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Mark Morrison (SBN 152561)
mark@mpaclassaction.com
MORRISON+ASSOCIATES
548 Market ST STE 34835
San Francisco, California 94914
Tel.: 360-440-0734
Fax: 206-316-8350

John G. Crabtree
jcrabtree@crabtreelaw.com
Charles M. Auslander
causlander@crabtreelaw.com
Brian C. Tackenberg
btackenberg@crabtreelaw.com
CRABTREE & AUSLANDER
240 Crandon Blvd., Suite 101
Key Biscayne, Florida 33149
Tel.: 305-361-3770
Fax: 305-437-8118

Attorneys for Plaintiff
Clean Cannabis Initiative LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CLEAN CANNABIS INITIATIVE, LLC,

Plaintiff,

v.

THCLEAR, *et al.*,

Defendants.

) Case No. RG 18915781
)
) **[PROPOSED] CONSENT**
) **JUDGMENT**
)
) **Reservation Number: R-2265508**
)
) **Hearing Date: November 9, 2021**
) **Time: 3:00 p.m.**
) **Department: 23**
) **Judge: Hon. Brad Seligman**
) **Date Action Filed: 8/7/2018**

1. DEFINITIONS

1.1 “Chemical” means malathion, carbaryl or myclobutanil, which collectively are referred to as “Chemicals” and each of which is identified on the Proposition 65 list of chemicals.

1 1.2 The “Complaint” means the complaint filed by Plaintiff in this matter on or about
2 August 7, 2018.

3 1.3 “Covered Products” means, as to each Settling Defendant, those products
4 identified in the Notice of Violation directed by Plaintiff to such Settling Defendant. Such Notices
5 of Violation are attached hereto as Exhibit A.

6 1.4 “Settling Defendant” or “Settling Defendants” means Kiva Brands Inc., and Dixie
7 Brands, Inc. (Dixie Brands), and also includes a subset of the Settling Defendants that includes
8 the following “Licensor Defendants:” NG IP Holdco, LLC (erroneously sued as Nameless
9 Genetics), The FlavRx Company, Inc. (erroneously sued as FlavRx), National Concessions Group
10 Inc. (erroneously sued as Open Vape), and Bhang Corporation (erroneously sued as Bhang).

11 1.5 “Licensor Defendant” or “Licensor Defendants” means the subset of Settling
12 Defendants who are not licensed by any California agency under California cannabis laws but
13 who license one or more forms of intellectual property to entities that are so licensed by one or
14 more California agencies, and includes the Licensor Defendants listed in Section 1.4.

15 1.6. “Chemical Standard” means a nondetectable level.

16 1.7 “Effective Date” means the date on which notice of entry of this Consent
17 Judgment by the Court is served upon Settling Defendants.

18 **2. INTRODUCTION**

19 2.1 The Parties to this Consent Judgment are Clean Cannabis Initiative, LLC, a limited
20 liability company organized under California law (“CCI”), on the one hand, and the Settling
21 Defendants, which includes the Licensor Defendants, on the other hand.

22 2.2 CCI and Settling Defendants (the “Parties”) enter into this Consent Judgment to
23 settle certain claims asserted by CCI against Settling Defendants as set forth in the Complaint and
24 further described herein.

25 2.3 CCI asserts that on May 5, and May 12 of 2017, it provided documents purporting
26 to be Notices of Violation to certain of the Settling Defendants. CCI asserts that on August 7,
27 2017, it provided other documents purporting to be Notices of Violation on the remaining Settling
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1 Defendants. CCI further asserts that all such Notices of Violation also were provided to the
2 California Attorney General, the District Attorneys of every county in California, the City
3 Attorneys of every California city with a population greater than 750,000. The relevant Notices of
4 Violation, attached hereto as Exhibit A, allege that Settling Defendants exposed persons to one or
5 more Chemicals through use of the Covered Products without first providing a clear and
6 reasonable Proposition 65 warning.

7 2.4 Each Settling Defendant is a “person in the course of doing business” under
8 Proposition 65 that either: (1) is licensed to manufacture, package, distribute, market, sell, or offer
9 for sale cannabis products that are sold in the State of California; or (2) for Licensor Defendants,
10 licenses one or more forms of intellectual property to a corporation or other person that is
11 licensed to manufacture, package, distribute, market, sell, or offer for sale cannabis products in
12 the State of California. On September 7, 2018, CCI filed the initial Complaint in the above-
13 captioned matter, naming the following Settling Defendants as original defendants: THClear,
14 Caviar Gold, Nameless Genetics, LOL Edibles; Kurvana; Spliffin; Absolute Extracts; Dixie
15 Brands; Bloom; FlavRx; The Clear; Pure Vape; Delta 9; Marley Naturals; Heavy Hitters;
16 Buddha’s Best; Open Vape; and Kiva Brands Inc.

17 2.5 For those Settling Defendants who were not initially named in the Complaint and
18 who received Notices of Violation issued by CCI as described herein, the Complaint shall be
19 deemed to be amended to add such Settling Defendants as defendants in this action October 7,
20 2018, 61 days after the service of the latest Notice of Violation, without the need for the formal
21 filing of an amended complaint. This Section shall apply to Settling Defendant Bhang
22 Corporation (erroneously sued as Bhang).

23 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
26 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
27 Judgment as a full, final and binding resolution of all claims which were or could have been
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1 raised in the Complaint based on the facts alleged therein and in the Notices of Violation with
2 respect to Covered Products manufactured, packaged, distributed, marketed, and/or sold by
3 Settling Defendants as alleged in the Notices of Violations directed to them, and, for Licensor
4 Defendants, with respect to any form of intellectual property licensed by Settling Defendants to
5 businesses licensed to manufacture, package, distribute, market, and/or sell cannabis products.

6 2.7 Nothing in this Consent Judgment is or shall be construed as an admission against
7 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
8 compliance with the Consent Judgment constitute or be construed as an admission against interest
9 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Each Licensor
10 Defendants specifically denies that, as a licensor of intellectual property without a state cannabis
11 license, it has any obligation to comply with Proposition 65 or that it is a manufacturer, packager,
12 distributor, marketer, or seller of any Covered Product or any other cannabis product. Nothing in
13 this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense
14 the Parties may have in any other pending or future legal proceedings. This Consent Judgment is
15 the product of negotiation and compromise and is accepted by the Parties solely for purposes of
16 settling, compromising, and resolving issues disputed in this action.

17 **3. INJUNCTIVE RELIEF**

18 3.1. No later than one hundred and twenty days (120) after the Effective Date, and
19 continuing thereafter, Settling Defendants who are not Licensor Defendants shall only manufacture,
20 package, distribute, market, sell, or offer for sale in California, Covered Product(s) meeting the
21 Chemical Standard as set forth in Section 3.2 (hereinafter “Reformulated Covered Product(s)”) or
22 Covered Product(s) for which a clear and reasonable warning is provided pursuant to Section 3.3.
23 Nothing herein shall be deemed to required compliance with this Section 3 as to Covered Products
24 that are already in the stream of commerce as of one hundred and twenty (120) days after the
25 Effective Date.

26 3.2. **“Reformulated Covered Product” Standard.** “Reformulated Covered Product” is
27 a Covered Product meeting the applicable Chemical Standard for the Chemicals. Any testing
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1 required to establish that a Covered Product meets the Chemical Standard shall be undertaken by
2 appropriately qualified/accredited and licensed as the case may be, testing laboratories using
3 generally accepted testing methodologies that are in compliance with the Medicinal and Adult-Use
4 Cannabis Regulation and Safety Act, specifically Business and Professions Code sections 26100 to
5 26106, California Code of Regulations, title 16, sections 5700 through 5721 and/or California Code
6 of Regulations, title 4, sections 15700 through 15738, as applicable, and any other relevant statutes
7 or regulations applicable to commercial cannabis activity in California.

8 **3.3. Clear and Reasonable Warnings.** No later than one hundred and twenty (120)
9 days after the Effective Date and continuing thereafter, each Settling Defendant who is not a
10 Licensor Defendant shall, for all Covered Product(s) that have not been Reformulated, that
11 Settling Defendant(s) continues to manufacture, package, distribute, market, sell or offer for sale
12 in California that does not meet the Chemical Standard (other than Covered Product existing as of
13 120 days after the Effective Date), provide a clear and reasonable warning in one of the forms set
14 forth in subsections 3.3.1 and 3.3.2 below, prominently placed with such conspicuousness as
15 compared with other words, statements, designs, or devices as to render it likely to be read and
16 understood by an ordinary individual under customary conditions before or at the time of the
17 purchase transaction. Each such warning shall only be required to include reference to Cancer or
18 Reproductive Harm as may be required by OEHHA's listings of the Chemicals which currently
19 provide the following:


20	Carbaryl	Cancer and Reproductive Toxicity
21	Malathion	Cancer
22	Myclobutanil	Reproductive Toxicity

23 3.3.1. In the event that OEHHA promulgates one or more regulations
24 requiring or permitting warning text and/or methods of transmission
25 different than those set forth above and below, a Settling Defendant
26 shall be entitled to implement, at its discretion, such other warning
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text and/or method of transmission for the Covered Product(s) without being deemed in breach of this Consent Judgment.

3.3.2. **Covered Products Labeling.** Settling Defendants who are not Licensor Defendants shall, in the absence of reformulation, affix a warning to the packaging, labeling or directly on each Covered Product(s) stating one of the following:

 **WARNING:** This product can expose you to chemicals including [CHEMICAL NAME(S)], which is [are] known to the State of California to cause [cancer] [and] [birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov.

or


 **WARNING:** [Cancer] [and] [Reproductive Harm] --
www.P65Warnings.ca.gov

3.3.2.1. The yellow warning triangle may be substituted with a black and white triangle as such alteration would otherwise be permitted under 27 CCR § 25603(a)(1) as it may be amended from time to time. Short-form warnings must comply with 27 CCR § 25602(a)(4) where the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

3.3.3. **Point of Display Warnings.** Alternatively, a Settling Defendant that operates or sells to a California licensed retail cannabis business and that is not a Licensor Defendant may post point of display warning signs in the form below in close proximity to the

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point of display of the Covered Product(s). Each such warning shall be provided in a manner such that the consumer or user is reasonably likely to understand to which specific Covered Products the warning applies, so as to minimize the risk of consumer confusion.

 **[PROPOSITION 65] WARNING:** This product can expose you to chemicals including [CHEMICAL NAME(S)], which is [are] known to the State of California to cause [cancer] [and] [birth defects or other reproductive harm]. For more information go to www.P65Warnings.ca.gov.

3.3.4. Internet Sales Warning. In the event that a Settling Defendant who is not a Licensor Defendant sells Covered Product(s) via the internet directly to consumers located in California 120 days after the Effective Date that are not Reformulated Covered Product(s), such Settling Defendant, in addition to complying with the warning requirements of Section 3.3.2 (or, for Settling Defendants implementing the alternative warning requirements of Section 3.3.3, those requirements), shall provide a warning for such Covered Product(s) sold via the internet to such California residents. Such internet warnings shall implement the warning text used on Covered Product labeling or point of display signage, as the case may be, and shall be provided by including either the warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase.

3.4. Licensor Defendants Only. Licensor Defendants are not subject to the requirements of Section 3.1 through 3.3 above. Each Licensor Defendant agrees

1 that it shall not enter into any intellectual property licensing agreement with any
2 third party intending to manufacture or distribute a cannabis product unless that
3 third party agrees to meet all requirements pursuant to this Section.

4 **3.5. Compliance.** For each defendant not currently in compliance with relevant Covered
5 Products, each year for three years from the date of this Court's approval of the Consent Judgment
6 each Settling Defendant must submit an annual letter of compliance certifying compliance with this
7 Section 3 requiring a warning on all Covered Products which includes a statement of facts sufficient
8 to indicate compliance with this Section 3. The letter shall be mailed to:

9 Mark A. Morrison, Esquire
10 Morrison & Associates
11 548 Market St., Unit 34835
San Francisco CA 94914-5401

12 Defendants, National Concessions Group Inc., Dixie Brands Inc., Bhang Corporation, NG
13 IP Holdco, LLC, and The FlavRx Company, Inc., do not currently manufacture or market the
14 Covered Product and are therefore exempt from compliance with Section 3 herein unless they begin
15 manufacturing the Covered Product again. In the event that they begin manufacturing the Covered
16 Product(s) again, Settling Defendants agree to comply with the requirements set forth herein.
17 Defendant Kiva Brands Inc. is currently in compliance with the Covered Product and thus exempt
18 from compliance with Section 3. In the event a Settling Defendant, other than those that are exempt,
19 fail to comply with this Section 3.4., Plaintiff will be entitled to file a motion for injunctive relief
20 with this Court including a request for appropriate relief including costs and penalties.

21 **4. PAYMENT OF CIVIL PENALTIES**

22 4.3. In settlement of all the claims referred to in this Consent Judgment, each Settling
23 Defendant shall pay a total of Five Thousand Dollars (\$5,000) in civil penalties
24 in accordance with this Section. Each penalty payment will be allocated in
25 accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with
26 75% of the funds (to wit, \$3,750) remitted to the California Office of
27 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25%

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1 of the penalty (to wit, \$1,250.00) remitted to CCI. Each penalty payment shall
2 be delivered to the addresses listed in Section 4.2 below. As a condition to the
3 obligation to make the payment, CCI agrees to provide each Settling Defendant
4 within ten (10) business days of the Parties' execution of this Consent Judgment
5 an IRS Form W-9 for CCI, CCI's counsel and OEHHA.

6 **4.4. Civil Penalty.**

7 4.4.1. Within thirty (30) days after the Effective Date, each Settling
8 Defendant shall issue two separate checks for the initial civil
9 penalty payment to (a) "OEHHA" in the amount of \$3,750.00; and
10 (b) "Morrison & Associates in Trust for CCI" in the amount of
11 \$1,250. The penalty payments shall be delivered to the addresses
12 listed in Section 4.2.2 below.

13 4.4.2. Payments shall be delivered as follows:

14 (i) All payments owed to CCI pursuant to Section 4.2.1 shall be
15 delivered to the following payment address:

16 Mark A. Morrison, Esquire
17 Morrison & Associates
18 548 Market St., Unit 34835
San Francisco CA 94914-5401

19 (ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
20 Section 4.2.1 shall be delivered directly to OEHHA (Memo Line "Prop 65
21 Penalties") at the following addresses:

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

26 For Non-United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief

1 Office of Environmental Health Hazard Assessment
2 1001 I Street
3 Sacramento, CA 95814

4 4.4.3. Each Settling Defendant agrees to provide CCI's counsel with a
5 copy of the checks payable to OEHHA, simultaneous with its
6 penalty payments to CCI, to be delivered to the address provided in
7 Section 4.2.2, as proof of payment to OEHHA.

8 4.4.4. Each Settling Defendant agrees to provide a completed IRS 1099
9 for its payments to each of the following payees under this Consent
10 Judgment:

11 (i) "CCI" whose address and tax identification number shall be
12 provided via an IRS Form W-9 after this Consent Judgment is fully
13 executed by the Parties;

14 (ii) "Morrison & Associates" (EIN:456-41-1509) at the address
15 provided in Section 4.2.2 and listed on IRS Form W-9 submitted to Settling
16 Defendant at execution of this Consent Judgment; and

17 (iii) "Office of Environmental Health Hazard Assessment" 1001 I
18 Street, Sacramento, CA 95814.

19 **5. REIMBURSEMENT OF FEES AND COSTS**

20 The Parties acknowledge that CCI and its counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
22 issue to be resolved after the material terms of the agreement had been settled. CCI then
23 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
24 been finalized. The Parties reached an accord on the compensation due to CCI and its counsel
25 under general contract principles and the private attorney general doctrine and principles codified
26 at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
27 execution of this Consent Judgment. Under these legal principles, each Settling Defendant shall
28 partially reimburse CCI's counsel for reasonable fees and costs incurred as a result of

1 investigating and bringing this matter to Settling Defendants’ attention and negotiating a
2 settlement in the public interest as set forth herein. Within thirty (30) days after the Effective
3 Date, each Settling Defendant shall issue a check payable to “Morrison & Associates” in the
4 amount of Twenty Thousand Dollars \$20,000, as a full and complete payment of reasonable fees
5 and costs incurred in this matter.

6 Payment shall be delivered to the following address:

7 Mark A. Morrison, Esquire
8 Morrison & Associates
9 548 Market St., Unit 34835
10 San Francisco CA 94914-5401

11 **6. ADDITIONAL PARTIES.**

12 This Consent Judgment is executed with the understanding that additional parties aside from
13 Settling Defendants, and presently known and/or unknown to Plaintiff, have manufactured,
14 distributed, or sold medical marijuana products for use in the State of California, and that those
15 parties may be subject either to a separate suit, or may be added to this Action as defendants per
16 the procedure within this Section. Any person who opts in shall be referred to as an “Opt-in Settling
17 Defendant.”

18 6.1. The qualifications for an Opt-In Defendant are as follows: Any person or entity that
19 employs ten or more persons, or who reasonably believes that at some time since July 1, 2015 it
20 has employed ten or more persons, and who manufactured, imported or distributed for use
21 (“distribution”) in California since July 1, 2015 marijuana products or licensed intellectual property
22 for the manufacture and sale of marijuana products for use in the State of California since July 1,
23 2015. Opt-ins are limited to manufacturer parties who already received a notice, and all other Opt-
24 ins need a new valid notice. Any new notice Opt-in needs supporting evidence with test data that
25 show a violation within a year of the notice and are limited to companies with a valid permit or
26 provisional permit to sell cannabis in California. Any person named as a defendant in any other
27 civil action arising under Proposition 65 related to the Chemicals in Covered Products prior to the
28 execution of this Consent Judgment shall not be eligible to Opt-In to this Consent Judgment. If an

1 Opt-In Defendant meets these requirements, then they may resolve any liabilities that may have
2 arisen under Proposition 65 as a result of such distribution by “opting in” as a defendant in this case
3 and agreeing to settle claims against it under Proposition 65 by entering into this Consent Judgment
4 by following the below procedure.

5 6.2. Opt-In Defendant Procedure: 1. An Opt-In Settling Defendant who enters this
6 Consent Judgment will be obligated to carry out the Proposition 65 compliance requirements set
7 forth in Section 3 above; 2. To opt-in, the Opt-In Settling Defendant shall submit its list of
8 marijuana products for review including test data that shows a violation within a year of the notice
9 (unless the Opt-In has already received a notice) and a valid permit or provisional permit to sell
10 cannabis in California and approval by Plaintiff prior to executing the Consent Judgment. Upon
11 satisfactory review of the Opt-In Settling Defendant’s submittal, Plaintiff is authorized and will file
12 a motion for judicial approval with this Court of the Amended Consent Judgment adding the Opt-
13 In Settling Defendant; 3. The Opt-In Settling Defendant shall pay the amount determined by
14 Sections 4 and 5 above within fifteen (15) days after entry of the Amended Consent Judgment
15 adding the Opt-In Settling Defendants In consideration of these acts, the Opt-in Settling Defendant
16 shall be released from all claims against it pursuant to Section 7 below. The detailed procedure for
17 opting in is set forth in Sections 6.2. A and 6.2. B.

18 A. Any person as defined in section 6.1 above and not later than 120 days after
19 this Consent Judgment is approved by the Court, execute the Opt-in Stipulation as Exhibit B to this
20 Consent Judgment thus stipulating that such Opt-In Settling Defendant:

21 i. sold marijuana products in the State of California since July 1, 2015
22 or licensed intellectual property for the manufacture and sale of marijuana products for use in the
23 State of California since July 1, 2015 and has included test data that shows a violation within a year
24 of the notice (unless the Opt-In has already received a notice) and a valid permit or provisional
25 permit to sell cannabis in California; and

26 ii. agrees to accept service of a Notice of Intent to Sue under Health &
27 Safety Code section 25249.7(d), as implemented pursuant to Code of Regulation title 22, section

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1 12903 (“Notice”), and waive any rights to assert any defense based on inadequate notice, lack of
2 compliance with the requirements of Code of Regulations title 25, section 12903, or any other
3 defense alleged under Health & Safety Code section 25249.6, et seq., or the regulations
4 promulgated thereunder, and any right to extension of any service period pursuant to Code of Civil
5 Procedure section 1013; and

6 iii. agrees to accept service of the Summons and Complaint as a Doe
7 defendant to be designated by Plaintiff, acting on behalf of the general public and agrees to be
8 bound by all terms and conditions of this Consent Judgment and to sign an Amended Consent
9 Judgment to be filed with this Court.

10 B. Thereafter, such Opt-in Settling Defendant shall mail the original signed
11 Opt-in Stipulation, to Counsel for CCI, which includes the information necessary to provide notice
12 as required under Code of Regulations title 25, section 25903(b)(A), and a check for \$1,200. This
13 amount represents that Opt-in Settling Defendant’s pro-rata share of the following costs: the cost
14 incurred by Plaintiff to prepare and mail the Notice, the cost of filing a Doe designation, the cost
15 of filing the stipulation, and the Opt-in Settling Defendant’s Alameda County Superior Court
16 filing/appearance fees. Upon filing the summons and complaint with Opt-In Settling Defendant
17 named as a Doe defendant, CCI will serve the Opt-In Settling Defendant with the Amended Consent
18 Judgment for signature. In addition to the \$1,200 payment, the Opt-In Settling Defendant is
19 obligated to make payments per Section 6.2. As explained in Section 6.2, CCI shall through counsel
20 administer the opt-in settlement process on behalf of Opt-In Settling Defendants.

21 **7. CLAIMS COVERED AND RELEASE**

22 3.1 CCI, in the public interest and on its own behalf as well as on behalf of its agents,
23 employees, principals, representatives, attorneys, beneficiaries, successors, heirs, assigns,
24 assignees, and anyone else claiming through or on behalf of it, if any, hereby release each Settling
25 Defendant and each of its respective current, former, and future parents, affiliates, predecessors
26 and successors in interest, and all of each of their officers, employees, contractors, landlords,
27 subtenants, licensees, attorneys, insurers, and agents, each entity to whom any of them directly or
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1 indirectly distributed or sold the Covered Products, including but not limited to, downstream
2 distributors, wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative
3 members, and each entity from whom any of them directly or indirectly purchased the Products or
4 materials used to make the Covered Products, including but not limited to upstream suppliers,
5 distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees
6 (collectively, the “Releasees”), from all claims for violations of Proposition 65 through one
7 hundred and twenty (120) days after the Effective Date based on the alleged failure to warn about
8 alleged exposures to the Chemicals resulting from use of the Covered Product(s), which was
9 alleged to be, or in fact was, manufactured, packaged, distributed, marketed, sold and/or offered
10 for sale by such Settling Defendant to customers and consumers in the State of California.

11 3.2 In further consideration of the promises and agreements herein contained, and for
12 the payments to be made as described above, CCI, on its own behalf as well as on behalf of its
13 agents, employees, principals, representatives, attorneys, beneficiaries, successors, heirs, assigns,
14 assignees, and anyone else claiming through or on behalf of it, if any, provides a release herein
15 which shall be effective as a full, final and binding accord and satisfaction, as a bar to all actions,
16 causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities
17 and demands against each Settling Defendant, or the Releasees, of any nature, character, or kind,
18 whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or
19 actual exposure to chemicals resulting from the use of the Product.

20 3.3 Pursuant to the terms of this Release, and in accord with the intent of this Consent
21 Judgment, CCI, on behalf of itself only, agrees to immediately terminate its pursuit and
22 prosecution of, and forebear from filing or further pursuing any lawsuits, claims, or actions
23 against each Settling Defendant in the future based upon the Covered Products at issue.

24 3.4 In further consideration of the promises and agreements herein contained, and for
25 the payments to be made hereunder, CCI, on behalf of itself only, hereby covenants not to sue and
26 waives any right to institute, participate in, directly or indirectly, any form of legal action and
27 releases all claims that it may have now or in the future, including without limitation, all actions
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1 and causes of action in law and in equity, all obligations, expenses (including without limitation
2 all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
3 demands against each Settling Defendant, and its parents, subsidiaries, affiliated entities,
4 shareholders, marketplaces, directors, officers, agents, employees, attorneys, and their respective
5 successors and assignees, of any nature, character, or kind, whether known or unknown,
6 suspected or unsuspected, limited to and arising out of any alleged or actual violation of
7 Proposition 65. Nothing herein shall be construed as a waiver or release of CCI's rights to enforce
8 the terms of this Consent Judgment or any of the injunctive relief herein.

9 3.5 Each Settling Defendant, on behalf of itself, its past and current agents,
10 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
11 CCI, its attorneys and other representatives, for any and all actions taken or statements made (or
12 those that could have been taken or made) by CCI, and/or its attorneys and other representatives,
13 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in
14 this matter.

15 7.3. **Waiver of California Civil Code Section 1542.** It is possible that other claims
16 not known to the Parties arising out of the facts alleged in the Notices of
17 Violation and Complaint and relating to the Products will develop or be
18 discovered. CCI, on behalf of itself only, on one hand, and each Settling
19 Defendant, on the other hand, acknowledge that this Consent Judgment is
20 expressly intended to cover and include all such claims up through one hundred
21 and twenty (120) after the Effective Date, including all rights of action therefor.
22 The Parties acknowledge that the claims released in Sections 6.1 through 6.5
23 above may include unknown claims, and nevertheless waive California Civil
24 Code section 1542 as to any such unknown claims. California Civil Code
25 section 1542 reads as follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
27 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**

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**TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.**

CCI and each Settling Defendant acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

7.4. Compliance by each Settling Defendant with the requirements of Section 3 of this Consent Judgment applicable to it constitutes that Settling Defendant’s compliance with Proposition 65 with respect to exposure to Chemicals resulting from the use of the Covered Products.

4. PROVISION OF NOTICE

7.5. When CCI is entitled to receive any notice under this Consent Judgment, the notice shall be sent by electronic mail to:

Mark A. Morrison, Esquire
Morrison & Associates
548 Market St., Unit 34835
San Francisco CA 94914-5401

mark@mpaclassaction.com

7.6. When a Settling Defendant is entitled to receive any notice under this Consent Judgment, the notice shall be sent by electronic mail as follows:

OpenVape (National Concessions Group Inc.) – Sean Mc Allister *Counsel for Defendant*
sean@mcallistergarfield.com

Dixie Elixirs (Dixie Brands Inc) – Jonathan Sandler *Counsel for Defendant*
JSandler@BHFS.com

FlavRx (The FlavRx Company Inc.) and Nameless Genetics (NG IP Holdco LLC) – Darwin L. Bustarde *Counsel for Defendant*
darwin@bmbrlaw.com

Kiva (Kiva Brands Inc.) – Nathan Low *Counsel for Defendant*
nlow@fisherphillips.com

Bhang — Todd Winter *Counsel for Defendant*
twinter@winterllp.com

1 Any Party may modify the person and/or address to whom the notice is to be sent by
2 sending the other Party notice by electronic mail.

3 **8. COURT APPROVAL**

4 8.3. CCI shall prepare and file a Motion for Approval of this Consent Judgment and
5 Settling Defendants shall reasonably support entry of this Consent Judgment by
6 the Court. The Effective Date of the Consent Judgment will be per section 1.7.

7 8.4. If this Consent Judgment is not entered by the Court, it shall be of no force or
8 effect and shall not be introduced into evidence or otherwise used in any
9 proceeding for any purpose.

10 **9. GOVERNING LAW AND CONSTRUCTION**

11 9.3. The terms of this Consent Judgment shall be governed by the laws of the State of
12 California and apply within the State of California. In the event that Proposition
13 65 is repealed or is otherwise rendered inapplicable by reason of law generally,
14 or as to the Products, any Settling Defendant may provide written notice to CCI
15 of any asserted change in the law, and shall have no further obligations pursuant
16 to this Consent Judgment with respect to, and to the extent that, the Products are
17 so affected.

18 **10. ENTIRE AGREEMENT**

19 10.3. This Consent Judgment contains the sole and entire agreement and
20 understanding of the Parties with respect to the entire subject matter hereof, and
21 any and all prior discussions, negotiations, commitments, or understandings
22 related thereto, if any, are hereby merged herein and therein. There are no
23 warranties, representations, or other agreements between the Parties except as
24 expressly set forth herein. No representations, oral or otherwise, express or
25 implied, other than those specifically referred to in this Consent Judgment have
26 been made by any Party hereto. No other agreements not specifically contained
27 or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of
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the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment (other than the provisions relating to the release of claims in Section 6) are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Consent Judgment being contrary to the intent of the Parties in entering into this Consent Judgment, and provided however, that the releases contemplated hereby shall not be severable from the remainder of the Consent Judgment and if invalidated shall require CCI to restore to each Settling Defendant the consideration paid hereunder. However, OEHHA cannot be required to return its share of the penalty.

12. RETENTION OF JURISDICTION

12.3. This Court shall retain jurisdiction of this matter to implement or modify or enforce the Consent Judgment.

13. MODIFICATION OF CONSENT JUDGMENT

This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court and prior notice to the Attorney General’s Office, or by an order of this Court upon motion and prior notice to the Attorney General’s Office and in accordance with law.

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14. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

14.3. Each Party acknowledges that it has had the opportunity to consult with counsel regarding this Consent Judgment. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

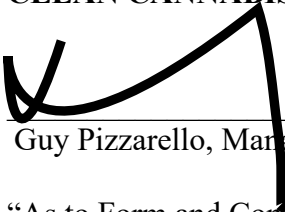
15. EXECUTION IN COUNTERPARTS

15.3. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____
Judge of the Superior Court

IT IS SO STIPULATED:

Dated: _____
CLEAN CANNABIS INITIATIVE, LLC


Guy Pizzarello, Manager
"As to Form and Content"

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Dated: 10/27/2021

NATIONAL CONCESSIONS GROUP INC.

DocuSigned by:
John Moynan

99A74C07EF7545E...

Signature

“As to Form and Content”

John Moynan

Printed name

Chief Operating Officer & General Counsel

Title

Dated: _____

DIXIE BRANDS INC.

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

THE FLAVRX COMPANY INC

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

NG IP HOLDCO, LLC

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

KIVA BRANDS INC

Signature

“As to Form and Content”

Printed name

Title

Dated: October 29, 2021

BHANG CORPORATION



Signature

“As to Form and Content”

Jamie L Pearsor

Printed name

President/CEC

Title