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FILED
Superior Court of California
County of Los Angeles

MAR 15 2021

Sherri R. Carter, Executive Officer/Clerk
By Patricia Salcido, Deputy
Patricia Salcido

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

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

13 Plaintiff,

14 v.

15 SUPER CENTER CONCEPTS, INC., a
16 California Corporation,
17 CABRERA DISTRIBUTION, INC., a
18 California Corporation,
19 and DOES 1-10,

20 Defendants.
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CASE NO. 19STCV24224

[Assigned for All Purposes to the Hon.
Robert S. Draper, Dept. 78]

CONSENT JUDGMENT [~~PROPOSED~~]

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: July 11, 2019
Trial Date: October 27, 2020

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
3 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
4 of the public, and defendants, CABRERA DISTRIBUTION, INC. and SUPER CENTER
5 CONCEPTS, INC. (collectively referred to as "Defendants"), with each a Party to the action and
6 collectively referred to as "Parties."

7 **1.2 Defendants and Products**

8 1.2.1 Defendant CABRERA DISTRIBUTION, INC. (referred to as "Cabrera")
9 is a California corporation. Cabrera manufactures, causes to be manufactured, distributes, and
10 sells Turmeric Dietary Supplements, identified as: "LAURA'S;" "CURCUMA TURMERIC;"
11 "INGREDIENTES NATURALES;" "NATURAL INGREDIENTS;" "SUPLEMENTO
12 ALIMENTICIO;" "DIETARY SUPPLEMENT;" "CONT. NET. 227.2 G / NET WT. 8 OZ;"
13 "BEST BY 9 17 20;" "DISTRIBUTED BY: CABRERA DISTRIBUTION, INC.;" "0 19962
14 33670 6."

15 1.2.2 Defendant SUPER CENTER CONCEPTS, INC. (referred to as "SCC") is
16 a California corporation, which employs ten or more persons. SCC distributed, and sold
17 Turmeric Dietary Supplements, identified as: "LAURA'S;" "CURCUMA TURMERIC;"
18 "INGREDIENTES NATURALES;" "NATURAL INGREDIENTS;" "SUPLEMENTO
19 ALIMENTICIO;" "DIETARY SUPPLEMENT;" "CONT. NET. 227.2 G / NET WT. 8 OZ;"
20 "BEST BY 9 17 20;" "DISTRIBUTED BY: CABRERA DISTRIBUTION, INC.;" "0 19962
21 33670 6."

22 1.2.3 For purposes of this Consent Judgment only, Defendants are deemed
23 persons in the course of doing business in California and are subject to the provisions of the
24 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
25 25249.6 et seq. ("Proposition 65").

26 **1.3 Chemicals of Concern**

1 1.3.1 Lead and Lead Compounds (hereinafter "Lead") are known to the State of
2 California to cause cancer and/or birth defects or other reproductive harm.

3 **1.4 Notices of Violation**

4 1.4.1 On or about December 12, 2018, CAG served Defendants and various
5 public enforcement agencies with a document entitled "60-Day Notice of Violation" ("AG2018-
6 02247 Notice") that provided the recipients with notice of alleged violations of Health & Safety
7 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
8 Turmeric Dietary Supplements sold and/or distributed by Cabrera and sold by retailer SCC. No
9 other public enforcer has commenced or diligently prosecuted the allegations set forth in the
10 AG2018-02247 Notice.

11 **1.5 Complaint**

12 1.5.1 On July 11, 2019, CAG filed a complaint for civil penalties and injunctive
13 relief ("Complaint") in Los Angeles Superior Court, Case No. 19STCV24224 against
14 Defendants. The Complaint alleges, among other things, that Defendants violated Proposition 65
15 by failing to give clear and reasonable warnings of exposure to Lead from Turmeric Dietary
16 Supplements.

17 **1.6 Consent to Jurisdiction**

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

25 **1.7 No Admission**

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

15 **2. DEFINITIONS**

16 2.1 “Covered Products” means Turmeric Dietary Supplements sold or supplied by
17 Defendants.

18 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
19 Court.

20 2.3 “Lead” means Lead and Lead Compounds.

21 2.4 “Notices” means the AG2018-02247 Notice sent by Plaintiff on or about
22 December 12, 2018.

23 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
24 **WARNINGS.**

25 3.1 After the Effective Date, Cabrera shall not sell in California, offer for sale in
26 California, or ship for sale in California any Covered Products unless the level of Lead does not
27 exceed 15 parts per billion (“ppb”).
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1 3.2 For any Covered Products with Lead levels that exceed 15 ppb sold in California
2 after the Effective Date, Cabrera must provide a Proposition 65 compliant warning for the
3 Covered Products as set forth below. Any warning provided pursuant to this section shall be
4 affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with
5 such conspicuousness as compared with other words, statements, designs, or devices as to render
6 it likely to be read and understood by an ordinary individual under customary conditions before
7 purchase or use. A symbol consisting of a black exclamation point in a yellow equilateral
8 triangle with a bold black outline shall precede the text of the warning. The symbol shall be
9 placed to the left of the text of the warning, in a size no smaller than the height of the word
10 "WARNING". The Parties agree that the following warning language shall constitute
11 compliance with Proposition 65 with respect to the alleged Lead in the Covered Products
12 distributed and/or sold by Defendants after the Effective Date:

13 △ **WARNING:** Consuming this product can expose you to Lead, a chemical
14 known to the State of California to cause cancer and birth defects or other
15 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

16 3.3 For any Covered Products still existing in the Defendants' inventory as of the
17 Effective Date, to the extent those Covered Products are sold and/or distributed for sale in
18 California as per Section 9.1 of this Consent Judgment, Cabrera shall place a Proposition 65
19 compliant warning on them, unless the Covered Products does not exceed a Lead level of 15
20 ppb. Any warning provided pursuant to this section shall comply with the warning requirements
21 under Section 3.2 above.

22 4. **SETTLEMENT PAYMENT**

23 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Cabrera
24 shall pay a total of one hundred and sixty thousand dollars and zero cents (\$160,000.00) in full
25 and complete settlement of all monetary claims by CAG related to the Notices, as follows:
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1 4.1.1 **Civil Penalty:** Cabrera shall issue separate checks totaling twenty-two
2 thousand eight hundred and sixty-three dollars (\$22,863.00) as penalties pursuant to Health &
3 Safety Code § 25249.12:

4 (a) Cabrera will issue a check made payable to the State of California's
5 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of seventeen
6 thousand one hundred and forty-seven dollars and twenty-five cents (\$17,147.25) representing
7 75% of the total penalty and Cabrera will issue a separate check to CAG in the amount of five
8 thousand seven hundred and fifteen dollars and seventy-five cents (\$5,715.75) representing 25%
9 of the total penalty; and

10 (b) Separate 1099s shall be issued for each of the above payments:
11 Cabrera will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
12 0284486). Cabrera will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
13 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

14 4.1.2 **Additional Settlement Payments:** Cabrera shall make a separate
15 payment, in the amount of seventeen thousand one hundred and thirty-seven dollars (\$17,137.00)
16 as an additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health &
17 Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Cabrera will
18 issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
19 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
20 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating
21 exposures through various mediums, including but not limited to consumer product,
22 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
23 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
24 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but
25 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
26 investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals by
27 notifying those persons and/or entities believed to be responsible for such exposures and
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1 attempting to persuade those persons and/or entities to reformulate their products or the source of
2 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including
3 but not limited to costs of documentation and tracking of products investigated, storage of
4 products, website enhancement and maintenance, computer and software maintenance,
5 investigative equipment, CAG's member's time for work done on investigations, office supplies,
6 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
7 provide to the Attorney General copies of documentation demonstrating how the above funds
8 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
9 additional settlement payment.

10 4.1.3 **Reimbursement of Attorneys Fees and Costs:** Cabrera shall pay one
11 hundred and twenty thousand dollars (\$120,000.00) to "Yeroushalmi & Yeroushalmi" as
12 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
13 incurred as a result of investigating, bringing this matter to Defendants' attention, litigating, and
14 negotiating a settlement in the public interest.

15 4.2 Other than the payment to OEHHA described above, all payments referenced in
16 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
17 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
18 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
19 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
20 with payment to OEHHA, Cabrera shall provide CAG with written confirmation that the
21 payment to OEHHA was delivered.

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

24 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
25 behalf of itself and in the public interest and Defendants, of any alleged violation of Proposition
26 65 that was or could have been asserted by CAG against Defendants for failure to provide
27 Proposition 65 warnings of exposure to Lead from the Covered Products as set forth in the
28 Notices, and fully resolves all claims that have been or could have been asserted against

1 Defendants in this action up to the Effective Date for failure to provide Proposition 65 warnings
2 for the Covered Products regarding Lead. CAG, on behalf of itself and in the public interest,
3 hereby discharges Cabrera and its officers, directors, insurers, shareholders, members, managers,
4 employees, agents, parent companies, predecessors, successors, assigns, subsidiaries, divisions,
5 affiliates, franchisees, licensors, licensees, customers, distributors, wholesalers, retailers,
6 including but not limited to Super Center Concepts, Inc. (d/b/a Superior Grocers), and all
7 downstream entities in the distribution chain of the Covered Products, and the predecessors,
8 successors and assigns of any of them, and all of their respective officers, directors, insurers,
9 shareholders, members, managers, employees, agents, and the suppliers of the Covered Products
10 only as to Covered Products sold by Cabrera (collectively, "Released Parties"), from all claims
11 up through the Effective Date for violations of Proposition 65 based on exposure to Lead from
12 the Covered Products. Compliance with the terms of this Consent Judgment shall be deemed to
13 constitute compliance by the Released Parties with Proposition 65 regarding alleged exposures to
14 Lead from the Covered Products. Nothing in this Section affects CAG's right to commence or
15 prosecute an action under Proposition 65 against any person other than Defendants or Released
16 Parties.

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

1 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
2 law regarding the failure to warn about exposure to Lead from the Covered Products by virtue of
3 the provisions of section 1542 of the California Civil Code, which provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
9 DEBTOR OR RELEASED PARTY.

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

23 **6. ENTRY OF CONSENT JUDGMENT**

24 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
25 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
26 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

27 6.2 The Parties shall make all reasonable efforts possible to have the Consent
28 Judgment approved by the Court.

1 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
2 Judgment and any and all prior agreements between the Parties merged herein shall terminate
3 and become null and void, and the actions shall revert to the status that existed prior to the
4 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
5 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
6 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
7 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
8 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **7. MODIFICATION OF JUDGMENT**

10 7.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
12 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

13 7.2 Any party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other party prior to filing a motion to modify the Consent Judgment.

15 **8. RETENTION OF JURISDICTION**

16 8.1 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 8.2 In any proceeding brought by either party to enforce this Consent Judgment, the
19 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

20 **9. DUTIES LIMITED TO CALIFORNIA**

21 9.1 This Consent Judgment shall have no effect on Covered Products sold by
22 Defendants outside the State of California.

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

24 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
25 California Attorney General so that the Attorney General may review this Consent Judgment
26 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
27 has received the aforementioned copy of this Consent Judgment, and in the absence of any
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1 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
2 approve this Consent Judgment.

3 **11. ATTORNEY FEES**

4 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each party shall bear its
5 own costs and attorney fees in connection with this action.

6 **12. GOVERNING LAW**

7 12.1 The validity, construction and performance of this Consent Judgment shall be
8 governed by the laws of the State of California, without reference to any conflicts of law
9 provisions of California law.

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

19 12.3 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
23 ambiguity existing in this Consent Judgment shall not be interpreted against any party as a result
24 of the manner of the preparation of this Consent Judgment. Each party to this Consent Judgment
25 agrees that any statute or rule of construction providing that ambiguities are to be resolved
26 against the drafting party should not be employed in the interpretation of this Consent Judgment
27 and, in this regard, the Parties hereby waive California Civil Code Section 1654.
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1 **13. EXECUTION AND COUNTERPARTS**

2 13.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document and have the same force and effect as original signatures.

5 **14. NOTICES**

6 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

7
8 If to CAG:

9 Reuben Yeroushalmi
10 YEROUSHALMI & YEROUSHALMI
11 9100 Wilshire Boulevard, Suite 240W
12 Beverly Hills, CA 90212
13 (310) 623-1926

14 If to Defendant Cabrera Distribution, Inc.:

15 Jose Cabrera
16 Cabrera Distribution, Inc.
17 5680 Ayala Ave.
18 Irwindale, CA 91706

19 With copy to:
20 Gilliam F. Stewart
21 CMBG3 LAW, LLC
22 100 Spectrum Center Drive, Suite 820
23 Irvine, CA 92618
24 (415) 957-2322

25 If to Defendant Super Center Concepts, Inc.:

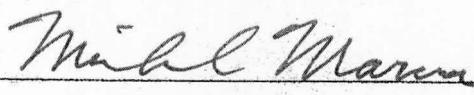

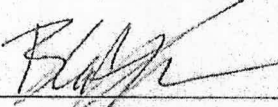
26 Super Center Concepts, Inc.
27 Agent for Service of Process
28 CSC – Lawyers Incorporating Service
29 2710 Gateway Oaks Drive, Suite 150N
30 Sacramento, CA 95833

31 With copy to:
32 Gilliam F. Stewart
33 CMBG3 LAW, LLC
34 100 Spectrum Center Drive, Suite 820
35 Irvine, CA 92618

1 (415) 957-2322

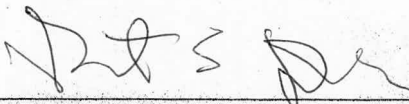
2 **15. AUTHORITY TO STIPULATE**

3 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
4 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
5 of the party represented and legally to bind that party.
6

AGREED TO:	AGREED TO:
Date: <u>May 8</u> , 2020	Date: <u>MAY 7</u> , 2020
	
Name: <u>Michael Marcus</u>	Name: <u>Laura Arila</u>
Title: <u>Director</u>	Title: <u>Secretary</u>
CONSUMER ADVOCACY GROUP, INC.	CABRERA DISTRIBUTION, INC.
AGREED TO:	
Date: <u>May 5</u> , 2020	
	
Name: <u>Blake Larson</u>	
Title: <u>CFO</u>	
SUPER CENTER CONCEPTS, INC.	

22 **IT IS SO ORDERED.**

23 Date: 3/15/21

24 
25 Hon. Robert S. Draper
26 JUDGE OF THE SUPERIOR COURT
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