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19 Attorneys for Plaintiff
20 Clean Cannabis Initiative LLC

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

23 CLEAN CANNABIS INITIATIVE, LLC,) Case No. RG 18915781
24)
25 Plaintiff,) **[PROPOSED] CONSENT**
26) **JUDGMENT**
27 v.)
28) **Reservation Number: R-2265508**
THCLEAR, *et al.*,)
Defendants.) **Hearing Date: August 31, 2021**
Time: 3:00 p.m.
Department: 23
Judge: Hon. Brad Seligman
Date Action Filed: 8/7/2018

29 **1. DEFINITIONS**

30 1.1 “Chemical” means malathion, carbaryl or myclobutanil, which collectively are
31 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., Delta 9,
7 and Dixie Brands, Inc. (Dixie Brands), and also includes a subset of the Settling Defendants that
8 includes the following “Licensor Defendants:” NG IP Holdco, LLC (erroneously sued as
9 Nameless Genetics), The FlavRx Company, Inc. (erroneously sued as FlavRx), National
10 Concessions Group Inc. (erroneously sued as Open Vape), and Bhang Corporation (erroneously
11 sued as Bhang).

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

16 1.6 “Chemical Standard” means, for each of the Chemicals, either:

17 (a) a nondetectable level; or

18 (b) a level below the Maximum Acceptable Dose Level (“MADL”) and/or No
19 Significant Risk Level (“NSRL”), as such levels are applicable to the Chemical(s)
20 and published by the California Office of Environmental Health Hazard
21 Assessment (“OEHHA”) under Proposition 65; or

22 (c) if OEHHA has not published such a level for one or more of the Chemicals, a
23 level at which an exposure to such Chemical(s) may occur resulting from use of a
24 Settling Defendant’s Covered Product(s) which is below the level of the exposure
25 posing no significant risk assuming lifetime exposure at the level in question (for a
26 Chemical listed as a carcinogen under Proposition 65) and/or below the level
27 having no observable effect assuming exposure at one thousand (1000) times the
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1 level in question (for a Chemical listed as a reproductive toxicant under
2 Proposition 65), based on evidence and standards of comparable scientific validity
3 to the evidence and standards which formed the scientific basis for the listing of
4 such Chemical.

5 1.7 “Effective Date” means the date on which notice of entry of this Consent
6 Judgment by the Court is served upon Settling Defendants.

7 **2. INTRODUCTION**

8 2.1 The Parties to this Consent Judgment are Clean Cannabis Initiative, LLC, a limited
9 liability company organized under California law (“CCI”), on the one hand, and the Settling
10 Defendants, which includes the Licensor Defendants, on the other hand.

11 2.2 CCI and Settling Defendants (the “Parties”) enter into this Consent Judgment to
12 settle certain claims asserted by CCI against Settling Defendants as set forth in the Complaint and
13 further described herein.

14 2.3 CCI asserts that on May 5, and May 12 of 2017, it provided documents purporting
15 to be Notices of Violation to certain of the Settling Defendants. CCI asserts that on August 7,
16 2017, it provided other documents purporting to be Notices of Violation on the remaining Settling
17 Defendants. CCI further asserts that all such Notices of Violation also were provided to the
18 California Attorney General, the District Attorneys of every county in California, the City
19 Attorneys of every California city with a population greater than 750,000. The relevant Notices of
20 Violation, attached hereto as Exhibit A, allege that Settling Defendants exposed persons to one or
21 more Chemicals through use of the Covered Products without first providing a clear and
22 reasonable Proposition 65 warning.

23 2.4 At all times relevant to the Complaint, each Settling Defendant is a “person in the
24 course of doing business” under Proposition 65 that either: (1) is licensed to manufacture,
25 package, distribute, market, sell, or offer for sale cannabis products that are sold in the State of
26 California; or (2) for Licensor Defendants, licenses one or more forms of intellectual property to a
27 corporation or other person that is licensed to manufacture, package, distribute, market, sell, or
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1 offer for sale cannabis products in the State of California.

2 On September 7, 2018, CCI filed the initial Complaint in the above-captioned matter,
3 naming the following Settling Defendants as original defendants: THClear, Caviar Gold, Nameless
4 Genetics, LOL Edibles; Kurvana; Spliffin; Absolute Extracts; Dixie Brands; Bloom; FlavRx; The
5 Clear; Pure Vape; Delta 9; Marley Naturals; Heavy Hitters; Buddha's Best; Open Vape; and Kiva
6 Brands Inc.

7 2.5 For those Settling Defendants who were not initially named in the Complaint and
8 who received Notices of Violation issued by CCI as described herein, the Complaint shall be
9 deemed to be amended to add such Settling Defendants as defendants in this action October 7,
10 2018, 61 days after the service of the latest Notice of Violation, without the need for the formal
11 filing of an amended complaint. This Section shall apply to Settling Defendant Bhang
12 Corporation (erroneously sued as Bhang).

13 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court
14 has jurisdiction over the allegations of violations contained in the Complaint and personal
15 jurisdiction over Settling Defendants as to the acts alleged in the Complaint, that venue is proper
16 in the County of Alameda, and that this Court has jurisdiction to enter and enforce this Consent
17 Judgment as a full, final and binding resolution of all claims which were or could have been
18 raised in the Complaint based on the facts alleged therein and in the Notices of Violation with
19 respect to Covered Products manufactured, packaged, distributed, marketed, and/or sold by
20 Settling Defendants as alleged in the Notices of Violations directed to them, and, for Licensor
21 Defendants, with respect to any form of intellectual property licensed by Settling Defendants to
22 businesses licensed to manufacture, package, distribute, market, and/or sell cannabis products.

23 2.7 Nothing in this Consent Judgment is or shall be construed as an admission against
24 interest by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
25 compliance with the Consent Judgment constitute or be construed as an admission against interest
26 by the Parties of any fact, conclusion of law, issue of law, or violation of law. Each Licensor
27 Defendants specifically denies that, as a licensor of intellectual property without a state cannabis
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1 license, it has any obligation to comply with Proposition 65 or that it is a manufacturer, packager,
2 distributor, marketer, or seller of any Covered Product or any other cannabis product. Nothing in
3 this Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense
4 the Parties may have in any other pending or future legal proceedings. This Consent Judgment is
5 the product of negotiation and compromise and is accepted by the Parties solely for purposes of
6 settling, compromising, and resolving issues disputed in this action.

7 **3. INJUNCTIVE RELIEF**

8 3.1 No later than one hundred and twenty days (120) after the Effective Date, and
9 continuing thereafter, Settling Defendants who are not Licensor Defendants shall only
10 manufacture, package, distribute, market, sell, or offer for sale in California, Covered Product(s)
11 meeting the Chemical Standard as set forth in Section 3.2 (hereinafter “Reformulated Covered
12 Product(s)”) or Covered Product(s) for which a clear and reasonable warning is provided pursuant
13 to Section 3.3. Nothing herein shall be deemed to required compliance with this Section 3 as to
14 Covered Products that are already in the stream of commerce as of one hundred and twenty (120)
15 days after the Effective Date.

16 3.2 **“Reformulated Covered Product” Standard.** “Reformulated Covered Product”
17 is a Covered Product meeting the applicable Chemical Standard for the Chemicals. Any testing
18 required to establish that a Covered Product meets the Chemical Standard shall be undertaken by
19 appropriately qualified/accredited laboratories using generally accepted testing methodologies.


20 3.3 **Clear and Reasonable Warnings.** No later than one hundred and twenty (120)
21 days after the Effective Date and continuing thereafter, each Settling Defendant who is not a
22 Licensor Defendants shall, for all Covered Product(s) it manufactures, packages, distributes,
23 markets, sells or offers for sale in California that does not meet the Chemical Standard (other than
24 Covered Product existing as of 120 days after the Effective Date), provide a clear and reasonable
25 warning in one of the forms set forth in subsections 3.3.1 and 3.3.2 below, prominently placed
26 with such conspicuousness as compared with other words, statements, designs, or devices as to
27 render it likely to be read and understood by an ordinary individual under customary conditions
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1 before or at the time of the purchase transaction. Each such warning shall only be required to
2 include reference to Cancer or Reproductive Harm as may be required by OEHHA's listings of
3 the Chemicals which currently provide the following:


4	Carbaryl	Cancer and Reproductive Toxicity
5	Malathion	Cancer
6	Myclobutanil	Reproductive Toxicity

7 3.3.1 In the event that OEHHA promulgates one or more regulations requiring or
8 permitting warning text and/or methods of transmission different than those set forth above and
9 below, a Settling Defendant shall be entitled to implement, at its discretion, such other warning
10 text and/or method of transmission for the Covered Product(s) without being deemed in breach of
11 this Consent Judgment.

12 3.3.2 **Covered Products Labeling.** Settling Defendants who are not Licensor
13 Defendants shall, in the absence of reformulation, affix a warning to the packaging, labeling or
14 directly on each Covered Product(s) stating one of the following:

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

19 or

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

22 3.3.2.1 The yellow warning triangle may be substituted with a black
23 and white triangle as such alteration would otherwise be permitted under 27 CCR § 25603(a)(1)
24 as it may be amended from time to time.

25 3.3.3 **Point of Display Warnings.** Alternatively, a Settling Defendant that
26 operates a California licensed retail cannabis business and that is not a Licensor Defendant may
27 post point of display warning signs in the form below in close proximity to the point of display of
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1 the Covered Product(s). Each such warning shall be provided in a manner such that the consumer
2 or user is reasonably likely to understand to which specific Covered Products the warning applies,
3 so as to minimize the risk of consumer confusion.

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

9 **3.3.4 Internet Sales Warning.** In the event that a Settling Defendant who is
10 not a Licensor Defendant sells Covered Product(s) via the internet directly to consumers located
11 in California 120 days after the Effective Date that are not Reformulated Covered Product(s),
12 such Settling Defendant, in addition to complying with the warning requirements of Section 3.3.2
13 (or, for Settling Defendants implementing the alternative warning requirements of Section 3.3.3,
14 those requirements), shall provide a warning for such Covered Product(s) sold via the internet to
15 such California residents. Such internet warnings shall implement the warning text used on
16 Covered Product labeling or point of display signage, as the case may be, and shall be provided
17 by including either the warning or a clearly marked hyperlink using the word “WARNING” on
18 the product display page, or by otherwise prominently displaying the warning to the purchaser
19 prior to completing the purchase.

20 **3.4 Licensor Defendants Only.** Licensor Defendants are not subject to the
21 requirements of Section 3.1 through 3.3 above. Each Licensor Defendant agrees that it shall not
22 enter into any intellectual property licensing agreement with any third party intending to
23 manufacture or distribute a cannabis product unless that third party agrees to provide a clear and
24 reasonable warning on such products pursuant to this Section.

25 **4. PAYMENT OF CIVIL PENALTIES**

26 4.1 In settlement of all the claims referred to in this Consent Judgment, each Settling
27 Defendant shall pay a total of Five Thousand Dollars (\$5,000) in civil penalties in accordance
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1 with this Section. Each penalty payment will be allocated in accordance with California Health &
2 Safety Code § 25249.12(c)(1) and (d), with 75% of the funds (to wit, \$3,750) remitted to the
3 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
4 25% of the penalty (to wit, \$1,250.00) remitted to CCI. Each penalty payment shall be delivered
5 to the addresses listed in Section 4.2 below. As a condition to the obligation to make the
6 payment, CCI agrees to provide each Settling Defendant within ten (10) business days of the
7 Parties' execution of this Consent Judgment an IRS Form W-9 for CCI, CCI's counsel and
8 OEHHA.

9 **4.2 Civil Penalty.**

10 4.2.1 Within thirty (30) days after the Effective Date, each Settling Defendant
11 shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the
12 amount of \$3,750.00; and (b) "Morrison & Associates in Trust for CCI" in the amount of \$1,250.
13 The penalty payments shall be delivered to the addresses listed in Section 4.2.2 below.

14 4.2.2 Payments shall be delivered as follows:

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

17 Mark A. Morrison, Esquire
18 Morrison & Associates
19 548 Market St., Unit 34835
San Francisco CA 94914-5401

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

23 For United States Postal Service Delivery:

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

27 For Non-United States Postal Service Delivery:

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1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

6 4.2.3 Each Settling Defendant agrees to provide CCI's counsel with a copy of
7 the checks payable to OEHHA, simultaneous with its penalty payments to CCI, to be delivered to
8 the address provided in Section 4.2.2, as proof of payment to OEHHA.

9 4.2.4 Each Settling Defendant agrees to provide a completed IRS 1099 for its
10 payments to each of the following payees under this Consent 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
investigating and bringing this matter to Settling Defendants' attention and negotiating a

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

5 Payment shall be delivered to the following address:

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

9 **6. ADDITIONAL PARTIES.**

10 This Consent Judgment is executed with the understanding that additional parties aside from
11 Settling Defendants, and presently known and/or unknown to Plaintiff, have manufactured,
12 distributed or sold medical marijuana products for use in the State of California, and that those
13 parties may be subject either to a separate suit, or may be added to this Action as defendants.

14 6.1. Any person or entity that employs ten or more persons, or who reasonably believes
15 that at some time since July 1, 2015 it has employed ten or more persons, and who manufactured,
16 imported or distributed for use (“distribution”) in California since July 1, 2015 medical marijuana
17 products or licensed intellectual property for the manufacture and sale of medical marijuana
18 products for use in the State of California since July 1, 2015 may resolve any liabilities that may
19 have arisen under Proposition 65 as a result of such distribution by “opting in” as a defendant in
20 this case, and agreeing to settle claims against it under Proposition 65 by entering into this Consent
21 Judgment. Any person who opts in shall be referred to as an “Opt-in Settling Defendant.” An Opt-
22 In Settling Defendant who enters into this Consent Judgment will be obligated to carry out the
23 Proposition 65 compliance requirements set forth in Section 3 above. To opt-in, the Opt-In Settling
24 Defendant shall submit its list of medical marijuana products for review and approval by Plaintiff
25 prior to executing the Consent Judgment. Such Opt-In Settling Defendant further shall pay the
26 amount determined by Sections 4 and 5 above. In consideration of these acts, said Opt-in Settling
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1 Defendant shall be released from all claims against it pursuant to Section 7 below. The procedure
2 for opting in is set forth in Sections 6.1.1 and 6.1.2.

3 6.1.1 Any person not named as a defendant in the Complaint at the time this
4 Consent Judgment is entered may, not later than 120 days after this Consent Judgment is approved
5 by the Court, execute the Opt-in Stipulation as Exhibit B to this Consent Judgment thus stipulating
6 that such Opt-In Settling Defendant:

7 6.1.1.1. sold medical marijuana products in the State of California
8 since July 1, 2015 or licensed intellectual property for the manufacture and sale of medical
9 marijuana products for use in the State of California since July 1, 2015; and

10 6.1.1.2. agrees to accept service of a Notice of Intent to Sue under
11 Health & Safety Code section 25249.7(d), as implemented pursuant to Code of Regulation title 22,
12 section 12903 (“Notice”), and waive any rights to assert any defense based on inadequate notice,
13 lack of compliance with the requirements of Code of Regulations title 25, section 12903, or any
14 other defense alleged under Health & Safety Code section 25249.6, et seq., or the regulations
15 promulgated thereunder, and any right to extension of any service period pursuant to Code of Civil
16 Procedure section 1013; and

17 6.1.1.3. agrees to accept service of the Summons and Complaint as a
18 Doe defendant to be designated by Plaintiff, acting on behalf of the general public and agrees to be
19 bound by all terms and conditions of this Consent Judgment.

20 6.1.2. Thereafter, such Opt-in Settling Defendant shall mail the original signed
21 Opt-in Stipulation, to Counsel for CCI, which includes the information necessary to provide notice
22 as required under Code of Regulations title 25, section 25903(b)(A), and a check for \$1,200. This
23 amount represents that Opt-in Settling Defendant’s pro-rata share of the following costs: the cost
24 incurred by Plaintiff to prepare and mail the Notice, the cost of filing a Doe designation, the cost
25 of filing the stipulation, and the Opt-in Settling Defendant’s Alameda County Superior Court
26 filing/appearance fees. Counsel for CCI with a check for its share of the settlement payment
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1 determined under Sections 4 and 5 above. As explained in Section 6.2, CCI shall through counsel
2 administer the opt-in settlement process on behalf of Opt-In Settling Defendants.

3 6.1.3. Notwithstanding the provisions of Section 6.1.1. above, any person named
4 as a defendant in any other civil action arising under Proposition 65 related to the Chemicals in
5 Covered Products prior to the execution of this Consent Judgment (for Settling Defendant(s) or
6 Licensor Defendant(s)) or filing a new 60-day notice of intent to sue by Plaintiff against an Opt-In
7 Defendant, shall not be eligible to Opt-In to this Consent Judgment.

8 6.2. Opt-in Settling Defendant Settlement Payments. Opt-In Settling Defendants shall
9 comply with Sections 4 and 5 above with respect to payment of civil penalties and reimbursement
10 of fees and costs within thirty (30) days after the date on which notice of entry of the signed Consent
11 Judgment by the Court is served upon Opt-In Settling Defendant.

12 **7. CLAIMS COVERED AND RELEASE**

13 7.1 CCI, in the public interest and on its own behalf as well as on behalf of its agents,
14 employees, principals, representatives, attorneys, beneficiaries, successors, heirs, assigns,
15 assignees, and anyone else claiming through or on behalf of it, if any, hereby release each Settling
16 Defendant and each of its respective current, former, and future parents, affiliates, predecessors
17 and successors in interest, and all of each of their officers, employees, contractors, landlords,
18 subtenants, licensees, attorneys, insurers, and agents, each entity to whom any of them directly or
19 indirectly distributed or sold the Covered Products, including but not limited to, downstream
20 distributors, wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative
21 members, and each entity from whom any of them directly or indirectly purchased the Products or
22 materials used to make the Covered Products, including but not limited to upstream suppliers,
23 distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees
24 (collectively, the "Releasees"), from all claims for violations of Proposition 65 through one
25 hundred and twenty (120) days after the Effective Date based on the alleged failure to warn about
26 alleged exposures to the Chemicals resulting from use of the Covered Product(s), which was
27 alleged to be, or in fact was, manufactured, packaged, distributed, marketed, sold and/or offered
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1 for sale by such Settling Defendant to customers and consumers in the State of California. This
2 settlement is a full, final and binding resolution of all claims, both individual and representative,
3 that were or could have been asserted by CCI, acting on its own and as a representative on behalf
4 of the general public at large, against each Settling Defendant and/or the Releasees for failure to
5 provide warnings for alleged exposures to Chemicals resulting from the use of Covered
6 Product(s).

7 7.2 In further consideration of the promises and agreements herein contained, and for
8 the payments to be made as described above, CCI, on its own behalf as well as on behalf of its
9 agents, employees, principals, representatives, attorneys, beneficiaries, successors, heirs, assigns,
10 assignees, and anyone else claiming through or on behalf of it, if any, provides a release herein
11 which shall be effective as a full, final and binding accord and satisfaction, as a bar to all actions,
12 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities
13 and demands against each Settling Defendant, or the Releasees, of any nature, character, or kind,
14 whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or
15 actual exposure to chemicals resulting from the use of the Product.

16 7.3 Pursuant to the terms of this Release, and in accord with the intent of this Consent
17 Judgment, CCI agrees to immediately terminate its pursuit and prosecution of, and within thirty
18 (30) days after the Effective Date, dismiss, any and all lawsuits, claims, or actions it has filed
19 against each Settling Defendant, and forebear from filing or further pursuing any lawsuits, claims,
20 or actions against each Settling Defendant in the future based upon the Covered Products at issue.

21 7.4 In further consideration of the promises and agreements herein contained, and for
22 the payments to be made hereunder, CCI, on behalf of itself only, hereby covenants not to sue and
23 waives any right to institute, participate in, directly or indirectly, any form of legal action and
24 releases all claims that it may have now or in the future, including without limitation, all actions
25 and causes of action in law and in equity, all obligations, expenses (including without limitation
26 all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
27 demands against each Settling Defendant, and its parents, subsidiaries, affiliated entities,
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1 shareholders, marketplaces, directors, officers, agents, employees, attorneys, and their respective
2 successors and assignees, of any nature, character, or kind, whether known or unknown,
3 suspected or unsuspected, limited to and arising out of any alleged or actual violation of
4 Proposition 65. Nothing herein shall be construed as a waiver or release of CCI's rights to enforce
5 the terms of this Consent Judgment or any of the injunctive relief herein.

6 7.5 Each Settling Defendant, on behalf of itself, its past and current agents,
7 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
8 CCI, its attorneys and other representatives, for any and all actions taken or statements made (or
9 those that could have been taken or made) by CCI, and/or its attorneys and other representatives,
10 in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in
11 this matter.

12 7.6 **Waiver of California Civil Code Section 1542.** It is possible that other claims not
13 known to the Parties arising out of the facts alleged in the Notices of Violation and Complaint and
14 relating to the Products will develop or be discovered. CCI, on behalf of itself only, on one hand,
15 and each Settling Defendant, on the other hand, acknowledge that this Consent Judgment is
16 expressly intended to cover and include all such claims up through one hundred and twenty (120)
17 after the Effective Date, including all rights of action therefor. The Parties acknowledge that the
18 claims released in Sections 6.1 through 6.5 above may include unknown claims, and nevertheless
19 waive California Civil Code section 1542 as to any such unknown claims. California Civil Code
20 section 1542 reads as follows:

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

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

3 7.7 Compliance by each Settling Defendant with the requirements of Section 3 of this
4 Consent Judgment applicable to it constitutes that Settling Defendant's compliance with
5 Proposition 65 with respect to exposure to Chemicals resulting from the use of the Covered
6 Products.

7 **8. PROVISION OF NOTICE**

8 8.1 When CCI is entitled to receive any notice under this Consent Judgment, the
9 notice shall be sent by electronic mail to:

10
11 Mark A. Morrison, Esquire
12 Morrison & Associates
13 548 Market St., Unit 34835
14 San Francisco CA 94914-5401

15 mark@mpaclassaction.com

16 8.2 When a Settling Defendant is entitled to receive any notice under this Consent
17 Judgment, the notice shall be sent by electronic mail as follows:

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

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

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

25 Delta 9 – Scott L. Hengesbach *Counsel for Defendant*
26 shengesbach@murchisonlaw.com

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

Bhang — Todd Winter *Counsel for Defendant*

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

1 **9. COURT APPROVAL**

2 9.1 This Consent Judgment shall become effective upon the date signed by CCI and
3 Settling Defendants, whichever is later, provided however, that CCI shall prepare and file a
4 Motion for Approval of this Consent Judgment and Settling Defendants shall reasonably support
5 entry of this Consent Judgment by the Court.

6 9.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
7 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
8 purpose.

9 **10. GOVERNING LAW AND CONSTRUCTION**

10 10.1 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California and apply within the State of California. In the event that Proposition 65 is repealed or
12 is otherwise rendered inapplicable by reason of law generally, or as to the Products, any Settling
13 Defendant may provide written notice to CCI of any asserted change in the law, and shall have no
14 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
15 Products is so affected.

16 **11. ENTIRE AGREEMENT**

17 11.1 This Consent Judgment contains the sole and entire agreement and understanding
18 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
20 and therein. There are no warranties, representations, or other agreements between the Parties
21 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
22 other than those specifically referred to in this Consent Judgment have been made by any Party
23 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
24 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
25 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
26 Parties hereto only to the extent that they are expressly incorporated herein. No supplementation,
27 modification, waiver, or termination of this Consent Judgment shall be binding unless executed in
28

1 writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent
2 Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof
3 whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **12. SEVERABILITY**

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

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
16 Consent Judgment.

17 **14. MODIFICATION OF CONSENT JUDGMENT**

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

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15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

15.1 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.

16. EXECUTION IN COUNTERPARTS

16.1 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: _____

NATIONAL CONCESSIONS GROUP INC.

Signature

“As to Form and Content”

Printed name

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: _____

DELTA 9

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

KIVA BRANDS INC

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

BHANG CORPORATION

Signature

“As to Form and Content”

Printed name

Title

1 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

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8 16.1 The stipulations to this Consent Judgment may be executed in counterparts and by
9 means of facsimile or portable document format (pdf), which taken together shall be deemed to
10 constitute one document.

11
12 **IT IS SO ORDERED, ADJUDGED, AND**
13 **DECREED.**

14
15
16 Dated: _____
17 Judge of the Superior Court

18
19 **IT IS SO STIPULATED:**

20 Dated: Jun 28, 2021
21 _____
22 **CLEAN CANNABIS INITIATIVE, LLC**
23 Guy Pizzarello
24 Guy Pizzarello (Jun 28, 2021 16:04 PDT)
25 Guy Pizzarello, Manager
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27 “As to Form and Content”
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Consent Judgment Edit MM 6-27-21

Final Audit Report

2021-06-28

Created:	2021-06-28
By:	Mark Morrison (markamorrison@me.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAog0yBtdTcdi_X1lzmyxXXJheXfxSOUGm

"Consent Judgment Edit MM 6-27-21" History

-  Document created by Mark Morrison (markamorrison@me.com)
2021-06-28 - 10:37:13 PM GMT- IP address: 71.237.68.83
-  Document emailed to Guy Pizzarello (guy@pceng-design.com) for signature
2021-06-28 - 10:39:53 PM GMT
-  Email viewed by Guy Pizzarello (guy@pceng-design.com)
2021-06-28 - 10:56:10 PM GMT- IP address: 98.178.240.190
-  Document e-signed by Guy Pizzarello (guy@pceng-design.com)
Signature Date: 2021-06-28 - 11:04:21 PM GMT - Time Source: server- IP address: 98.178.240.190
-  Agreement completed.
2021-06-28 - 11:04:21 PM GMT

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Dated: 6/29/2021

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: 7/14/2021

DIXIE BRANDS INC.



Signature

“As to Form and Content”

C. J. Chapman

Printed name

General Counsel

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:

DIXIE BRANDS INC.

Signature

“As to Form and Content”

Printed name

Title

Dated: Jul 14, 2021

THE FLAVRX COMPANY INC

Steven dang

steven dang (Jul 14, 2021 17:04 PDT)

Signature

“As to Form and Content”

Steven dang

Printed name

CEO

Title

Dated: 7/13/2021

NG IP HOLDCO, LLC

J. Malinowitz

Signature

“As to Form and Content”

Jeffrey Malinovitz

Printed name
Partner

Title

Dated: 7/8/2021 _____

DELTA 9

Signature

“As to Form and Content”

Mark Adams

Printed name

CEO

Title

Dated: _____

KIVA BRANDS INC

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

BHANG CORPORATION

Signature

“As to Form and Content”

Printed name

Title

Dated:

DELTA 9

Signature

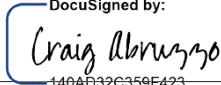
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Dated: 7/15/2021

KIVA BRANDS INC

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Craig Abruzzo

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Chief Legal Officer

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Dated:

BHANG CORPORATION

Signature

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Dated: _____

DELTA 9

Signature

“As to Form and Content”

Printed name

Title

Dated: _____

KIVA BRANDS INC

Signature

“As to Form and Content”

Printed name

Title

Dated: June 28, 2021

BHANG CORPORATION



Signature

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Jamie L Pearson

Printed name

President/CEO

Title

EXHIBIT A

NOTICES FOR SETTLING DEFENDANTS

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

EXHIBIT B

OPT-IN STIPULATION

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

Re: Opt-In Stipulation: *Clean Cannabis Initiative, LLC v. THCLEAR, et al.*

Dear Mr. Morrison:

We are writing to inform you that [COMPANY NAME] has elected to become an Opt-In Defendant in *Clean Cannabis Initiative, LLC v. THCLEAR, et al.*, Alameda County Superior Court, Case RG 18915781. In accordance with the terms of paragraph 6.1.1 of the Consent Judgment filed in the case, [COMPANY NAME] stipulates and affirms that it:

- [CHECK ONE] _____ Sold medical marijuana products for use in the State of California since July 1, 2015 or _____ Licensed intellectual property for the manufacture and sale of medical marijuana products for use in the State of California since July 1, 2015; and
- Will accept service of a Notice of Intent to Sue under Health & Safety Code section 25249.7(d), as implemented pursuant to Code of Regulation title 22, section 12903 (“Notice”), and waive any rights to assert any defense based on inadequate notice, lack of compliance with the requirements of Code of Regulations title 25, section 12903, or any other defense alleged under Health & Safety Code section 25249.6, et seq., or the regulations promulgated thereunder, and any right to extension of any service period pursuant to Code of Civil Procedure section 1013;
- Agrees to accept service of the Summons and Complaint as a Doe defendant to be designated by Plaintiff, acting on behalf of the general public; and
- Agrees to be bound by all terms and conditions of this Consent Judgment.

Enclosed is a check for \$1,250 made payable to Morrison & Associates to cover the cost of preparing and mailing the Notice required by Cal. Health and Safety Code Section 25249.7(d), preparing and filing the opt-in complaint and stipulation with the court and paying the required court appearance fees. Please mail the notice to:

[Name and Title of Company Representative]
[COMPANY]

[Mailing Address]

If you have any questions concerning the above stipulation, please contact [NAME] at [Telephone Number] of contact.

Sincerely,

[Company Representative]

[Title]

[Company Name]