

19

Lexington Law Group
 Eric S. Somers, SBW 139050
 503 Divisadero St.
 San Francisco, CA 94117
 Tel: 415-913-7800
 Fax: 415-759-4112
 esomers@lexlawgroup.com
 Attorneys for Plaintiff.

FILED
 San Francisco County Superior Court

MAR 05 2013

CLERK OF THE COURT
 BY: [Signature]
 Deputy Clerk

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH,)
 Plaintiff,)
 vs.)
 SHENG KEE OF CALIFORNIA, INC.; and)
 DOES 1 through 200, inclusive,)
 Defendants.)

Case No. CGC-12-527269

~~PROPOSED~~ CONSENT JUDGMENT AS
 TO SHENG KEE OF CALIFORNIA, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by the Center For Environmental Health, a California non-profit corporation ("CEH"), and Sheng Kee of California, Inc. ("Defendant"), to settle certain claims asserted by CEH against Defendant as set forth in the operative complaint in the matter entitled *Center for Environmental Health v. Sheng Kee of California, Inc., et al.*, San Francisco County Superior Court Case No. CGC-12-527269 (the "Action").

1.2 On July 11, 2012, CEH provided a "Notice of Violation of Proposition 65" to the California Attorney General, the District Attorneys of every county in California, the City Attorneys of every California city with a population greater than 750,000, and to Defendant

DOCUMENT PREPARED
 ON RECYCLED PAPER

1 regarding the presence of lead in plastic shopping bags ("Covered Products").

2 1.3 On or about December 19, 2012, CEH filed the complaint against Defendant in
3 the Action.

4 1.4 For purposes of this Consent Judgment only, CEH and Defendant (the "Parties")
5 stipulate that this Court has jurisdiction over the allegations of violations contained in the
6 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
7 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
8 Consent Judgment as a full and final resolution of all claims which were or could have been
9 raised in the Complaint based on the facts alleged therein with respect to Covered Products
10 manufactured, distributed, and/or sold by Defendant.

11 1.5 CEH and Defendant enter into this Consent Judgment as a full and final
12 settlement of all claims that were raised in the Complaint, or which could have been raised in the
13 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
14 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
15 facts or conclusions of law including, but not limited to, any facts or conclusions of law
16 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law
17 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
18 admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
19 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
20 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the factual and
21 legal allegations in CEH's Complaint and expressly denies any wrong doing whatsoever.

22 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument
23 or defense the Parties may have in this or any other pending or future legal proceedings. This
24 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
25 solely for purposes of settling, compromising, and resolving issues disputed in this action.

26 **2. INJUNCTIVE RELIEF**

27 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
28 Judgment (the "Effective Date"), Defendant shall not purchase, manufacture, import, sell or

DOCUMENT PREPARED
ON RECYCLED PAPER

CEC-12-527269

1 supply to an unaffiliated third party any Covered Product in California or anywhere else unless
2 such Covered Product complies with the following Lead Limits:

3 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
4 § 1303.2(b); no more than 0.009 percent lead by weight (90 parts per million ("ppm")).

5 2.1.2 All other materials: no more than .01 percent lead by weight (100 ppm).

6 **3. ENFORCEMENT**

7 **3.1 Enforcement Procedures.** Prior to bringing any motion or order to show cause
8 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
9 violating party thirty (30) days advanced written notice of the alleged violation. The Parties shall
10 meet and confer during such thirty (30) day period in an effort to try to reach agreement on an
11 appropriate cure for the alleged violation. After such thirty (30) day period, the Party seeking to
12 enforce may, by new action, motion or order to show cause before the Superior Court of San
13 Francisco, seek to enforce the terms and conditions contained in this Consent Judgment.

14 **4. PAYMENTS**

15 4.1 **Payments From Defendant.** Within five (5) business days of the entry of this
16 Consent Judgment, Defendant shall pay the total sum of \$15,000 as a settlement payment.

17 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be paid
18 in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
19 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
20 as follows:

21 4.2.1 Defendant shall pay the sum of \$1,930 as a penalty pursuant to Health &
22 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
23 Safety Code § 25249.12. The penalty check shall be made payable to the Center For
24 Environmental Health.

25 4.2.2 Defendant shall pay the sum of \$2,900 as payment to CEH in lieu of
26 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations,
27 Title 11, § 3202(b). CEH will use such funds to continue its work educating and protecting
28 people from exposures to toxic chemicals, including heavy metals. CEH may also use a portion

1 of such funds to monitor compliance with the reformulation requirements of this and other
 2 similar Consent Judgments and to purchase and test Covered Products to confirm compliance
 3 with such reformulation requirements. In addition, as part of its Community Environmental
 4 Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots
 5 environmental justice groups working to educate and protect people from exposures to toxic
 6 chemicals. The method of selection of such groups can be found at the CEH web site at
 7 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
 8 Center for Environmental Health.

9 4.2.3 Defendant shall pay the sum of \$10,170 as reimbursement of reasonable
 10 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
 11 payable to the Lexington Law Group.

12 **5. MODIFICATION AND DISPUTE RESOLUTION**

13 5.1 **Modification.** This Consent Judgment may be modified from time to time by
 14 express written agreement of the Parties, with the approval of the Court, or by an order of this
 15 Court upon motion and in accordance with law.

16 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment
 17 shall attempt in good faith to meet and confer with the other Party prior to filing a motion to
 18 modify the Consent Judgment.

19 **6. CLAIMS COVERED AND RELEASE**

20 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
 21 acting in the public interest and Defendant and Defendant's parents, shareholders, divisions,
 22 subdivisions, subsidiaries, partners, sister companies and their successors and assigns
 23 ("Defendant Releasees"), and all to whom they distribute or sell Covered Products including, but
 24 not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members,
 25 and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 up
 26 through the Effective Date that has been or could have been asserted in the public interest against
 27 Defendant, Defendant Releasees, and Downstream Defendant Releasees, based on the failure to
 28 warn about exposure to lead arising in connection with Covered Products manufactured,

DOCUMENT PREPARED
 ON RECYCLED PAPER

CGC-12-527269

1 distributed or sold by Defendant prior to the Effective Date as set forth in the "Notice of
2 Violation."

3 6.2 CEH, for itself, releases, waives, and forever discharges any and all claims against
4 Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
5 violation of Proposition 65 or any other statutory or common law claims that have been or could
6 have been asserted in the public interest based on failure to warn about exposure to lead arising
7 in connection with Covered Products manufactured, distributed or sold by Defendant prior to the
8 Effective Date.

9 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
10 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
11 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
12 failure to warn about lead in Covered Products manufactured, distributed or sold by Defendant
13 after the Effective Date.

14 7. PROVISION OF NOTICE

15 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
16 notice shall be sent by first class and electronic mail as follows:

17 7.1.1 **Notices to Defendant.** The persons for Defendant to receive Notices
18 pursuant to this Consent Judgment shall be:

19 Gayle Chan
20 Attorney at Law
21 233 Sansome Street
22 Suite 500
San Francisco, CA 94104
gaylechan88@yahoo.com

23 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
24 this Consent Judgment shall be:

25 Howard Hirsch
26 Lexington Law Group
27 503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

1 7.2 Any Party may modify the person and address to whom the notice is to be sent by
2 sending the other Party notice by first class and electronic mail.

3 **8. COURT APPROVAL**

4 8.1 This Consent Judgment shall become effective on the Effective Date, provided
5 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
6 Defendant shall support approval of such Motion.

7 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
8 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
9 purpose.

10 **9. GOVERNING LAW AND CONSTRUCTION**

11 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California.

13 **10. ENTIRE AGREEMENT**

14 10.1 This Consent Judgment contains the sole and entire agreement and understanding
15 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
17 and therein. There are no warranties, representations, or other agreements between the Parties
18 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
19 other than those specifically referred to in this Consent Judgment have been made by any Party
20 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
21 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
22 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
23 Parties hereto only to the extent that they are expressly incorporated herein. No
24 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
25 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
26 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
27 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

28

MANAGEMENT & RECYCLING
DOCUMENT PREPARED
ON RECYCLED PAPER
ON RECYCLED PAPER

CGC-12-52726A

11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

12.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

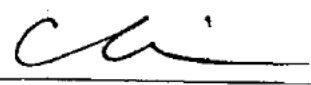
13. NO EFFECT ON OTHER SETTLEMENTS

13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

14. EXECUTION IN COUNTERPARTS

14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.


IT IS SO STIPULATED:

Dated: <u>12/19</u> , 2012	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p><u>CHARLIE PIZARRO</u> Printed Name</p> <hr/> <p><u>ASSOCIATE DIRECTOR</u> Title</p>
----------------------------	---

DOCUMENT PREPARED ON RECYCLED PAPER

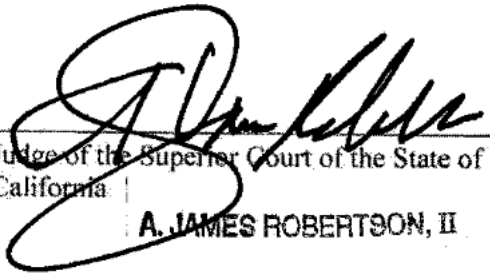
CGC-12-52726A

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

Dated: <u>December 18</u> 2012	<p>SHENG KEE OF CALIFORNIA, INC.</p>  <p>SIAU LIANG KAO Printed Name</p> <p>CEO Title</p>
--------------------------------	---

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: March 5, 2013



Judge of the Superior Court of the State of
California

A. JAMES ROBERTSON, II

DOCUMENT PREPARED
ON RECYCLED PAPER

CGC-12-527269