

JUN 30 2022

Sherril R. Carter, Executive Officer/Clerk  
By Roberto M. Mendoza Deputy  
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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 KIM SENG COMPANY DBA IHA  
18 BEVERAGE, a California Corporation, *et*  
19 *al.*,  
20 Defendants.

CASE NO. 21STCV43592

[Assigned for All Purposed to the Hon.  
Stephen Goorvitch, Dept. 39]

**CONSENT JUDGMENT [~~PROPOSED~~]**

Health & Safety Code § 25249.5 *et seq.*

21 **1. INTRODUCTION**

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

27 **1.2 Defendant and Products**

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

07/01/2022

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

4 1.2.2.1 Five Spice Powder including but not limited to (i) “Super Brand”;  
5 “Ngu Vi Huong”; “Five Spice Powder”; “Net Wt: 3oz (85g)”; “UPC 6  
6 10232 01233 9”; “Product of China” and (ii) “Super Brand”; “Five Spice  
7 Powder”; “Net Wt: 3oz (85g)”; “UPC 6 10232 01233 9”;  
8 “X000R8BSRF”; “Super Chinese 5 Spice Pow..ian Seasoning Mixed  
9 Spice”; “Product of China”;

10 1.2.2.2 Galangal Powder including but not limited to “Super Brand”;  
11 “Dried Galangal Powder”; “Net Wt: 4oz (113g)”; “UPC 6 10232 02267 3-  
12 ”; “Product of China”;

13 1.2.2.3 Lamb Spice Seasoning including but not limited to “Spice-  
14 grains”; “L640”; “GIA VI NAU DE”; “Lamb Spice Seasoning”; “Net Wt.  
15 3oz (85.5g)”; “UPC 6 10232 03964 0”;

16 1.2.2.4 Dried Prickly Ash Powder including but not limited to “Super  
17 Brand”: “Dried Prickly Ash Powder”; “Net Wt: 4oz (113 g)”; “Product of  
18 China”; “UPC 6 10232 01251 3.”; and

19 1.2.2.5 Lime Stone Paste w/ Turmeric including but not limited to "Lime  
20 Stone Paste w/Turmeric"; "Net Wt: 3.5 oz (100g)"; "UPC 6 10232 03807  
21 0"; "Product of Thailand".

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 Inorganic Arsenic Compounds and Inorganic Arsenic Oxides (hereinafter  
2 “Arsenic”) are known to the State of California to cause cancer and/or birth defects or other  
3 reproductive harm.

4           1.4     **Notices of Violation**

5           1.4.1 On or about March 24, 2021, CAG served Defendant and various public  
6 enforcement agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-00770)  
7 (hereinafter “Notice 1”) 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 Lead  
9 contained in Five Spices Powder and Galangal Powder sold and/or distributed by Defendant. No  
10 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
11 1. The Parties agree that Notice 1 is part of this settlement and Consent Judgment.

12           1.4.2 On or about July 9, 2021, CAG served Defendant and various public enforcement  
13 agencies with second notice, another document entitled “60-Day Notice of Violation” (AG#  
14 2021-01677) (hereinafter “Notice 2”) that provided the Defendant with notice of alleged  
15 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
16 exposures to Lead contained in Lamb Spice Seasoning sold and/or distributed by Defendant. No  
17 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice  
18 2. The Parties agree that Notice 2 is part of this settlement and Consent Judgment.

19           1.4.3 On or about July 9, 2021, CAG served Defendant and various public enforcement  
20 agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-01688) (hereinafter  
21 “Notice 3”) that provided the Defendant with notice of alleged violations of Health & Safety  
22 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in  
23 Five Spice Powder sold and/or distributed by Defendant. No other public enforcer has  
24 commenced or diligently prosecuted the allegations set forth in Notice 3. The Parties agree that  
25 Notice 3 is part of this settlement and Consent Judgment.  
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07/01/2022

1 1.4.4 On or about August 27, 2021, CAG served Defendant and various public  
2 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2021-02155)  
3 (hereinafter "Notice 4") that provided the Defendant with notice of alleged violations of Health  
4 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead  
5 contained in Dried Prickly Ash Powder sold and/or distributed by Defendant. No other public  
6 enforcer has commenced or diligently prosecuted the allegations set forth in Notice 4. The  
7 Parties agree that Notice 4 is part of this settlement and Consent Judgment.

8 1.4.5 On or about November 12, 2021, CAG served Defendant and various public  
9 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2021-02826)  
10 (hereinafter "Notice 5") that provided the Defendant with notice of alleged violations of Health  
11 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Arsenic  
12 contained in Lime Stone Paste w/ Turmeric sold and/or distributed by Defendant. No other  
13 public enforcer has commenced or diligently prosecuted the allegations set forth in Notice 5.  
14 The Parties agree that Notice 5 is part of this settlement and Consent Judgment.

15 **1.5 Complaint**

16 1.5.1 On November 29, 2021, CAG filed a complaint for civil penalties and  
17 injunctive relief ("Complaint") in Los Angeles Superior Court, Case No. 21STCV43592 against  
18 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65  
19 by failing to give clear and reasonable warnings of exposure to Lead from the Covered Products.  
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21 1.5.2 Upon entry of an order approving this Consent Judgment, the Complaint  
22 on file in this matter shall be deemed amended to include the claims alleged in Notice 5 for  
23 Limestone Paste with Turmeric containing Arsenic listed in Section 1.4.5.

24 1.5.4 Upon acceptance by the Court of this Consent Judgment, Kim Seng and  
25 CAG agree that this lawsuit will be dismissed with prejudice as to Kim Seng only.

26 **1.6 Consent to Jurisdiction**

27 1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this  
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07/01/2022

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

8 **1.7 No Admission**

9 **1.7.1** This Consent Judgment resolves claims that are denied and disputed. The  
10 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all  
11 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly  
12 maintains that all of its warnings on the Covered Products provide a clear and reasonable  
13 warning of exposure to Lead and Arsenic from the Covered Products and that said Proposition  
14 65 compliant warnings were on the Covered Products prior to Defendant's receipt of the  
15 Proposition 65 Notices. Nothing in this Consent Judgment shall be construed as an admission by  
16 the Parties of any material allegation of the Complaint (each and every allegation of which  
17 Defendant denies), any fact, conclusion of law, issue of law or violation of law, including  
18 without limitation, any admission concerning any violation of Proposition 65 or any other  
19 statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms  
20 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and  
21 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,  
22 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,  
23 issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its  
24 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or  
25 admitted as evidence in any administrative or judicial proceeding or litigation in any court,  
26 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or  
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07/01/2022

1 impair any right, remedy, argument, or defense the Parties may have in any other or future legal  
2 proceeding, except as expressly provided in this Consent Judgment.

3 **1.8 Purpose of Consent Judgment**

4 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
5 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
6 the parties for the purpose of avoiding prolonged litigation. The Parties intend that this Consent  
7 Judgment provide, to the maximum extent permitted by law, *res judicata and collateral estoppel*  
8 protection for Defendant against any and all other claims based on the same or similar  
9 allegations under Proposition 65 pertaining to the Listed Chemicals in the Covered Products.

10 **2. DEFINITIONS**

11 2.1 "Covered Products" means Five Spices Powder, Galangal Powder, Lamb Spice  
12 Seasoning, Five Spice Powder, Dried Prickly Ash Powder and Lime Stone Paste w/ Turmeric  
13 sold or supplied by Defendant manufactured through the date of this Consent Judgment.

14 2.2 "Effective Date" means the date that this Consent Judgment is approved by the  
15 Court.

16 2.3 "Lead" means Lead and Lead Compounds.

17 2.4 "Arsenic" means Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.

18 2.5 "Notices" means Notice 1 – Notice 5, as described in section 1.4.

19  
20 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
21 **WARNINGS.**

22 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in  
23 California, or ship for sale in California any Five Spices Powder, Galangal Powder, Lamb Spice  
24 Seasoning, Five Spice Powder, Dried Prickly Ash Powder unless the level of Lead does not  
25 exceed 34 parts per billion ("ppb"), and any Lime Stone Paste w/ Turmeric unless the level of  
26 Arsenic does not exceed 20 ppb without the warning set forth in Section 3.2.

07/01/2022

1           3.2    For any Covered Products that will be offered by Defendant for sale in California  
2 exceeding the levels specified in section 3.1, after the Effective Date, Defendant shall place a  
3 Proposition 65 compliant warning on these products as set forth below. Any warning provided  
4 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,  
5 and be prominently placed with such conspicuousness as compared with other words, statements,  
6 designs, or devices as to render it likely to be read and understood by an ordinary individual  
7 under customary conditions before purchase or use. The warning must be set off from other  
8 surrounding information, enclosed in a box. Where the packaging of the Covered Product  
9 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)  
10 in a language other than English, the warning must also be provided in that language in addition  
11 to English. The Parties agree that current law permits the long form or short form warning to be  
12 used for food products. Where a short form warning is used, the entire warning must be in a type  
13 size no smaller than the largest type size used for other consumer information on the product. In  
14 no case shall the warning appear in a type size smaller than 6-point type. The Parties also agree  
15 that current law does not require the use of the “/food” on short-form warnings URL, but that  
16 such is recommended under a proposed regulation of OEHHA still in the regulatory process.  
17 Should the proposed regulation be adopted Defendant agrees to follow any compliance period  
18 specified by the California Code of Regulations for parties to redesign their labels to comply  
19 with the new law. The Parties agree that the following long form and short form warning  
20 language reflects the current law as it presently exists and shall constitute compliance with  
21 Proposition 65 with respect to all chemicals alleged in this Lawsuit and the Notices as to the  
22 Covered Products placed into the steam of commerce by Defendant after the Effective Date:  
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24                   **WARNING:** Consuming this product can expose you to  
25                   chemicals including Lead, which is known to the State of  
26                   California to cause cancer and birth defects or other  
27                   reproductive harm. For more information go to  
28                   [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

07/01/2022

1 or

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

7 or

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

13 or

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

16 3.3 For any Covered Products still existing in the Defendant's inventory as of the  
17 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the  
18 Covered Products does not exceed their respective levels of Lead, or Arsenic. Any warning  
19 provided pursuant to this section shall comply with the warning requirements under Section 3.2  
20 above.

21 3.4 The Parties have agreed that an essential term of this settlement is that the  
22 injunctive relief agreed to herein is a full and complete recitation of this settlement term, as  
23 enumerated above, and acceptable to both Parties such that warnings may be provided without  
24 product reformulation when the Covered Products contain levels of Lead and/or Arsenic in  
25 exceedance of levels enumerated in section 3.1.  
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07/01/2022



1 **4. SETTLEMENT PAYMENT**

2 **4.1 Payment and Due Date:** Within one hundred and five days (105) days of the  
3 Effective Date, Defendant shall pay an all-inclusive total of Seventy-five Thousand dollars  
4 (\$75,000.00) in full and complete settlement of any and all claims for monetary relief of any  
5 kind, including but not limited to claims for civil penalties, damages, attorney's fees, expert fees,  
6 or any other claim for costs, expenses, or monetary relief of any kind, for all claims that were or  
7 could have been asserted in the Notices and Complaint (the "Total Settlement Payment"). The  
8 \$75,000.00 Total Settlement Payment shall be allocated as follows:

9 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling five  
10 thousand, three hundred and eighty dollars (\$5,380.00) as penalties pursuant to Health & Safety  
11 Code § 25249.12:

12 (a) Defendant will issue a check made payable to the State of California's  
13 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand  
14 and thirty-five dollars (\$4,035.00) representing 75% of the total penalty and Defendant will issue  
15 a separate check to CAG in the amount of one thousand, three hundred and forty-five dollars  
16 (\$1,345.00) representing 25% of the total penalty; and

17 (b) Separate 1099s shall be issued for each of the above payments:  
18 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
19 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100  
20 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

21 **4.1.2 Additional Settlement Payments:** In full, final and complete resolution  
22 of any claim for additional settlement payments for the claims alleged in the Notices and  
23 Complaint, Defendant shall make a separate payment, in the amount of three thousand nine  
24 hundred and ninety-five dollars (\$3,995.00) as an additional settlement payment to "Consumer  
25 Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of  
26 Regulations, Title 11 § 3203(d). Defendant will issue a separate check to CAG for the  
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07/01/2022

1 Additional Settlement Payment. CAG will use this portion of the Total Settlement Payment as  
2 follows, eighty five percent (85%) for fees of investigation, purchasing and testing for  
3 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures  
4 through various mediums, including but not limited to consumer product, occupational, and  
5 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and  
6 retaining experts who assist with the extensive scientific analysis necessary for those files in  
7 litigation and to offset the costs of future litigation enforcing Proposition 65 but excluding  
8 attorney fees; fifteen percent (15%) for administrative costs incurred during investigation and  
9 litigation to reduce the public's exposure to Proposition 65 listed chemicals by notifying those  
10 persons and/or entities believed to be responsible for such exposures and attempting to persuade  
11 those persons and/or entities to reformulate their products or the source of exposure to  
12 completely eliminate or lower the level of Proposition 65 listed chemicals including but not  
13 limited to costs of documentation and tracking of products investigated, storage of products,  
14 website enhancement and maintenance, computer and software maintenance, investigative  
15 equipment, CAG's member's time for work done on investigations, office supplies, mailing  
16 supplies and postage. Within 30 days of a request from the Attorney General, CAG shall provide  
17 to the Attorney General copies of documentation demonstrating how the above funds have been  
18 spent. CAG shall be solely responsible for ensuring the proper expenditure of such additional  
19 settlement payment.  
20

21 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** In full and complete  
22 resolution of any claims to Plaintiff's attorney's fees and expenses related to this matter,  
23 Defendant shall pay sixty-five thousand six hundred and twenty-five dollars (\$65,625.00) to  
24 "Yeroushalmi & Yeroushalmi" as full and complete reimbursement for any and all costs,  
25 reasonable investigation fees, expenses, attorneys' fees, expert fees, and any and all other costs  
26 and expenses of any kind incurred as a result of investigating, bringing this matter to Defendant's  
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1 attention, preparing and serving the Notice, litigating, negotiating a settlement in the public  
2 interest, and seeking and obtaining court approval of this Consent Judgment.

3 4.2 Other than the payment to OEHHA described above, all payments referenced in  
4 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
5 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
6 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,  
7 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently  
8 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the  
9 payment to OEHHA was delivered.

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

11 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on  
12 behalf of itself and in the public interest and Defendant for the alleged failure to provide  
13 Proposition 65 warning of exposure to Lead from Five Spices Powder, Galangal Powder, Lamb  
14 Spice Seasoning, Five Spice Powder, Dried Prickly Ash Powder and Arsenic from Lime Stone  
15 Paste w/ Turmeric as set forth in the five Notices and filed Lawsuit, 21STCV43592, and fully  
16 resolves all claims for Lead from Five Spices Powder, Galangal Powder, Lamb Spice Seasoning,  
17 Five Spice Powder, Dried Prickly Ash Powder and Arsenic from Lime Stone Paste w/ Turmeric  
18 that have been asserted against Defendant by CAG in these Notices and Lawsuit up through the  
19 Effective Date for the alleged failure to provide Proposition 65 warnings for the Covered  
20 Products. CAG, on behalf of itself and in the public interest, hereby discharges Defendant and its  
21 officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions,  
22 subsidiaries, and their successors and assigns ("Defendant Releasees") and all customers,  
23 retailers and downstream entities in the distribution chain of the Covered Products to whom  
24 Defendant distributed or sold Covered Products, and the predecessors, successors and assigns of  
25 any of them, and all of their respective officers, directors, shareholders, members, managers,  
26 employees, agents only as to Covered Products sold by the Defendant (collectively,  
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07/01/2022

1 “Downstream Releasees”), for all Covered Products placed into the stream of commerce up  
2 through the Effective Date for violations of Proposition 65 based on exposure to Lead from Five  
3 Spices Powder, Galangal Powder, Lamb Spice Seasoning, Five Spice Powder, Dried Prickly Ash  
4 Powder and Arsenic from Lime Stone Paste w/ Turmeric. Defendant’s compliance with the terms  
5 of this Consent Judgment shall be deemed to constitute compliance with Proposition 65  
6 regarding alleged exposures to Lead from Five Spices Powder, Galangal Powder, Lamb Spice  
7 Seasoning, Five Spice Powder, Dried Prickly Ash Powder and Arsenic from Lime Stone Paste w/  
8 Turmeric. Nothing in this Section affects CAG’s right to commence or prosecute an action under  
9 Proposition 65 against any person other than Defendant Releasees or Downstream Releasees  
10 after the Effective Date.

11           5.2     CAG on behalf of itself, its past and current agents, representatives, attorneys,  
12 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
13 indirectly, any form of legal action and releases all claims, including, without limitation, all  
14 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
15 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
16 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,  
17 fixed or contingent (collectively “Claims”), against the Released Parties arising from any  
18 violation of Proposition 65 or any other statutory or common law regarding the failure to warn  
19 about exposure to Lead and Arsenic, from the Covered Products that could have originally been  
20 brought in the current lawsuit including Lime Stone Paste w/ Turmeric which was not included  
21 in the current lawsuit but deemed amended therein pursuant to Section 1.5.2 herein . If there  
22 were chemicals listed in the Notice which were not named in the current lawsuit, CAG waives  
23 the right to file lawsuits for those chemicals in the Covered Products, including Lime Stone Paste  
24 w/ Turmeric. In furtherance of the foregoing, as to alleged exposures to Lead and Arsenic from  
25 the Covered Products, CAG on behalf of itself only, hereby waives any and all rights and  
26 benefits which it now has, or in the future may have, conferred upon it with respect to Claims  
27 arising from any violation of Proposition 65 or any other statutory or common law regarding the  
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07/01/2022

1 failure to warn about exposure to Lead and Arsenic from the Covered Products by virtue of the  
2 provisions of section 1542 of the California Civil Code, which provides as follows:

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

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

## 23 6. ENFORCEMENT OF JUDGMENT

24 6.1 Any alleged violation of the terms of this Consent Judgment shall be enforced  
25 exclusively hereunder by the Parties hereto and may only be through the terms of the entered  
26 consent judgment. Before CAG moves to enforce the terms of this Consent Judgment, CAG must  
27 provide written notice to Defendant of any alleged violation, including the date and location of  
28 the alleged violation and provide all evidence supporting the alleged violation including any  
applicable test results, product photographs, and purchase receipts, subject to a reasonable

1 confidentiality agreement if requested. The Parties will thereafter meet and confer for a  
2 minimum period of 30 days to allow time for Defendant to present CAG any relevant  
3 compliance information and/or corrective action taken related to the alleged violation, including  
4 if applicable the date of manufacture, import, distribution, or sale of the Covered Product at issue  
5 for purposes of determining the applicability of the release hereunder. If the Parties cannot  
6 resolve the alleged violation, either Party may move to enforce the terms of this Consent  
7 Judgment consistent with the terms herein. If the Parties cannot resolve the alleged violation at  
8 the conclusion of the meet and confer process, CAG has the right to enforce the terms of the  
9 Consent Judgment herein and seek penalties and fees against Defendant.

10 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, the  
11 prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

12 **7. ENTRY OF CONSENT JUDGMENT**

13 7.1 CAG shall be responsible for preparing a motion seeking approval of this Consent  
14 Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties agree to act in  
15 good faith to obtain Court approval of the Consent Judgment. Upon entry of the Consent  
16 Judgment, CAG and Defendant waive their respective rights to a hearing, trial, or appeal on the  
17 allegations in the Notices and/or Complaint.

18 7.2 The Parties shall make good faith efforts to have the Consent Judgment approved  
19 by the Court.

20 7.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent  
21 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
22 and become null and void, and the actions shall revert to the status that existed prior to the  
23 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
24 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
25 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
26 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer in  
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07/01/2022

1 good faith to determine whether to modify the terms of the Consent Judgment and to resubmit it  
2 for approval.

3 **8. MODIFICATION OF JUDGMENT**

4 8.1 This Consent Judgment may be modified only upon written agreement of the  
5 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
6 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

7 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **9. RETENTION OF JURISDICTION**

10 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the  
11 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

12 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the  
13 prevailing party shall be entitled to recover its reasonable attorney's fees and costs as determined  
14 by the Court or agreement of the Parties.

15 **10. DUTIES LIMITED TO CALIFORNIA**

16 10.1 This Consent Judgment shall have no effect on Covered Products sold by  
17 Defendant outside the State of California.

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

19 11.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the  
20 California Attorney General so that the Attorney General may review this Consent Judgment  
21 prior to its approval by to the Court. No sooner than forty-five (45) days after the Attorney  
22 General has received the aforementioned copy of this Consent Judgment, and in the absence of  
23 any written objection by the Attorney General to the terms of this Consent Judgment, CAG may  
24 then submit the Consent Judgment to the Court for approval.

25 **12. ATTORNEY FEES**

07/01/2022

1           12.1 Except as specifically provided in Section 4.1.3, 6.2, and 9.2, each Party shall  
2 bear its own costs and attorney fees in connection with the claims alleged in the Notices and  
3 Complaint which are entirely resolved in this Consent Judgment.

4 **13. GOVERNING LAW**

5           13.1 The validity, construction and performance of this Consent Judgment shall be  
6 governed by the laws of the State of California, without reference to any conflicts of law  
7 provisions of California law.

8           13.2 The terms of this Consent Judgment shall be governed by the laws of the State of  
9 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
10 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
11 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
12 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant  
13 subject to this Consent Judgment may provide written notice to CAG of any asserted change in  
14 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,  
15 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment  
16 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state  
17 or federal law or regulation.

18           13.3 The Parties, including their counsel, have participated in the preparation of this  
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
22 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
23 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
24 agrees that any statute or rule of construction providing that ambiguities are to be resolved  
25 against the drafting Party should not be employed in the interpretation of this Consent Judgment  
26 and, in this regard, the Parties hereby waive California Civil Code § 1654.  
27



1 **14. EXECUTION AND COUNTERPARTS**

2 14.1 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 **15. NOTICES**

6 15.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

7  
8 If to CAG:

9 Reuben Yeroushalmi  
10 Shannon Royster  
11 YEROUSHALMI & YEROUSHALMI  
12 9100 Wilshire Boulevard, Suite 240W  
13 Beverly Hills, CA 90212  
14 (310) 623-1926  
15 Email: lawfirm@yeroushalmi.com

16 If to Kim Seng Company:  
17 Kathleen N. Strickland  
18 Briana Bramer  
19 Matthew Linnell  
20 ROPERS MAJESKI PC  
21 505 Sansome Street, Suite 1925  
22 San Francisco, CA 94111  
23 (415) 543-4800  
24 Email: kathleen.strickland@ropers.com

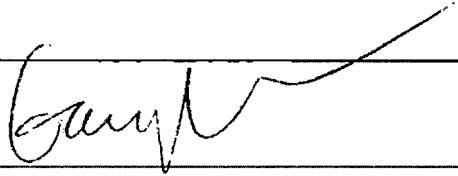
25 **16. AUTHORITY TO STIPULATE**

26 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
27 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
28 the party represented and legally to bind that party.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: _____, 2022	Date: 5/23, 2022

07/01/2022

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Name: _____	Name: <u>GARY TSAI</u>
Title: _____	Title: <u>Director</u>
CONSUMER ADVOCACY GROUP, INC.	KIM SENG COMPANY, dba IHA BEVERAGE

IT IS SO ORDERED.

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

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

07/01/2022

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10 Shannon Royster  
11 YEROUSHALMI & YEROUSHALMI  
12 9100 Wilshire Boulevard, Suite 240W  
13 Beverly Hills, CA 90212  
14 (310) 623-1926  
15 Email: lawfirm@yerausalmi.com

16 If to Kim Seng Company:

17 Kathleen N. Strickland  
18 Briana Bramer  
19 Matthew Linnell  
20 ROPERS MAJESKI PC  
21 505 Sansome Street, Suite 1925  
22 San Francisco, CA 94111  
23 (415) 543-4800  
24 Email: kathleen.strickland@ropers.com

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28 the party represented and legally to bind that party.


<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: <i>May 23</i> , 2022	Date: _____, 2022

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<i>Michael Marcus</i>	
Name: <u>Michael Marcus</u>	Name: _____
Title: <u>Director</u>	Title: _____
CONSUMER ADVOCACY GROUP, INC.	KIM SENG COMPANY, dba IHA BEVERAGE

IT IS SO ORDERED.

Date: JUN 30 2022

  
STEPHEN I. GOORVITCH  
JUDGE OF THE SUPERIOR COURT