

1 Reuben Yeroushalmi (SBN 193981)
Peter T. Sato (SBN 238486)
2 Shannon E. Royster (SBN 314126)
3 **YEROUSHALMI & YEROUSHALMI***
9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, CA 90212
Telephone: (310) 623-1926
5 Facsimile: (310) 623-1930

6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF LOS ANGELES**

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

12
13 Plaintiff,

14 v.

15 H MART COMPANIES, INC., a New York
16 Corporation; H MART, INC., a Delaware
17 Corporation and DOES 1-20;

18 Defendants.
19

CASE NO. BC627649 (Related Case
BC643652)

[Assigned for All Purposes to the Hon.
David Sotelo, Dept. 40]

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Complaint filed: July 20, 2016

Trial Date: December 10, 2019

20
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 public interest,
24 and Defendant Koco Trading Co., Inc. (“Defendant” or “Koco”) with each a Party to the action
25 and collectively referred to as “Parties.”
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1 **1.2 Defendants and Covered Products**

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

7 1.2.2 CAG alleges that Defendant sells, or distributes Kitchen Tongs (“Tongs”) in
8 California.

9 **1.3 Listed Chemicals**

10 1.3.1 Di (2-ethylhexyl) Phthalate (“DEHP”), also known as Diethyl Hexyl Phthalate
11 and Bis (2-ethylhexyl) Phthalate, has been listed by the State of California as a chemical known
12 to cause cancer and birth defects or other reproductive harm.

13 **1.4 Notices of Violation**

14 1.4.1 On or about October 20, 2015, CAG served a “60-Day Notice of Intent to Sue for
15 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2015-01077”)
16 (“October 20, 2015 Notice”) that provided the recipients, specifically Koco, with notice of
17 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
18 California of exposures to DEHP contained in certain Tongs sold by Koco in California. No
19 public enforcer has commenced or diligently prosecuted the allegations set forth in the October
20 20, 2015 Notice.

21 1.4.2 On or about November 6, 2015, CAG served a “60-Day Notice of Intent to Sue for
22 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (“AG# 2015-01146”)
23 (“November 6, 2015 Notice”) that provided the recipients, specifically Koco, with notice of
24 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
25 California of exposures to DEHP contained in certain Tongs sold by Koco in California. No
26 public enforcer has commenced or diligently prosecuted the allegations set forth in the
27 November 6, 2015 Notice.

1 **1.5 Complaint**

2 1.5.1 On July 20, 2016 CAG filed a Complaint for civil penalties and injunctive relief
3 (“Complaint”) in Los Angeles County Superior Court, Case No. BC627649, against Defendant.
4 The Complaint alleges, among other things, that Defendant violated Proposition 65 for allegedly
5 failing to give clear and reasonable warnings of alleged exposure to DEHP in certain Tongs
6 products Koco distributed and/or sold in California.

7 **1.6 Consent to Jurisdiction**

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

15 **1.7 No Admission**

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

6 **2. DEFINITIONS**

7 2.1 “Covered Products” means Kitchen Tongs, which includes but is not limited to:
8 “Home Art® 9” Coating Tong; “Beast Quality House Goods”; Made in China; “Sweet home
9 Beautiful life Hare Art”; Item No.: AK 1364; Stainless Steel; Barcode #: “8 808596 120353;”
10 and “Home Art® 12” Coating Tong; “Beast Quality House Goods”; Made in China; “Sweet
11 home Beautiful life Home Art”; Item No.: AK 1365; Stainless Steel; Barcode #: “8 8808596
12 120360,” The Covered Products are limited to those sold by or supplied by Koco.

13 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
14 Court.

15 2.3 “DEHP” means Di (2-ethylhexyl) Phthalate, also known as Diethyl Hexyl
16 Phthalate and Bis (2-ethylhexyl) Phthalate

17 2.4 “Listed Chemical” means DEHP.

18 2.5 “Notices” means the October 20, 2015, and November 6, 2015 notices.

19 **3. INJUNCTIVE RELIEF/REFORMULATION**

20 3.1 After the Effective Date, Koco shall not sell, offer for sale in California, or ship
21 for sale in California any Covered Products without a Proposition 65 warning unless the level of
22 the DEHP in the Covered Products does not exceed more than 0.1% (1,000 parts per million) by
23 weight.

24 3.2 For any Covered Products still existing in Defendant inventory as of the Effective
25 Date, Defendant shall place a Proposition 65 compliant warning on them. Any warning provided
26 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,
27 and be prominently placed with such conspicuousness as compared with other words, statements,
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1 designs, or devices as to render it likely to be read and understood by an ordinary individual
2 under customary conditions before purchase or use. The equilateral triangle pictogram shall be
3 in yellow with a black exclamation mark; provided however, the pictogram may be in white
4 instead of yellow if the Covered Product label does not contain the color yellow. The warning
5 shall state:



6 **WARNING:** This product can expose you to chemicals including DEHP, which is
7 known to the State of California to cause cancer and birth defects or other reproductive harm.

8 For more information go to www.P65Warnings.ca.gov

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10 **4. SETTLEMENT PAYMENT**

11 **4.1 Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
12 shall pay a total of one hundred fifty thousand dollars and zero cents (\$150,000.00) in full and
13 complete settlement of any and all claims for civil penalties, damages, attorney's fees, expert
14 fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or
15 could have been asserted in the Notice or Complaint, as follows:

16 **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling five thousand
17 seven hundred and twenty dollars and zero cents (\$5,720.00) as follows for alleged civil
18 penalties pursuant to Health & Safety Code § 25249.12:

19 (a) Defendant will issue one check made payable to the State of California's Office of
20 Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand two
21 hundred and ninety dollars and zero cents (\$4,290.00) representing 75% of the total civil penalty
22 and Defendant will issue a second check to CAG in the amount of one thousand four hundred
23 and thirty dollars and zero cents (\$1,430.00) representing 25% of the total civil penalty;

24 (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a
25 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of
26 \$4,290.00. Defendant will also issue a 1099 to CAG in the amount of \$1,430.00 and deliver it to
27 CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,
28 California 90212.

1 4.1.2 **Additional Settlement Payments:** Koco shall issue one check for four thousand
2 two hundred and eighty dollars and zero cents (\$4,280.00) to “Consumer Advocacy Group, Inc.”
3 pursuant to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 §
4 3203(d). CAG will use this portion of the Total Settlement Payment as follows, eighty five
5 percent (85%) for fees of investigation, purchasing and testing for the Proposition 65 Listed
6 Chemical in various products, and for expert fees for evaluating exposures through various
7 mediums, including but not limited to consumer product, occupational, and environmental
8 exposures to the Proposition 65 Listed Chemical, and the cost of hiring consulting and retaining
9 experts who assist with the extensive scientific analysis necessary for those files in litigation and
10 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees; fifteen
11 percent (15%) for administrative costs incurred during investigation and litigation to reduce the
12 public’s exposure to the Proposition 65 Listed Chemical by notifying those persons and/or entities
13 believed to be responsible for such exposures and attempting to persuade those persons and/or
14 entities to reformulate their products or the source of exposure to completely eliminate or lower
15 the level of the Proposition 65 Listed Chemical including but not limited to costs of documentation
16 and tracking of products investigated, storage of products, website enhancement and maintenance,
17 computer and software maintenance, investigative equipment, CAG’s member’s time for work
18 done on investigations, office supplies, mailing supplies and postage Within 30 days of a request
19 from the Attorney General, CAG shall provide to the Attorney General copies of documentation
20 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring
21 the proper expenditure of such additional settlement payment.

22 4.1.3 **Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in
23 the amount of one hundred and forty thousand dollars and zero cents (\$140,000.00) payable to
24 “Yeroushalmi & Yeroushalmi” as complete reimbursement for any and all reasonable
25 investigation fees and costs, attorneys’ fees, expert fees, and any and all other costs and expenses
26 incurred as a result of investigating, bringing this matter to the Koco’s attention, litigating,
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1 negotiating a settlement in the public interest, and seeking and obtaining court approval of this
2 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 directly to Office of Environmental Health Hazard
7 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.
8 Koco shall provide written confirmation to CAG concurrently with payment to OEHHA.

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

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

26 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
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1 indirectly, any form of legal action and releases all claims, including, without limitation, all
2 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
3 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
4 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
5 fixed or contingent (collectively "Claims"), against the Released Parties arising from any actual
6 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
7 Covered Products manufactured, distributed or sold by the Released Parties through the Effective
8 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from
9 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby
10 waives any and all rights and benefits which it now has, or in the future may have, conferred
11 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold
12 by the Released Parties through the Effective Date arising from any violation of Proposition 65
13 or any other statutory or common law regarding the failure to warn about exposure to the Listed
14 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California
15 Civil Code, which provides as follows:

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

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

1 consequences for any such Claims arising from any violation of Proposition 65 or any other
2 statutory or common law regarding the failure to warn about exposure to the Listed Chemical
3 from the Covered Products as may exist as of the date of this release but which CAG does not
4 know exist, and which, if known, would materially affect their decision to enter into this Consent
5 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
6 error, negligence, or any other cause.

7 **6. ENTRY OF CONSENT JUDGMENT**

8 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
9 California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain
10 Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and Koco
11 waive their respective rights to a hearing and trial on the allegations in the Notices and
12 Complaint.

13 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
14 Judgment and any and all prior agreements between the Parties merged herein shall terminate
15 and become null and void, and the actions shall revert to the status that existed prior to the
16 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
17 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
18 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
19 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
20 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

21 **7. MODIFICATION OF JUDGMENT**

22 7.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
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1 **8. RETENTION OF JURISDICTION**

2 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

4 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
5 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

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

7 9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
8 California Attorney General so that the Attorney General may review this Consent Judgment
9 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
10 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
11 then submit it to the Court for approval.

12 **10. ENTIRE AGREEMENT**

13 10.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
18 deemed to exist or to bind any of the Parties.

19 **11. ATTORNEY FEES**

20 11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its
21 own attorneys’ fees and costs in connection with the claims resolved in this Consent Judgment.

22 **12. GOVERNING LAW**

23 12.1 The validity, construction, terms, and performance of this Consent Judgment shall
24 be governed by the laws of the State of California, without reference to any conflicts of law
25 provisions of California law.

26 12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
27 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
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1 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
2 rendered inapplicable by reason of law generally as to the Covered Products, then Koco may
3 provide written notice to CAG of any asserted change in the law, and shall have no further
4 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
5 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Koco
6 from any obligation to comply with any other pertinent state or federal law or regulation.

7 12.3 The Parties, including their counsel, have participated in the preparation of this
8 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
9 Consent Judgment was subject to revision and modification by the Parties and has been accepted
10 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
11 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
12 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
13 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
14 resolved against the drafting Party should not be employed in the interpretation of this Consent
15 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

16 **13. EXECUTION AND COUNTERPARTS**

17 13.1 This Consent Judgment may be executed in counterparts and by means of
18 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
19 one document and have the same force and effect as original signatures.

20 **14. NOTICES**

21 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.
22 If to CAG:

23 Reuben Yeroushalmi, Esq.
24 Yeroushalmi & Yeroushalmi
25 9100 Wilshire Boulevard, Suite 240W
26 Beverly Hills, CA 90212

27 If to Defendant KOCO TRADING CO., INC.:

28 Dok K. Kim
LAW OFFICES OF DOK KIM

3435 Wilshire Boulevard, Suite 400
Los Angeles, California 90010

15. AUTHORITY TO STIPULATE

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

AGREED TO:

AGREED TO:

Date: Oct 11, 2019

Date: 10-11-, 2019

Michael Marcus *Giyun Kim*

Name: Michael Marcus Name: Giyun Kim

Title: Director Title: President

CONSUMER ADVOCACY GROUP, KOCO TRADING CO., INC.
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT