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9 Attorneys for Plaintiff,
10 Consumer Advocacy Group, Inc.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 CALI FOODS MARKET, INC. dba CALI
18 MART, a California Corporation, *et al.*,

19 Defendants.

CASE NO. 19STCV37537

[Assigned for All Purposed to the Hon.
Michelle Williams Court, Dept. 74]

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

20 **1. INTRODUCTION**

21 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
22 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
23 of the public, and defendant, KIM SENG COMPANY, DBA IHA BEVERAGE (hereinafter
24 referred to as "Defendant"), with each a Party to the action and collectively referred to as
25 "Parties."

26 **1.2 Defendant and Products**

27 1.2.1 CAG alleges that Defendant is a California corporation which employs ten
28 or more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in
the course of doing business in California and are subject to the provisions of the Safe Drinking

1 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
2 (“Proposition 65”).

3 1.2.2 CAG alleges that Defendant distributes and sells **Dried Seaweed**
4 including but not limited to and collectively referred to as “Covered Products”:

- 5 a. “Heng Lung Brand;” “DRIED SEAWEED SLICE;” “NET WT: 7 OZ
6 (200g);” “DISTRIBUTOR: IHA BEVERAGE COMMERCE, CA 90040;”
7 “PRODUCT OF CHINA;” “6 10232 00673 4” (DRIED SEAWEED
8 SLICE”). Dried Seaweed Slice contains Lead, Cadmium and Arsenic.
9 b. “Double Parrot; Dried Seaweed; UPC 610232007397; Product of
10 China; Net WT: 1.40oz (40g)” (“DRIED SEAWEED”).
11 c. “KOTASHIMA;” “KOTASHIMA BRAND;” “DRIED SEAWEED;”
12 “NET WT: 4oz(113g);” “DISTRIBUTOR: KOTASHIMA
13 INTERNATIONAL COMMERCE, CA 90040;” “PRODUCT OF
14 CHINA;” “6 10232 02339 7” (“DRIED SEAWEED IV”).
15 d. “DRIED SEAWEED;” “NET WT 2oz (56g);” “DISTRIBUTOR: IHA
16 BEVERAGE COMMERCE, CA 90040;” “PRODUCT OF CHINA;” “6
17 10232 022352;” (“DRIED SEAWEED V”).
18 e. “DOUBLE PARROT;” “DRIED SEAWEED STRIP;” “NET WT: 3.5 oz
19 (100 g);” “PRODUCT OF CHINA;” “6 10232 02338 0;”
20 “DISTRIBUTOR: IHA BEVERAGE COMMERCE, CA 90040;” (“DRIED
21 SEAWEED VI”).

22 This Consent Judgment includes the Covered Products manufactured through the
23 date of this Consent Judgment and those chemicals in the Covered Products.

24 1.3 **Listed Chemicals**

25 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
26 California to cause cancer and/or birth defects or other reproductive harm.

1 1.3.2 Cadmium and Cadmium Compounds (hereinafter "Cadmium") are known
2 to the State of California to cause cancer and/or birth defects or other reproductive harm.

3 1.3.3 Inorganic Arsenic Compounds and Inorganic Arsenic Oxides are known to
4 the State of California to cause cancer and/or birth defects or other reproductive harm.

5 **1.4 Notices of Violation -- Listed by Product**

6 **7 oz. Seaweed**

7 1.4.1 On or about July 2, 2019, CAG served Defendant and various public
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01265)
9 (hereinafter "Notice 1") that provided the Defendant with notice of alleged violations of Health
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium
11 and Lead contained in Dried Seaweed specifically Dried Seaweed Slice ("Seaweeds") (7 oz.)
12 sold and/or distributed by Defendant. No other public enforcer has commenced or diligently
13 prosecuted the allegations set forth in Notice 1. The Parties agree that Notice 1 is part of this
14 settlement and Consent Judgment.

15 1.4.2 On or about December 9, 2019, CAG served Defendant and various public
16 enforcement agencies with second notice, another document entitled "60-Day Notice of
17 Violation" (AG# 2019-02273) (hereinafter "Notice 2") that provided the Defendant with notice
18 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
19 California of exposures to Arsenic and Lead contained in Dried Seaweed specifically Dried
20 Seaweed Slice ("Seaweeds") (7 oz.) sold and/or distributed by Defendant. No other public
21 enforcer has commenced or diligently prosecuted the allegations set forth in Notice 2. While
22 there was already a pending lawsuit, this notice was sent adding Arsenic. The Parties agree that
23 Notice 2 is part of this settlement and Consent Judgment.

24 1.4.3 On or about December 16, 2019, CAG served Defendant and various public
25 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-02355)
26 (hereinafter "Notice 3") that provided the Defendant with notice of alleged violations of Health
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1 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
2 Lead Compounds ("Lead") and Inorganic Arsenic Compounds ("Arsenic") contained in Dried
3 Seaweeds specifically Dried Seaweed Slice ("Seaweeds") (7 oz.) sold and/or distributed by
4 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set
5 forth in Notice 3. This notice is duplicative of the December 9, 2019 Notice. The Parties agree
6 that Notice 3 is part of this settlement and Consent Judgment.

7 1.4.4 On or about March 10, 2020, CAG served Defendant and various public
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00621)
9 (hereinafter "Notice 4") that provided the Defendant with notice of alleged violations of Health
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
11 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides
12 ("Arsenic") contained in Dried Seaweeds ("Seaweeds") (7 oz.) sold and/or distributed by
13 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set
14 forth in Notice 4. The Parties agree that Notice 4 is part of this settlement and Consent
15 Judgment.

16 1.4 oz. Seaweed

17 1.4.5 On or about July 2, 2019, CAG served Defendant and various public enforcement
18 agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01269) (hereinafter
19 "Notice 5") that provided the Defendant with notice of alleged violations of Health & Safety
20 Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium and Lead
21 contained in Dried Seaweed specifically Dried Seaweed (1.4 oz.) sold and/or distributed by
22 Defendant. No other public enforcer has commenced or diligently prosecuted the allegations set
23 forth in Notice 5. The Parties agree that Notice 5 is part of this settlement and Consent
24 Judgment.

25 1.4.6 On or about December 4, 2019, CAG served Defendant and various public
26 enforcement agencies with a second notice, another document entitled "60-Day Notice of
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1 Violation" (AG# 2019-02251) (hereinafter "Notice 6") that provided the Defendant with notice
2 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
3 California of exposures to Cadmium and Lead and adding Arsenic contained in Dried Seaweed
4 specifically Dried Seaweeds ("Seaweeds") (1.4 oz.) sold and/or distributed by Defendant. No
5 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
6 6. When this Notice was received, which alleged Arsenic, this Lawsuit was already pending as
7 identified in section 1.5.1. The Parties agree that Notice 6 is part of this settlement and Consent
8 Judgment.

9 1.4.7 On or about March 13, 2020, CAG served Defendant and various public
10 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00718)
11 (hereinafter "Notice 7") that provided the Defendant with notice of alleged violations of Health
12 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
13 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic
14 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,
15 specifically Dried Seaweed ("Seaweed") (1.4oz.) sold and/or distributed by Defendant. No
16 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
17 7. This notice was issued to Green Farm Market in addition to Kim Seng. The Parties agree that
18 Notice 7 is part of this settlement and Consent Judgment.

19 1.4.8 On or about March 13, 2020, CAG served Defendant and various public
20 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00724
21 (hereinafter "Notice 8") that provided the Defendant with notice of alleged violations of Health
22 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead, and
23 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic
24 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,
25 specifically Dried Seaweeds ("Seaweeds") (1.4oz.) sold and/or distributed by Defendant. No
26 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
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1 8. This notice was issued on the same date as Notice 7 to TS Emporium and Tak Shing Hong
2 Inc., in addition to Kim Seng ("Notice 8"). The Parties agree that Notice 8 is part of this
3 settlement and Consent Judgment.

4 **2 oz. Seaweed**

5 1.4.9 On or about September 25, 2019 CAG served Defendant and various public
6 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-01838)
7 hereinafter "Notice 9") that provided the Defendant with notice of alleged violations of Health &
8 Safety Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium and
9 Lead contained in Seaweed specifically Dried Seaweed ("Seaweeds") (2oz.) sold and/or
10 distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the
11 allegations set forth in Notice 9. Kim Seng received two duplicate Notices for this date. The
12 Parties agree that Notice 9 is part of this settlement and Consent Judgment.

13 1.4.10 On or about December 4, 2019 CAG served Defendant and various public
14 enforcement agencies with a second notice, another document entitled "60-Day Notice of
15 Violation"(AG# 2019-02249) hereinafter "Notice 10") that provided the Defendant with notice
16 of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
17 California of exposures to Cadmium and Lead contained in Seaweed specifically Dried Seaweed
18 ("Dried Seaweed") (2oz.) sold and/or distributed by Defendant. No other public enforcer has
19 commenced or diligently prosecuted the allegations set forth in Notice 10. This notice did not
20 add arsenic and appears duplicative of the notice served on September 24, 2019 for the 2oz.
21 product. While notices were served on the 2oz product, it was not included in the initial
22 Complaint filed on October 18, 2019. The Parties agree that Notice 10 is part of this settlement
23 and Consent Judgment.

24 1.4.11 On or about March 13, 2020, CAG served Defendant and various public
25 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00716)
26 (hereinafter "Notice 11") that provided the Defendant with notice of alleged violations of Health
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1 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
2 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic
3 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweeds,
4 specifically Dried Seaweeds ("Seaweeds") (2 oz.) sold and/or distributed by Defendant. No
5 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
6 11. The Parties agree that Notice 11 is part of this settlement and Consent Judgment.

7 1.4.12 On or about March 20, 2020, CAG served Defendant and various public
8 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG#2020-00787)
9 (hereinafter "Notice 12") that provided the Defendant with notice of alleged violations of Health
10 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
11 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") and Inorganic
12 Arsenic Compounds and Inorganic Arsenic Oxides ("Arsenic") contained in Dried Seaweed,
13 specifically Dried Seaweed ("Seaweed") (2 oz.) sold and/or distributed by Defendant. No other
14 public enforcer has commenced or diligently prosecuted the allegations set forth in Notice 12.
15 The Parties agree that Notice 12 is part of this settlement and Consent Judgment.

16 **4 oz. Seaweed**

17 1.4.13 On or about December 16, 2019, CAG served Defendant and various public
18 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2019-02350)
19 (hereinafter "Notice 13") that provided the Defendant with notice of alleged violations of Health
20 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
21 Arsenic contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (4oz.) sold
22 and/or distributed by Defendant. No other public enforcer has commenced or diligently
23 prosecuted the allegations set forth in Notice 13. The Parties agree that Notice 13 is part of this
24 settlement and Consent Judgment.
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26 1.4.14 On or about February 10, 2020, CAG served Defendant and various public
27 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG 2020-00305)
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1 (hereinafter "Notice 14") that provided the Defendant with notice of alleged violations of Health
2 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
3 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides
4 ("Arsenic") contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (4 oz.) sold
5 and/or distributed by Defendant. No other public enforcer has commenced or diligently
6 prosecuted the allegations set forth in Notice 14. The Parties agree that Notice 14 is part of this
7 settlement and Consent Judgment.

8 **3.5 oz. Seaweed**

9 1.4.15 On or about January 29, 2020, CAG served Defendant and various public
10 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG #2020-00246)
11 (hereinafter "Notice 15") that provided the Defendant with notice of alleged violations of Health
12 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
13 Lead Compounds ("Lead") and Inorganic Arsenic Compounds and Inorganic Arsenic Oxides
14 ("Arsenic") contained in Dried Seaweeds, specifically Dried Seaweeds ("Seaweeds") (3.5 oz.)
15 sold and/or distributed by Defendant. No other public enforcer has commenced or diligently
16 prosecuted the allegations set forth in Notice 15. The Parties agree that Notice 15 is part of this
17 settlement and Consent Judgment.

18 1.4.16 On or about March 11, 2021, CAG served Defendant and various public
19 enforcement agencies with a document entitled "60-Day Notice of Violation" (AG# 2021-00630)
20 (hereinafter "Notice 16") that provided the Defendant with notice of alleged violations of Health
21 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead and
22 Lead Compounds ("Lead"), Cadmium and Cadmium Compounds ("Cadmium") contained in
23 Dried Seaweed Strip, specifically Dried Seaweed Strip ("Seaweed Strip") (3.5 oz.) sold and/or
24 distributed by Defendant. No other public enforcer has commenced or diligently prosecuted the
25 allegations set forth in Notice 16. The Parties agree that Notice 16 is part of this settlement and
26 Consent Judgment.

1 **1.5 Complaint**

2 1.5.1 On October 18, 2019, CAG filed a complaint for civil penalties and
3 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. 19STCV37537 against
4 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65
5 by failing to give clear and reasonable warnings of exposure to Lead and Cadmium from the
6 Covered Products.

7 1.5.2 On July 29, 2020, CAG filed a First Amended Complaint alleging, among
8 other things, that Defendant violated Proposition 65 by failing to give clear and reasonable
9 warnings of exposure to Lead, Cadmium, and Arsenic from Dried Seaweed.

10 1.5.3 On January 13, 2021, CAG filed a Second Amended Complaint
11 (“Complaint”) alleging, among other things, that Defendant violated Proposition 65 by failing to
12 give clear and reasonable warnings of exposure to Lead, Cadmium and Arsenic from Dried
13 Seaweed.

14 1.5.4 Upon acceptance by the Court of this Consent Judgment, Kim Seng and
15 CAG agree that this lawsuit will be dismissed with prejudice as to Kim Seng only.

16 **1.6 Consent to Jurisdiction**

17 1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this
18 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint
19 and personal jurisdiction over Defendant as to the acts alleged in the Notices and Complaint, that
20 venue is proper in the County of Los Angeles and that this Court has jurisdiction to enter this
21 Consent Judgment as a full and final settlement and resolution of all the allegations against
22 Defendant contained in the Notices and Complaint and of all claims which were or could have
23 been raised by any person or entity based in whole or in part, directly or indirectly, on the facts
24 alleged therein or arising therefrom or related thereto.

25 **1.7 No Admission**

26 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
27
28

1 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
2 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly
3 maintains that all of its warnings on the Covered Products provide a clear and reasonable
4 warning of exposure to Lead, Arsenic, and Cadmium from the Covered Products and that said
5 Proposition 65 compliant warnings were on the Covered Products prior to Defendant's receipt of
6 the Proposition 65 Notices. Nothing in this Consent Judgment shall be construed as an admission
7 by the Parties of any material allegation of the Complaint (each and every allegation of which
8 Defendant denies), any fact, conclusion of law, issue of law or violation of law, including
9 without limitation, any admission concerning any violation of Proposition 65 or any other
10 statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
11 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
12 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,
13 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,
14 issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its
15 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
16 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
17 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
18 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
19 proceeding, except as expressly provided in this Consent Judgment.
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21 1.8 Purpose of Consent Judgment

22 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
23 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
24 the parties for the purpose of avoiding prolonged litigation. The Parties intend that this Consent
25 Judgment provide, to the maximum extent permitted by law, *res judicata and collateral estoppel*
26 protection for Defendant against any and all other claims based on the same or similar
27 allegations under Proposition 65 pertaining to the Covered Products.
28

1 **2. DEFINITIONS**

2 2.1 "Covered Products" means Dried Seaweeds, Dried Seaweed Slice and
3 "Seaweeds" sold or supplied by Defendant manufactured through the date of this Consent
4 Judgment.

5 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
6 Court.

7 2.3 "Lead" means Lead and Lead Compounds.

8 2.4 "Cadmium" means Cadmium and Cadmium Compounds.

9 2.5 "Arsenic" means Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.

10 2.6 "Notices" means Notice 1 through Notice 16, as described in section 1.4.

11 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
12 **WARNINGS.**

13 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
14 California, or ship for sale in California any Covered Products unless the level of Lead does not
15 exceed 75 parts per billion ("ppb"), the level of Cadmium does not exceed 85 ppb, and the level
16 of Arsenic does not exceed 15 ppb without the warning set forth in Section 3.2.

17 3.2 For any Covered Products that will be offered by Defendant for sale in California
18 exceeding the levels specified in section 3.1, after the Effective Date, Defendant shall place a
19 Proposition 65 compliant warning on these products as set forth below. Any warning provided
20 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,
21 and be prominently placed with such conspicuousness as compared with other words, statements,
22 designs, or devices as to render it likely to be read and understood by an ordinary individual
23 under customary conditions before purchase or use. The warning must be set off from other
24 surrounding information, enclosed in a box. Where the packaging of the Covered Product
25 includes consumer information as defined by California Code of Regulations title 27 §25600.1(c)
26 in a language other than English, the warning must also be provided in that language in addition
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1 to English. The Parties agree that current law permits the long form or short form warning to be
2 used for food products. Where a short form warning is used, the entire warning must be in a type
3 size no smaller than the largest type size used for other consumer information on the product. In
4 no case shall the warning appear in a type size smaller than 6-point type. The Parties also agree
5 that current law does not require the use of the “/food” on short-form warnings URL, but that
6 such is recommended under a proposed regulation of OEHHA still in the regulatory process.
7 Should the proposed regulation be adopted Defendant agrees to follow any compliance period
8 specified by the California Code of Regulations for parties to redesign their labels to comply
9 with the new law. The Parties agree that the following long form and short form warning
10 language reflects the current law as it presently exists and shall constitute compliance with
11 Proposition 65 with respect to all chemicals alleged in this Lawsuit and Notices as to the
12 Covered Products placed into the stream of commerce by Defendant after the Effective Date:

13 **WARNING:** Consuming this product can expose you to
14 chemicals including Lead, which is known to the State of
15 California to cause cancer and birth defects or other
16 reproductive harm. For more information go to
17 www.P65Warnings.ca.gov/food.

18 or

19 **WARNING:** Consuming this product can expose you to
20 chemicals including Arsenic, which is known to the State of
21 California to cause cancer and birth defects or other
22 reproductive harm. For more information go to
23 www.P65Warnings.ca.gov/food.

24 or

25 **WARNING:** Consuming this product can expose you to
26 chemicals including Cadmium, which is known to the State of
27

California to cause birth defects or other reproductive harm.

For more information go to www.P65Warnings.ca.gov/food.

or

WARNING: Consuming this product can expose you to chemicals including Cadmium, Arsenic and Lead, which 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/food.

or

⚠ WARNING: Cancer and Reproductive Harm –
www.p65Warnings.ca.gov.

3.3 For any Covered Products still existing in the Defendant's inventory as of the Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the Covered Products does not exceed their respective levels of Lead, Arsenic, or Cadmium. Any warning provided pursuant to this section shall comply with the warning requirements under Section 3.2 above.

3.4 The Parties have agreed that an essential term of this settlement is that the injunctive relief agreed to herein is a full and complete recitation of this settlement term, as enumerated above, and acceptable to both Parties such that warnings may be provided without product reformulation when the Covered Products contain levels of Lead, Arsenic, and/or Cadmium in exceedance of levels enumerated in section 3.1.

4. SETTLEMENT PAYMENT

4.1 **Payment and Due Date:** Within ninety (90) days of the Effective Date, Defendant shall pay an all-inclusive total of Two Hundred and Sixteen Thousand dollars (\$216,000.00) in full and complete settlement of any and all claims for monetary relief of any kind, including but not limited to claims for civil penalties, damages, attorney's fees, expert fees, or any other claim for costs, expenses, or monetary relief of any kind, for all claims that were or

1 could have been asserted in the Notices and Complaint (the "Total Settlement Payment"). The
2 \$216,000.00 Total Settlement Payment shall be allocated as follows:

3 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling Seventeen
4 Thousand dollars (\$17,000.00) as penalties pursuant to Health & Safety Code § 25249.12:

5 (a) Defendant will issue a check made payable to the State of California's
6 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of Twelve
7 Thousand and Seven Hundred and Fifty dollars (\$12,750.00) representing 75% of the total
8 penalty and Defendant will issue a separate check to CAG in the amount of Four Thousand Two
9 Hundred and Fifty dollars (\$4,250.00) representing 25% of the total penalty; and

10 (b) Separate 1099s shall be issued for each of the above payments:
11 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
12 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
13 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

14 **4.1.2 Additional Settlement Payments:** In full, final and complete resolution
15 of any claim for additional settlement payments for the claims alleged in the Notices and
16 Complaint, Defendant shall make a separate payment, in the amount of Twelve Thousand Six
17 Hundred and Twenty-Five dollars (\$12,625.00) as an additional settlement payment to
18 "Consumer Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and
19 California Code of Regulations, Title 11 § 3203(d). Defendant will issue a separate check to
20 CAG for the Additional Settlement Payment. CAG will use this portion of the Total Settlement
21 Payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
22 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating
23 exposures through various mediums, including but not limited to consumer product,
24 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
25 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
26 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but
27

1 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
2 investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals by
3 notifying those persons and/or entities believed to be responsible for such exposures and
4 attempting to persuade those persons and/or entities to reformulate their products or the source of
5 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including
6 but not limited to costs of documentation and tracking of products investigated, storage of
7 products, website enhancement and maintenance, computer and software maintenance,
8 investigative equipment, CAG's member's time for work done on investigations, office supplies,
9 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
10 provide to the Attorney General copies of documentation demonstrating how the above funds
11 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
12 additional settlement payment.

13 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** In full and complete
14 resolution of any claims to Plaintiff's attorney's fees and expenses related to this matter,
15 Defendant shall pay One Hundred and Eighty Six Thousand Three Hundred and Seventy-Five
16 dollars (\$186,375.00) to "Yeroushalmi & Yeroushalmi" as full and complete reimbursement for
17 any and all costs, reasonable investigation fees, expenses, attorneys' fees, expert fees, and any
18 and all other costs and expenses of any kind incurred as a result of investigating, bringing this
19 matter to Defendant's attention, preparing and serving the Notice, litigating, negotiating a
20 settlement in the public interest, and seeking and obtaining court approval of this Consent
21 Judgment.

22 **4.2** Other than the payment to OEHHA described above, all payments referenced in
23 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
24 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
25 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
26 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
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1 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
2 payment to OEHHA was delivered.

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

4 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
5 behalf of itself and in the public interest and Defendant for the alleged failure to provide
6 Proposition 65 warning of exposure to Lead, Arsenic, and Cadmium from the Covered Products
7 as set forth in the 16 Notices and one filed Lawsuit, 19STCV37537, and fully resolves all claims
8 for all products and chemicals that have been asserted against Defendant by CAG in this
9 Lawsuit and Notices up through the Effective Date for the alleged failure to provide Proposition
10 65 warnings for the Covered Products. CAG, on behalf of itself and in the public interest, hereby
11 discharges Defendant and its officers, directors, insurers, employees, parents, shareholders,
12 divisions, subdivisions, subsidiaries, and their successors and assigns ("Defendant Releasees")
13 and all customers, retailers and downstream entities in the distribution chain of the Covered
14 Products to whom Defendant distributed or sold Covered Products, and the predecessors,
15 successors and assigns of any of them, and all of their respective officers, directors, shareholders,
16 members, managers, employees, agents only as to Covered Products sold by the Defendant
17 (collectively, "Downstream Releasees"), for all Covered Products placed into the stream of
18 commerce up through the Effective Date for violations of Proposition 65 based on exposure to
19 Lead, Arsenic, and Cadmium from the Covered Products. Defendant's compliance with the
20 terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65
21 regarding alleged exposures to Lead, Arsenic, and Cadmium from the Covered Products.
22 Nothing in this Section affects CAG's right to commence or prosecute an action under
23 Proposition 65 against any person other than Defendant Releasees or Downstream Releasees
24 after the Effective Date.

25
26 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
27 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
28

1 indirectly, any form of legal action and releases all claims, including, without limitation, all
2 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
3 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
4 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
5 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
6 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
7 about exposure to Lead, Arsenic, and Cadmium from the Covered Products that could have
8 originally been brought in the current lawsuit. If there were chemicals listed in the Notices which
9 were not named in the current lawsuit, CAG waives the right to file lawsuits for those chemicals
10 in the Covered Products. In furtherance of the foregoing, as to alleged exposures to Lead,
11 Arsenic, and Cadmium from the Covered Products, CAG on behalf of itself only, hereby waives
12 any and all rights and benefits which it now has, or in the future may have, conferred upon it
13 with respect to Claims arising from any violation of Proposition 65 or any other statutory or
14 common law regarding the failure to warn about exposure to Lead, Arsenic, and Cadmium from
15 the Covered Products by virtue of the provisions of section 1542 of the California Civil Code,
16 which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
18 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
19 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
20 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

21 CAG understands and acknowledges that the significance and consequence of this waiver of
22 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
24 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
25 about exposure to Lead, Arsenic, and Cadmium from the Covered Products, including but not
26 limited to any exposure to, or failure to warn with respect to exposure to Lead, Arsenic, and
27 Cadmium from the Covered Products, CAG will not be able make any claim for those damages
28

1 against Released Parties. Furthermore, CAG acknowledges that it intends to release Defendant
2 fully and completely from these Covered Products and fully accepts these consequences for any
3 such Claims arising from any violation of Proposition 65 or any other statutory or common law
4 regarding the failure to warn about exposure to Lead, Arsenic, and Cadmium from Covered
5 Products as may exist as of the date of this release but which CAG does not know exist, and
6 which, if known, would materially affect their decision to enter into this Consent Judgment,
7 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
8 negligence, or any other cause.

9 **6. ENFORCEMENT OF JUDGMENT**

10 6.1 Any alleged violation of the terms of this Consent Judgment shall be enforced
11 exclusively hereunder by the Parties hereto and may only be through the terms of the entered
12 consent judgment. Before CAG moves to enforce the terms of this Consent Judgment, CAG must
13 provide written notice to Defendant of any alleged violation, including the date and location of
14 the alleged violation and provide all evidence supporting the alleged violation including any
15 applicable test results, product photographs, and purchase receipts, subject to a reasonable
16 confidentiality agreement if requested. The Parties will thereafter meet and confer for a
17 minimum period of 30 days to allow time for Defendant to present CAG any relevant
18 compliance information and/or corrective action taken related to the alleged violation, including
19 if applicable the date of manufacture, import, distribution, or sale of the Covered Product at issue
20 for purposes of determining the applicability of the release hereunder. If the Parties cannot
21 resolve the alleged violation, either Party may move to enforce the terms of this Consent
22 Judgment consistent with the terms herein. If the Parties cannot resolve the alleged violation at
23 the conclusion of the meet and confer process, CAG has the right to enforce the terms of the
24 Consent Judgment herein and seek penalties and fees against Defendant.

26 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
27 prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

1 **7. ENTRY OF CONSENT JUDGMENT**

2 7.1 CAG shall be responsible for preparing a motion seeking approval of this Consent
3 Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties agree to act in
4 good faith to obtain Court approval of the Consent Judgment. Upon entry of the Consent
5 Judgment, CAG and Defendant waive their respective rights to a hearing, trial, or appeal on the
6 allegations in the Notices and/or Complaint.

7 7.2 The Parties shall make good faith efforts to have the Consent Judgment approved
8 by the Court.

9 7.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
10 Judgment and any and all prior agreements between the Parties merged herein shall terminate
11 and become null and void, and the actions shall revert to the status that existed prior to the
12 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
13 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
14 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
15 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer in
16 good faith to determine whether to modify the terms of the Consent Judgment and to resubmit it
17 for approval.

18 **8. MODIFICATION OF JUDGMENT**

19 8.1 This Consent Judgment may be modified only upon written agreement of the
20 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
21 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

22 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
23 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
24

25 **9. RETENTION OF JURISDICTION**

26 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
27 terms of this Consent Judgment under Code of Civil Procedure § 664.6.
28

1 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
2 prevailing party shall be entitled to recover its reasonable attorney's fees and costs as determined
3 by the Court or agreement of the Parties.

4 **10. DUTIES LIMITED TO CALIFORNIA**

5 10.1 This Consent Judgment shall have no effect on Covered Products sold by
6 Defendant outside the State of California.

7 **11. SERVICE ON THE ATTORNEY GENERAL**

8 11.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
9 California Attorney General so that the Attorney General may review this Consent Judgment
10 prior to its approval by to the Court. No sooner than forty-five (45) days after the Attorney
11 General has received the aforementioned copy of this Consent Judgment, and in the absence of
12 any written objection by the Attorney General to the terms of this Consent Judgment, CAG may
13 then submit the Consent Judgment to the Court for approval.

14 **12. ATTORNEY FEES**

15 12.1 Except as specifically provided in Section 4.1.3, 6.2, and 9.2, each Party shall
16 bear its own costs and attorney fees in connection with the claims alleged in the Notices and
17 Complaint which are entirely resolved in this Consent Judgment.

18 **13. GOVERNING LAW**

19 13.1 The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California, without reference to any conflicts of law
21 provisions of California law.

22 13.2 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
24 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
25 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
26 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
27

1 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
2 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to,
3 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
4 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
5 or federal law or regulation.

6 13.3 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
10 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
11 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
12 agrees that any statute or rule of construction providing that ambiguities are to be resolved
13 against the drafting Party should not be employed in the interpretation of this Consent Judgment
14 and, in this regard, the Parties hereby waive California Civil Code § 1654.

15 **14. EXECUTION AND COUNTERPARTS**

16 14.1 This Consent Judgment may be executed in counterparts and by means of
17 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
18 one document and have the same force and effect as original signatures.

19 **15. NOTICES**

20 15.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

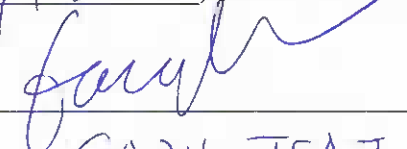
21 If to CAG:

22
23 Reuben Yeroushalmi
24 Shannon Royster
25 YEROUSHALMI & YEROUSHALMI
26 9100 Wilshire Boulevard, Suite 240W
27 Beverly Hills, CA 90212
28 (310) 623-1926
Email: lawfirm@yeroushalmi.com

If to Kim Seng Company:
Kathleen N. Strickland
Briana J. Bramer
ROPERS MAJESKI PC
505 Sansome Street, Suite 1925
San Francisco, CA 94111
(415) 543-4800
Email: kathleen.strickland@ropers.com

16. AUTHORITY TO STIPULATE

16.1 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: _____, 2022	Date: <u>5/13</u> , 2022
_____ Name: _____	 _____ Name: <u>GARY TSAI</u>
Title: _____	Title: <u>Director</u>
CONSUMER ADVOCACY GROUP, INC.	KIM SENG COMPANY dba IHA BEVERAGE

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

If to Kim Seng Company:
Kathleen N. Strickland
Briana J. Bramer
ROPERS MAJESKI PC
505 Sansome Street, Suite 1925
San Francisco, CA 94111
(415) 543-4800
Email: kathleen.strickland@ropers.com

16. AUTHORITY TO STIPULATE

16.1 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: Date: <u>May 13</u> , 2022 <u>Michael Marcus</u> Name: <u>Michael Marcus</u> Title: <u>Director</u> CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: _____, 2022 _____ Name: _____ Title: _____ KIM SENG COMPANY dba IHA BEVERAGE
--	--

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT