

FILED
Superior Court of California
County of Los Angeles

04/10/2019

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Woods Deputy

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Superior Court of California
County of Los Angeles

MAY 16 2019

Sherri R. Carter, Executive Officer/Clerk

By: Deputy
 Latrina Woods

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES
STANLEY MOSK COURTHOUSE**

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

Plaintiff,

v.

EL MONTE SUPERSTORE, INC., a
California Corporation, et. al.,

Defendants.

CASE NO. 18STCV02562

CONSENT JUDGMENT ~~(PROPOSED)~~

Health & Safety Code §25249.5

Dept. 61
Hon. Gregory Keosian

Filing Date: 10/26/2018
Trial Date: Not Yet Set

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between Plaintiff, CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") acting on behalf of itself and in the interest of the public. and Defendant, DAI CHEONG TRADING CO, INC. ("Defendant" or "DAI CHEONG") with each a Party to the action and collectively referred to as "Parties."

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1 **1.2 Defendants and Covered Products**

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

7 1.2.2 CAG alleges that DAI CHEONG manufactures, causes to be manufactured,
8 imports, supplies, offers for sale, sells, or distributes certain dried fungus products in California.

9 **1.3 Listed Chemical**

10 Lead and lead compounds have been listed by the State of California as known to cause
11 cancer and birth defects or other reproductive harm.

12 **1.4 Notice of Violation**

13 On or about May 7, 2018, CAG served DAI CHEONG and various public enforcement
14 agencies with a document titled “Sixty-Day Notice of Intent to Sue for Violation of the Safe
15 Drinking Water and Toxic Enforcement Act of 1986” (“Notice”) that provided the recipients
16 with notice of alleged violations of Health & Safety Code § 25249.6 for allegedly failing to warn
17 individuals in California of exposures to lead and lead compounds, contained in certain dried
18 fungus products sold by DAI CHEONG in California. No public enforcer has commenced or
19 diligently prosecuted the allegations set forth in the Notice.
20

21 **1.5 Complaint**

22 On October 26, 2018, CAG filed a Complaint against DAI CHEONG for civil penalties
23 and injunctive relief (the “Complaint”) in Los Angeles County Superior Court, Case No.
24 18STCV02562, alleging that Defendants violated Proposition 65 for allegedly failing to give
25 clear and reasonable warnings of alleged exposure to lead and lead compounds in certain dried
26 fungus products DAI CHEONG distributed and/or sold in California.

27 **1.6 Consent to Jurisdiction**

28 For purposes of this Consent Judgment only, the Parties stipulate that this Court has

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1 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
2 over DAI CHEONG as to the acts alleged in the Complaint, that venue is proper in the County of
3 Los Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full
4 settlement and resolution of the allegations against the DAI CHEONG contained in the
5 Complaint, and of all claims which were or could have been raised by any person or entity based
6 in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or
7 related thereto.

8 **1.7 No Admission**

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

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26 **2. DEFINITIONS**

27 2.1 “Covered Products” means dried fungus, which includes but is not limited to:
28 “Dried Black Fungus; Fortuna Brand; Packed for: Dai Cheong Trading Co., Inc.; Product of

1 conspicuousness as compared with other words, statements, designs, or devices as to render it
2 likely to be read and understood by an ordinary individual under customary conditions before
3 purchase or use. The Parties agree that the foregoing warning language or other language that
4 complies with applicable warning requirements adopted by OEHHA as of or after the Effective
5 Date shall constitute compliance with Proposition 65 with respect to the alleged Listed Chemical
6 in the Covered Products as of the Effective Date.

7 **4. SETTLEMENT PAYMENT**

8 4.1 **Payment:** Defendant shall pay a total of sixty five thousand dollars and zero
9 cents (\$65,000) in full and complete settlement of any and all claims for civil penalties, damages,
10 attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any kind
11 for claims that were or could have been asserted in the Notice or Complaint, as follows:

12 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling thirteen
13 thousand one-hundred fifty dollars and zero cents (\$13,150.00) as follows for alleged civil
14 penalties pursuant to Health & Safety Code § 25249.12:

15 (a) Defendant will issue one check made payable to the State of
16 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
17 nine thousand eight-hundred sixty-two dollars and fifty cents (\$9,862.50) representing 75% of
18 the total civil penalty and Defendant will issue a second check to CAG in the amount of three
19 thousand two-hundred eighty-seven dollars and fifty cents (\$3,287.50) representing 25% of the
20 total civil penalty;

21 (b) Separate 1099s shall be issued for each of the above payments:
22 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
23 0284486) in the amount of nine thousand eight-hundred sixty-two dollars and fifty cents
24 (\$9,862.50). Defendant will also issue a 1099 to CAG in the amount of three thousand two-
25 hundred eighty-seven dollars and fifty cents (\$3,287.50) and deliver it to CAG c/o Yerousalmi
26 & Yerousalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.
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1 **4.1.2 Additional Settlement Payments:** DAI CHEONG shall pay nine thousand eight-
2 hundred fifty dollars and zero cents (\$9,850.00) to "Consumer Advocacy Group, Inc." pursuant
3 to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d).
4 CAG will use this portion of the Total Settlement Payment as follows, eighty five percent (85%)
5 for fees of investigation, purchasing and testing for Proposition 65 Listed Chemical in various
6 products, and for expert fees for evaluating exposures through various mediums, including but
7 not limited to consumer product, occupational, and environmental exposures to Proposition 65
8 Listed Chemical, and the cost of hiring consulting and retaining experts who assist with the
9 extensive scientific analysis necessary for those files in litigation and to offset the costs of future
10 litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for
11 administrative costs incurred during investigation and litigation to reduce the public's exposure
12 to Proposition 65 Listed Chemical by notifying those persons and/or entities believed to be
13 responsible for such exposures and attempting to persuade those persons and/or entities to
14 reformulate their products or the source of exposure to completely eliminate or lower the level of
15 Proposition 65 Listed Chemical including but not limited to costs of documentation and tracking
16 of products investigated, storage of products, website enhancement and maintenance, computer
17 and software maintenance, investigative equipment, CAG's member's time for work done on
18 investigations, office supplies, mailing supplies and postage. Within 30 days of a request from
19 the Attorney General, CAG shall provide to the Attorney General copies of documentation
20 demonstrating how the above funds have been spent. CAG shall be solely responsible for
21 ensuring the proper expenditure of such additional settlement payment.
22

23 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendants shall pay forty
24 two thousand dollars and zero cents (\$42,000.00) to "Yeroushalmi & Yeroushalmi" as complete
25 reimbursement including, but not limited to, any and all reasonable investigation fees and costs,
26 attorneys' fees, expert fees, and any and all other costs and expenses incurred as a result of
27 investigating, bringing this matter to the DAI CHEONG's attention, litigating, negotiating a
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1 settlement in the public interest, and seeking and obtaining court approval of this Consent
2 Judgment.

3 4.2 Other than the payment to OEHHA described above, all payments referenced in
4 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
5 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.
6 Defendant shall deliver payment to OEHHA by check (Memo Line "Prop 65 Penalties") at one
7 of the following addresses:

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
Sacramento, CA 95812-4010

13 For Non-United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
Sacramento, CA 95814

18 DAI CHEONG shall provide written confirmation to CAG concurrently with payment to
19 OEHHA.

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

21 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
22 behalf of itself and in the public interest, and DAI CHEONG and their officers, directors,
23 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
24 affiliates, sister companies, and their successors and assigns ("Defendant Releases"), and all
25 entities to whom DAI CHEONG directly or indirectly distributes, supplies, offers for sale or sells
26 Covered Products, including, but not limited to, downstream distributors, wholesalers,
27 customers, retailers, franchisees, cooperative members, licensees, and the successors and assigns
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1 of any of them, who may use, maintain, distribute, supply, offer for sale or sell Covered Products
2 including, but not limited to SF Supermarket, Inc., El Monte Superstore, Tran's Family, Inc.
3 ("Downstream Defendant Releasees"), of all claims for alleged or actual violations of
4 Proposition 65 for alleged exposures to the Listed Chemical from the Covered Products
5 manufactured, distributed or sold by DAI CHEONG up through the Effective Date as set forth in
6 the Notice and Complaint. DAI CHEONG's compliance with this Consent Judgment shall
7 constitute compliance with Proposition 65 with respect to alleged exposures to the Listed
8 Chemical from the Covered Products manufactured, imported, distributed, supplied, offered for
9 sale or sold by Defendant Releasees or Downstream Defendant Releasees after the Effective
10 Date. Nothing in this section affects CAG's right to commence or prosecute an action under
11 Proposition 65 against any person other than DAI CHEONG, Defendant Releasees, or
12 Downstream Defendant Releasees. DAI CHEONG, Defendant Releasees and Downstream
13 Defendant Releasees are hereafter collectively referred to as the "Released Parties".

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

5
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
10 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
11 DEBTOR OR RELEASED PARTY.
12

13 CAG understands and acknowledges that the significance and consequence of this waiver of
14 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
15 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
16 violation of Proposition 65 or any other statutory or common law regarding the Covered
17 Products manufactured, imported, distributed, supplied, offered for sale or sold by the Released
18 Parties through the Effective Date regarding the failure to warn about actual or alleged exposure
19 to the Listed Chemical from the Covered Products, CAG will not be able to make any claim for
20 those damages, penalties or other relief against the Released Parties. Furthermore, CAG
21 acknowledges that it intends these consequences for any such Claims arising from any violation
22 of Proposition 65 or any other statutory or common law regarding the failure to warn about
23 exposure to the Listed Chemical from the Covered Products as may exist as of the date of this
24 release but which CAG does not know exist, and which, if known, would materially affect their
25 decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the
26 result of ignorance, oversight, error, negligence, or any other cause.
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1 **6. ENFORCEMENT OF JUDGMENT**

2 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
3 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
4 California, Los Angeles County, enforce the terms and conditions contained herein. A Party
5 may enforce any of the terms and conditions of this Consent Judgment only after that Party first
6 provides 30 days' notice to the Party allegedly failing to comply with the terms and conditions of
7 this Consent Judgment, and attempts to resolve such Party's failure to comply in an open and
8 good faith manner.

9 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
10 proceeding to enforce the terms of this Consent Judgment, CAG shall provide a Notice of
11 Violation ("NOV") to DAI CHEONG within 60 days of the date the alleged violation was
12 observed. The NOV shall, at a minimum, include for each alleged violation: (a) a description of
13 the Covered Product giving rise to the alleged violation, including a picture of the Covered
14 Product and all identifying and consumer information on packaging and labels; (b) specific
15 date(s) when the alleged violation was observed; (c) the store or other place at which the
16 Covered Product was offered for sale to consumers; (d) test data obtained by CAG regarding the
17 Covered Product and related supporting documentation, including all laboratory reports, quality
18 assurance and quality control reports associated with the testing of the Covered Product; and (e)
19 any other evidence or support for the allegations in the NOV.
20

21 6.2.1 **Non-Contested NOV.** CAG shall take no further action of any kind
22 regarding the alleged violation if, within 60 days of receiving such NOV, DAI CHEONG
23 serve a Notice of Election ("NOE") not to contest the NOV that meets the following
24 conditions:

25 (a) A statement that the Covered Product was manufactured, imported,
26 distributed, offered for sale, sold or supplied by DAI CHEONG before the Effective
27 Date; or
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1 (b) A statement that since receiving the NOV DAI CHEONG has
2 taken corrective action by either: (i) taking all steps necessary to bring the sale of the
3 product into compliance under the terms of this Consent Judgment; or (ii) requesting that
4 its customers or stores in California, as applicable, remove the Covered Product identified
5 in the NOV from sale in California; or (iii) refute the information provided in the NOV.

6 6.2.2 **Contested NOV.** DAI CHEONG may serve a NOE informing CAG of its
7 election to contest the NOV within 60 days of receiving the NOV.

8 (a) In its election, DAI CHEONG may request that the sample(s) of
9 Covered Product tested by CAG be subject to confirmatory testing at an EPA- or
10 California-accredited laboratory of DAI CHEONG's choosing.

11 (b) If the confirmatory testing establishes that the Covered Product
12 does not contain the Listed Chemical in excess of the level allowed in section 3.1, above,
13 CAG shall take no further action regarding the alleged violation. If the testing does not
14 establish compliance with section 3.1, above, DAI CHEONG may withdraw its NOE to
15 contest the violation and may serve a new NOE pursuant to section 6.2.1.

16 (c) If DAI CHEONG does not withdraw a NOE to contest the NOV,
17 the Parties shall meet and confer for a period of no less than 30 days before CAG may
18 seek an order enforcing the terms of this Consent Judgment.

19 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the
20 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

21 6.4 Notwithstanding the above, CAG may bring a motion or an action to enforce any
22 breach of the Settlement Payment terms in section 4 et seq. above, upon five (5) business days
23 written notice by CAG to Defendant of the alleged breach in accordance with the notification
24 requirements set forth in section 15 below.

25
26 **7. ENTRY OF CONSENT JUDGMENT**

27 7.1 CAG shall promptly file a motion seeking approval of this Consent Judgment
28 pursuant to California Health & Safety Code § 25249.7(f). The Parties will act in good faith in

1 order to obtain the Court's approval of this Consent Judgment. Upon entry of the Consent
2 Judgment, CAG and DAI CHEONG waive their respective rights to a hearing and trial on the
3 allegations in the Notice and Complaint.

4 7.2 If this Consent Judgment is not approved in full by the Court within six months
5 after it is submitted to the Court for approval: (a) this Consent Judgment and any and all prior
6 agreements between the Parties merged herein shall terminate and become null and void, and the
7 actions shall revert to the status that existed prior to the execution date of this Consent Judgment;
8 (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation,
9 or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any
10 such matter be admissible in evidence for any purpose in this Action, or in any other proceeding;
11 and (c) the Parties agree to meet and confer to determine whether to modify the terms of the
12 Consent Judgment and to resubmit it for approval.

13 **8. MODIFICATION OF JUDGMENT**

14 8.1 This Consent Judgment may be modified only upon written agreement of the
15 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
16 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

19 **9. RETENTION OF JURISDICTION**

20 This Court shall retain jurisdiction of this matter to implement and enforce the terms of
21 this Consent Judgment under Code of Civil Procedure § 664.6.

22 **10. SERVICE ON THE ATTORNEY GENERAL**

23 CAG shall serve a copy of this Consent Judgment, signed by both Parties, on the
24 California Attorney General within five (5) days of submittal to the Court.

25 **11. ATTORNEY FEES**

26 Except as specifically provided in sections 4.1.2, 4.1.3 and 6.3, each Party shall bear its
27 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.
28

1 **12. GOVERNING LAW**

2 12.1 The validity, construction and performance of this Consent Judgment shall be
3 governed by the laws of the State of California, without reference to any conflicts of law
4 provisions of California law.

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

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

23
24 **13. EXECUTION AND COUNTERPARTS**

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

14. NOTICES

Any notices under this Consent Judgment shall be by delivery of First Class Mail.

If to CAG:

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

If to Defendant DAI CHEONG TRADING, INC.:

Malcolm Weiss, Esq.
HUNTON ANDREWS KURTH, LLP
550 S. Hope St., Ste. 2000
Los Angeles, CA 90071

15. AUTHORITY TO STIPULATE

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

AGREED TO:

AGREED TO:

Date: March 22, 2019

Date: MAR/26/, 2019

Michael Marcus
Name: Michael Marcus

Pauline Shin
Name: PAULINE SHIN

Title: Director

Title: MANAGING DIRECTOR

CONSUMER ADVOCACY GROUP, INC.

DAI CHEONG TRADING CO., INC.

IT IS SO ORDERED.

Date: MAY 16 2019
~~4/10/19~~



Gregory Keosian

JUDGE OF THE SUPERIOR COURT

14 Gregory Keosian / Judge

05/24/2019