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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 STARBUCKS CORPORATION, *et al.*,

20 Defendants.

Case No. CGC-16-555322

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT WALONG
MARKETING, INC.**

(Health and Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered by plaintiff Whitney R. Leeman, Ph.D. (“Leeman”), and
4 defendant Walong Marketing, Inc. (“Walong”), with Leeman and Walong each individually referred
5 to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Walong employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Walong sells or distributes for sale in California dried teas containing
16 lead, and that it does so without providing the warning required by Proposition 65. Lead is listed
17 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.
18 Walong denies Leeman’s allegations.

19 **1.5 Covered Tea Products**

20 For purposes of this Consent Judgment, “Covered Tea Products” are defined as dried teas
21 (loose leaf and bagged) containing lead that are sold or distributed for sale in California by Walong
22 including, but not limited to, the (i) *Asian Taste Dong Ding Oolong Tea, UPC #6 73367 64217 8*, and
23 (ii) *Tea King of China Oolong Tea, UPC #6 942808 601086* identified in Leeman’s Notice.

24 **1.6 Notice of Violation**

25 On August 19, 2016, Leeman served Walong, the California Attorney General, and all other
26 requisite public enforcement agencies with a 60-day notice of violation (“Notice”). The Notice
27 alleges that Walong violated Proposition 65 by failing to warn its customers and consumers in
28 California of the health hazards associated with exposures to lead from the Covered Tea Products.

1 No public enforcer has commenced and is diligently prosecuting an action to enforce the violations
2 alleged in the Notice.

3 **1.7 Complaint**

4 On November 10, 2016, Leeman filed the instant action, naming Walong as a defendant for
5 the alleged violations that are the subject of the Notice. On June 1, 2016, Leeman filed a second
6 amended complaint. On or about April 11, 2018, Leeman filed a third amended complaint
7 (“Complaint”), the operative pleading in this action.

8 **1.8 No Admission**

9 Walong denies the material, factual, and legal allegations made in the Notice and Complaint,
10 and maintains that all of the products it has sold or distributed for sale in California, including the
11 Covered Tea Products, have been, and are, in compliance with all laws. Nothing in this Consent
12 Judgment shall be construed as an admission by Walong of any fact, finding, conclusion, issue of
13 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
14 as an admission by Walong of any fact, finding, conclusion, issue of law, or violation of law, the
15 same being specifically denied by Walong. This Section shall not, however, diminish or otherwise
16 affect Walong’s obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Walong as to the allegations in the Complaint, that venue is proper in the County of
20 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
24 the motion for approval of this Consent Judgment is granted by the Court, including the date of any
25 unopposed tentative ruling granting the approval motion.
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27
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1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Comply with Brewed Tea Standard or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, Walong agrees to only sell or
4 distribute for sale in or into California, Covered Tea Products that: (a) meet the “Brewed Tea
5 Standard” set forth in Section 2.2; or (b) are sold and offered for sale with a clear and reasonable
6 warning pursuant to Section 2.3.

7 **2.2 Brewed Tea Standard**

8 Covered Tea Products containing no more than ten (10) parts per billion (micrograms/liter) of
9 lead (“Brewed Tea Standard”) are exempt from the warning requirements of Section 2.3. To
10 determine if a Covered Tea Product complies with the Brewed Tea Standard, it shall be prepared by
11 placing one prepackaged tea bag, or for loose leaf teas, two grams of dried tea leaves in 200
12 milliliters (mL) of boiling ultra-pure water, steeping for five minutes and, after five minutes,
13 decanting a representative sample of the resulting infusion for analysis. The sample shall be analyzed
14 according to U.S. Environmental Protection Agency testing methodology 6020 using inductively
15 coupled plasma mass spectrometry (ICP-MS).

16 **2.3 Warnings**

17 Commencing on the Effective Date and continuing thereafter, those Covered Tea Products
18 sold or distributed for sale in California by Walong that do not meet the Brewed Tea Standard, shall
19 be accompanied by a clear and reasonable warning, in accordance with this Section or Title 27
20 California Code of Regulations section 25600, et seq. The warning shall be prominently placed in
21 relation to the Covered Tea Product with such conspicuousness when compared with other words,
22 statements, designs, or devices as to render it likely to be read and understood by an ordinary
23 individual under customary conditions of purchase or use.

1 A warning shall be deemed reasonable if transmitted in accordance with Title 27 California
2 Code of Regulations §§ 25607.1 and 25607.2. The following warning statement shall be deemed
3 clear:

4 **WARNING:** Consuming this product can expose you to
5 chemicals including lead, which is known to the
6 State of California to cause birth defects or other
7 reproductive harm. For more information go to
8 www.P65Warnings.ca.gov/food

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payment**

10 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all claims
11 referred to in the Notice, Complaint, and this Consent Judgment, Walong agrees to pay \$3,500 in
12 civil penalties. Walong's civil penalty payment will be allocated according to Health and Safety
13 Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the
14 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
15 twenty-five percent (25%) of the penalty payment retained by Leeman. Walong shall issue its
16 payment in two checks for the following amounts made payable to (a) "OEHHA" in the amount of
17 \$2,625; and (b) "Whitney R. Leeman, Client Trust Account" in the amount of \$875. Leeman's
18 counsel shall be responsible for delivering OEHHA's portion of the penalty payment.

19 **3.2 Reimbursement of Attorney's Fees and Costs**

20 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
21 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized, the
22 Parties negotiated the compensation to be paid to Leeman and her counsel under general contract
23 principles and the private attorney general doctrine codified at California Code of Civil Procedure
24 section 1021.5 for all work performed through the mutual execution of this Consent Judgment and
25 court approval of the same, but exclusive of fees and costs on appeal, if any. Walong agrees to pay
26 \$16,000 by a check made payable to "The Chanler Group" for all fees and costs incurred
27 investigating, bringing this matter to Walong's attention, litigating, and negotiating a settlement in
28 the public interest.

1 **3.3 Payment Timing; Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until the Court approves
3 the Parties’ settlement. Walong shall deliver its civil penalty and attorneys’ fee reimbursement
4 payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully
5 executed by the Parties. Walong’s counsel shall provide Leeman’s counsel with written
6 confirmation following its receipt of the settlement funds. Thereafter, Walong’s counsel shall hold
7 the settlement funds in trust until, and disburse the funds to Leeman’s counsel within five (5) days
8 after the Effective Date.

9 **3.4 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Leeman’s Public Release of Proposition 65 Claims**

16 Leeman, acting on her own behalf and on behalf of her past and current agents,
17 representatives, attorneys, successors, and assignees hereby releases Walong and its parents,
18 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
19 attorneys (“Releasees”), and each entity to whom Walong directly or indirectly distributes or sells
20 Covered Tea Products including, but not limited to, Walong’s downstream distributors, wholesalers,
21 customers, retailers (including, but not limited to, Tawa Supermarket, Inc.), franchisees, cooperative
22 members, licensors, and licensees (“Downstream Releasees”), based on the alleged or actual failure
23 to warn about exposures to lead in Covered Tea Products imported, manufactured, sold, or
24 distributed for sale by Walong before the Effective Date, as set forth in the Notice. Compliance
25 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Walong
26 with respect to the failure to warn about exposures to lead in Covered Tea Products sold or
27 distributed for sale by Walong after the Effective Date.
28

1 **4.2 Leeman’s Individual Release of Claims**

2 Leeman, in her individual capacity only and *not* in her representative capacity, on her own
3 behalf and on behalf of her past and current agents, representatives, attorneys, successors, and
4 assignees, also provides a release to Walong, Releasees, and Downstream Releasees which shall be
5 effective as a full and final accord and satisfaction, as a bar to all suits, actions, and causes of action
6 in law or in equity, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities,
7 and demands of any nature, character, or kind, whether known or unknown, suspected or
8 unsuspected, arising out of alleged or actual exposures to lead in Covered Tea Products imported,
9 manufactured, sold, or distributed for sale by Walong before the Effective Date.

10 **4.3 Walong’s Release of Leeman**

11 Walong, on its own behalf, and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
13 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
14 her attorneys and other representatives, whether in the course of investigating claims, seeking to
15 enforce Proposition 65 against Walong in this matter, or with respect to the Covered Tea Products.

16 **5. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court, and shall
18 be null and void if it is not approved and entered by the Court within one year after it has been fully
19 executed by the Parties, or by such additional time to which the Parties may agree in writing.

20 **6. AGREEMENT TO DISMISS RETAIL CUSTOMER**

21 Leeman agrees that within 10 days of the Effective Date or her receipt of the settlement
22 payments required by Sections 3.1 and 3.2 from Walong, she will file a request for dismissal without
23 prejudice as to defendant Tawa Supermarket, Inc.

24 **7. SEVERABILITY**

25 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
26 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
27 adversely affected.

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable by reason of law generally or as to the Covered Tea Products, then Walong
5 may provide written notice to Leeman of any asserted change in the law, and shall have no further
6 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
7 Covered Tea Products are so affected.

8 **9. NOTICE**

9 Unless specified herein, all correspondence and notice required by this Consent Judgment
10 shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return
11 receipt requested; or (c) a recognized overnight courier, and with contemporaneous copies by email
12 where indicated below, on any Party by the other at the following addresses:

13 For Walong Marketing, Inc.:

14 Chang Hua K. Chen, Chief Executive Officer
15 Walong Marketing, Inc.
16 6281 Regio Avenue, Floor 1
17 Buena Park, CA 90620

Roseann C. Stevenson, Esq.
1105 Oleander Way
Simi Valley, CA 93065
rcs@rcsesq.com

Iris Leong
Legal Counsel
Tawa Services, Inc.
irisl@tawa.com

19 For Leeman:

20 The Chanler Group
21 Attn: Proposition 65 Coordinator
22 2560 Ninth Street
23 Parker Plaza, Suite 214
24 Berkeley, CA 94710-2565

25 Any Party may, from time to time, specify in writing to the other a change of address to which all
26 notices and other communications shall be sent.

27 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

28 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
which shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document.

1 **11. POST EXECUTION ACTIVITIES**

2 Leeman agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
4 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement,
5 which Leeman shall draft and file. In furtherance of obtaining such approval, the Parties agree to
6 mutually employ their best efforts, and those of their counsel, to support the entry of this agreement
7 as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of
8 this Section, “best efforts” shall include, at a minimum, supporting the motion for approval, filing a
9 response to any opposition or objection any third-party may file, and appearing at the hearing before
10 the Court if so requested.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
13 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
14 of any Party, and the entry of a modified consent judgment thereon by the Court.

15 **13. ENFORCEMENT**

16 **13.1 First Notice of Breach**

17 To allege a violation of this Consent Judgment, Plaintiff shall provide written notice to
18 Walong in accordance with this section (“Notice of Breach”). The Notice of Breach shall include: (a)
19 a declaration that the specific Covered Tea Product alleged to be in violation of the Consent
20 Judgment was purchased in California and tested in excess of the Brewed Tea Standard within three
21 months of the Notice of Breach and that no warning was provided for the specific Covered Tea
22 Product; (b) any and all test results that support the allegation that the Covered Tea Product violates
23 this Consent Judgment; (c) copies of (i) relevant purchase information for the allegedly violating
24 Covered Tea Product; (ii) images of the packaging or labeling of the allegedly violating Covered Tea
25 Product showing the SKU, UPC, Lot, and/or Batch number(s), if any; and (iii) all other test results
26 conducted on the same Covered Tea Product performed within three months of the Notice of Breach.
27 Upon receipt of the Notice of Breach, Walong and Plaintiff shall meet and confer for not less than
28 thirty days in an effort to resolve the alleged violation informally. During this time, Plaintiff shall not

1 file any motion, application, action, or pleading regarding the violation(s) alleged in the Notice of
2 Breach.

3 Walong may rebut the Notice of Breach and demonstrate compliance with the Consent
4 Judgment to avoid additional civil fines by: (1) if the identity of the supplier of the finished Covered
5 Tea Product is known to Walong and additional Covered Tea Product can be readily obtained from
6 such supplier, showing that the average of all verified lead test results performed on samples of the
7 same Covered Tea Product obtained from such supplier, and collected within three months of the
8 Notice of Breach, complies with the Brewed Tea Standard, or (2) if the identity of the supplier of the
9 finished Covered Tea Product is not known to the Walong or additional Covered Tea Product cannot
10 be readily obtained from such supplier, showing that the average of all verified lead test results
11 performed on samples of the same Covered Tea Product, and collected within three months of the
12 Notice of Breach, complies with the Brewed Tea Standard, or (3) providing the most recent
13 certificate of analysis or other proof, from Walong or its supplier of the Covered Tea Product in
14 question, as evidence that the Covered Tea Product meets either the Brewed Tea Standard or that the
15 dried leaves of such Covered Tea Product do not exceed six (6) parts per million
16 (milligrams/kilograms) before brewing when prepared using a scientifically validated preparation
17 method and analyzed according to EPA testing methodology 6020 using ICP-MS, or alternative
18 methodologies utilized by federal or state agencies for the purpose of measuring lead concentration of
19 6 ppm in food.

20 If Walong cannot demonstrate compliance within ninety (90) days of receiving Plaintiff's
21 Notice of Breach, it must pay a stipulated civil penalty of \$2,500 to be allocated according to Section
22 3.1.

23 **13.2 Subsequent Notice(s) of Breach**

24 If Defendant rebuts Plaintiff's first Notice of Breach and demonstrates compliance other than
25 by reliance on its supplier's representations, a subsequent Notice of Breach on the same specific
26 Covered Tea Product shall be deemed to be a First Notice of Breach, subject to the same procedures,
27 showings and penalties set forth in Section 13.1.
28

1 To allege a subsequent or additional violation of this Consent Judgment by Walong, Plaintiff
2 must follow the procedures set forth in Section 13.1. Walong may rebut the subsequent Notice(s) of
3 Breach and demonstrate compliance with the Consent Judgment following the procedures set forth in
4 Section 13.1, except that if Defendant rebutted a first Notice of Breach by providing a certificate of
5 analysis or other proof from the supplier(s) of the Covered Tea Product in question, it may not
6 respond to any subsequent or additional Notice of Breach issued on the same Covered Tea Product
7 more than four months after the first Notice of Breach by relying on a certificate of analysis or other
8 proof from the same supplier for the same Covered Tea Product. Instead, to demonstrate compliance,
9 Walong must show compliance with the Brewed Tea Standard in subsequent Notices of Breach on
10 the same Covered Tea Product, using the testing protocol set forth in Section 2.1 and 2.2 of this
11 Consent Judgment.

12 If Walong cannot rebut the subsequent Notice of Breach and demonstrate compliance within
13 ninety (90) days of receiving Plaintiff's subsequent Notice(s) of Breach, it must pay a stipulated civil
14 penalty of \$5,000 for the second, and each subsequent, Notice of Breach as to which it cannot
15 demonstrate compliance.

16 **13.3 Notice of Significant Exceedance**

17 Notwithstanding the forgoing, if Plaintiff's Notice of Breach includes three or more test
18 results for the same product, each of which (1) exceeds 25 ppb and (2) is accompanied by the
19 information set forth in the second sentence of Section 13.1 of this Consent Judgment, then the
20 Defendant may rebut the Notice of Breach and demonstrate compliance with the Consent Judgment
21 only by showing that the average of all verified lead test results performed on samples of the same
22 Covered Tea Product collected within two months of the Notice of Breach, complies with the Brewed
23 Tea Standard.

24 Absent agreement to the contrary, the Parties shall maintain the confidentiality of test results
25 exchanged among them pursuant to this Section 13, whether as regards a First Notice of Breach or a
26 Subsequent Notice of Breach, except to the extent that disclosure is required in an enforcement action
27 or is otherwise required by law.
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14. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 3/24/2018

Date: 4/3/18

By: 
WHITNEY R. LEEMAN, PH.D.

By:  for
Chang Hua K. Chen, Chief Executive Officer
WALONG MARKETING, INC.