

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
YEROUSHALMI & YEROUSHALMI
3 An Association of Independent Law Corporations
9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, California 90212
5 Telephone: 310.623.1926
Facsimile: 310.623.1930
6

7 Attorneys for Plaintiffs,
Consumer Advocacy Group, Inc.
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 CONSUMER ADVOCACY GROUP, INC.,
12 in the interest of the Public,

13 Plaintiff,

14 v.
15

16 KAM KUO TRADING CORP., a New York
Corporation; KAM KUO TRADING INC.,
17 a New York Corporation; HONG KONG
SUPERMARKET, INC., a California
18 Corporation; HONG KONG
19 SUPERMARKET OF MONTEREY PARK,
LTD., a California Corporation; and DOES
20 1-20;

21 Defendants.
22

CASE NO. BC538139

CONSENT JUDGMENT [PROPOSED]

Complaint filed: March 3, 2014
Trial Date: None

23 **1. INTRODUCTION**

24 **1.1** This Consent Judgment is entered into by and between plaintiff Consumer
25 Advocacy Group, Inc. (“CAG”) acting on behalf of itself and in the interest of the public, and
26 defendants KAM KUO TRADING CORP., KAM KUO TRADING, INC. (collectively referred to
27 as “KAM KUO”) and HONG KONG SUPERMARKET OF MONTEREY PARK, LTD. (“HONG
28

1 KONG”) (all defendants are collectively referred to herein as “Defendants”) with each a “Party”
2 to the action and collectively referred to as “Parties.”

3 **1.2** It is alleged that Defendants named in the Complaint employ ten or more persons,
4 are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic
5 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”),
6 and manufactured, distributed, and/or sold Steel Strainers, including, but not limited to, (1)
7 “Myland® STAINLESS STEEL, ‘High quality stainless steel kitchen tools’, Steel Strainer with
8 Black Rubber Handle, UPC: 7 15470 43295 3”, (2) “Myland® STAINLESS STEEL, “High quality
9 stainless steel kitchen tools”, “ITEM NO.: KSMS0065”, “6.5CM DELUX HOTPOT
10 STRAINER”, Steel Strainer with Black Rubber Handle, UPC: 7 15470 43296 0” before the
11 Effective Date of this Consent Judgment.

12 **1.3 Notice of Violation.**

13 1.3.1 On or about October 9, 2013, CAG served the Defendants named in the Complaint
14 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
15 (the “Notices”) that provided the recipients with notice of alleged violations of Health & Safety
16 Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in
17 the Covered Products.

18 1.3.2 No public enforcer has commenced or diligently prosecuted the allegations
19 set forth in the Notices.

20 **1.4 Complaint.**

21 On March 3, 2014, CAG filed a Complaint for civil penalties and injunctive relief
22 (“Complaint”) in Los Angeles Superior Court, Case No. BC538139. The Complaint alleges,
23 among other things, that the named Defendants violated Proposition 65 by failing to give clear and
24 reasonable warnings of exposure to DEHP from Covered Products.

25 **1.5 Consent to Jurisdiction**

26 While otherwise disputed, for purposes of this Consent Judgment, the parties consent that
27 this Court has jurisdiction over the allegations of violations contained in the Complaint and
28

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

7 **1.6 No Admission**

8 This Consent Judgment resolves claims that are denied and disputed. The parties enter into
9 this Consent Judgment pursuant to a full and final settlement of any and all claims between the
10 parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
11 constitute an admission with respect to any material allegation of the Complaint, each and every
12 allegation of which Defendants denies including jurisdiction, nor may this Consent Judgment or
13 compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on
14 the part of Defendants.

15 **2. DEFINITIONS**

16 **2.1** “Covered Products” means Steel Strainers sold by KAM KUO or which there is a
17 trademark registered only by KAM KUO.

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

20 **2.3** “DEHP” means Di (2-ethylhexy) phthalate), also known as Diethyl Hexyl
21 Phthalate.

22 **3. INJUNCTIVE RELIEF/REFORMULATION**

23 **3.1** After the Effective Date, Defendants shall not sell, offer for sale in California, or
24 ship Covered Products for sale in California unless Defendants have reformulated the Covered
25 Products to the point where the level of DEHP does not exceed more than 0.1 % by weight or
26 100 ppm (parts per million).

1 **3.2** Defendants agree, promise, and represent that, as of the Effective Date, to the
2 extent it ships or sells any Covered Products for sale to California customers from its existing
3 inventory that do not comply with Section 3.1, it will provide warnings on such Covered Products
4 that comply with Proposition 65. “Existing inventory” excludes Covered Products shipped, sold
5 and/or otherwise distributed on or prior to the Effective Date, even if sold by Downstream
6 Releasees after the Effective Date. The warnings shall be provided in such a conspicuously and
7 prominent manner that will assure the message is made available and likely to be read, seen, or
8 heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that
9 product labeling stating that:

10 **“WARNING: This product contains chemicals known to the State of**
11 **California to cause cancer, or birth defects, or other reproductive harm”**

12 Shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the
13 Covered Products for any Covered Products in existing inventory that do not comply with Section
14 3.1 and were distributed and/or sold by Releasees or Downstream Releasees after the Effective
15 Date.

16 **4. SETTLEMENT PAYMENT**

17 **Total Payment:** Defendants shall mail via certified mail, payments totaling sixty-five
18 thousand dollars (\$65,000.00) as follows:

19 **4.1 Reimbursement of Attorneys’ Fees and Costs:** Defendants shall pay sixty-two
20 thousand dollars (\$62,000.00) to “Yeroushalmi & Associates” as reimbursement for the
21 investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and
22 expenses for all work performed through the approval of this Consent Judgment.

23 **4.2 Civil Penalties.** Defendants shall issue two separate checks for a total amount of
24 two-thousand dollars (\$2,000.00) as penalties pursuant to Health & Safety Code § 25249.12: (a)
25 one check made payable to the State of California’s Office of Environmental Health Hazard
26 Assessment (OEHHA) in the amount of one-thousand and five hundred dollars (\$1,500.00)
27 representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the
28

1 amount of five hundred dollars (\$500.00) representing 25% of the total penalty. Two separate
2 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box
3 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500.00. The second 1099
4 shall be issued in the amount of \$500.00 to CAG and delivered to: Yeroushalmi & Associates,
5 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

6 **4.3 Payments in Lieu of Civil Penalties**

7 Defendants also shall separately pay one-thousand dollars (\$1,000.00) to CAG as a
8 payment in lieu of civil penalty pursuant to Health & Safety Code §25249.7(b) and California
9 Code of Regulations, Title 11 § 3203(b). CAG will use this payment for investigation of the
10 public's exposure to Proposition 65 listed chemicals through various means, laboratory fees for
11 testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various
12 mediums, including but not limited to consumer product, occupational, and environmental
13 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained
14 experts who assist with the extensive scientific analysis necessary for those files in litigation, as
15 well as administrative costs incurred during the litigation, in order to reduce the public's
16 exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to
17 be responsible for such exposures and attempting to persuade those persons and/or entities to
18 reformulate their products or the source of exposure to completely eliminate or lower the level of
19 Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the
20 instant Action.

21 **4.4** Payments pursuant to 4.1, 4.2 and 4.3 shall be delivered to: Reuben Yeroushalmi,
22 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212 within
23 the time agreed upon by the Parties.

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

25 **5.1** This Consent Judgment is a full, final, and binding resolution between CAG on
26 behalf of itself and in the public interest and Defendants and its officers, directors, insurers,
27 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
28

1 companies, agents, contractors, vendors, and their successors and assigns (“Defendant
2 Releasees”), including but not limited to each of their suppliers, customers, distributors,
3 wholesalers, retailers, or any other person in the course of doing business, and the successors and
4 assigns of any of them who may use, maintain, distribute or sell Covered Products (“Downstream
5 Defendant Releasees”), for all conduct of the named Defendants prior to the Effective Date based
6 on alleged exposure to DEHP from Covered Products as set forth in the Notice. Defendants and
7 Defendant Releasees’ compliance with this Consent Judgment shall constitute compliance with
8 Proposition 65 with respect to DEHP from Covered Products.

9 **5.2** CAG on behalf of itself, its past and current agents, representatives, attorneys,
10 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
11 indirectly, any form of legal action and releases all claims, including, without limitation, all
12 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
13 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
14 fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or
15 contingent (collectively “Claims”), against Defendants, Defendant Releasees, and Downstream
16 Defendant Releasees arising from any allegations of violation of Proposition 65 or any other
17 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
18 Products manufactured, distributed, or sold by Defendants and Defendant Releasees. In
19 furtherance of the foregoing, as to alleged exposures to DEHP from Covered Products, CAG
20 hereby waives any and all rights and benefits which it now has, or in the future may have, conferred
21 upon it with respect to the Claims arising from any violation of Proposition 65 or any other
22 statutory or common law regarding the failure to warn about exposure to DEHP from Covered
23 Products by virtue of the provisions of section 1542 of the California Civil Code, which provides
24 as follows:

25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
26 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
27 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
28 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

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

15 **6. ENFORCEMENT OF JUDGMENT**

16 **6.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
17 hereto. Except as otherwise agreed by the Parties, the Parties may, by noticed motion or order to
18 show cause before the Superior Court of California, City and County of Los Angeles, giving the
19 notice required by law, enforce the terms and conditions contained herein. A Party may enforce
20 any of the terms and conditions of this Consent Judgment only after that Party first provides notice
21 to the Party allegedly failing to comply with the terms and conditions of this Consent Judgment
22 and provide 60 days in which the Parties shall attempt to resolve such Party's failure to comply in
23 an open and good faith manner.

24 **6.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
25 proceeding to enforce any alleged violation of Section 3.1 of this Consent Judgment, CAG shall
26 provide a Notice of Violation ("NOV") to Defendants. The NOV shall include for each of the
27 Covered Products: the date(s) the alleged violation(s) was observed and the location at which the
28

1 Covered Products were offered for sale, and shall be accompanied by all test data obtained by
2 CAG regarding the Covered Products, including an identification of the component(s) of the
3 Covered Products that were tested. Before any destructive testing of any Covered Products is
4 conducted by or on behalf of CAG, CAG shall give Defendants an opportunity to inspect and
5 verify at reasonable times and places the authenticity of any Covered Product in violation of this
6 Consent Judgment.

7 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
8 alleged violation if, within 60 days of receiving such NOV, Defendants serve a Notice of
9 Election (“NOE”) that meets one of the following conditions:

10 (a) The Covered Products were shipped by Defendants for sale in
11 California before the Effective Date, or

12 (b) Since receiving the NOV Defendants have taken corrective action
13 by either (i) requesting that its customers in California remove the Covered Products
14 identified in the NOV from sale in California and destroy or return the Covered Products
15 to Defendants, or (ii) providing a clear and reasonable warning for the Covered Products
16 identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

17 6.2.2 **Contested NOV.** Defendants may serve an NOE informing CAG of its
18 election to contest the NOV within 60 days of receiving the NOV.

19 (a) In its election, Defendants may request that the sample(s) Covered
20 Products tested by CAG be subject to additional confirmatory testing at an EPA-accredited
21 laboratory.

22 (b) If the confirmatory testing establishes that the Covered Products do
23 not contain DEHP in excess of the level allowed in Section 3.1, CAG shall take no further
24 action regarding the alleged violation. If the testing does not establish compliance with
25 Section 3.1, Defendants may withdraw its NOE to contest the violation and may serve a
26 new NOE pursuant to Section 6.2.1.

1 (c) If Defendants do not withdraw an NOE to contest the NOV, the
2 Parties shall meet and confer for a period of no less than 30 days before CAG may seek an
3 order enforcing the terms of this Consent Judgment.

4 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, such
5 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
6 violation of Proposition 65 or this Consent Judgment.

7 **7. ENTRY OF CONSENT JUDGMENT**

8 **7.1** CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
10 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaint.

11 **7.2** If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
12 and any and all prior agreements between the parties merged herein shall terminate and become
13 null and void, and the actions shall revert to the status that existed prior to the execution date of
14 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
15 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
16 have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action,
17 or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
18 modify the terms of the Consent Judgment and to resubmit it for approval.

19 **8. MODIFICATION OF JUDGMENT AND RIGHTS THEREUNDER**

20 **8.1** This Consent Judgment may be modified only upon written agreement of the
21 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
22 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. Any
23 Party may waive in writing any right it may have under this Consent Judgment.

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

1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms
3 of this Consent Judgment.

4 **10. DUTIES LIMITED TO CALIFORNIA**

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

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

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by all parties, on the
9 California Attorney General so that the Attorney General may review this Consent Judgment prior
10 to its submittal to the Court for approval. 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, the Parties
13 may then submit it to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4.1 and 6.3, each Party shall bear its own
16 costs and attorney fees in connection with this action.

17 **13. GOVERNING LAW**

18 13.1 The validity, construction and performance of this Consent Judgment shall be
19 governed by the laws of the State of California, without reference to any conflicts of law provisions
20 of California law.

21 13.2 The Parties, including their counsel, have participated in the preparation of this
22 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
23 Consent Judgment was subject to revision and modification by the Parties and has been accepted
24 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
25 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
26 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
27 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
28

1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
2 this regard, the Parties hereby waive California Civil Code § 1654.

3 **14. EXECUTION AND COUNTERPARTS**

4 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile
5 or portable document format (PDF), which taken together shall be deemed to constitute one
6 document.

7 **15. NOTICES**

8 15.1 Any notices under this Consent Judgment shall be by personal delivery or First
9 Class Mail.

10 If to CAG:

11 Reuben Yeroushalmi
12 9100 Wilshire Boulevard, Suite 240W
13 Beverly Hills, CA 90212
14 (310) 623-1926

15 If to Kam Kuo Trading, Inc. and Kam Kuo Trading Corp.

16 Joshua Shayne, Esq.
17 Richard W. Park, Esq.
18 KAUFMAN BORGEEST & RYAN LLP
19 23975 Park Sorrento, Suite 370
20 Calabasas, CA 91302
21 Tel: 818-880-0992; Fax: 818-880-0993

22 If to Hong Kong Supermarket of Monterey Park, LTD.

23 Yaw-Jiun (Gene) Wu, Esq.
24 Robert A Bailey, Esq.
25 ANGLIN, FLEWELLING, RASMUSSEN, CAMPBELL & TRYTTEN LLP
26 199 South Los Robles Avenue, Suite 600
27 Pasadena, California 91101-2459
28 Telephone: (626) 535-1900; Fascimile: (626) 577-7764

1 **16. AUTHORITY TO STIPULATE**

2 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
4 of the party represented and legally to bind that party.

5
6 **AGREED TO:**

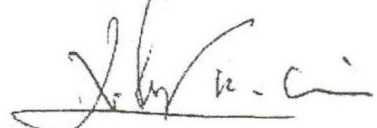
7 Date: 3-4-15, 2015

8
9
10 By:  _____

11 Plaintiff, CONSUMER ADVOCACY
12 GROUP, INC.

AGREED TO:

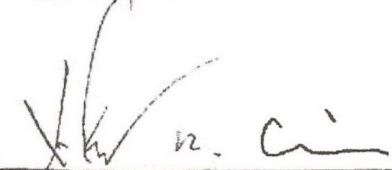
Date: Feb. 23, 2015

By:  _____

Defendant, KAM KUO TRADING CORP.

13
14
15 **AGREED TO:**

16 Date: Feb. 23, 2015

17
18
19 By:  _____

20 Defendant, KAM KUO TRADING, INC.

AGREED TO:

Date: Feb 25, 2015

By:  _____

Defendant, HONG KONG SUPERMARKET
OF MONTEREY PARK, LTD.

21
22
23
24 **IT IS SO ORDERED.**

25
26 Date: _____

JUDGE OF THE SUPERIOR COURT