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Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

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| CONSUMER ADVOCACY GROUP, INC., in the public interest,<br><br>Plaintiff,<br>v.<br><br>ISLAND PACIFIC SUPERMARKETS, INC., a California Corporation; and DOES 1-10,<br>Defendants. | CASE NO. 21STCV20014<br><br>**CONSENT JUDGMENT [PROPOSED]**<br><br>[Assigned for All Purposes to the Hon. Kevin C. Brazile, Dept. 20]<br><br>Complaint Date: May 27, 2021<br>Trial Date: None |

## 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 Defendant Island Pacific Supermarket, Inc., a California Corporation ("Island Pacific" or "Defendant") with each a "Party" to the action and collectively referred to as "Parties."

1.2 **Defendants and Products**

1.2.1 CAG alleges that Defendant is a California Corporation, which does business in California, and employs ten (10) or more persons. Accordingly, for purposes of this Consent Judgment only, Defendant 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 Defendant is a California Corporation, which does business in California, and employs ten (10) or more persons. Accordingly, for purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and subject to the provisions of Proposition 65.

1.2.3 CAG alleges that Defendant manufacture, cause to be manufactured, sell, or distribute: Crispy Squid including but not limited to "Carl's Crispy Squid"; "Hot and Spicy"; "Net Wt. 1.41 oz (40g); "UPC 4 809011 259256"; "Product of the Philippines". Crispy Squid is referred hereinafter as Covered Products.

1.3 **Chemical 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.

**1.3.4** Lead is sometimes referred to herein as "Listed Chemical".

1.4 **Notices of Violation**.

1.4.1 On or about August 25, 2020, CAG served a "60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Attorney General Notice Number ("AG#") 2020-02203 that provided the recipients, specifically Defendant, with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to the Listed Chemical contained in Covered Products allegedly sold by Defendant in California. To the best of the Parties' knowledge, no public enforcer has commenced or diligently prosecuted the allegations set forth in the AG# 2020-02203.

1.5 **Complaint**

1.5.1 On May 27, 2021 CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in Los Angeles County Superior Court, Case No. 21STCV20014, against Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings of the alleged exposure to the Listed Chemicals contained in Crispy Squid allegedly sold or distributed by Defendant in California.

1.6 **Consent to Jurisdiction**

1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Notice and Complaint and personal jurisdiction over Defendant 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 Defendant of any material allegation in 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 any fault, wrongdoing, or liability by any of the Defendant, their officers, directors, employees, or parent, subsidiary or affiliated corporations or stores, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum for purposes of establishing same. 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 Product" means product specifically identified in Paragraph 1.2.3, sold and supplied by Defendant.

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

2.3 "Listed Chemical" means Lead.

2.4 "Notice" means the AG# 2020-02203.

**3. INJUNCTIVE RELIEF/REFORMULATION**

3.1 After the Effective Date, Defendant 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 34 parts per billion ("ppb") unless Proposition 65 compliant warnings are used as set forth in the following paragraphs.

3.2 For any Covered Products that exceed the levels of Lead that are placed into the stream of commerce in California after the Effective Date, Defendant must provide a Proposition 65 compliant warning for cancer and reproductive toxicity for the Covered Products. The language of the warnings and method for providing any warnings for the Covered Products shall be compliant with Title 27, California Code of Regulations, § 25600, et seq. The warnings shall be provided for reproductive toxicity. 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 warning must be set off from other surrounding information, enclosed in a box. Where the packaging of the Covered Product or a sign referring to the Covered Product includes consumer information as defined by California Code of Regulations title 27 §25600.1(c) in a language other than English, the warning must also be provided in that language in addition to English. Should Defendant sell or distribute any Covered Product through the internet, the warning will be posted in the manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601 and 25602, as they may be subsequently amended. The Parties agree that the following warning language shall constitute compliance with Proposition 65 with respect to the alleged Lead in the Covered Products placed into the stream of commerce by Defendant after the Effective Date:

For Lead:

**WARNING**: Consuming this Product can expose you to chemicals including Lead and Lead Compounds, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go towww.P65Warnings.ca.gov/food.

3.3 For any Covered Products still existing in the Defendant's inventory as of the Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the Covered Products do not exceed the level of Lead outlined above. Any warning provided pursuant to this section shall comply with the warning requirements under Section 3.2 above.

3.4 Changes in the law and regulations applicable to Proposition 65 occurring after this date shall be incorporated into the terms of this Consent Judgment.

**4. SETTLEMENT PAYMENT**

4.1 To the extent Defendant has Express, Implied, and/or Equitable indemnity claims against the suppliers and/or distributors of the Covered Products for losses incurred as a result of the sale of the Covered Product, including reimbursement of their attorney's fees and costs in this action. Defendant assigns all such claims in lieu of Defendant making any payments, Defendant has assigned their claims for indemnity to CAG, for resolution of this matter. Defendants hereby assign to CAG, and CAG hereby assumes, any rights the Settling Defendant has, for Express, Implied, and/or Equitable Indemnity and/or Implied Warranty of Merchantability for alleged violations for failure to warn for the Covered Products under Health & Safety Code § 25249.6 as set forth in the Notices for the Covered Products against the suppliers and/or distributors of the Covered Products.

## 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 Defendant and their officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, stores, subsidiaries, partners, affiliates, sister companies, and their successors and assigns, and each such entity who sold the Covered Products in California ("Defendant Releasees), of all claims for actual or alleged violations of Proposition 65 for alleged exposures to the Listed Chemical from the Covered Product manufactured, distributed or sold by Defendants up through the Effective Date as set forth in the Notice and the Complaint. Defendants', and Defendant Releasees,' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to the alleged exposure to the Listed Chemical from the Covered Product manufactured, distributed or sold by 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 the

Defendant, and/or Defendant Releasees. (Defendant, and Defendant Releasees herein referred to as "Released Parties"). Abacus Business Capital. Inc. is deemed a 'Released Party' herein.

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 claim related to Covered Product manufactured, distributed or sold by the Released Parties through the Effective Date. regarding the failure to warn about exposure to the Listed Chemical from the Covered Product. In furtherance of the foregoing, as to alleged exposures to the Listed Chemical from the Covered Product, 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 related to Covered Product manufactured, distributed or sold by the Released Parties through the Effective Date arising from violation of Proposition 65, or any other statutory or common law regarding the failure to warn about exposure to the Listed Chemical from the Covered Product 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 related to Covered Product manufactured, distributed or sold by the Defendant through the Effective Date, regarding the failure to warn about exposure to the Listed Chemical from the Covered Product, including but not limited to any exposure to, or failure to warn with respect to exposure to the Listed Chemical from the Covered Product, 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 Chemical from the Covered Product 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. ENFORCEMENT OF JUDGMENT**

6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties hereto. 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.

**7. ENTRY OF CONSENT JUDGMENT**

7.1 CAG shall file a motion seeking Court 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, trial, or appeal on the allegations in the Notices or the Complaint.

7.2 The Parties will make all reasonable, good faith efforts to finalize this Consent Judgment and have it approved by the Court.

7.3 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 action shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

**8. MODIFICATION OF JUDGMENT**

8.1 This Consent Judgment may be modified only upon written agreement of the Parties and 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.

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

**9. RETENTION OF JURISDICTION**

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

**10. SERVICE ON THE ATTORNEY GENERAL**

10.1 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 hearing before 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 receive Court approval.

**11. ATTORNEY FEES**

11.1 Except as specifically provided in Section 6.1, each Party shall bear its own attorneys' fees and costs in connection with the claims resolved in this this action.

**12. ENTIRE AGREEMENT**

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

**13. GOVERNING LAW**

13.1 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.

13.2 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 Product, then Defendants subject to this Consent Judgment may provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Product is 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.

13.3 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.

**14. EXECUTION AND COUNTERPARTS**

14.1 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.

**15. NOTICES**

15.1 Any notices under this Consent Judgment shall be by United States Postal Service.

If to CAG:

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

If to Defendant Island Pacific Supermarkets, Inc.:

Kirk Downing
Law Office of Kirk G. Downing
1313 E Maple St, Ste 201
Bellingham, WA 98225-5708
Telephone: (323) 935-3517
Email: kirk@downinglaw.us

**16. AUTHORITY TO STIPULATE**

16.1 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: 4-3, 2026

Willard Bayer

Name: Willard Bayer

Title: President

CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date: March 3, 2026

Herman S. Chiu

Name: Herman Chiu

Title: CFO

ISLAND PACIFIC SUPERMARKETS, INC

**IT IS SO ORDERED.**

Date: _____

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JUDGE OF THE SUPERIOR COURT