

1 Reuben Yeroushalmi (SBN 193981)  
 2 Shannon E. Royster (SBN 314126)  
**YEROUSHALMI & YEROUSHALMI**  
 3 An Association of Independent Law Corporations  
 9100 Wilshire Boulevard, Suite 240W  
 4 Beverly Hills, California 90212  
 Telephone: 310.623.1926  
 5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,  
 7 Consumer Advocacy Group, Inc.

**FILED**  
 Superior Court of California  
 County of Los Angeles  
**05/25/2022**

Sherri R. Carter, Executive Officer / Clerk of Court  
 By: C. Guerrero Deputy

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

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

12 Plaintiff,

13 v.

14 CALI FOODS MARKET, INC. dba CALI  
 15 MART, a California Corporation, *et al.*,

16 Defendants.

CASE NO. 19STCV37537

[Assigned for All Purposed to the Hon.  
 Michelle Williams Court, Dept. 74]

**CONSENT JUDGMENT [PROPOSED]**

Health & Safety Code § 25249.5 *et seq.*

17 **1. INTRODUCTION**

18 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER  
 19 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest  
 20 of the public, and defendant, KIM SENG COMPANY, DBA IHA BEVERAGE (hereinafter  
 21 referred to as "Defendant"), with each a Party to the action and collectively referred to as  
 22 "Parties."  
 23

24 **1.2 Defendant and Products**

25 1.2.1 CAG alleges that Defendant is a California corporation which employs ten  
 26 or more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in  
 27 the course of doing business in California and are subject to the provisions of the Safe Drinking  
 28

1 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
2 (“Proposition 65”).

3 1.2.2 CAG alleges that Defendant distributes and sells **Dried Seaweed**  
4 including but not limited to and collectively referred to as “Covered Products”:

- 5 a. “Heng Lung Brand;” “DRIED SEAWEED SLICE;” “NET WT: 7 OZ  
6 (200g);” “DISTRIBUTOR: IHA BEVERAGE COMMERCE, CA 90040;”  
7 “PRODUCT OF CHINA;” “6 10232 00673 4” (DRIED SEAWEED  
8 SLICE”). Dried Seaweed Slice contains Lead, Cadmium and Arsenic.  
9 b. “Double Parrot; Dried Seaweed; UPC 610232007397; Product of  
10 China; Net WT: 1.40oz (40g)” (“DRIED SEAWEED”).  
11 c. “KOTASHIMA;” “KOTASHIMA BRAND;” “DRIED SEAWEED;”  
12 “NET WT: 4oz(113g);” “DISTRIBUTOR: KOTASHIMA  
13 INTERNATIONAL COMMERCE, CA 90040;” “PRODUCT OF  
14 CHINA;” “6 10232 02339 7” (“DRIED SEAWEED IV”).  
15 d. “DRIED SEAWEED;” “NET WT 2oz (56g);” “DISTRIBUTOR: IHA  
16 BEVERAGE COMMERCE, CA 90040;” “PRODUCT OF CHINA;” “6  
17 10232 022352;” (“DRIED SEAWEED V”).  
18 e. “DOUBLE PARROT;” “DRIED SEAWEED STRIP;” “NET WT: 3.5 oz  
19 (100 g);” “PRODUCT OF CHINA;” “6 10232 02338 0;”  
20 “DISTRIBUTOR: IHA BEVERAGE COMMERCE, CA 90040;” (“DRIED  
21 SEAWEED VI”).

22 This Consent Judgment includes the Covered Products manufactured through the  
23 date of this Consent Judgment and those chemicals in the Covered Products.

24 1.3 **Listed Chemicals**

25 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of  
26 California to cause cancer and/or birth defects or other reproductive harm.

1 1.3.2 Cadmium and Cadmium Compounds (hereinafter "Cadmium") are known  
2 to the State of California to cause cancer and/or birth defects or other reproductive harm.

3 1.3.3 Inorganic Arsenic Compounds and Inorganic Arsenic Oxides are known to  
4 the State of California to cause cancer and/or birth defects or other reproductive harm.

5 **1.4 Notices of Violation -- Listed by Product**

6 **7 oz. Seaweed**

7 1.4.1 On or about July 2, 2019, CAG served Defendant and various public  
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01265)  
9 (hereinafter "Notice 1") that provided the Defendant with notice of alleged violations of Health  
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium  
11 and Lead contained in Dried Seaweed specifically Dried Seaweed Slice ("Seaweeds") (7 oz.)  
12 sold and/or distributed by Defendant. No other public enforcer has commenced or diligently  
13 prosecuted the allegations set forth in Notice 1. The Parties agree that Notice 1 is part of this  
14 settlement and Consent Judgment.

15 1.4.2 On or about December 9, 2019, CAG served Defendant and various public  
16 enforcement agencies with second notice, another document entitled "60-Day Notice of  
17 Violation" (AG# 2019-02273) (hereinafter "Notice 2") that provided the Defendant with notice  
18 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
19 California of exposures to Arsenic and Lead contained in Dried Seaweed specifically Dried  
20 Seaweed Slice ("Seaweeds") (7 oz.) sold and/or distributed by Defendant. No other public  
21 enforcer has commenced or diligently prosecuted the allegations set forth in Notice 2. While  
22 there was already a pending lawsuit, this notice was sent adding Arsenic. The Parties agree that  
23 Notice 2 is part of this settlement and Consent Judgment.

24 1.4.3 On or about December 16, 2019, CAG served Defendant and various public  
25 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-02355)  
26 (hereinafter "Notice 3") that provided the Defendant with notice of alleged violations of Health  
27

1 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
2 Lead Compounds ("Lead") and Inorganic Arsenic Compounds ("Arsenic") contained in Dried  
3 Seaweeds specifically Dried Seaweed Slice ("Seaweeds") (7 oz.) sold and/or distributed by  
4 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set  
5 forth in Notice 3. This notice is duplicative of the December 9, 2019 Notice. The Parties agree  
6 that Notice 3 is part of this settlement and Consent Judgment.

7 1.4.4 On or about March 10, 2020, CAG served Defendant and various public  
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00621)  
9 (hereinafter "Notice 4") that provided the Defendant with notice of alleged violations of Health  
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
11 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides  
12 ("Arsenic") contained in Dried Seaweeds ("Seaweeds") (7 oz.) sold and/or distributed by  
13 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set  
14 forth in Notice 4. The Parties agree that Notice 4 is part of this settlement and Consent  
15 Judgment.

16 1.4 oz. Seaweed

17 1.4.5 On or about July 2, 2019, CAG served Defendant and various public enforcement  
18 agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01269) (hereinafter  
19 "Notice 5") that provided the Defendant with notice of alleged violations of Health & Safety  
20 Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium and Lead  
21 contained in Dried Seaweed specifically Dried Seaweed (1.4 oz.) sold and/or distributed by  
22 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set  
23 forth in Notice 5. The Parties agree that Notice 5 is part of this settlement and Consent  
24 Judgment.

25 1.4.6 On or about December 4, 2019, CAG served Defendant and various public  
26 enforcement agencies with a second notice, another document entitled "60-Day Notice of  
27  
28

1 Violation" (AG# 2019-02251) (hereinafter "Notice 6") that provided the Defendant with notice  
2 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
3 California of exposures to Cadmium and Lead and adding Arsenic contained in Dried Seaweed  
4 specifically Dried Seaweeds ("Seaweeds") (1.4 oz.) sold and/or distributed by Defendant. No  
5 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
6 6. When this Notice was received, which alleged Arsenic, this Lawsuit was already pending as  
7 identified in section 1.5.1. The Parties agree that Notice 6 is part of this settlement and Consent  
8 Judgment.

9 1.4.7 On or about March 13, 2020, CAG served Defendant and various public  
10 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00718)  
11 (hereinafter "Notice 7") that provided the Defendant with notice of alleged violations of Health  
12 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
13 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic  
14 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,  
15 specifically Dried Seaweed ("Seaweed") (1.4oz.) sold and/or distributed by Defendant. No  
16 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
17 7. This notice was issued to Green Farm Market in addition to Kim Seng. The Parties agree that  
18 Notice 7 is part of this settlement and Consent Judgment.

19 1.4.8 On or about March 13, 2020, CAG served Defendant and various public  
20 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00724  
21 (hereinafter "Notice 8") that provided the Defendant with notice of alleged violations of Health  
22 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead, and  
23 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic  
24 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,  
25 specifically Dried Seaweeds ("Seaweeds") (1.4oz.) sold and/or distributed by Defendant. No  
26 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
27

1 8. This notice was issued on the same date as Notice 7 to TS Emporium and Tak Shing Hong  
2 Inc., in addition to Kim Seng ("Notice 8"). The Parties agree that Notice 8 is part of this  
3 settlement and Consent Judgment.

4 **2 oz. Seaweed**

5 1.4.9 On or about September 25, 2019 CAG served Defendant and various public  
6 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01838)  
7 hereinafter "Notice 9") that provided the Defendant with notice of alleged violations of Health &  
8 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium and  
9 Lead contained in Seaweed specifically Dried Seaweed ("Seaweeds") (2oz.) sold and/or  
10 distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the  
11 allegations set forth in Notice 9. Kim Seng received two duplicate Notices for this date. The  
12 Parties agree that Notice 9 is part of this settlement and Consent Judgment.

13 1.4.10 On or about December 4, 2019 CAG served Defendant and various public  
14 enforcement agencies with a second notice, another document entitled "60-Day Notice of  
15 Violation"(AG# 2019-02249) hereinafter "Notice 10") that provided the Defendant with notice  
16 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in  
17 California of exposures to Cadmium and Lead contained in Seaweed specifically Dried Seaweed  
18 ("Dried Seaweed") (2oz.) sold and/or distributed by Defendant. No other public enforcer has  
19 commenced or diligently prosecuted the allegations set forth in Notice 10. This notice did not  
20 add arsenic and appears duplicative of the notice served on September 24, 2019 for the 2oz.  
21 product. While notices were served on the 2oz product, it was not included in the initial  
22 Complaint filed on October 18, 2019. The Parties agree that Notice 10 is part of this settlement  
23 and Consent Judgment.

24 1.4.11 On or about March 13, 2020, CAG served Defendant and various public  
25 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00716)  
26 (hereinafter "Notice 11") that provided the Defendant with notice of alleged violations of Health  
27

1 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
2 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic  
3 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,  
4 specifically Dried Seaweeds ("Seaweeds") (2 oz.) sold and/or distributed by Defendant. No  
5 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
6 11. The Parties agree that Notice 11 is part of this settlement and Consent Judgment.

7 1.4.12 On or about March 20, 2020, CAG served Defendant and various public  
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00787)  
9 (hereinafter "Notice 12") that provided the Defendant with notice of alleged violations of Health  
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
11 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic  
12 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweed,  
13 specifically Dried Seaweed ("Seaweed") (2 oz.) sold and/or distributed by Defendant. No other  
14 public enforcer has commenced or diligently prosecuted the allegations set forth in Notice 12.  
15 The Parties agree that Notice 12 is part of this settlement and Consent Judgment.

16 **4 oz. Seaweed**

17 1.4.13 On or about December 16, 2019, CAG served Defendant and various public  
18 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-02350)  
19 (hereinafter "Notice 13") that provided the Defendant with notice of alleged violations of Health  
20 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
21 Arsenic contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (4oz.) sold  
22 and/or distributed by Defendant. No other public enforcer has commenced or diligently  
23 prosecuted the allegations set forth in Notice 13. The Parties agree that Notice 13 is part of this  
24 settlement and Consent Judgment.  
25

26 1.4.14 On or about February 10, 2020, CAG served Defendant and various public  
27 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG 2020-00305)  
28

1 (hereinafter "Notice 14") that provided the Defendant with notice of alleged violations of Health  
2 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
3 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides  
4 ("Arsenic") contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (4 oz.) sold  
5 and/or distributed by Defendant. No other public enforcer has commenced or diligently  
6 prosecuted the allegations set forth in Notice 14. The Parties agree that Notice 14 is part of this  
7 settlement and Consent Judgment.

8 **3.5 oz. Seaweed**

9 1.4.15 On or about January 29, 2020, CAG served Defendant and various public  
10 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG #2020-00246)  
11 (hereinafter "Notice 15") that provided the Defendant with notice of alleged violations of Health  
12 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
13 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides  
14 ("Arsenic") contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (3.5 oz.)  
15 sold and/or distributed by Defendant. No other public enforcer has commenced or diligently  
16 prosecuted the allegations set forth in Notice 15. The Parties agree that Notice 15 is part of this  
17 settlement and Consent Judgment.

18 1.4.16 On or about March 11, 2021, CAG served Defendant and various public  
19 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2021-00630)  
20 (hereinafter "Notice 16") that provided the Defendant with notice of alleged violations of Health  
21 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and  
22 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") contained in  
23 Dried Seaweed Strip, specifically Dried Seaweed Strip ("Seaweed Strip") (3.5 oz.) sold and/or  
24 distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the  
25 allegations set forth in Notice 16. The Parties agree that Notice 16 is part of this settlement and  
26 Consent Judgment.  
27



1           **1.5     Complaint**

2           1.5.1   On October 18, 2019, CAG filed a complaint for civil penalties and  
3 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. 19STCV37537 against  
4 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65  
5 by failing to give clear and reasonable warnings of exposure to Lead and Cadmium from the  
6 Covered Products.

7           1.5.2   On July 29, 2020, CAG filed a First Amended Complaint alleging, among  
8 other things, that Defendant violated Proposition 65 by failing to give clear and reasonable  
9 warnings of exposure to Lead, Cadmium, and Arsenic from Dried Seaweed.

10          1.5.3   On January 13, 2021, CAG filed a Second Amended Complaint  
11 (“Complaint”) alleging, among other things, that Defendant violated Proposition 65 by failing to  
12 give clear and reasonable warnings of exposure to Lead, Cadmium and Arsenic from Dried  
13 Seaweed.

14          1.5.4   Upon acceptance by the Court of this Consent Judgment, Kim Seng and  
15 CAG agree that this lawsuit will be dismissed with prejudice as to Kim Seng only.

16           **1.6     Consent to Jurisdiction**

17          1.6.1   For purposes of this Consent Judgment only, the Parties stipulate that this  
18 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint  
19 and personal jurisdiction over Defendant as to the acts alleged in the Notices and Complaint, that  
20 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter this  
21 Consent Judgment as a full and final settlement and resolution of all the allegations against  
22 Defendant contained in the Notices and Complaint and of all claims which were or could have  
23 been raised by any person or entity based in whole or in part, directly or indirectly, on the facts  
24 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  
28

1 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all  
2 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly  
3 maintains that all of its warnings on the Covered Products provide a clear and reasonable  
4 warning of exposure to Lead, Arsenic, and Cadmium from the Covered Products and that said  
5 Proposition 65 compliant warnings were on the Covered Products prior to Defendant's receipt of  
6 the Proposition 65 Notices. Nothing in this Consent Judgment shall be construed as an admission  
7 by the Parties of any material allegation of the Complaint (each and every allegation of which  
8 Defendant denies), any fact, conclusion of law, issue of law or violation of law, including  
9 without limitation, any admission concerning any violation of Proposition 65 or any other  
10 statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms  
11 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and  
12 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,  
13 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
14 issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its  
15 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or  
16 admitted as evidence in any administrative or judicial proceeding or litigation in any court,  
17 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or  
18 impair any right, remedy, argument, or defense the Parties may have in any other or future legal  
19 proceeding, except as expressly provided in this Consent Judgment.  
20

#### 21 1.8 Purpose of Consent Judgment

22 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
23 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
24 the parties for the purpose of avoiding prolonged litigation. The Parties intend that this Consent  
25 Judgment provide, to the maximum extent permitted by law, *res judicata and collateral estoppel*  
26 protection for Defendant against any and all other claims based on the same or similar  
27 allegations under Proposition 65 pertaining to the Covered Products.  
28

1 **2. DEFINITIONS**

2 2.1 "Covered Products" means Dried Seaweeds, Dried Seaweed Slice and  
3 "Seaweeds" sold or supplied by Defendant manufactured through the date of this Consent  
4 Judgment.

5 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
6 Court.

7 2.3 "Lead" means Lead and Lead Compounds.

8 2.4 "Cadmium" means Cadmium and Cadmium Compounds.

9 2.5 "Arsenic" means Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.

10 2.6 "Notices" means Notice 1 through Notice 16, as described in section 1.4.

11 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
12 **WARNINGS.**

13 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in  
14 California, or ship for sale in California any Covered Products unless the level of Lead does not  
15 exceed 75 parts per billion ("ppb"), the level of Cadmium does not exceed 85 ppb, and the level  
16 of Arsenic does not exceed 15 ppb without the warning set forth in Section 3.2.

17 3.2 For any Covered Products that will be offered by Defendant for sale in California  
18 exceeding the levels specified in section 3.1, after the Effective Date, Defendant shall place a  
19 Proposition 65 compliant warning on these products as set forth below. Any warning provided  
20 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,  
21 and be prominently placed with such conspicuousness as compared with other words, statements,  
22 designs, or devices as to render it likely to be read and understood by an ordinary individual  
23 under customary conditions before purchase or use. The warning must be set off from other  
24 surrounding information, enclosed in a box. Where the packaging of the Covered Product  
25 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)  
26 in a language other than English, the warning must also be provided in that language in addition  
27  
28

1 to English. The Parties agree that current law permits the long form or short form warning to be  
2 used for food products. Where a short form warning is used, the entire warning must be in a type  
3 size no smaller than the largest type size used for other consumer information on the product. In  
4 no case shall the warning appear in a type size smaller than 6-point type. The Parties also agree  
5 that current law does not require the use of the “/food” on short-form warnings URL, but that  
6 such is recommended under a proposed regulation of OEHHA still in the regulatory process.  
7 Should the proposed regulation be adopted Defendant agrees to follow any compliance period  
8 specified by the California Code of Regulations for parties to redesign their labels to comply  
9 with the new law. The Parties agree that the following long form and short form warning  
10 language reflects the current law as it presently exists and shall constitute compliance with  
11 Proposition 65 with respect to all chemicals alleged in this Lawsuit and Notices as to the  
12 Covered Products placed into the stream of commerce by Defendant after the Effective Date:

13           **WARNING:** Consuming this product can expose you to  
14 chemicals including Lead, which is known to the State of  
15 California to cause cancer and birth defects or other  
16 reproductive harm. For more information go to  
17 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

18           or

19           **WARNING:** Consuming this product can expose you to  
20 chemicals including Arsenic, which is known to the State of  
21 California to cause cancer and birth defects or other  
22 reproductive harm. For more information go to  
23 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

24           or

25           **WARNING:** Consuming this product can expose you to  
26 chemicals including Cadmium, which is known to the State of  
27

California to cause birth defects or other reproductive harm.

For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

or

**WARNING:** Consuming this product can expose you to chemicals including Cadmium, Arsenic and Lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

or

**⚠ WARNING:** Cancer and Reproductive Harm –  
[www.p65Warnings.ca.gov](http://www.p65Warnings.ca.gov).

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

3.4 The Parties have agreed that an essential term of this settlement is that the injunctive relief agreed to herein is a full and complete recitation of this settlement term, as enumerated above, and acceptable to both Parties such that warnings may be provided without product reformulation when the Covered Products contain levels of Lead, Arsenic, and/or Cadmium in exceedance of levels enumerated in section 3.1.

#### 4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within ninety (90) days of the Effective Date, Defendant shall pay an all-inclusive total of Two Hundred and Sixteen Thousand dollars (\$216,000.00) in full and complete settlement of any and all claims for monetary relief of any kind, including but not limited to claims for civil penalties, damages, attorney's fees, expert fees, or any other claim for costs, expenses, or monetary relief of any kind, for all claims that were or

1 could have been asserted in the Notices and Complaint (the "Total Settlement Payment"). The  
2 \$216,000.00 Total Settlement Payment shall be allocated as follows:

3           **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling Seventeen  
4 Thousand dollars (\$17,000.00) as penalties pursuant to Health & Safety Code § 25249.12:

5                   (a) Defendant will issue a check made payable to the State of California's  
6 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of Twelve  
7 Thousand and Seven Hundred and Fifty dollars (\$12,750.00) representing 75% of the total  
8 penalty and Defendant will issue a separate check to CAG in the amount of Four Thousand Two  
9 Hundred and Fifty dollars (\$4,250.00) representing 25% of the total penalty; and

10                   (b) Separate 1099s shall be issued for each of the above payments:  
11 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
12 0284486). Defendant 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:** In full, final and complete resolution  
15 of any claim for additional settlement payments for the claims alleged in the Notices and  
16 Complaint, Defendant shall make a separate payment, in the amount of Twelve Thousand Six  
17 Hundred and Twenty-Five dollars (\$12,625.00) as an additional settlement payment to  
18 "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and  
19 California Code of Regulations, Title 11 § 3203(d). Defendant will issue a separate check to  
20 CAG for the Additional Settlement Payment. CAG will use this portion of the Total Settlement  
21 Payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing  
22 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating  
23 exposures through various mediums, including but not limited to consumer product,  
24 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of  
25 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary  
26 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but  
27

1 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during  
2 investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals by  
3 notifying those persons and/or entities believed to be responsible for such exposures and  
4 attempting to persuade those persons and/or entities to reformulate their products or the source of  
5 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including  
6 but not limited to costs of documentation and tracking of products investigated, storage of  
7 products, website enhancement and maintenance, computer and software maintenance,  
8 investigative equipment, CAG's member's time for work done on investigations, office supplies,  
9 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall  
10 provide to the Attorney General copies of documentation demonstrating how the above funds  
11 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such  
12 additional settlement payment.

13                   **4.1.3 Reimbursement of Attorneys' Fees and Costs:** In full and complete  
14 resolution of any claims to Plaintiff's attorney's fees and expenses related to this matter,  
15 Defendant shall pay One Hundred and Eighty Six Thousand Three Hundred and Seventy-Five  
16 dollars (\$186,375.00) to "Yeroushalmi & Yeroushalmi" as full and complete reimbursement for  
17 any and all costs, reasonable investigation fees, expenses, attorneys' fees, expert fees, and any  
18 and all other costs and expenses of any kind incurred as a result of investigating, bringing this  
19 matter to Defendant's attention, preparing and serving the Notice, litigating, negotiating a  
20 settlement in the public interest, and seeking and obtaining court approval of this Consent  
21 Judgment.

22                   **4.2** Other than the payment to OEHHA described above, all payments referenced in  
23 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
24 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
25 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,  
26 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently  
27  
28

1 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the  
2 payment to OEHHA was delivered.

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

4 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
5 behalf of itself and in the public interest and Defendant for the alleged failure to provide  
6 Proposition 65 warning of exposure to Lead, Arsenic, and Cadmium from the Covered Products  
7 as set forth in the 16 Notices and one filed Lawsuit, 19STCV37537, and fully resolves all claims  
8 for all products and chemicals that have been asserted against Defendant by CAG in this  
9 Lawsuit and Notices up through the Effective Date for the alleged failure to provide Proposition  
10 65 warnings for the Covered Products. CAG, on behalf of itself and in the public interest, hereby  
11 discharges Defendant and its officers, directors, insurers, employees, parents, shareholders,  
12 divisions, subdivisions, subsidiaries, and their successors and assigns ("Defendant Releasees")  
13 and all customers, retailers and downstream entities in the distribution chain of the Covered  
14 Products to whom Defendant distributed or sold Covered Products, and the predecessors,  
15 successors and assigns of any of them, and all of their respective officers, directors, shareholders,  
16 members, managers, employees, agents only as to Covered Products sold by the Defendant  
17 (collectively, "Downstream Releasees"), for all Covered Products placed into the stream of  
18 commerce up through the Effective Date for violations of Proposition 65 based on exposure to  
19 Lead, Arsenic, and Cadmium from the Covered Products. Defendant's compliance with the  
20 terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65  
21 regarding alleged exposures to Lead, Arsenic, and Cadmium from the Covered Products.  
22 Nothing in this Section affects CAG's right to commence or prosecute an action under  
23 Proposition 65 against any person other than Defendant Releasees or Downstream Releasees  
24 after the Effective Date.

25  
26 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,  
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
28



1 indirectly, any form of legal action and releases all claims, including, without limitation, all  
2 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
3 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
4 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,  
5 fixed or contingent (collectively "Claims"), against the Released Parties arising from any  
6 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
7 about exposure to Lead, Arsenic, and Cadmium from the Covered Products that could have  
8 originally been brought in the current lawsuit. If there were chemicals listed in the Notices which  
9 were not named in the current lawsuit, CAG waives the right to file lawsuits for those chemicals  
10 in the Covered Products. In furtherance of the foregoing, as to alleged exposures to Lead,  
11 Arsenic, and Cadmium from the Covered Products, CAG on behalf of itself only, hereby waives  
12 any and all rights and benefits which it now has, or in the future may have, conferred upon it  
13 with respect to Claims arising from any violation of Proposition 65 or any other statutory or  
14 common law regarding the failure to warn about exposure to Lead, Arsenic, and Cadmium from  
15 the Covered Products by virtue of the provisions of section 1542 of the California Civil Code,  
16 which provides as follows:

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

21 CAG understands and acknowledges that the significance and consequence of this waiver of  
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
23 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
24 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
25 about exposure to Lead, Arsenic, and Cadmium from the Covered Products, including but not  
26 limited to any exposure to, or failure to warn with respect to exposure to Lead, Arsenic, and  
27 Cadmium from the Covered Products, CAG will not be able make any claim for those damages  
28

1 against Released Parties. Furthermore, CAG acknowledges that it intends to release Defendant  
2 fully and completely from these Covered Products and fully accepts these consequences for any  
3 such Claims arising from any violation of Proposition 65 or any other statutory or common law  
4 regarding the failure to warn about exposure to Lead, Arsenic, and Cadmium from Covered  
5 Products as may exist as of the date of this release but which CAG does not know exist, and  
6 which, if known, would materially affect their decision to enter into this Consent Judgment,  
7 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,  
8 negligence, or any other cause.

## 9 **6. ENFORCEMENT OF JUDGMENT**

10 6.1 Any alleged violation of the terms of this Consent Judgment shall be enforced  
11 exclusively hereunder by the Parties hereto and may only be through the terms of the entered  
12 consent judgment. Before CAG moves to enforce the terms of this Consent Judgment, CAG must  
13 provide written notice to Defendant of any alleged violation, including the date and location of  
14 the alleged violation and provide all evidence supporting the alleged violation including any  
15 applicable test results, product photographs, and purchase receipts, subject to a reasonable  
16 confidentiality agreement if requested. The Parties will thereafter meet and confer for a  
17 minimum period of 30 days to allow time for Defendant to present CAG any relevant  
18 compliance information and/or corrective action taken related to the alleged violation, including  
19 if applicable the date of manufacture, import, distribution, or sale of the Covered Product at issue  
20 for purposes of determining the applicability of the release hereunder. If the Parties cannot  
21 resolve the alleged violation, either Party may move to enforce the terms of this Consent  
22 Judgment consistent with the terms herein. If the Parties cannot resolve the alleged violation at  
23 the conclusion of the meet and confer process, CAG has the right to enforce the terms of the  
24 Consent Judgment herein and seek penalties and fees against Defendant.

26 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, the  
27 prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

1     **7.     ENTRY OF CONSENT JUDGMENT**

2             7.1     CAG shall be responsible for preparing a motion seeking approval of this Consent  
3 Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties agree to act in  
4 good faith to obtain Court approval of the Consent Judgment. Upon entry of the Consent  
5 Judgment, CAG and Defendant waive their respective rights to a hearing, trial, or appeal on the  
6 allegations in the Notices and/or Complaint.

7             7.2     The Parties shall make good faith efforts to have the Consent Judgment approved  
8 by the Court.

9             7.3     If this Consent Judgment is not approved in full by the Court, (a) this Consent  
10 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
11 and become null and void, and the actions shall revert to the status that existed prior to the  
12 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
13 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
14 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
15 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer in  
16 good faith to determine whether to modify the terms of the Consent Judgment and to resubmit it  
17 for approval.

18     **8.     MODIFICATION OF JUDGMENT**

19             8.1     This Consent Judgment may be modified only upon written agreement of the  
20 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
21 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

22             8.2     Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
23 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.  
24

25     **9.     RETENTION OF JURISDICTION**

26             9.1     This Court shall retain jurisdiction of this matter to implement and enforce the  
27 terms of this Consent Judgment under Code of Civil Procedure § 664.6.  
28

1           9.2     In any proceeding brought by either Party to enforce this Consent Judgment, the  
2 prevailing party shall be entitled to recover its reasonable attorney's fees and costs as determined  
3 by the Court or agreement of the Parties.

4       **10.     DUTIES LIMITED TO CALIFORNIA**

5           10.1   This Consent Judgment shall have no effect on Covered Products sold by  
6 Defendant outside the State of California.

7       **11.     SERVICE ON THE ATTORNEY GENERAL**

8           11.1   CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the  
9 California Attorney General so that the Attorney General may review this Consent Judgment  
10 prior to its approval by to the Court. No sooner than forty-five (45) days after the Attorney  
11 General has received the aforementioned copy of this Consent Judgment, and in the absence of  
12 any written objection by the Attorney General to the terms of this Consent Judgment, CAG may  
13 then submit the Consent Judgment to the Court for approval.

14       **12.     ATTORNEY FEES**

15           12.1   Except as specifically provided in Section 4.1.3, 6.2, and 9.2, each Party shall  
16 bear its own costs and attorney fees in connection with the claims alleged in the Notices and  
17 Complaint which are entirely resolved in this Consent Judgment.

18       **13.     GOVERNING LAW**

19           13.1   The validity, construction and performance of this Consent Judgment shall be  
20 governed by the laws of the State of California, without reference to any conflicts of law  
21 provisions of California law.

22           13.2   The terms of this Consent Judgment shall be governed by the laws of the State of  
23 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
24 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
25 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
26 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant  
27

1 subject to this Consent Judgment may provide written notice to CAG of any asserted change in  
2 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,  
3 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment  
4 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state  
5 or federal law or regulation.

6 13.3 The Parties, including their counsel, have participated in the preparation of this  
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved  
13 against the drafting Party should not be employed in the interpretation of this Consent Judgment  
14 and, in this regard, the Parties hereby waive California Civil Code § 1654.

15 **14. EXECUTION AND COUNTERPARTS**

16 14.1 This Consent Judgment may be executed in counterparts and by means of  
17 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
18 one document and have the same force and effect as original signatures.

19 **15. NOTICES**

20 15.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

21 If to CAG:

22  
23 Reuben Yeroushalmi  
24 Shannon Royster  
25 YERUSHALMI & YERUSHALMI  
26 9100 Wilshire Boulevard, Suite 240W  
27 Beverly Hills, CA 90212  
28 (310) 623-1926  
Email: lawfirm@yeroushalmi.com

If to Kim Seng Company:  
Kathleen N. Strickland  
Briana J. Bramer  
ROPERS MAJESKI PC  
505 Sansome Street, Suite 1925  
San Francisco, CA 94111  
(415) 543-4800  
Email: kathleen.strickland@ropers.com

**16. AUTHORITY TO STIPULATE**

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

<b>AGREED TO:</b> Date: _____, 2022  Name: _____ Title: _____ CONSUMER ADVOCACY GROUP, INC.	<b>AGREED TO:</b> Date: <u>5/13</u> , 2022  Name: <u>GARY TSAIZ</u> Title: <u>Director</u> KIM SENG COMPANY dba IHA BEVERAGE
--	---

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

If to Kim Seng Company:  
Kathleen N. Strickland  
Briana J. Bramer  
ROPERS MAJESKI PC  
505 Sansome Street, Suite 1925  
San Francisco, CA 94111  
(415) 543-4800  
Email: kathleen.strickland@ropers.com

**16. AUTHORITY TO STIPULATE**

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

<b>AGREED TO:</b> Date: <u>May 13</u> , 2022 <u>Michael Marcus</u> Name: <u>Michael Marcus</u> Title: <u>Director</u> CONSUMER ADVOCACY GROUP, INC.	<b>AGREED TO:</b> Date: _____, 2022 _____ Name: _____ Title: _____ KIM SENG COMPANY dba IHA BEVERAGE
--	--

**IT IS SO ORDERED.**

Date: 05/25/2022

  
JUDGE OF THE SUPERIOR COURT  
P[ ] ET AL @ ^ A d l e . A [ ] c