

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered by and between Whitney R. Leeman Ph.D. (“Dr. Leeman”) and Kim-Seng Company (“Kim-Seng”) with Dr. Leeman and Kim-Seng each individually referred to as a “Party” and collectively as the “Parties.” Dr. Leeman is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances consumed in food and beverage products. Kim-Seng employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Dr. Leeman alleges that Kim-Seng sells and distributes for sale in California packaged dried green teas containing lead in levels requiring a warning under Proposition 65, and that Kim-Seng did so, without first providing an exposure warning. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

#### 1.3 Product Description

For purposes of this Settlement Agreement, “Covered Tea Products” are defined as, and specifically limited to, the dried green tea sold in California by Kim-Seng and identified in Dr. Leeman’s Notice as *the Green Tea Tea Bag UPC No. 6 10232 00122 7*.

#### 1.4 Notice of Violation

On December 28, 2016, Dr. Leeman served Kim-Seng, the California Attorney General and all other requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). The Notice alleges that Kim-Seng violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Covered Tea Products. No public enforcer has

commenced and is diligently prosecuting an action to enforce the allegations made in the Notice.

### **1.5 No Admission**

Kim-Seng denies all factual and legal allegations contained in the Notice and this Settlement Agreement, and maintains that all of the products that it has sold and distributed for sale in California, including the Covered Tea Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Kim-Seng of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kim-Seng of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Kim-Seng. This Section shall not, however, diminish or otherwise affect Kim-Seng's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this agreement is fully executed by the Parties.

## **2. INJUNCTIVE RELIEF**

**2.1** Commencing on the Effective Date and continuing thereafter, Kim-Seng shall only ship, sell, or offer for sale in California: Covered Tea Products that either (a) comply with the "Lead Limits" established by Section 2.2; or (b) are sold or offered for sale with a clear and reasonable warning pursuant to Section 2.4.

**2.2** Kim-Seng's Covered Tea Products shall comply with the "Lead Limits" set forth below, as follows:

**2.2.1 Brewed Tea Lead Limit.** All Covered Tea Products shall yield an infusion test result of "no reportable amount" of lead. This Lead Limit applies when a certified laboratory evaluates a Covered Tea Product using a validated preparation method and analyzes the sample according to United States Environmental Protection Agency ("EPA") testing methodology 6020 using inductively coupled plasma mass

spectrometry (ICP-MS). The sample shall be prepared by placing one prepackaged tea bag or, for loose leaf teas, two grams of dried tea leaves, in 1 cup (8 fluid ounces or 237 milliliters (mL)) of boiling ultra-pure water (and allowed to steep five minutes, and after five minutes decanting a representative sample of the resulting infusion for analysis. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed a reporting limit of 1.0 micrograms per liter ( $\mu\text{g/L}$ ); or

**2.2.2 Dried Tea Lead Limit.** All Covered Tea Products shall yield a content test result of “no reportable amount” of lead when a certified laboratory evaluates a representative sample of the dried tea Product using a validated preparation method and analyzes the sample according to EPA testing methodology 6020 using ICP-MS. For purposes of this Settlement Agreement, “no reportable amount” is defined as an amount of lead that does not exceed 0.25 milligrams per kilogram (mg/kg).

### **2.3 Modification of Lead Limits**

The Lead Limits established by Section 2.2, above, shall not be modified unless the conditions and procedures set forth in Sections 2.3.1 or 2.3.2, below, are satisfied.

**2.3.1 Alternative Lead Limits Adopted by The State of California.** Kim-Seng may utilize any lead limit, level or standard for a Covered Tea Product that is, after the Effective Date: (i) adopted by The State of California, either by statute or regulation; or (ii) agreed to by the California Attorney General, on behalf of the People of the State of California, in a consent judgment entered by a Superior Court of the State of California.

**2.3.2 Alternative Lead Limits Adopted by Dr. Leeman.** Kim-Seng may utilize any lead limit, level or standard for a Covered Tea Product that is, after the Effective Date, agreed to by Dr. Leeman in a consent judgment entered by the California Superior Court.

### **2.4 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, those Covered Tea Products sold, offered for sale, or distributed for sale in California by Kim-Seng that do

not comply with the Lead Limits established by Section 2.2, shall be accompanied by a clear and reasonable warning, in accordance with Title 27, Article 6 of the California Code of Regulations (Proposition 65 Warning Regulations) or this Section. Any warning used by Kim-Seng shall be prominently placed in relation to the Covered Tea Product with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products satisfying the above criteria includes, but is not limited to, a warning containing the following statement:

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

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Kim-Seng agrees to pay civil penalties in the amount of \$1,000 within five days of the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Dr. Leeman. Kim-Seng shall issue its payment in two checks for the following amounts made payable to (a) “OEHHA” in the amount of \$750; and (b) “Whitney R. Leeman, Client Trust Account” in the amount of \$250. Dr. Leeman’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment.

### **3.2 Reimbursement of Attorneys' Fees and Costs**

The Parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the fees and costs to be reimbursed, leaving the issue to be resolved after the material terms of the Parties' agreement had been settled. Shortly after finalizing the other settlement terms, the Parties negotiated Kim-Seng's reimbursement of Dr. Leeman's fees and costs under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed through the execution and reporting of this Settlement Agreement. Within five days of the Effective Date, Kim-Seng agrees to pay \$6,000 in a single check made payable to "The Chanler Group." Kim-Seng's payment under this Section shall cover all amounts incurred investigating, bringing this matter to the attention of Kim-Seng's management, and negotiating a settlement that provides a public benefit.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to:

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Dr. Leeman's Release of Kim-Seng**

This Settlement Agreement is a full, final, and binding resolution between Dr. Leeman, in her individual capacity and not on behalf of the public in California, and Kim-Seng of any violation of Proposition 65 that was or could have been asserted by Dr. Leeman on her own behalf, or on behalf of her past and current agents, representatives, attorneys, successors, and assignees, against Kim-Seng, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Kim-Seng directly or indirectly distributes or sells the Covered Tea Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees

(“Releasees”), based on the alleged or actual failure to warn about exposures to lead in Covered Tea Products sold or distributed for sale by Kim-Seng in California before the Effective Date, as alleged in the Notice. Compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Covered Tea Products sold by Kim-Seng after the Effective Date.

In further consideration of the promises and agreements herein contained, Dr. Leeman, as an individual and not on behalf of the public of California, on her own behalf, and on behalf of her past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights she may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that she may have against Kim-Seng and Releasees, including, without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to lead in Covered Tea Products distributed, sold or offered for sale by Kim-Seng before the Effective Date, as alleged in the Notice.

The Parties agree and understand that the releases provided under this Section 4.1 shall not extend upstream to any entity that produced the Covered Tea Products, or any ingredient or portion thereof, or that supplied the Covered Tea Products, or any ingredient or portion thereof to Kim-Seng, except to the extent such products are/were imported, sold, or distributed for sale in California by Kim-Seng.

#### **4.2 Kim-Seng’s Release of Dr. Leeman**

Kim-Seng waives any and all claims against Dr. Leeman and her attorneys and other representatives, for any and all actions taken or statements made by Dr. Leeman and her attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Tea Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Tea Products, then Kim-Seng may provide written notice to Dr. Leeman of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Tea Products are so affected.

**7. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

**For Kim-Seng:**

Gary Tsai  
Kim-Seng Company  
6121 Randolph Street  
Commerce, CA 90040

**For Dr. Leeman:**

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

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

8. COUNTERPARTS: FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. The exchange of this Agreement and of signature pages by facsimile transmission or electronic mail attachment shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Signatures by scanned and e-mailed image or facsimile transmission shall have the same force and effect as original signatures as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1-1633.17.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Dr. Leeman and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: July 17, 2017

Date: July 17, 2017

By:   
WHITNEY R. LEEMAN PH.D.

By:   
Gary Tsai  
KIM-SENG COMPANY