancer, and birth defects and other reproductive harm. www.P65Warnings.ca.gov.

[California Proposition 65] WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

The warning shall be prominently displayed with such conspicuousness as compared with

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand the Covered Products the warning applies to, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission applicable to the Covered Products that is different than those set forth above, VENUS shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Consent Judgment, as long as such warning text and methods of transmission comply with OEHHA regulations.

2.5. Internet Sales

For any Covered Products sold by VENUS through the internet, the relevant warnings shall comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

2.6. Warnings By Notice To Businesses Who Sell Or Receive The Covered Products

For purposes of this Consent Judgment, VENUS may also satisfy the warning requirement by providing the required information in compliance with 27 Cal. Code Regs. §25600.2 to any business or retailer that is subject to Proposition 65, to which it sells or transfers the Covered Products.

3. MONETARY PAYMENTS

3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)

VENUS shall pay a total civil penalty of \$15,000, to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to PHSA. VENUS shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State

1
2
3 of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the
4 amount of \$11,250, representing 75% of the total civil penalty; and (b) one check to "Kawahito
5 Law Group in Trust for PHSA" in the amount of \$3,750, representing 25% of the total civil
6 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
7 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second
8 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W2 at least five calendar
9 days before payment is due.

10 The payments shall be delivered to PHSA's counsel at the following address within ten
11 days of the Effective Date of this Consent Judgment:

12 James Kawahito, Esq.
13 Kawahito Law Group APC
14 300 Corporate Pointe., Suite 340
Culver City, CA 90230

15 Payment may also be made by wire or ACH or wire transfer. Instructions will be provided
16 separately upon request.

17 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

18 The Parties acknowledge that PHSA and its counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee
20 reimbursement issue to be resolved after the material terms of the Consent Judgment had been
21 settled. The Parties reached an accord on the compensation due to PHSA and its counsel under
22 general contract principles and the private attorney general doctrine codified at California Code of
23 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
24 Consent Judgment. VENUS shall reimburse PHSA and its counsel in the total amount of \$65,000
25 for all attorney's fees, investigative and consulting costs, and all other expenses of any kind
26 incurred by PHSA as a result of investigating, bringing this matter to the attention of VENUS,
27 negotiating this Consent Judgment, drafting the Complaint, and preparing the necessary briefing to
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

obtain Court approval of the Consent Judgment. VENUS shall make payment by check or by ACH or wire transfer within ten days of the Effective Date. The check shall be made payable to “Kawahito Law Group APC” and delivered to the address below. Wire or ACH Instructions will be provided separately upon request.

James Kawahito, Esq.
Kawahito Law Group APC
300 Corporate Pointe., Suite 340
Culver City, CA 90230

To allow for the issuance of a timely payment pursuant to the above, PHSA shall provide VENUS with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

5. RELEASE OF CLAIMS

5.1. Release of VENUS

This Consent Judgment is a full, final and binding resolution between PHSA, on behalf of itself and the public interest, and its past and current agents, representatives, attorneys, successors and/or assignees (the “Releasers”), on the one hand, and VENUS, its respective parents, subsidiaries, affiliated entities that are under common ownership, shareholders, members, directors, officers, managers employees, representatives, agents, attorneys, divisions, subdivisions, partners, sister companies, licensors, licensees, and each entity to whom VENUS directly or indirectly distributes or sells the Covered Products, including but not limited to downstream retailers, distributors, wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees, and the successors and assigns of any of them (“Releasees”), on the other hand, of any violation of Proposition 65 that was or could have been asserted by PHSA against VENUS or the Releasees based on the alleged failure to warn about alleged Proposition 65 exposures to lead and/or cadmium caused by the Covered Products that were manufactured by VENUS (either directly or through any of the Releasees) as of 90 days after the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to the alleged or actual failure to warn about exposures to lead and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

cadmium from Covered Products.

With respect to the foregoing waivers and releases in this paragraph, PHSA on behalf of itself, hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred 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 SETTLEMENT WITH THE DEBTOR.

5.2 VENUS Release of PHSA

VENUS on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against PHSA, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by PHSA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

6. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court.

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then VENUS may provide Plaintiff with written notice 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.

9. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. 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.

10. ENTIRE AGREEMENT

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, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

11. NOTICES

Unless specified herein, all correspondence and notice required to be provided pursuant to this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email, sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For VENUS: Pyng Soon, Esq.
Law Offices of Pyng Soon, Inc.
17870 Castleton St. Suite 215
Los Angeles, CA 90013.
pyng.soon@soonattorney.com

For PHSA: Shabnam Elyaszadeh
Public Health And Safety Advocates, LLC
10429 Eastborne St.
Los Angeles, CA 90049

With a Copy to: James K. Kawahito
Kawahito Law Group APC
Attn. PHSA v. VENUS
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

12. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7

PHSA and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code Section 25249.7(f).

14. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, PHSA shall be responsible for preparing the motion to approve the Consent Judgment. VENUS and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include at a minimum, cooperating in Plaintiff's drafting and filing of any papers in support of the required motion for judicial approval.

15. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least forty-five days in advance of its consideration by the Court. To the extent either party alleges a breach of this Consent Judgment, written notice shall be provided to the party in alleged breach and the Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute before either Party files a motion to enforce.

16. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

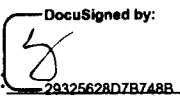
AGREED TO:

AGREED TO:

Date: 8/24/22

Date: 8/24/2022

By: 
Public Health And Safety Advocates, LLC

By: 
Venus Foods, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT