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8 Attorneys for Plaintiff,
9 CLEAN PRODUCT ADVOCATES, LLC

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

13 CLEAN PRODUCT ADVOCATES, LLC, a
14 California Limited Liability Company,

15 Plaintiff,

16 v.

17 WISMETTAC ASIAN FOODS, INC.; and
18 DOES 1 through 100,

19 Defendants.

Case No. 23NWCV02775

20 CONSENT JUDGMENT [PROPOSED]

21 *[[Filed Concurrently with Notice of Motion*
22 *and Motion, Supporting Declaration of*
23 *[Elham Shabatian], [Proposed] Order, and*
24 *Memorandum of Points and Authorities in*
25 *Support to Approve and Enter Consent*
26 *Judgment*

27 Hon. Olivia Rosales
28 Dept. F

Reservation ID:

Date:

Time:

Complaint filed: August 31, 2023

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2
3 **1. INTRODUCTION**

4 1.1 This Consent Judgment is entered into by and between Plaintiff **CLEAN**
5 **PRODUCT ADVOCATES, LLC** ("Plaintiff" or "CPA"), acting on behalf of itself and in the
6 public interest, and Defendant **WISMETTAC ASIAN FOODS, INC.** ("Defendant"). Plaintiff
7 and Defendant are collectively referred to as "Parties."

8 **1.2 Defendant and Covered Products**

9 1.2.1 CPA alleges that Defendant employs ten or more persons. For purposes of this
10 Consent Judgment only, Defendant is deemed to be a person in the course of doing business in
11 California and subject to the provisions of the *Safe Drinking Water and Toxic Enforcement Act*
12 *of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65")*.

13 1.2.2 CPA alleges that Defendant manufactures, imports, distributes and/or sells
14 Frozen Cuttlefish Fillet (SK-Mongo) (UPC 074410905224) and Crab Shumai Dumpling (UPC
15 074410918651) in California. As set forth in Section 2.1 below, Frozen Cuttlefish Fillet and
16 Crab Shumai Dumpling products that allegedly contain cadmium are collectively referred to
17 herein as "Covered Products."

18 **1.3 Listed Chemicals**

19 1.3.1 Cadmium and cadmium compounds ("Cadmium") has been listed by the State
20 of California as chemicals known to cause cancer and/or birth defects or other reproductive
21 harm. The Maximum Allowable Dose Level ("MADL") for cadmium set by the California
22 Office of Environmental Health Hazard Assessment is 4.1 micrograms (µg) per day.

23 **1.4 Notices of Violation**

24 1.4.1 On or about June 1, 2022, CPA served a "60-Day Notice of Violation of the Safe
25 Drinking Water and Toxic Enforcement Act of 1986," AG# 2022-01119, in which it alleged
26 that the recipients, specifically including Defendant, violated *Health & Safety Code § 25249.6*
27 by failing to warn individuals in California of exposures to Cadmium contained in the Crab
28 Shumai Dumpling product sold by Defendant in California.

1.4.2 On or about June 21, 2022, CPA served a "60-Day Notice of Violation of the

1 Safe Drinking Water and Toxic Enforcement Act of 1986,” AG# 2022-01300, in which it
2 alleged that the recipients, specifically including Defendant, violated *Health & Safety Code*
3 § 25249.6 by failing to warn individuals in California of exposures to Cadmium contained in
4 Frozen Cuttlefish Fillet sold by Defendant in California.

5 1.4.3 The Notices of Violation, as described in Section 1.4.1 and Section 1.4.2, are
6 collectively referred to as the Notices.

7 1.5 Complaint

8 1.5.1 On August 31, 2023, CPA filed a Complaint for civil penalties and injunctive
9 relief (“Complaint”) in Los Angeles County Superior Court, Case No. 23NWCV02775, against
10 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition
11 65 by allegedly failing to give clear and reasonable warnings of alleged exposure to Cadmium
12 contained in Covered Products that Defendant allegedly placed into the stream of commerce in
13 California.

14 1.6 Consent to Jurisdiction

15 1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court
16 has jurisdiction over the allegations of violations contained in the Complaint, personal
17 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
18 County of Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as
19 a full settlement and resolution of the allegations against Defendant contained in the Complaint
20 and the Notices, and of all claims which were or could have been raised by any person or entity
21 based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom
22 or related thereto with respect to Covered Products.

23 1.7 No Admission

24 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The Parties
25 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
26 between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly
27 maintains that all of their products, including but not limited to the Covered Products subject
28 to the Notices 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

1 as an admission by Defendant of any material allegation in the Notices or the Complaint, or of
2 any fact, conclusion of law, issue of law or violation of law of any kind, including without
3 limitation, any admission concerning any alleged or actual violation of Proposition 65 or any
4 other statutory, regulatory, common law or equitable doctrine, including but not limited to the
5 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning"
6 as used in *Health and Safety Code section 25249.6*. Nothing in this Consent Judgment, nor
7 compliance with its terms, shall constitute or be construed as an admission by Defendant of
8 any fact, conclusion of law, issue of law or violation of law, or of fault, wrongdoing or liability
9 by Defendant, their officers, directors, employees or parent, subsidiary or affiliated
10 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
11 or litigation in any court, agency or forum, except for purposes of res judicata or collateral
12 estoppel. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any
13 right, remedy, argument or defense the parties may have in any other or future legal proceeding,
14 except as expressly provided in this Consent Judgment.

15 2. DEFINITIONS

16 2.1 "Complaint" means the operative complaint in the above-captioned matter.

17 2.2 "Covered Products" means Frozen Cuttlefish Fillet (SK-Mongo) and Crab Shumai
18 Dumpling, manufactured, imported, distributed, and/or sold in California by Defendant.

19 2.3 "Effective Date" means the date that this Consent Judgment is entered by the
20 Court.

21 2.4 "Cadmium" means cadmium and cadmium compounds.

22 2.5 "Listed Chemical" cadmium and cadmium compounds.

23 2.6 "Notices" means the June 1, 2022, *Proposition 65* 60-Day Notice, AG# 2022-
24 01119 and the June 21, 2022, *Proposition 65* 60-Day Notice, AG # 2022-01300.

25 3. INJUNCTIVE RELIEF/REFORMULATION

26 3.1 Defendant shall provide a Proposition 65 warning for all Covered Products
27 manufactured 30 or more days after the Effective Date that are distributed or offered for sale
28 in California and contain 4.1 micrograms or more of Cadmium per day, calculated using the
following formula: micrograms of cadmium per gram of product, multiplied by grams of

1 product per serving of the product. The Proposition 65 warning may be provided by any one
2 of or combination of the methods described below.

3 3.2 Any warning provided pursuant to this section may be provided either on the
4 product itself or by retail warning sign. Any warning on the Covered Product itself shall be on
5 the product label, or affixed to the packaging of, or directly on, the Covered Product, and shall
6 be placed with such conspicuousness as compared with other words, statements, designs or
7 devices as to render it likely to be read and understood by an ordinary individual under
8 customary conditions before purchase or use. The product warning shall state either:

9 **WARNING:** Consuming this product can expose you to chemicals including
10 Cadmium, which are known to the State of California to cause cancer and birth defects
11 or other reproductive harm. For more information go to www.P65Warnings.ca.gov

12 or

13 **WARNING:** Cancer and Reproductive Harm -
www.P65Warnings.ca.gov.

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

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

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

7 **4. SETTLEMENT PAYMENT**

8 **4.1 Payment and Due Date:** Within ten (10) business days of the Effective Date,
9 Defendant shall pay a total of Twenty Thousand Dollars (\$20,000) in full and complete
10 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees,
11 investigative expenses, or any other claim for costs, expenses or monetary relief of any kind
12 for claims that were or could have been asserted in the Notices or Complaint, as follows:

13 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling Two
14 Thousand Dollars (\$2,000) as follows for alleged civil penalties pursuant to *Health & Safety*
15 *Code § 25249.12*:

16 (a) Defendant will issue one check made payable to the State of California's Office of
17 Environmental Health Hazard Assessment ("OEHHA") in the amount of One Thousand and
18 Five Hundred Dollars (\$1,500) representing 75% of the total civil penalty and Defendant will
19 issue a second check to CPA in the amount of Five Hundred (\$500) representing 25% of the
20 total civil penalty;

21 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue
22 a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount
23 of \$1,500. Defendant will also issue a 1099 to CPA (EIN: 88-2690913) in the amount of \$750
24 and deliver it to CPA c/o Cliffwood Law Firm, PC, 12100 Wilshire Blvd., Suite 800, Los
25 Angeles, CA 90025.

26 **4.1.2 Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in
27 the amount of Eighteen Thousand (\$18,000) payable to "Cliffwood Law Firm, PC" as
28 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees,
expert fees, and any and all other costs and expenses incurred as a result of investigating,

1 bringing this matter to the Defendant' attention, preparing and serving the Notices, litigating,
2 negotiating a settlement in the public interest, and seeking and obtaining court approval of this
3 Consent Judgment.

4 4.2 Other than the payment to OEHHA described above, all payments referenced in
5 paragraphs 4.1.1 and 4.1.2 above, shall be delivered to: Cliffwood Law Firm, PC, 12100
6 Wilshire Blvd., Suite 800, Los Angeles, CA 90025. The payment to OEHHA shall be delivered
7 directly to the Office of Environmental Health Hazard Assessment, Attn: Mike Gyurics, 1001
8 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall provide written
9 confirmation to CPA that the payment to OEHHA has been made concurrently with the
10 payment it makes to OEHHA.

11 5. MATTERS COVERED BY THIS CONSENT JUDGMENT

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

1 Section affects CPA's right to commence or prosecute an action under Proposition 65 against
2 any person other than Defendant, Defendant Releasees or Downstream Defendant Releasees.

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

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

26 CPA understands and acknowledges that the significance and consequence of this waiver of
27 *California Civil Code section 1542* is that even if CPA alleges or suffers future harm arising
28 out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising
from any violation of Proposition 65 or any other statutory or common law regarding the
Covered Products manufactured, imported, distributed and/or sold by the Defendant,
Defendant Releasees or Downstream Defendant Releasees through the Effective Date, CPA

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

8 **6. ENTRY OF CONSENT JUDGMENT**

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

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

23 **7. MODIFICATION OF JUDGMENT**

24 7.1 This Consent Judgment may be modified only upon written agreement of the
25 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion
26 of any Party as provided by law and upon entry of a modified Consent Judgment by the 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 enforced
3 exclusively hereunder by the Parties hereto. Before CPA moves to enforce the terms of this
4 Consent Judgment against Defendant, Defendant Releasees or Downstream Defendant
5 Releasees related to the alleged Listed Chemical in the Covered Products, CPA must provide
6 written notice to Defendant of any alleged violation, and must provide all evidence supporting
7 the alleged violation including any applicable test results, product photographs and purchase
8 receipts, subject to a reasonable confidentiality agreement if requested. The Parties will
9 thereafter meet and confer for a minimum period of 60 days to allow time for the named entity
10 or entities to present to CPA any relevant compliance information and/or corrective action
11 taken related to the alleged violation, including if applicable, the date of manufacture, import,
12 distribution or sale of the Covered Product at issue for purpose of determining the applicability
13 of the release hereunder. If the Parties cannot resolve the alleged violation, any Party may
14 move to enforce the terms of this Consent Judgment consistent with the terms hereof.

15 **9. RETENTION OF JURISDICTION**

16 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
17 terms of this Consent Judgment under *Code of Civil Procedure section 664.6*.

18 9.2 In any proceeding brought by any Party to enforce this Consent Judgment, the
19 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

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

21 10.1 CPA shall serve a copy of this Consent Judgment, signed by all Parties, on the
22 California Attorney General so that the Attorney General may review this Consent Judgment
23 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
24 Attorney General has received the aforementioned copy of this Consent Judgment, CPA may
25 then submit it to the Court for approval.

26 **11. ENTIRE AGREEMENT**

27 11.1 This Consent Judgment contains the sole and entire agreement and understanding
28 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

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

4 **12. ATTORNEY FEES**

5 12.1 Except as specifically provided in Section 4.1.2, Defendant and CPA shall bear
6 their own attorneys' fees and costs in connection with the claims alleged in the Notices and
7 Complaint, and resolved in this Consent Judgment.

8 **13. GOVERNING LAW**

9 13.1 The validity, construction, terms and performance of this Consent Judgment
10 shall be governed by the laws of the State of California, without reference to any conflicts of
11 law provisions of California law.

12 13.2 In the event that Proposition 65 is repealed, preempted or is otherwise rendered
13 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment
14 are rendered inapplicable or are no longer required as a result of any such repeal or preemption,
15 or rendered inapplicable by reason of law generally or as to the Covered Products, then
16 Defendant may provide written notice to CPA of any asserted change in the law, and shall have
17 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
18 the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted
19 to relieve Defendant from any obligation to comply with any other pertinent state or federal
20 law or regulation.

21 13.3 The Parties, including their counsel, have participated in the preparation of this
22 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties.
23 This Consent Judgment was subject to revision and modification by the Parties and has been
24 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
25 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
26 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
27 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
28 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 section

1 1654.

2 **14. EXECUTION AND COUNTERPARTS**

3 14.1 This Consent Judgment may be executed in counterparts and by means of
4 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
5 one document and have the same force and effect as original signatures.

6 **15. NOTICES**

7 15.1 Any notices under this Consent Judgment shall be by delivery of First-Class
8 Mail.

9 If to Plaintiff CLEAN PRODUCT ADVOCATES, LLC:

10 Elham (Ellie) Shabatian, Esq.
11 CLIFFWOOD LAW FIRM, PC
12 12100 Wilshire Blvd., Suite 800
13 Los Angeles, CA 90025

14 If to Defendant WISMETTAC ASIAN FOODS, INC.:

15 Wismettac Asian Foods, Inc.
16 13409 Orden Drive
17 Santa Fe Springs, CA 90670

18 With a copy to:

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

24 **16. AUTHORITY TO STIPULATE**

25 16.1 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:

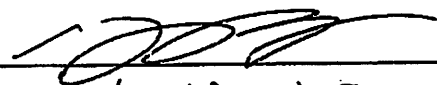
Date: 05/08, 2024



By: Deki Yangzom
CLEAN PRODUCT ADVOCATES, LLC

AGREED TO:

Date: 1/31, 2024



By: Hye 'Ameshi' Ta
WISMETTAC ASIAN FOODS, INC.

Text

IT IS SO ORDERED.

Date: 05/08

JUDGE OF THE SUPERIOR COURT