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8 Attorneys for Plaintiff,
9 Consumer Advocacy Group, Inc.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 THE TJX COMPANIES, INC., a Delaware
17 Corporation;
18 WILDFARE INC., a New York Corporation;
19 and DOES 1-20

20 Defendants.

CASE NO. 22STCV01596

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

21 **1. INTRODUCTION**

22 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
23 ADVOCACY GROUP, INC. (referred to as “CAG”) acting on behalf of itself and in the interest
24 of the public, and defendant, WILDFARE INC. (hereinafter referred to as “Defendant”), with each
25 a Party to the action collectively referred to as “Parties.”

26 **1.2 Defendant and Products**

27 1.2.1 CAG alleges that Defendant is a New York corporation which employs ten
28 or more persons. CAG further alleges that Defendant distributes, and sells Ground Sage identified
as “Wild Fare”; “Organic Sage”; “Ground Spices”; “Net Wt. 35g (1.23 oz)”; “UPC 8 10030 14063

1 4”; “Product of Turkey”; “D54 S113244 C1250 T2 S0121” containing Inorganic Arsenic Oxides
2 to consumers in California. (Hereinafter referred to as the “Covered Products”).

3 1.2.2 For purposes of this Consent Judgment only, Defendant is deemed a person
4 in the course of doing business in California and are subject to the provisions of the Safe Drinking
5 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
6 (“Proposition 65”).

7 **1.3 Chemicals of Concern**

8 1.3.3 Inorganic Arsenic Oxides (hereinafter Arsenic) are known to the State of
9 California to cause birth defects or other reproductive harm.

10 **1.4 Notices of Violation**

11 1.4.1 On or about May 14, 2021, CAG served Defendant, Homegoods, Inc. and
12 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
13 (hereinafter “Notice 1”) that provided the Defendant and Homegoods, Inc. with notice of alleged
14 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
15 exposures to Arsenic contained in Organic Sage sold and/or distributed by Defendant and
16 Homegoods, Inc. No other public enforcer has commenced or diligently prosecuted the allegations
17 set forth in the Notice.

18 1.4.2 On or about August 27, 2021, CAG served The TJX Companies, Inc. (“TJX”) and
19 various public enforcement agencies with a document entitled “60-Day Notice of Violation”
20 (hereinafter “Notice 2”) that provided TJX with notice of alleged violations of Health & Safety
21 Code § 25249.6 for failing to warn individuals in California of exposures to Arsenic contained in
22 Organic Sage sold and/or distributed by TJX. No other public enforcer has commenced or
23 diligently prosecuted the allegations set forth in the Notice.

24 1.4.3 Notice 1 and Notice 2 are referred to as the “Notices.”

25 **1.5 Complaint**

26 1.5.1 On January 13, 2022, CAG filed a complaint for civil penalties and
27 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. 22STCV01596 against
28

1 Defendant and TJX. The Complaint alleges, among other things, that Defendant and TJX violated
2 Proposition 65 by failing to give clear and reasonable warnings of exposure to Arsenic from
3 Covered Products.

4 **1.6 Consent to Jurisdiction**

5 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
6 has jurisdiction over the allegations of violations contained in the Complaint and personal
7 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
8 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full
9 settlement and resolution of the allegations contained in the first cause of action of the Complaint
10 and of all claims which were or could have been raised by any person or entity based in whole or
11 in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

12 **1.7 No Admission**

13 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
14 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
15 between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent
16 Judgment shall be construed as an admission by the Parties of any material allegation of the
17 Complaint (each and every allegation of which Defendant denies), any fact, conclusion of law,
18 issue of law or violation of law, including without limitation, any admission concerning any
19 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
20 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
21 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
22 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
23 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
24 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
25 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or
26 litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
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1 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
2 other or future legal proceeding, except as expressly provided in this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 "Covered Products" means products specifically identified in Paragraph 1.2.1 sold
5 or supplied by Defendant.

6 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
7 Court.

8 2.3 "Arsenic" means Inorganic Arsenic Oxides.

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

11 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
12 California, or ship for sale in California any Covered Products unless the level of Arsenic does not
13 exceed 20 parts per billion ("ppb") unless Proposition 65 compliant warnings are used as set forth
14 in the following paragraphs.

15 3.2 For any Covered Products that exceeds 20 ppb of Arsenic that are placed into the
16 stream of commerce in California after the Effective Date, Defendant must provide a Proposition
17 65 compliant warning for the Covered Products as set forth below. Any warning provided
18 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,
19 and be prominently placed with such conspicuousness as compared with other words, statements,
20 designs, or devices as to render it likely to be read and understood by an ordinary individual under
21 customary conditions before purchase or use. The warning must be set off from other surrounding
22 information, enclosed in a box. Where the packaging of the Covered Product includes consumer
23 information as defined by California Code of Regulations title 27 §25600.1(c) in a language other
24 than English, the warning must also be provided in that language in addition to English. Should
25 Defendant sell or distribute any Covered Product through the internet the warning will be posted
26 in the manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601
27 and 25602, as they may be subsequently amended.

1 The Parties agree that the following warning language shall constitute compliance with
2 Proposition 65 with respect to the alleged Arsenic in the Covered Products placed into the stream
3 of commerce by Defendant after the Effective Date:

4 **WARNING:** Consuming this product can expose you to Inorganic Arsenic, a
5 chemical known to the State of California to cause birth defects or other
6 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

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8 3.3 For any Covered Products still existing in the Defendant's inventory as of the
9 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
10 Covered Products does not exceed their respective level Arsenic. Any warning provided pursuant
11 to this section shall comply with the warning requirements under Section 3.2 above.

12 3.4 For any Covered Product which includes consumer information in a language other
13 than English and where the Defendant uses a consumer product sign, label, or shelf tag to provide
14 a warning, the warning must also be provided in that foreign language in addition to English.

15 3.5 Changes in the law and regulations applicable to Prop 65 occurring after this date
16 shall be incorporated into the terms of this Consent Judgment.

17 **4. SETTLEMENT PAYMENT**

18 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
19 shall pay a total of one hundred and thirty thousand dollars (\$130,000) in full and complete
20 settlement of all monetary claims by CAG related to the Notices, as follows:

21 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling twenty-five
22 thousand, seven hundred and twenty dollars (\$25,720.00) as penalties pursuant to Health & Safety
23 Code § 25249.12:

24 (a) Defendant will issue a check made payable to the State of California's
25 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of nineteen
26 thousand two hundred and ninety dollars (\$19,290.00) representing 75% of the total penalty and
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1 Defendant will issue a separate check to CAG in the amount of six thousand four hundred and
2 thirty dollars (\$6,430.00) representing 25% of the total penalty; and

3 (b) Separate 1099s shall be issued for each of the above payments:
4 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
5 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
6 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

7 **4.1.2 Additional Settlement Payments:** Defendant shall make a separate
8 payment, in the amount of nineteen thousand two hundred and eighty dollars (\$19,280.00) as an
9 additional settlement payment to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety
10 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue
11 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as
12 follows, eighty percent (80%) for fees of investigation, purchasing and testing for Proposition 65
13 listed chemicals in various products, and for expert fees for evaluating exposures through various
14 mediums, including but not limited to consumer product, occupational, and environmental
15 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining experts
16 who assist with the extensive scientific analysis necessary for those files in litigation and to offset
17 the costs of future litigation enforcing Proposition 65 but excluding attorney fees; twenty percent
18 (20%) for administrative costs incurred during investigation and litigation to reduce the public’s
19 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to
20 be responsible for such exposures and attempting to persuade those persons and/or entities to
21 reformulate their products or the source of exposure to completely eliminate or lower the level of
22 Proposition 65 listed chemicals including but not limited to costs of documentation and tracking
23 of products investigated, storage of products, website enhancement and maintenance, computer
24 and software maintenance, investigative equipment, CAG’s member’s time for work done on
25 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from the
26 Attorney General, CAG shall provide to the Attorney General copies of documentation
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1 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
2 the proper expenditure of such additional settlement payment.

3 **4.1.3 Reimbursement of Attorney’s Fees and Costs:** Defendant shall pay
4 eighty-five thousand dollars (\$85,000.00) to “Yeroushalmi & Yeroushalmi” as reimbursement for
5 reasonable investigation fees and costs, attorneys’ fees, and any other costs incurred as a result of
6 investigating, bringing this matter to Defendant’s attention, litigating, and negotiating a settlement
7 in the public interest.

8 4.2 Other than the payment to OEHHA described above, all payments referenced in
9 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi
10 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
11 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike
12 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with
13 payment to OEHHA, Defendant shall provide CAG with written confirmation that the payment to
14 OEHHA was delivered.

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

16 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf
17 of itself and in the public interest and Defendant for failure to provide Proposition 65 warning of
18 exposure to Arsenic from the Covered Products as set forth in the Notice, and fully resolves all
19 claims that have been or could have been asserted against Defendant in this action up through the
20 Effective Date for failure to provide Proposition 65 warnings for the Covered Products regarding
21 Arsenic. CAG, on behalf of itself and in the public interest, hereby discharges Defendant, and their
22 respective officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions,
23 subsidiaries, and their successors and assigns (“Defendant Releasees”) and all customers, retailers,
24 and downstream entities in the distribution chain of the Covered Products to whom Defendant
25 distributed or sold Covered Products, including but not limited to TJX, its parents, subsidiaries,
26 and affiliated entities, and the predecessors, successors and assigns of any of them, and all of their
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1 respective officers, directors, shareholders, members, managers, employees, agents only as to
2 Covered Products sold by the Defendant (collectively, "Downstream Releasees"), for all Covered
3 Products placed into the stream of commerce up through the Effective Date for violations of
4 Proposition 65 based on exposure to Arsenic from the Covered Products. Defendant's compliance
5 with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition
6 65 regarding alleged exposures to Arsenic from the Covered Products. Nothing in this Section
7 affects CAG's right to commence or prosecute an action under Proposition 65 against any person
8 other than Defendant Releasees or Downstream Releasees after the Effective Date.

9 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
11 indirectly, any form of legal action and releases all claims, including, without limitation, all
12 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
13 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
14 fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or
15 contingent (collectively "Claims"), against the Released Parties arising from any violation of
16 Proposition 65 or any other statutory or common law regarding the failure to warn about exposure
17 to Arsenic from the Covered Products. In furtherance of the foregoing, as to alleged exposures to
18 Arsenic from the Covered Products, CAG on behalf of itself only, hereby waives any and all rights
19 and benefits which it now has, or in the future may have, conferred upon it with respect to Claims
20 arising from any violation of Proposition 65 or any other statutory or common law regarding the
21 failure to warn about exposure to Arsenic from the Covered Products by virtue of the provisions
22 of section 1542 of the California Civil Code, which provides as follows:
23

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
27 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
28 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
29 DEBTOR OR RELEASED PARTY.

30 CAG understands and acknowledges that the significance and consequence of this waiver of

1 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
2 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
3 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
4 about exposure to Arsenic from the Covered Products, including but not limited to any exposure
5 to, or failure to warn with respect to exposure to Arsenic from the Covered Products, CAG will
6 not be able to make any claim for those damages against Released Parties. Furthermore, CAG
7 acknowledges that it intends these consequences for any such Claims arising from any violation
8 of Proposition 65 or any other statutory or common law regarding the failure to warn about
9 exposure to Arsenic from Covered Products as may exist as of the date of this release but which
10 CAG does not know exist, and which, if known, would materially affect their decision to enter
11 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
12 ignorance, oversight, error, negligence, or any other cause.

13 **6. ENTRY OF CONSENT JUDGMENT**

14 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
16 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.
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18 6.2 The Parties shall make all reasonable efforts possible to have the Consent Judgment
19 approved by the Court.

20 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
21 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
22 become null and void, and the actions shall revert to the status that existed prior to the execution
23 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
24 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
25 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
26 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
27 modify the terms of the Consent Judgment and to resubmit it for approval.

1 **7. MODIFICATION OF JUDGMENT**

2 7.1 This Consent Judgment may be modified only upon written agreement of the
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **8. RETENTION OF JURISDICTION**

8 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
9 of this Consent Judgment under Code of Civil Procedure § 664.6.

10 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
11 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

12 **10. DUTIES LIMITED TO CALIFORNIA**

13 9.1 This Consent Judgment shall have no effect on Covered Products sold by Defendant
14 outside the State of California.

15 **10. SERVICE ON THE ATTORNEY GENERAL**

16 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
17 California Attorney General so that the Attorney General may review this Consent Judgment prior
18 to its approval by the Court. No sooner than forty-five (45) days after the Attorney General has
19 received the aforementioned copy of this Consent Judgment, and in the absence of any written
20 objection by the Attorney General to the terms of this Consent Judgment, may the Court approve
21 this Consent Judgment.
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23 **11. ATTORNEY FEES**

24 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
25 own costs and attorney fees in connection with this action.

26 **12. GOVERNING LAW**

1 12.1 The validity, construction and performance of this Consent Judgment shall be
2 governed by the laws of the State of California, without reference to any conflicts of law provisions
3 of California law.

4 12.2 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California. In the event that Proposition 65 is amended, repealed, preempted, or is otherwise
6 rendered inapplicable by reason of law generally, or if any of the provisions of this Consent
7 Judgment are rendered inapplicable or are no longer required as a result of any such amendment,
8 repeal or preemption, or rendered inapplicable by reason of law generally as to the Covered
9 Products, then any Defendant subject to this Consent Judgment may provide written notice to CAG
10 of any asserted change in the law, and shall have no further obligations pursuant to this Consent
11 Judgment with respect to, and to the extent that, the Covered Products are so affected. Nothing in
12 this Consent Judgment shall be interpreted to relieve a Defendant from any obligation to comply
13 with any pertinent state or federal law or regulation.

14 12.3 The Parties, including their counsel, have participated in the preparation of this
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
18 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
19 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
20 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
21 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
22 this regard, the Parties hereby waive California Civil Code § 1654.

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24 **13. EXECUTION AND COUNTERPARTS**

25 13.1 This Consent Judgment may be executed in counterparts and by means of facsimile
26 or portable document format (pdf), which taken together shall be deemed to constitute one
27 document and have the same force and effect as original signatures.

1 **14. NOTICES**

2 14.1 Any notice under this Consent Judgment shall be by First-Class Mail or E-mail.

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4 If to CAG:

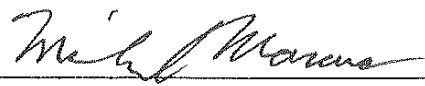
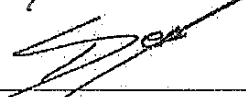
5 Reuben Yeroushalmi
6 YEROUSHALMI & YEROUSHALMI
7 9100 Wilshire Boulevard, Suite 240W
8 Beverly Hills, CA 90212
9 (310) 623-1926
10 Email: lawfirm@yeroushalmi.com

11 If to Defendant Wildfare, Inc.

12 Lynn R. Fiorentino
13 ARENTFOX SCHIFF, LLP
14 44 Montgomery Street, 38th Floor
15 San Francisco, CA 94104
16 (415) 757-5500
17 Email: lynn.fiorentino@afslaw.com

18 **15. AUTHORITY TO STIPULATE**

19 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
20 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
21 the party represented and legally to bind that party.

AGREED TO:	AGREED TO:
Date: <u>April 10</u> , 2023	Date: <u>04/06/2023</u> , 2023
	
Name: <u>Michael Marcus</u>	Name: <u>DEMIR SABANCI</u>
Title: <u>Director</u>	Title: <u>PRESIDENT</u>
CONSUMER ADVOCACY GROUP, INC.	WILDFARE, INC.

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT