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9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

13 CONSUMER ADVOCACY GROUP, INC.,
14 in the public interest,

15 Plaintiff,

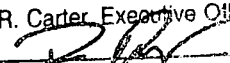
16 v.

17 GAJU MARKET CORPORATION DBA
18 CALIFORNIA MARKET, a California
19 Corporation; and DOES 1-10.

20 Defendants,

FILED
Superior Court of California
County of Los Angeles

AUG 23 2022

Sherri R. Carter, Executive Officer/Clerk
By 
Robert R. Alva

CASE NO. 19STCV27357

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: August 5, 2019

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23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
25 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the public interest,
26 and Defendant GAJU MARKET CORPORATION DBA CALIFORNIA MARKET,
27 ("Defendant") with each a Party to the action and collectively referred to as "Parties."
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08/26/2022

1 1.2 **Defendants and Covered Products**

2 1.2.1 CAG alleges that Defendant is a Corporation which employs ten or more persons.
3 For purposes of this Consent Judgment only, Defendant is deemed a person in the course of
4 doing business in California and subject to the provisions of the Safe Drinking Water and Toxic
5 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“**Proposition**
6 **65**”).

7 1.2.2 CAG alleges that Defendant manufactures, sells, or distributes Kitchen
8 Accessories in California.

9 1.3 **Listed Chemicals**

10 1.3.1 Bis(2-ethylhexyl) phthalate (“DEHP”) has been listed by the State of California as
11 a chemical known to cause cancer and Developmental and other reproductive harm.

12 1.4 **Notices of Violation**

13 1.4.1 On or about March 14, 2019, CAG served a “60-Day Notice of Intent to Sue for
14 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that provided
15 Defendant with notice of alleged violations of Health & Safety Code §25249.6 for failing to
16 warn individuals in California of exposures to DEHP contained in Tongs with Plastic Handles
17 sold by Defendant in California. No public enforcer has commenced or diligently prosecuted the
18 allegations set forth in the Notice.

19 1.4.2 On or about September 11, 2019, CAG served a “60-Day Notice of Intent to Sue
20 for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that provided
21 Defendant with notice of alleged violations of Health & Safety Code §25249.6 for failing to
22 warn individuals in California of exposures to DEHP contained in Tongs with Plastic Handles
23 sold by Defendant in California. No public enforcer has commenced or diligently prosecuted the
24 allegations set forth in the Notice.

25 1.5 **Complaint**

26 1.5.1 On August 5, 2019, CAG filed a Complaint for civil penalties and injunctive
27 relief (“**Complaint**”) in Los Angeles County Superior Court, Case No. 19STCV27357. The
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1 Complaint alleges, among other things, that Defendant violated Proposition 65 for allegedly
2 failing to give clear and reasonable warnings of alleged exposure to DEHP in Tongs with Plastic
3 Handles that Defendant distributed and/or sold in California.

4 **1.6 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
7 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los
8 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
9 and resolution of the allegations against Defendant contained in the Complaint, and of all claims
10 which were or could have been raised by any person or entity based in whole or in part, directly
11 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

12 **1.7 No Admission**

13 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into
14 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
15 Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall
16 be construed as an admission by the Parties of any material allegation in the Notice or the
17 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including
18 without limitation, any admission concerning any alleged or actual violation of Proposition 65 or
19 any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the
20 meaning of the terms "knowingly and intentionally expose" or "clear and reasonable warning" as
21 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor
22 compliance with its terms, shall constitute or be construed as an admission by the Parties of any
23 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
24 Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be
25 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any
26 court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
27 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
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08/26/2022

1 proceeding, except as expressly provided in this Consent Judgment.

2 **2. DEFINITIONS**

3 2.1 "Covered Products" means Tongs with Plastic Handles, which includes but is
4 not limited to: "LXD;" "MADEIN CHINA;" "14;" HQ S/S TONG (J0189);" "893483703304"
5 sold by or supplied by Defendant.

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

8 2.3 "DEHP" means Bis(2-ethylhexyl) phthalate

9 2.4 "Listed Chemical" means DEHP.

10 2.5 "Notice" means the March 14, 2019 notice.

11 **3. INJUNCTIVE RELIEF/REFORMULATION**

12 3.1 After the Effective Date, Defendant shall not sell, offer for sale, or order for sale
13 any Covered Products unless the level of DEHP in the Covered Products does not exceed more
14 than 0.1% (1,000 parts per million) by weight.

15 3.2 For any Covered Products whose DEHP content exceeds .1% still existing in
16 Defendant inventory as of the Effective Date, Defendant shall place a clear and reasonable
17 warning Proposition 65 compliant warning on them, consistent with 27 CCR section 25600 *et*
18 *seq.* In consideration of the fact that Defendants have agreed to only order for manufacture
19 reformulated Covered products, parties agree to the following language for Covered Products in
20 existing inventory that contain more than 0.1% DEHP by weight:

21 **⚠ WARNING:** This product can expose you to chemicals including Bis(2-ethylhexyl)
22 phthalate (DEHP) which is known to the State of California to cause Cancer, birth defects
23 or other reproductive harm. For more information go to www.P65Warnings.ca.gov

24 3.3 Any warning provided pursuant to this section shall be affixed to the packaging
25 or hangtag of, or directly on, the Covered Products, and be prominently placed with such
26 conspicuousness as compared with other words, statements, designs, or devices as to render it
27 likely to be read and understood by an ordinary individual under customary conditions before
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1 purchase or use. The equilateral triangle pictogram shall be in yellow with a black exclamation
2 mark; provided however, the pictogram may be in white instead of yellow if the Covered Product
3 label does not contain the color yellow.

4 **4. SETTLEMENT PAYMENT**

5 **4.1 Payment and Due Date:** Within fifteen (15) days of the Effective Date,
6 Defendant shall pay a total of sixty-five thousand dollars (\$65,000) in full and complete
7 settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any
8 other claim for costs, expenses or monetary relief of any kind for claims that were or could have
9 been asserted in the Notice or Complaint, as follows:

10 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling Seven
11 Thousand Four Hundred and Forty dollars (\$7,440.00) as follows for alleged civil penalties
12 pursuant to Health & Safety Code § 25249.12:

13 (a) Defendant will issue one check made payable to the State of California's Office of
14 Environmental Health Hazard Assessment ("OEHHA") in the amount of Five Thousand Five
15 Hundred and Eighty dollars (\$5,580.00) representing 75% of the total civil penalty and
16 Defendant will issue a second check to CAG in the amount of One Thousand Eight Hundred and
17 Sixty dollars (\$1,860.00) representing 25% of the total civil penalty;

18 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a
19 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
20 Seven Thousand Four Hundred and Forty dollars (\$7,440.00). Defendant will also issue a 1099
21 to CAG in the amount of One Thousand Eight Hundred and Sixty dollars (\$1,860.00) and deliver
22 it to CAG c/o YEROUSHALMI & YEROUSHALMI, 9100 Wilshire Blvd., Ste. 240W, Beverly
23 Hills California 90212.

24 **4.1.2 Additional Settlement Payments:** Defendant shall issue one check for Five
25 Thousand Five Hundred and Sixty dollars (\$5,560.00) to "Consumer Advocacy Group, Inc."
26 pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 §
27 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty five
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08/26/2022

1 percent (80%) for fees of investigation, purchasing and testing for the Proposition 65 Listed
2 Chemical in various products, and for expert fees for evaluating exposures through various
3 mediums, including but not limited to consumer product, occupational, and environmental
4 exposures to the Proposition 65 Listed Chemical, and the cost of hiring consulting and retaining
5 experts who assist with the extensive scientific analysis necessary for those files in litigation
6 and to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees;
7 fifteen percent (20%) for administrative costs incurred during investigation and litigation to
8 reduce the public's exposure to the Proposition 65 Listed Chemical by notifying those persons
9 and/or entities believed to be responsible for such exposures and attempting to persuade those
10 persons and/or entities to reformulate their products or the source of exposure to completely
11 eliminate or lower the level of the Proposition 65 Listed Chemical including but not limited to
12 costs of documentation and tracking of products investigated, storage of products, website
13 enhancement and maintenance, computer and software maintenance, investigative equipment,
14 CAG's member's time for work done on investigations, office supplies, mailing supplies and
15 postage Within 30 days of a request from the Attorney General, CAG shall provide to the
16 Attorney General copies of documentation demonstrating how the above funds have been spent.
17 CAG shall be solely responsible for ensuring the proper expenditure of such additional
18 settlement payment.

19 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in
20 the amount of Fifty-two Thousand dollars (\$52,000.00) payable to "Yeroushalmi &
21 Yeroushalmi" as complete reimbursement for any and all reasonable investigation fees and costs,
22 attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of
23 investigating, bringing this matter to the Defendant's attention, litigating, negotiating a
24 settlement in the public interest, and seeking and obtaining court approval of this Consent
25 Judgment.

26 **4.2** Other than the payment to OEHHA described above, all payments referenced in
27 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be mailed to: Reuben Yeroushalmi, Yeroushalmi
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1 & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to
2 OEHHA shall be mailed directly to Office of Environmental Health Hazard Assessment, Attn:
3 Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Defendant shall
4 provide written confirmation to CAG concurrently with payment to OEHHA.

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

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
7 behalf of itself and in the public interest, and Defendant and their owners, officers, directors,
8 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
9 affiliates, sister companies, predecessors, and their successors and assigns ("**Defendant**
10 **Releasees**"), and all entities to whom Defendant directly or indirectly distribute or sell Covered
11 Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers
12 marketplace hosts, franchisees, cooperative members, licensees, and the successors and assigns
13 of any of them, who may use, maintain, distribute or sell Covered Products ("**Downstream**
14 **Defendant Releasees**"), of all claims for alleged or actual violations of Proposition 65 for
15 alleged exposures to the Listed Chemical from the Covered Products manufactured, distributed
16 or sold by Defendant up through the Effective Date as set forth in the Notices and Complaint.
17 Defendant and Defendant Releasees' compliance with this Consent Judgment shall constitute
18 compliance with Proposition 65 with respect to alleged exposures to the Listed Chemical from
19 the Covered Products sold by Defendant Releasees or Downstream Defendant Releasees after the
20 Effective Date. Nothing in this Section affects CAG's right to commence or prosecute an action
21 under Proposition 65 against any person other than Defendant, Defendant Releasees, or
22 Downstream Defendant Releasees (collectively the "**Released Parties**").

23 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
25 indirectly, any form of legal action and releases all claims, including, without limitation, all
26 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
27 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
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08/26/2022

1 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
2 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual
3 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
4 Covered Products manufactured, distributed or sold by the Defendant Releasees through the
5 Effective Date regarding any actual or alleged failure to warn about exposure to the Listed
6 Chemical from the Covered Products. In furtherance of the foregoing, CAG on behalf of itself
7 only, hereby waives any and all rights and benefits which it now has, or in the future may have,
8 conferred upon it with respect to Claims regarding the Covered Products manufactured,
9 distributed or sold by the Defendant Releasees through the Effective Date arising from any
10 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
11 about exposure to the Listed Chemical from the Covered Products by virtue of the provisions of
12 section 1542 of the California Civil Code, which provides as follows:

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

19 CAG understands and acknowledges that the significance and consequence of this waiver of
20 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
21 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
22 violation of Proposition 65 or any other statutory or common law regarding the Covered
23 Products manufactured, distributed or sold by the Defendant Releasees through the Effective
24 Date regarding the failure to warn about actual or alleged exposure to the Listed Chemical from
25 the Covered Products, CAG will not be able to make any claim for those damages, penalties or
26 other relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
27 consequences for any such Claims arising from any violation of Proposition 65 or any other
28 statutory or common law regarding the failure to warn about exposure to the Listed Chemical
from the Covered Products as may exist as of the date of this release but which CAG does not

1 know exist, and which, if known, would materially affect their decision to enter into this Consent
2 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
3 error, negligence, or any other cause.

4 5.2.1 CAG further agrees that should it determine that any future Covered Products are
5 being offered for sale by Defendant in violation of the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq., CAG shall
7 provide the Defendant with notice thereof and five (5) days to cease the sale of any such
8 offending Covered Products; if such Covered Products are permanently removed from sale by
9 the Defendant within the foregoing five (5) day period, and notice of the removal provided to
10 CAG per section 14.1, below within the same five (5) day period, CAG shall not commence a
11 legal action against the Defendant, or seek the institution of penalties against Defendant, based
12 thereon.

13 **6. ENTRY OF CONSENT JUDGMENT**

14 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
15 California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain
16 Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and
17 Defendant waive their respective rights to a hearing and trial on the allegations in the Notices
18 and Complaint.

19 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
20 Judgment and any and all prior agreements between the Parties merged herein shall terminate
21 and become null and void, and the actions shall revert to the status that existed prior to the
22 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
23 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
24 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
25 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
26 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.
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08/26/2022

1 **7. MODIFICATION OF JUDGMENT**

2 7.1 This Consent Judgment may be modified only upon written agreement of the
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
4 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

5 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
6 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

7 **8. RETENTION OF JURISDICTION**

8 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
9 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

10 8.2 In any proceeding brought by either Party to enforce this Consent Judgment other
11 than in seeking the Court's approval of said Consent Judgment as set forth in paragraph 6 herein
12 above, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

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

14 9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
15 California Attorney General so that the Attorney General may review this Consent Judgment
16 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
17 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
18 then submit it to the Court for approval.

19 **10. ENTIRE AGREEMENT**

20 10.1 This Consent Judgment contains the sole and entire agreement and understanding
21 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
22 negotiations, commitments and understandings related hereto. No representations, oral or
23 otherwise, express or implied, other than those contained herein have been made by any party
24 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
25 deemed to exist or to bind any of the Parties.

26 **11. ATTORNEY FEES**

27 11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its
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1 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

2 **12. GOVERNING LAW**

3 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
4 be governed by the laws of the State of California, without reference to any conflicts of law
5 provisions of California law.

6 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
9 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant
10 may provide written notice to CAG of any asserted change in the law, and shall have no further
11 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
12 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
13 Defendant from any obligation to comply with any other pertinent state or federal law or
14 regulation.

15 12.3 The Parties, including their counsel, have participated in the preparation of this
16 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
17 Consent Judgment was subject to revision and modification by the Parties and has been accepted
18 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
19 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
20 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
21 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
22 resolved against the drafting Party should not be employed in the interpretation of this Consent
23 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

24 **13. EXECUTION AND COUNTERPARTS**

25 13.1 This Consent Judgment may be executed in counterparts and by means of
26 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
27 one document and have the same force and effect as original signatures.

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08/26/2022

1 14. NOTICES

2 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

3 If to CAG:

4 Reuben Yeroushalmi
5 YEROUSHALMI & YEROUSHALMI
6 9100 Wilshire Boulevard, Suite 240W
7 Beverly Hills, CA 90212
8 (310) 623-1926
9 Email: lawfirm@yeroushalmi.com

7 If to Defendant:

8 Jeffery R. Klein
9 FISHER, KLEIN & WOLFE LLP
10 9401 Wilshire Boulevard, Suite 640
11 Beverly Hills, CA 90212
12 (310)278-4300
13 Email:jrk@fisherwolfe.com

13 15. AUTHORITY TO STIPULATE

14 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
15 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf
16 of the Party represented and legally to bind that party.

17 AGREED TO:

17 AGREED TO:

19 Date: April 8, 2022

19 Date: 4-8, 2022

21 Michael Marcus

21 Hyun Sun Park

23 Name: Michael Marcus

23 Name: Hyun Sun Park

25 Title: Director

25 Title: CEO

26 CONSUMER ADVOCACY GROUP, INC.

26 GAJU MARKET CORPORATION DBA

27 CALIFORNIA MARKET

Plaintiff is ordered to give notice of this Order:

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IT IS SO ORDERED.

Date: 8/23/22

James A. Beaudet
JUDGE OF THE SUPERIOR COURT

08/26/2022