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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

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

12
13 Plaintiff,

14 v.

15 DEL MAR SUPERMARKET, a business
16 entity form unknown; and DOES1-20;

17 Defendants.

CASE NO. BC613069

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

Dept: 28

Judge: Hon. Rupert A. Byrdsong

Complaint: March 8, 2016

18 **1. INTRODUCTION**

19 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
20 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the interest of the
21 public, and defendant, THOAI PHAT, INC. DBA DEL MAR SUPERMARKET (referred to as
22 “DEL MAR” or “Defendant”) and cross-defendant, CHEVALIER INTERNATIONAL (USA),
23 INC. (referred to as “CHEVALIER” or “Cross-Defendant”) (with DEL MAR and CHEVALIER
24 together referred to as the “Defendants”) with each a Party to the action and collectively referred
25 to as “Parties.”

26 1.2 **Defendant and Products**

27 1.2.1 Defendant is a California corporation which employs ten or more persons.
28

1 Defendant manufactures, causes to be manufactured, distributes, or sells (a) ginger powder,
2 including but not limited to “Wu Hsing Dry Ginger Powder; Net Wt: 30g, 1.1oz; Ingredients:
3 Dry Ginger; Packed For Ton Hsing Foods Industrial Co., LTD.; Office: 4F, No. 108 Ruey
4 Guang Rd. Neihu Dist. Taipei Taiwan R.O.C.; Made In Taiwan; UPC: 4 710868 801171” sold
5 or supplied by CHEVALIER (herein “Ginger”) (b) ground cinnamon including but not limited
6 to “La Mexicana Spice, Canela Molida ‘Ground Cinnamon’ 99 ¢ (Net Wt 1.5oz, 42.52g)
7 Packed and Distributed by La Mexicana Spice, www.LeMexicanaSpice.com. UPC: 7 05571
8 11310 3” sold or supplied by La Mexicana Spice, Inc. (herein “Cinnamon”), (c) dried ground
9 shrimp including but not limited to “Ranchero Camaron Molido ‘Ground Shrimp’ \$1.99. Net
10 Wt. 2 oz. (56.6g) P525600, Distributed by Ranchero Latin Foods, Los Angeles, Ca, 90023. UPC
11 7 48397 10007 0” sold or supplied by AGSM Distribution Co. (herein “Shrimp”), and (d) Indian
12 curry powder including but not limited to “Pure Indian Curry Powder, Net Wt. 6.35 Oz. (180g),
13 Distributed by U-Can Food Trading, Inc. Pack by Pacific Giant (M) Sdn Bhd. UPC: 0 650897
14 092192” sold or supplied by U-Can Food Trading, Inc. (herein “Curry Powder”).

15 1.2.2 Cross-Defendant is a California corporation which employs ten or more
16 persons. Cross-Defendant manufactures, causes to be manufactured, distributes, and sells
17 Ginger.

18 1.2.3 For purposes of this Consent Judgment, Defendant and Cross-Defendant
19 are deemed persons in the course of doing business in California and are subject to the
20 provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
21 Safety Code §§ 25249.6 et seq. (“Proposition 65”).

22 **1.3 Chemicals of Concern**

23 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
24 California to cause cancer and/or birth defects or other reproductive harm.

25 **1.4 Notices of Violation.**

26 1.4.1 On or about May 1, 2015, CAG served Defendant and various public
27 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “AG #
28 2015-00387 Notice”) that provided the recipients with notice of alleged violations of Health &

1 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
2 contained in Ginger sold and/or distributed by Defendant. No other public enforcer has
3 commenced or diligently prosecuted the allegations set forth in the AG # 2015-00387 Notice.

4 1.4.2 On or about August 5, 2015, CAG served Defendant and various public
5 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “AG #
6 2015-00750 Notice”) that provided the recipients with notice of alleged violations of Health &
7 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
8 contained in Cinnamon sold and/or distributed by Defendant. No other public enforcer has
9 commenced or diligently prosecuted the allegations set forth in the AG # 2015-00750 Notice.

10 1.4.3 On or about October 2, 2015, CAG served Defendant and various public
11 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “AG #
12 2015-00997 Notice”) that provided the recipients with notice of alleged violations of Health &
13 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
14 contained in Shrimp sold and/or distributed by Defendant. No other public enforcer has
15 commenced or diligently prosecuted the allegations set forth in the AG # 2015-00997 Notice.

16 1.4.4 On or about November 17, 2015, CAG served Defendant and various
17 public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
18 “AG # 2015-01177 Notice”) that provided the recipients with notice of alleged violations of
19 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
20 Lead contained in Curry Powder sold and/or distributed by Defendant. No other public enforcer
21 has commenced or diligently prosecuted the allegations set forth in the AG # 2015-01177 Notice.

22 1.4.5 On or about March 14, 2017, CAG served Defendants and various public
23 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter “AG #
24 2017-00322 Notice”) that provided the recipients with notice of alleged violations of Health &
25 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
26 contained in Ginger sold and/or distributed by Defendant. No other public enforcer has
27 commenced or diligently prosecuted the allegations set forth in the AG # 2017-00322 Notice.
28

1 1.4.6 On or about December 18, 2015, CAG served Defendant and various
2 public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
3 “AG # 2015-01301 Notice”) that provided the recipients with notice of alleged violations of
4 Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to
5 Lead contained in Roasted Seaweed, including but not limited to “‘Roasted Seaweed’ Net Wt: .56
6 oz (16g) Product of China. Distributed by CTC Food International Inc. DBA Oriental Trading
7 Co., International. UPC: 0 74601 00836 9” supplied by and/or distributed by CTC Food
8 International Inc. (herein “Seaweed”). No other public enforcer has commenced or diligently
9 prosecuted the allegations set forth in the AG # 2015-01301 Notice.

10 **1.5 Complaints**

11 1.5.1 On March 8, 2016, CAG filed a complaint for civil penalties and
12 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. BC613069 against
13 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65
14 by failing to give clear and reasonable warnings of exposure to Lead from the Ginger,
15 Cinnamon, Shrimp, Curry Powder, and Seaweed.

16 1.5.2 On April 24, 2018, Defendant filed a cross-complaint for implied
17 indemnity, comparative indemnity, declaratory relief, equitable indemnity, and contribution in
18 this Complaint against Cross-Defendant.

19 1.5.3 Upon the Court’s approval of this Consent Judgment, the allegations in the
20 AG # 2017-00322 Notice shall be deemed amended and added into the Complaint and
21 CHEVALIER shall be added as a defendant as to the allegations in the AG # 2017-00322 Notice.

22 **1.6 Consent to Jurisdiction**

23 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the
26 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
27 full settlement and resolution of the allegations contained in the Complaint and of all claims
28

1 which were or could have been raised by any person or entity based in whole or in part, directly
2 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

3 **1.7 No Admission**

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

20 **2. DEFINITIONS**

21 2.1 “Covered Products” means Ginger, Cinnamon, Shrimp, and Curry Powder sold or
22 supplied by DEL MAR.

23 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
24 Court.

25 2.3 “Lead” means lead and lead compounds.

26 2.4 “Notices” means the AG # 2015-00387 Notice, AG # 2015-00750 Notice, AG #
27 2015-00997 Notice, AG # 2015-01177 Notice, and AG # 2017-00322 Notice sent by Plaintiff.
28

1 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
2 **WARNINGS.**

3 3.1 After the Effective Date, DEL MAR and CHEVALIER shall not sell in
4 California, offer for sale in California, or ship for sale in California any Ginger unless the level
5 of Lead does not exceed 720 parts per billion (“ppb”) except as provided in Section 3.2. DEL
6 MAR shall not sell in California, offer for sale in California, or ship for sale in California any
7 Cinnamon unless the level of Lead does not exceed 200 ppb, and shall not sell in California,
8 offer for sale in California, or ship for sale in California any Shrimp and Curry Powder unless the
9 level of Lead does not exceed 90 ppb except as provided in Section 3.2.

10 3.2 For any Ginger that exceeds 720 ppb Lead DEL MAR and CHEVALIER must
11 provide a Proposition 65 compliant warning for the Covered Products as set forth below. For
12 any Cinnamon that exceeds 200 ppb Lead, or Shrimp and Curry Powder that exceeds 90 ppb
13 Lead that are sold in California after the Effective Date, DEL MAR must provide a Proposition
14 65 compliant warning for the Covered Products as set forth below. Any warning provided
15 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products
16 or a product-specific warning provided on a posted sign, shelf tag, or shelf sign, for each
17 Covered Product at each point of display of each Covered Product, and be prominently placed
18 with such conspicuousness as compared with other words, statements, designs, or devices as to
19 render it likely to be read and understood by an ordinary individual under customary conditions
20 before purchase or use. The Parties agree that the following warning language shall constitute
21 compliance with Proposition 65 with respect to the alleged Lead in the Covered Products
22 distributed and/or sold by Defendants after the Effective Date:
23

24
25 **WARNING:** Consuming this product can expose you to Lead, which
26 are known to the State of California to cause cancer and birth defects or
27 other reproductive harm. For more information go to
28 www.P65Warnings.ca.gov/food.

1
2 3.3 For any “Wu Hsing Dry Ginger Powder; Net Wt: 30g, 1.1oz; Ingredients: Dry
3 Ginger; Packed For Ton Hsing Foods Industrial Co., LTD.; Office: 4F, No. 108 Ruey Guang Rd.
4 Neihu Dist. Taipei Taiwan R.O.C.; Made In Taiwan; UPC: 4 710868 801171” still existing in
5 DEL MAR and CHEVALIER’s inventory as of the Effective Date, Defendants shall
6 immediately destroy the Ginger and shall not offer it for sale or consumption to anyone under
7 any circumstances.

8 3.4 For any Cinnamon, Shrimp, and Curry Powder still existing in the
9 Defendant's inventory as of the Effective Date, Defendant shall place a Proposition 65 compliant
10 warning on them, unless the Cinnamon does not exceed 200 ppb Lead, and unless the Shrimp
11 and Curry Powder does not exceed 90 ppb Lead. Any warning provided on existing inventory
12 pursuant to this section shall comply with the warning requirements under Section 3.2 above.
13

14 **4. SETTLEMENT PAYMENT**

15 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendants
16 shall pay a total of one hundred thousand dollars and zero cents (\$100,000.00) in full and
17 complete settlement of all monetary claims by CAG related to the Notices. Of the total
18 \$100,000.00 settlement payment, DEL MAR shall pay eighty thousand dollars (\$80,000.00) and
19 CHEVALIER shall pay twenty thousand dollars (\$20,000.00), as follows:
20

21 4.1.1 **Civil Penalty:** Defendants shall issue separate checks totaling five
22 thousand seven hundred and twenty dollars (\$5,720.00) as penalties pursuant to Health & Safety
23 Code § 25249.12 divided as follows:

24 (a) Defendants will pay to the State of California’s Office of
25 Environmental Health Hazard Assessment (“OEHHA”) the total amount of four thousand two
26 hundred and ninety dollars (\$4,290.00) representing 75% of the total penalty and Defendants will
27 pay to CAG the total amount of one thousand four hundred and thirty dollars (\$1,430.00)
28 representing 25% of the total penalty; and

1 (b) Separate 1099s shall be issued for each of the above payments:

2 Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
3 0284486). Defendants will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
4 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

5 4.1.2 **Additional Settlement Payments:** Defendants shall make a separate
6 payment, in the total amount of four thousand two hundred and eighty dollars (\$4,280.00) as an
7 Additional Settlement Payment to “Consumer Advocacy Group, Inc.” pursuant to Health &
8 Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendants
9 will issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
10 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
11 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating
12 exposures through various mediums, including but not limited to consumer product,
13 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
14 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
15 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but
16 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
17 investigation and litigation to reduce the public’s exposure to Proposition 65 listed chemicals by
18 notifying those persons and/or entities believed to be responsible for such exposures and
19 attempting to persuade those persons and/or entities to reformulate their products or the source of
20 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including
21 but not limited to costs of documentation and tracking of products investigated, storage of
22 products, website enhancement and maintenance, computer and software maintenance,
23 investigative equipment, CAG’s member’s time for work done on investigations, office supplies,
24 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
25 provide to the Attorney General copies of documentation demonstrating how the above funds
26 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
27 additional settlement payment.
28

1 4.1.3 **Reimbursement of Attorneys Fees and Costs:** Defendants shall pay a
2 total of ninety thousand dollars (\$90,000.00) to “Yeroushalmi & Yeroushalmi” as reimbursement
3 for reasonable investigation fees and costs, attorneys’ fees, and any other costs incurred as a
4 result of investigating, bringing this matter to Defendants’ attention, litigating, and negotiating a
5 settlement in the public interest.

6 4.2 Other than the payment to OEHHA described above, all payments referenced in
7 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
8 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

9 4.3 The payment to OEHHA shall be delivered to Office of Environmental Health
10 Hazard Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California
11 95812. Concurrently with payment to OEHHA, Defendants shall provide CAG with written
12 confirmation that the payment to OEHHA was delivered.

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

14 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
15 behalf of itself and in the public interest and Defendants, of any alleged violation of Proposition
16 65 that was or could have been asserted by CAG against DEL MAR for failure to provide
17 Proposition 65 warnings of exposure to Lead from the Covered Products as set forth in the
18 Notices, and against CHEVALIER for failure to provide Proposition 65 warnings of exposure to
19 Lead from the Covered Products as set forth in the AG # 2017-00322 Notice, and fully resolves
20 all claims that have been or could have been asserted in this action up to the Effective Date for
21 DEL MAR’S failure to provide Proposition 65 warnings for the Covered Products regarding
22 exposures to Lead and CHEVALIER’S failure to provide Proposition 65 warnings for the Ginger
23 regarding exposures to Lead.

24 5.2 Release of DEL MAR:

25 5.2.1 CAG, on behalf of itself and in the public interest, hereby discharges
26 Defendant and its parent companies, subsidiaries, divisions, affiliates, franchisees, licensors,
27 licensees, customers, distributors, wholesalers, retailers and all downstream entities in the
28

1 distribution chain of the Covered Products, and the predecessors, successors and assigns of any
2 of them, and all of their respective officers, directors, shareholders, members, managers,
3 employees, and agents (collectively, “Released Parties”), from all claims up through the
4 Effective Date for violations of Proposition 65 based on exposure to Lead from the Covered
5 Products. Compliance with the terms of this Consent Judgment shall be deemed to constitute
6 compliance by the Released Parties with Proposition 65 regarding alleged exposures to Lead
7 from the Covered Products. Nothing in this Section affects CAG’s right to commence or
8 prosecute an action under Proposition 65 against any person other than Defendant or Released
9 Parties.

10 5.2.2 CAG on behalf of itself, its past and current agents, representatives,
11 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in,
12 directly or indirectly, any form of legal action and releases all claims, including, without
13 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
14 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
15 investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or
16 unknown, fixed or contingent (collectively “Claims”), against the Released Parties arising from
17 any violation of Proposition 65 or any other statutory or common law regarding the failure to
18 warn about exposure to Lead from the Covered Products. In furtherance of the foregoing, as to
19 alleged exposures to Lead from the Covered Products, CAG on behalf of itself only, hereby
20 waives any and all rights and benefits which it now has, or in the future may have, conferred
21 upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory
22 or common law regarding the failure to warn about exposure to Lead from the Covered Products
23 by virtue of the provisions of section 1542 of the California Civil Code, which provides as
24 follows:
25

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

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

16 5.2.3 CAG has released DEL MAR for the claims and allegations in the AG #
17 2015-01301 Notice in a fully executed proposed consent judgment entered into between CAG
18 and CTC Food International Inc. who is the supplier of the Seaweed to DEL MAR, which is
19 contingent upon court approval in another action captioned, *Consumer Advocacy Group, Inc. v.*
20 *CTC Food International, Inc. et al.*, filed in the Superior Court of the State of California, County
21 of Alameda, Case No. RG15784625. This Consent Judgment is expressly conditioned upon, and
22 contingent to, the Alameda Court's approval of CAG's consent judgment with CTC Food
23 International Inc.

24 5.3 Release of CHEVALIER:

25 5.3.1 CAG, on behalf of itself and in the public interest, hereby discharges
26 CHEVALIER and its parent companies, subsidiaries, divisions, affiliates, franchisees, licensors,
27 licensees, customers, distributors, wholesalers, retailers and all downstream entities in the
28 distribution chain of the Ginger, and the predecessors, successors and assigns of any of them, and

1 all of their respective officers, directors, shareholders, members, managers, employees, and
2 agents (collectively, “Ginger Released Parties”), from all claims up through the Effective Date
3 for violations of Proposition 65 based on exposure to Lead from the Ginger. Compliance with the
4 terms of this Consent Judgment shall be deemed to constitute compliance by the Ginger Released
5 Parties with Proposition 65 regarding alleged exposures to Lead from the Ginger. Nothing in this
6 Section affects CAG’s right to commence or prosecute an action under Proposition 65 against
7 any person other than CHEVALIER or Ginger Released Parties.

8 5.3.2 CAG on behalf of itself, its past and current agents, representatives,
9 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in,
10 directly or indirectly, any form of legal action and releases all claims, including, without
11 limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
12 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
13 investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or
14 unknown, fixed or contingent (collectively “Claims”), against the Ginger Released Parties
15 arising from any violation of Proposition 65 or any other statutory or common law regarding the
16 failure to warn about exposure to Lead from the Ginger. In furtherance of the foregoing, as to
17 alleged exposures to Lead from the Ginger, CAG on behalf of itself only, hereby waives any and
18 all rights and benefits which it now has, or in the future may have, conferred upon it with respect
19 to Claims arising from any violation of Proposition 65 or any other statutory or common law
20 regarding the failure to warn about exposure to Lead from the Ginger by virtue of the provisions
21 of section 1542 of the California Civil Code, which provides as follows:

22
23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
25 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
26 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
27 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
28 DEBTOR OR RELEASED PARTY.

CAG understands and acknowledges that the significance and consequence of this waiver of
California Civil Code section 1542 is that even if CAG suffers future damages arising out of or

1 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
2 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
3 about exposure to Lead from the Ginger, including but not limited to any exposure to, or failure
4 to warn with respect to exposure to Lead from the Ginger, CAG will not be able to make any
5 claim for those damages against Ginger Released Parties. Furthermore, CAG acknowledges that
6 it intends these consequences for any such Claims arising from any violation of Proposition 65 or
7 any other statutory or common law regarding the failure to warn about exposure to Lead from
8 Ginger as may exist as of the date of this release but which CAG does not know exist, and
9 which, if known, would materially affect their decision to enter into this Consent Judgment,
10 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
11 negligence, or any other cause.

12 5.4 Mutual Release:

13 5.4.1 DEL MAR and CHEVALIER on behalf of themselves, hereby discharges
14 each other and their respective parent companies, subsidiaries, divisions, affiliates, franchisees,
15 licensors, licensees, customers, distributors, wholesalers, retailers and all downstream entities in
16 the distribution chain of the Ginger, and the predecessors, successors and assigns of any of them,
17 and all of their respective officers, directors, shareholders, members, managers, employees, and
18 agents (collectively, “Mutually Released Parties”), from all claims up through the Effective Date
19 for all claims against each other arising from CAG’s allegations against the Defendants for
20 violations of Proposition 65 based on exposure to Lead from the Ginger.

21 5.4.2 DEL MAR and CHEVALIER on behalf of themselves, past and current
22 agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to
23 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
24 including, without limitation, all actions, and causes of action, in law or in equity, suits,
25 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
26 but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever,
27 whether known or unknown, fixed or contingent (collectively “Claims”), against each other and
28

1 the Mutually Released Parties arising from CAG's allegations against the Defendants for
2 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
3 about exposure to Lead from the Ginger. In furtherance of the foregoing, as to alleged exposures
4 to Lead from the Ginger, DEL MAR and CHEVALIER on behalf of themselves, hereby
5 mutually waives any and all rights and benefits which either now has, or in the future may have,
6 conferred upon them with respect to Claims arising from CAG's allegations against the
7 Defendants for violation of Proposition 65 or any other statutory or common law regarding the
8 failure to warn about exposure to Lead from the Ginger by virtue of the provisions of section
9 1542 of the California Civil Code, which provides as follows:

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

16 DEL MAR and CHEVALIER understands and acknowledges that the significance and
17 consequence of this waiver of California Civil Code section 1542 is that even if DEL MAR or
18 CHEVALIER suffers future damages arising out of or resulting from, or related directly or
19 indirectly to, in whole or in part, Claims arising from CAG's allegations against the Defendants
20 for violation of Proposition 65 or any other statutory or common law regarding the failure to
21 warn about exposure to Lead from the Ginger, including but not limited to any exposure to, or
22 failure to warn with respect to exposure to Lead from the Ginger, then DEL MAR and
23 CHEVALIER will not be able to make any claim against each other for those damages against
24 each other and the Mutually Released Parties. Furthermore, DEL MAR and CHEVALIER
25 acknowledge that they intend these consequences for any such Claims arising from CAG's
26 allegations against the Defendants for violation of Proposition 65 or any other statutory or
27 common law regarding the failure to warn about exposure to Lead from Ginger as may exist as
28 of the date of this release but which DEL MAR and CHEVALIER do not know exist, and which,
if known, would materially affect their decision to enter into this Consent Judgment, regardless

1 of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any
2 other cause.

3 **6. ENFORCEMENT OF JUDGMENT**

4 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
5 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
6 California, Los Angeles County, giving the notice required by law, enforce the terms and
7 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent
8 Judgment only after that Party first provides 30 days notice to the Party allegedly failing to
9 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
10 Party's failure to comply in an open and good faith manner. Notwithstanding the immediately
11 preceding sentence CAG may bring a motion or an action to enforce any breach of the settlement
12 payment terms in Section 4 upon five (5) days written notice by CAG to any of the Defendant.

13 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
14 proceeding to enforce the terms of this Consent Judgment other than for failure to make
15 payment, CAG shall provide a Notice of Violation ("NOV") to Defendants. The NOV shall
16 include for each of the Covered Products: the date(s) the alleged violation(s) was observed and
17 the location at which the Covered Products were offered for sale and shall be accompanied by all
18 test data obtained by CAG regarding the Covered Products, and any other evidence or support
19 for the allegations in the NOV.
20

21 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
22 alleged violation if, within 60 days of receiving such NOV, Defendants serve a Notice of
23 Election ("NOE") that meets one of the following conditions:

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

26 (b) Since receiving the NOV Defendants have taken corrective action
27 by either (i) requesting that its customers or stores in California, as applicable, remove
28 the Covered Products identified in the NOV from sale in California and destroy or return

1 the Covered Products to Defendants or vendor, as applicable, or (ii) providing a clear and
2 reasonable warning for the Covered Products identified in the NOV pursuant to Section 3
3 above with written confirmation to CAG.

4 6.2.2 **Contested NOV.** Defendants may serve a NOE informing CAG of its
5 election to contest the NOV within 30 days of receiving the NOV.

6 (a) In its election, Defendants may request that the sample(s) of
7 Covered Products tested by CAG be subject to confirmatory testing at an EPA-accredited
8 laboratory.

9 (b) If the confirmatory testing establishes that the Covered Products do
10 not contain Lead in excess of the levels allowed in Section 3.1, above, CAG shall take no
11 further action regarding the alleged violation. If the testing does not establish compliance
12 with Section 3.1, above, Defendants may withdraw its NOE to contest the violation and
13 may serve a new NOE pursuant to Section 6.2.1.

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

17 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
18 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

19 7. **ENTRY OF CONSENT JUDGMENT**

20 7.1 CAG shall file a notice of conditional settlement with the court within 5 business
21 days after fully execution of this Consent Judgment.

22 7.2 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
23 California Health & Safety Code § 25249.7(f) to be set for hearing after paragraph 5.2.3 is
24 satisfied. Upon entry of the Consent Judgment, CAG and Defendants waive their respective
25 rights to a hearing or trial on the allegations of the Complaint.

26 7.3 The Parties shall make all reasonable efforts possible to have the Consent
27 Judgment approved by the Court.
28

1 7.4 If this Consent Judgment is not approved in full by the Court, (a) this Consent
2 Judgment and any and all prior agreements between the Parties merged herein shall terminate
3 and become null and void, and the actions shall revert to the status that existed prior to the
4 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
5 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
6 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
7 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
8 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

9 **8. MODIFICATION OF JUDGMENT**

10 8.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
12 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

13 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

15 **9. RETENTION OF JURISDICTION**

16 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
17 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

18 **10. DUTIES LIMITED TO CALIFORNIA**

19 10.1 This Consent Judgment shall have no effect on Covered Products sold by
20 Defendants outside the State of California.

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

22 11.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
23 California Attorney General so that the Attorney General may review this Consent Judgment
24 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
25 has received the aforementioned copy of this Consent Judgment, and in the absence of any
26 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
27 approve this Consent Judgment.
28

1 **12. ATTORNEY FEES**

2 12.1 Except as specifically provided in Section 4.1.3 and 6.3, each Party shall bear its
3 own costs and attorney fees in connection with this action.

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
28

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

15 If to Defendant.:

16 Eoin L. Kreditor
17 ekreditor@fyklaw.com
18 John C. Clough
19 jclough@fyklaw.com
20 FITZGERALD YAP KREDITOR LLP
21 2 Park Plaza, Suite 850
22 Irvine, CA 92614
23 (949) 788-8900

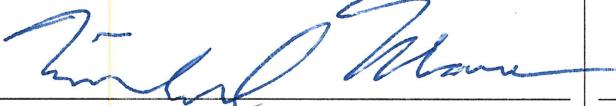
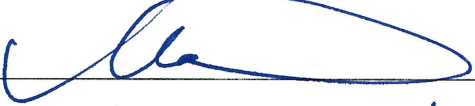
24 If to Cross-Defendant:

25 Whitney Jones Roy
26 wroy@sheppardmullin.com
27 SHEPPARD, MULLIN, RICHTER & HAMPTON
28 333 S. Hope Street, 43rd Floor
Los Angeles, CA 90071
Tel: (213) 620-1780

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.

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AGREED TO: Date: <u>08/07</u> , 2019  Name: <u>Michael Marcus</u> Title: <u>Director</u> CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: <u>8-7</u> , 2019  Name: <u>Martin Trinh</u> Title: <u>president</u> THOAI PHAT, INC. DBA DEL MAR SUPERMARKET
AGREED TO: Date: _____, 2019 Name: _____ Title: _____ CHEVALIER INTERNATIONAL (USA), INC.	

IT IS SO ORDERED.

Date: _____

HON. RUPERT A. BYRDSONG
JUDGE OF THE SUPERIOR COURT

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AGREED TO: Date: _____, 2019 Name: _____ Title: _____ CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: _____, 2019 Name: _____ Title: _____ THOAI PHAT, INC. DBA DEL MAR SUPERMARKET
AGREED TO: Date: <u>Aug. 8th</u> , 2019 <u></u> Name: <u>Philip Chu</u> Title: _____ CHEVALIER INTERNATIONAL (USA), INC.	

IT IS SO ORDERED.

Date: _____

HON. RUPERT A. BYRDSONG
JUDGE OF THE SUPERIOR COURT