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9 PUBLIC HEALTH AND SAFETY ADVOCACY, LLC.

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

12 **PUBLIC HEALTH AND SAFETY**
13 **ADVOCACY, LLC., a Limited Liability**
14 **Company, in the public interest,**

15 **Plaintiff,**

16 **vs.**

17 **SANYO FOODS CORPORATION OF**
18 **AMERICA and DOES 1 through 50,**
19 **inclusive,**

20 **Defendant(s).**

Case No. 22STCV28996

CONSENT JUDGMENT [PROPOSED]

[[*Filed Concurrently with* Notice of Motion and Motion, Supporting Declaration of Davar Danialpour, [Proposed] Order, and Memorandum of Points and Authorities in Support to Approve and Enter Consent Judgment

Hon. Stephanie M. Bowick
Dept. 19

Complaint filed: 09/07/2022

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23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between Plaintiff **PUBLIC**
25 **HEALTH AND SAFETY ADVOCACY, LLC** (“Plaintiff” or “PHSA”), acting on behalf of
26 itself and in the public interest, and Defendant **SANYO FOODS CORPORATION OF**
27 **AMERICA** (“Defendant”). Plaintiff and Defendant are collectively referred to as “Parties.”
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1.2 Defendant and Covered Products

1.2.1 PHSA alleges that Defendant employs ten or more persons. For purposes of this Consent Judgment only, Defendant is deemed to be 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 PHSA alleges that Defendant manufactures, imports, distributes and/or sells Sapporo Ichiban Noodle products in California, including but not limited to the exemplar product: SAPPORO ICHIBAN ORIGINAL FLAVORED NOODLE - UPC 0-761860001-1. As set forth in Section 2.1 below, Sapporo Ichiban Noodle products that allegedly contain Lead are collectively referred to herein as “Covered Products.”

1.3 Listed Chemicals

1.3.1 Lead and Lead Compounds (“Lead”) have been listed by the State of California as chemicals known to cause cancer and/or birth defects or other reproductive harm. The Maximum Allowable Dose Level (“MADL”) for lead set by the California Office of Environmental Health Hazard Assessment is 0.5 micrograms (µg) per day.

1.4 Notice of Violation

1.4.1 On or about January 10, 2022, PHSA served a “60-Day Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986,” AG# 2022-00042, (“Notice”) in which it alleged that the recipients, specifically including Defendant, violated *Health & Safety Code § 25249.6* by failing to warn individuals in California of exposures to Lead contained in Covered Products sold by Defendant in California.

1.5 Complaint

1.5.1 On September 7, 2022, PHSA filed a Complaint for civil penalties and injunctive relief (“Complaint”) in Los Angeles County Superior Court, Case No. 22STCV28996, against Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65 by allegedly failing to give clear and reasonable warnings of alleged exposure to Lead contained in Covered Products that Defendant allegedly placed into the stream of commerce in California.

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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 Complaint, 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 against Defendant contained in the Complaint and the Notice, 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 with respect to Covered Products.

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. Defendant expressly maintains that all of their products, including but not limited to the Covered Products subject to the Notice and the Complaint, comply with all laws including Proposition 65, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any material allegation in the Notice 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 Defendant of any fact, conclusion of law, issue of law or violation of law, or of fault, wrongdoing or liability by Defendant, their officers, directors, employees or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency or forum, except for purposes of res judicata or collateral estoppel. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the parties

1 may have in any other or future legal proceeding, except as expressly provided in this
2 Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 “Complaint” means the operative complaint in the above-captioned matter.

5 2.2 “Covered Products” means Sapporo Ichiban Noodles, manufactured, imported,
6 distributed, and/or sold in California by Defendant.

7 2.3 “Effective Date” means the date that this Consent Judgment is entered by the
8 Court.

9 2.4 “Compliance Date” means thirty (30) days after the Effective Date.

10 2.5 “Lead” means Lead and Lead compounds.

11 2.6 “Listed Chemical” Lead and Lead Compounds.

12 2.7 “Notice” means the January 10, 2022, *Proposition 65* 60-Day Notice, AG #
13 2022-00042.

14 **3. INJUNCTIVE RELIEF/REFORMULATION**

15 3.1 Defendant shall provide a Proposition 65 warning for all Covered Products
16 manufactured 30 or more days after the Effective Date that are distributed or offered for sale
17 in California and contain 0.5 micrograms or more of Lead per day, calculated using the
18 following formula: micrograms of lead per gram of product, multiplied by grams of product
19 per serving of the product. The Proposition 65 warning may be provided by any one of or
20 combination of the methods described below.

21 3.2 Any warning provided pursuant to this section may be provided either on the
22 product itself or by retail warning sign. Any warning on the Covered Product itself shall be
23 on the product label, or affixed to the packaging of, or directly on, the Covered Product, and
24 shall be placed with such conspicuousness as compared with other words, statements, designs
25 or devices as to render it likely to be read and understood by an ordinary individual under
26 customary conditions before purchase or use. The product warning shall state either:

27 [California Proposition 65] **WARNING:** Consuming this product can expose you to
28 chemicals including Lead, which are known to the State of California to cause cancer and
birth defects or other reproductive harm. For more information go to

1 www.P65Warnings.ca.gov

2 or

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

5 Language in brackets is optional.

6 If the warning is provided by retail warning sign, it shall state as follows:

7 [California Proposition 65] **WARNING:** Consuming the Sapporo Ichiban Noodles sold
8 on these shelves can expose you to chemicals including lead, which are known to the
9 State of California to cause cancer and birth defects or other reproductive harm. For more
10 information go to www.P65Warnings.ca.gov

11 3.3 Defendant may provide warnings as specified in the Proposition 65 regulations
12 in effect as of the Effective Date, or as such regulations may be modified or amended in
13 the future. Defendant may also comply with this Section 3 by complying with the
14 procedures set forth in Title 27, California Code of Regulations, section 25600.2.

15 3.4 The same warning shall be posted on any website under the exclusive control
16 of Defendant where the Covered Product is sold to consumers located in California. The
17 warning requirements of this section shall be satisfied if the forgoing warning appears
18 either: (a) on the same web page on which a Covered Product is displayed and/or
19 described by providing a clearly marked hyperlink using the word “WARNING,”; (b) on
20 the same page as the price for the Covered Product, or (c) on one or more web pages
21 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a
22 symbol consisting of a black exclamation point in a yellow or white equilateral triangle
23 may appear adjacent to or immediately following the display, description, price, or check-
24 out listing of the Covered Product, if the warning statement appears elsewhere on the
25 same web page in a manner that clearly associates it with the product to which the
26 warning applies.

27 Defendant also agrees to inform third parties of the need to provide a website warning
28 as a condition of the sale of the product if the product is sold on third-party websites.

1 3.5 Notwithstanding anything else in this Consent Judgement, Covered Products
2 that are manufactured, packaged, imported, or distributed prior to the Compliance Date
3 shall be subject to release of liability pursuant to this Consent Judgment, without regard to
4 when such products were, or are in the future, shipped, delivered, distributed or sold to
5 customers. As a result, the obligation of Releasees do not apply to the Products
6 manufactured, packaged, imported, or distributed prior to the Compliance Date.

7 **4. SETTLEMENT PAYMENT**

8 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date,
9 Defendant shall pay a total of \$30,000 in full and complete settlement of any and all claims
10 for civil penalties, damages, attorney’s fees, expert fees, investigative expenses, or any other
11 claim for costs, expenses or monetary relief of any kind for claims that were or could have
12 been asserted in the Notices or Complaint, as follows:

13 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling \$10,000 as
14 follows for alleged civil penalties pursuant to *Health & Safety Code § 25249.12*:

15 (a) Defendant will issue one check made payable to the State of California’s Office of
16 Environmental Health Hazard Assessment (“OEHHA”) in the amount of \$7,500 representing
17 75% of the total civil penalty and Defendant will issue a second check to PHSA in the
18 amount of \$2,500 representing 25% of the total civil penalty;

19 (b) Separate 1099s shall be issued for each of the above payments: Defendant will
20 issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the
21 amount of \$7,500. Defendant will also issue a 1099 to PHSA (EIN: 88-3249518) in the
22 amount of \$2,500 and deliver it to PHSA c/o Danialpour & Associates, 357 S. Robertson
23 Blvd., 2nd Floor, Suite 400, Beverly Hills, CA 90211.

24 4.1.2 **Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check
25 in the amount of \$20,000 payable to “Danialpour & Associates” as complete reimbursement
26 for any and all reasonable investigation fees and costs, attorneys’ fees, expert fees, and any
27 and all other costs and expenses incurred as a result of investigating, bringing this matter to
28 the Defendant’ attention, preparing and serving the Notice, litigating, negotiating a settlement
in the public interest, and seeking and obtaining court approval of this Consent Judgment.

1 4.2 Other than the payment to OEHHA described above, all payments referenced in
2 paragraphs 4.1.1 and 4.1.2 above, shall be delivered to: Davar Danialpour, Danialpour &
3 Associates, 357 S. Robertson Blvd., 2nd Floor, Suite 400, Beverly Hills, CA 90211. The
4 payment to OEHHA shall be delivered directly to the Office of Environmental Health Hazard
5 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California
6 95812. Defendant shall provide written confirmation to PHSA that the payment to OEHHA
7 has been made concurrently with the payment it makes to OEHHA.

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

9 5.1 This Consent Judgment is a full, final, and binding resolution between PHSA
10 and Defendant as to those matters raised in the Notice and Complaint. PHSA, on behalf of
11 itself and *in the public interest*, hereby waives and releases Defendant and their owners,
12 officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions,
13 subsidiaries, partners, affiliates, sister companies, predecessors and their successors and
14 assigns (“Defendant Releasees”), and all entities to whom Defendant directly or indirectly
15 distribute or sell Covered Products, including, but not limited to, all suppliers, downstream
16 distributors, wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative
17 members, licensees, licensors and the successors and assigns of any of them, who may use,
18 maintain, distribute or sell Covered Products (“Downstream Defendant Releasees”), of any
19 and all claims for alleged or actual violations of Proposition 65 for alleged exposures or
20 failure to warn of alleged exposures to the Listed Chemical from Covered Products
21 manufactured, imported, distributed and/or sold by Defendant up through the Compliance
22 Date. Defendant and Defendant Releasees’ compliance with this Consent Judgment shall
23 constitute compliance with Proposition 65 with respect to alleged exposures to the Listed
24 Chemical from the Covered Products imported, distributed or sold by Defendant, Defendant
25 Releasees and Downstream Defendant Releasees after the Compliance Date except this
26 release will not apply to any third party website that does not comply with the instruction to
27 provide the warning. Nothing in this Section affects PHSA’s right to commence or prosecute
28 an action under Proposition 65 against any person other than Defendant, Defendant Releasees
or Downstream Defendant Releasees.

1 5.2 PHSA on behalf of itself, its past and current agents, representatives, attorneys,
2 successors and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal action and releases all claims, including, without limitation, all
4 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
5 penalties, damages, costs, fines, losses or expenses (including, but not limited to,
6 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known
7 or unknown, fixed or contingent (collectively "Claims"), against the Defendant, Defendant
8 Releasees and Downstream Defendant Releasees arising from any actual or alleged violation
9 of Proposition 65 or any other statutory or common law claim regarding the Covered
10 Products manufactured, imported, distributed or sold by the Defendant, Defendant Releasees
11 or Downstream Defendant Releasees through the Compliance Date. In furtherance of the
12 foregoing, PHSA on behalf of itself only, hereby waives any and all rights and benefits which
13 it now has, or in the future may have, conferred upon it with respect to Claims regarding the
14 Covered Products manufactured, imported, distributed and/or sold by the Defendant,
15 Defendant Releasees or Downstream Defendant Releasees through the Compliance Date
16 arising from any actual or alleged violation of Proposition 65 or any other statutory or
17 common law by virtue of the provisions of *section 1542 of the California Civil Code*, which
18 provides as follows:

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

25 PHSA understands and acknowledges that the significance and consequence of this waiver of
26 *California Civil Code section 1542* is that even if PHSA alleges or suffers future harm arising
27 out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising
28 from any violation of Proposition 65 or any other statutory or common law regarding the
Covered Products manufactured, imported, distributed and/or sold by the Defendant,
Defendant Releasees or Downstream Defendant Releasees through the Compliance Date,
PHSA will not be able to make any claim for those damages, penalties or any other relief

1 against such releasees. Furthermore, PHSA acknowledges that it intends these consequences
2 for any such Claims arising from any violation of Proposition 65 or any other statutory or
3 common law Claim that may exist as of the date of this release but which PHSA does not
4 know exists, and which, if known, would materially affect PHSA's decision to enter into this
5 Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
6 oversight, error, negligence or any other cause.

7 **6. ENTRY OF CONSENT JUDGMENT**

8 6.1 PHSA shall file a motion seeking approval of this Consent Judgment pursuant
9 to *California Health & Safety Code § 25249.7(f)*. The Parties agree to act in good faith to
10 obtain Court approval of the Consent Judgment. Upon entry of the Consent Judgment, PHSA
11 and Defendant waive their respective rights to a hearing, trial, or appeal on the allegations in
12 the Notice and/or Complaint.

13 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
14 Judgment and any and all prior agreements between the Parties merged herein shall terminate
15 and become null and void, and the actions shall revert to the status that existed prior to the
16 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
17 thereof, or of the negotiation, documentation or other part or aspect of the Parties' settlement
18 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
19 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and
20 confer to determine whether to modify the terms of the Consent Judgment and to resubmit it
21 for approval.

22 **7. MODIFICATION OF JUDGMENT**

23 7.1 This Consent Judgment may be modified only upon written agreement of the
24 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion
25 of any Party as provided by law and upon entry of a modified Consent Judgment by the
26 Court.

27 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith
28 to meet and confer with the other Parties prior to filing a motion to modify the Consent
Judgment.

1 **8. ENFORCEMENT**

2 8.1 Any alleged violation of the terms of this Consent Judgment shall be
3 enforced exclusively hereunder by the Parties hereto. Before PHSA moves to enforce the
4 terms of this Consent Judgment against Defendant, Defendant Releasees or Downstream
5 Defendant Releasees related to the alleged Listed Chemical in the Covered Products, PHSA
6 must provide written notice to Defendant of any alleged violation, and must provide all
7 evidence supporting the alleged violation including any applicable test results, product
8 photographs and purchase receipts, subject to a reasonable confidentiality agreement if
9 requested. The Parties will thereafter meet and confer for a minimum period of 60 days to
10 allow time for the named entity or entities to present to PHSA any relevant compliance
11 information and/or corrective action taken related to the alleged violation, including if
12 applicable, the date of manufacture, import, distribution or sale of the Covered Product at
13 issue for purpose of determining the applicability of the release hereunder. If the Parties
14 cannot resolve the alleged violation, any Party may move to enforce the terms of this Consent
15 Judgment consistent with the terms hereof.

16 **8. RETENTION OF JURISDICTION**

17 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
18 terms of this Consent Judgment under *Code of Civil Procedure section 664.6*.

19 8.2 In any proceeding brought by any Party to enforce this Consent Judgment, the
20 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

21 **9. SERVICE ON THE ATTORNEY GENERAL**

22 9.1 PHSA shall serve a copy of this Consent Judgment, signed by all Parties, on
23 the California Attorney General so that the Attorney General may review this Consent
24 Judgment prior to its submittal to the Court for approval. No sooner than forty-five (45) days
25 after the Attorney General has received the aforementioned copy of this Consent Judgment,
26 PHSA may then submit it to the Court for approval.

27 **10. ENTIRE AGREEMENT**

28 10.1 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,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein, have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **11. ATTORNEY FEES**

6 11.1 Except as specifically provided in Section 4.1.2, Defendant and PHSA shall
7 bear their own attorneys' fees and costs in connection with the claims alleged in the Notice
8 and Complaint, and resolved in this Consent Judgment.

9 **12. GOVERNING LAW**

10 12.1 The validity, construction, terms and performance of this Consent Judgment
11 shall be governed by the laws of the State of California, without reference to any conflicts of
12 law provisions of California law.

13 12.2 In the event that Proposition 65 is repealed, preempted or is otherwise rendered
14 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment
15 are rendered inapplicable or are no longer required as a result of any such repeal or
16 preemption, or rendered inapplicable by reason of law generally or as to the Covered
17 Products, then Defendant may provide written notice to PHSA of any asserted change in the
18 law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
19 and to the extent that, the Covered Products are so affected. Nothing in this Consent
20 Judgment shall be interpreted to relieve Defendant from any obligation to comply with any
21 other pertinent state or federal law or regulation.

22 12.3 The Parties, including their counsel, have participated in the preparation of this
23 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties.
24 This Consent Judgment was subject to revision and modification by the Parties and has been
25 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
26 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
27 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party
28 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

1 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive
2 California Civil Code section 1654.

3 **13. EXECUTION AND COUNTERPARTS**

4 13.1 This Consent Judgment may be executed in counterparts and by means of
5 facsimile or portable document format (pdf), which taken together shall be deemed to
6 constitute one document and have the same force and effect as original signatures.

7 **14. NOTICES**

8 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class
9 Mail.

If to Plaintiff PUBLIC HEALTH AND SAFETY ADVOCACY, LLC:

10 Davar Danialpour, Esq.
11 DANIALPOUR & ASSOCIATES
12 357 S. Robertson Blvd., 2nd Floor, Suite 400
13 Beverly Hills, CA 90211

14 If to Defendant SANYO FOODS CORPORATION OF AMERICA:

15 Sanyo foods Corporation of America
16 11955 Monarch St.
17 Garden Grove, CA 92841

18 With a copy to:

19 Naoki Kawada, Esq.
20 Jasmine W. Wetherell, Esq.
21 Perkins Coie LLP
22 1888 Century Park East Suite 1700
23 Los Angeles, CA 90067-1721

24 **15. AUTHORITY TO STIPULATE**

25 15.1 Each signatory to this Consent Judgment certifies that he or she is fully
26 authorized by the Party or Parties he or she represents to enter into this Consent Judgment and
27 to execute it on behalf of the Party or Parties represented and legally to bind that Party or
28 Parties.

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AGREED TO:

Date: March 24, 2023

Roya Mohseni

By: Roya Mohseni
PUBLIC HEALTH & SAFETY
ADVOCACY, LLC

AGREED TO:

Date: March 14, 2023



By: Yoko Takahashi
SANYO FOODS CORPORATION OF
AMERICA

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT