

1 JAMES KAWAHITO (SBN 234851)
KAWAHITO LAW GROUP APC
2 300 Corporate Pointe, Suite 340
Culver City, California 90230
3 Telephone: (310) 746-5300
Facsimile: (310) 593-2520
4 Email: jkawahito@kawahitolaw.com

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6 Attorneys for Plaintiff Public Health and Safety Advocates, LLC

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

9 PUBLIC HEALTH AND SAFETY
10 ADVOCATES, LLC,

11 Plaintiff,

12 vs.

13 HITE USA, INC. dba SHO
INTERNATIONAL, a California
14 Corporation; HITE USA, INC., a California
Corporation; and DOES 1 through 50,
15 inclusive,

16 Defendants.

Case No.: 21STCV25765

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

**HEALTH AND SAFETY CODE §
25249.6**

1 **1. INTRODUCTION**

2 **1.1. Public Health and Safety Advocates, LLC. and Hite USA, Inc., dba Sho**
3 **International.**

4 This Consent Judgment is entered into by and between plaintiff Public Health and Safety
5 Advocates, LLC ("PHSA" or "Plaintiff") and defendant Hite USA, Inc., dba Sho International
6 ("HITE" or "Defendant") with HITE and PHSA each individually referred to as a "Party" and
7 collectively as the "Parties."

8 **1.2. Plaintiff**

9 PHSA is a limited liability company duly organized and existing in the State of California,
10 which seeks to promote awareness of exposures to toxic chemicals and to improve human health
11 by reducing or eliminating hazardous substances used in consumer products.

12 **1.3. Defendant**

13 HITE employs ten or more persons and is a person in the course of doing business for
14 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
15 Safety Code section 25249.6 et seq. ("Proposition 65").

16 **1.4. General Allegations**

17 PHSA alleges that HITE has manufactured, sold, and/or distributed for sale in California,
18 certain products described more specifically below containing lead and cadmium, chemicals listed
19 by the State of California under Proposition 65, without providing a required Proposition 65
20 warning. Lead and Cadmium shall be referred to hereinafter as the "Listed Chemicals."

21 **1.5. Product Description**

22 The HITE products that are the subject of this Consent Judgment are: (1) Arkshell, UPC
23 #8809426330638; (2) Marsh Clam, UPC #8809312880214. which were sold and/or distributed for
24 sale in California by HITE ("Covered Products").

25 **1.6. Notice of Violation**

26 On July 13, 2020, PHSA served HITE and the requisite public enforcement agencies with
27 two 60-Day Notices of Violation ("Notices") alleging that HITE violated Proposition 65. The
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1 Notices alleged that HITE failed to warn its customers and consumers in California that the
2 Covered Products contain lead and cadmium.

3 **1.7. Complaint**

4 On July 13, 2021, Plaintiff, who was and is acting in the interest of the general public in
5 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
6 County of Los Angeles against HITE and Does 1 through 50, alleging violations of Health &
7 Safety Code §25249.6 based on the alleged exposures to lead and cadmium contained in the
8 Covered Products.

9 **1.8. No Admission**

10 The Parties enter into this Consent Judgment as a full and final settlement of all claims that
11 were raised or that could have been raised in the Notices, arising out of the facts and/or conduct
12 alleged therein. HITE denies the material, factual and legal allegations contained in PHSA's
13 Notice and the Complaint, and maintains that all products, including but not limited to the
14 Covered Products, that it has sold and distributed in California have been and are in compliance
15 with all applicable laws, and are completely safe for their intended use. Nothing in this Consent
16 Judgment shall be construed as an admission by HITE of any fact, finding, conclusion, issue of
17 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
18 construed as an admission by HITE of any fact, finding, conclusion, issue of law, or violation of
19 law, such being specifically denied by HITE. However, this section shall not diminish or
20 otherwise affect HITE's obligations, responsibilities, and duties hereunder.

21 **1.9. Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has
23 jurisdiction over HITE as to the allegations contained in the Complaint; 2) that venue is proper in
24 the County of Los Angeles; and 3) that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

1 **1.10. Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
3 which the Court approves this Consent Judgment, including any unopposed tentative ruling
4 granting approval of this Consent Judgment.

5 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

6 **2.1. Reformulation Standard and Schedule**

7 Commencing after the Effective Date, HITE shall not manufacture for consumer sale into
8 the State of California any Covered Product that subsequently exposes a person to a Daily Serving
9 of more than 0.5 micrograms of lead or 4.1 micrograms of cadmium without providing a warning
10 as set forth in Sections 2.3 -2.6. A reformulated Covered Product (“Reformulated Product”) is one
11 for which the Daily Serving contains no more than 0.5 micrograms of lead or 4.1 micrograms of
12 cadmium (“Reformulation Standard”).

13 Covered Products that comply with the Reformulation Standard shall not require any
14 warnings. For any Covered Products manufactured after the Effective Date or later that do not
15 meet the Reformulation Standard, HITE shall provide the warning set forth in Section 2.3-2.6.

16 As long as HITE complies and remains in compliance with the requirements of Section 2.1
17 – 2.6 for each of the Covered Products, the Parties agree that such Products shall be deemed to
18 comply with Proposition 65 with respect to lead and cadmium, and that compliance with this
19 Consent Judgment shall fully and completely satisfy HITE’s obligations under Proposition 65 to
20 provide warnings for such Covered Products with respect to the presence of lead or cadmium,
21 regardless of when manufactured, distributed or sold. To the extent that HITE manufactures other
22 similar products in the future, aside from the Covered Products, its compliance with the
23 obligations set forth herein, Sections 2.1-2.6, shall be deemed to comply with Proposition 65 with
24 respect to lead and cadmium.

25 Covered Products manufactured as of the Effective Date and/or currently in the channels of
26 distribution may continue to be sold through by HITE and Releasees. However, as of the
27 Effective Date, HITE and the Releasees, as defined in Section 5.1, may not sell into California
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1 newly manufactured Covered Products that are not Reformulated Products that do not contain the
2 warnings set forth in Paragraph 2.3-2.6.

3 **2.2. Daily Serving**

4 A Daily Serving (for purposes of determining Proposition 65 compliance for chemicals
5 present in the Covered Products) shall be defined as the serving size set forth on the “Nutritional
6 Facts” or “Supplemental Facts”.

7 **2.3. Warning Option**

8 Covered Products that do not meet the standard of Reformulated Products set forth in
9 Section 2.1 above shall be accompanied by a warning as described in Section 2.4-2.6 below. This
10 warning shall only be required as to Covered Products that Defendant manufactures, sells or ships
11 to consumers, retailers, or distributors in California after the Effective Date. No Proposition 65
12 warning for lead and/or cadmium shall be required as to any Covered Products that are already in
13 the stream of commerce as of the Effective Date.

14 **2.4. Warning Language**

15 Covered Products manufactured after the Effective Date for sale in California that do not
16 qualify as Reformulated Products shall contain a Proposition 65 warning affixed to the packaging,
17 labeling, or directly on each Covered Product. The warning shall state either:

18 **[California Proposition 65] WARNING:** Consuming this product can
19 expose you to chemicals including lead and cadmium, which are
20 known to the State of California to cause cancer, and birth defects and
other reproductive harm. www.P65Warnings.ca.gov.

21 **[California Proposition 65] WARNING:** Cancer and Reproductive
22 Harm - www.P65Warnings.ca.gov.

23 The warning shall be prominently displayed with such conspicuousness as compared with
24 other words, statements, designs, or devices as to render it likely to be read and understood by an
25 ordinary individual under customary conditions before purchase or use. Each warning shall be
26 provided in a manner such that the consumer or user is reasonably likely to understand the
27 Covered Products the warning applies to, so as to minimize the risk of consumer confusion. In the
28 event that the Office of Environmental Health Hazard Assessment promulgates one or more

1 regulations requiring or permitting warning text and/or methods of transmission applicable to the
2 Covered Products that is different than those set forth above, HITE shall be entitled to use, at its
3 discretion, such other warning text and/or methods of transmission without being deemed in
4 breach of this Consent Judgment, as long as such warning text and methods of transmission
5 comply with OEHHA regulations.

6 **2.5. Internet Sales**

7 For any Covered Products sold by HITE through the internet, the relevant warnings shall
8 comply with the requirements of 27 Cal. Code Regs. § 25602(b), effective August 30, 2018.

9 **2.6. Warnings By Notice To Businesses Who Sell Or Receive The Covered**
10 **Products**

11 For purposes of this Consent Judgment, HITE may also satisfy the warning requirement by
12 providing the required information in compliance with 27 Cal. Code Regs. §25600.2 to any
13 business or retailer that is subject to Proposition 65, to which it sells or transfers the Covered
14 Products.

15 **3. MONETARY PAYMENTS**

16 **3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)**

17 HITE shall pay a total civil penalty of \$2,000.00, to be apportioned in accordance with
18 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
19 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
20 remaining 25% of the penalty remitted to PHSA. HITE shall issue two separate checks for the
21 penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State
22 of California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHA") in the
23 amount of \$1,500.00, representing 75% of the total civil penalty; and (b) one check to "Kawahito
24 Law Group in Trust for PHSA" in the amount of \$500.00, representing 25% of the total civil
25 penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be
26 issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second
27 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W2 at least five calendar
28 days before payment is due.

1 The payments shall be delivered to PHSA's counsel at the following address within ten
2 days of the Effective Date of this Consent Judgment:

3 James Kawahito, Esq.
4 Kawahito Law Group APC
5 300 Corporate Pointe., Suite 340
6 Culver City, CA 90230

7 Payment may also be made by wire or ACH or wire transfer. Instructions will be provided
8 separately upon request.

9 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

10 The Parties acknowledge that PHSA and its counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee
12 reimbursement issue to be resolved after the material terms of the Consent Judgment had been
13 settled. The Parties reached an accord on the compensation due to PHSA and its counsel under
14 general contract principles and the private attorney general doctrine codified at California Code of
15 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
16 Consent Judgment. HITE shall reimburse PHSA and its counsel in the total amount of \$28,000.00
17 for all attorney's fees, investigative and consulting costs, and all other expenses of any kind
18 incurred by PHSA as a result of investigating, bringing this matter to the attention of HITE,
19 litigating this matter, negotiating this Consent Judgment, drafting the Complaint, and preparing the
20 necessary briefing to obtain Court approval of the Consent Judgment. HITE shall make an initial
21 payment of \$4,000 by check or by ACH or wire transfer within ten days of the Effective Date.
22 Thereafter HITE shall make monthly payments of \$2,000 per month for 12 months. The check
23 shall be made payable to "Kawahito Law Group APC" and delivered to the address below. Wire
24 or ACH Instructions will be provided separately upon request.

25 James Kawahito, Esq.
26 Kawahito Law Group APC
27 300 Corporate Pointe., Suite 340
28 Culver City, CA 90230

1 To allow for the issuance of a timely payment pursuant to the above, PHSA shall provide
2 HITE with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

3 **5. RELEASE OF CLAIMS**

4 **5.1. Release of HITE**

5 This Consent Judgment is a full, final and binding resolution between PHSA, on behalf of
6 itself and the public interest, and its past and current agents, representatives, attorneys, successors
7 and/or assignees (the "Releasors"), on the one hand, and HITE, its respective parents, subsidiaries,
8 affiliated entities that are under common ownership, shareholders, members, directors, officers,
9 managers employees, representatives, agents, attorneys, divisions, subdivisions, partners, sister
10 companies, licensors, licensees, and each entity to whom HITE directly or indirectly distributes or
11 sells the Covered Products, including but not limited to downstream retailers, distributors,
12 wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees,
13 and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of
14 Proposition 65 that was or could have been asserted by PHSA against HITE or the Releasees
15 based on the alleged failure to warn about alleged Proposition 65 exposures to lead and/or
16 cadmium caused by the Covered Products that were manufactured by HITE (either directly or
17 through any of the Releasees) as of 90 days after the Effective Date. Compliance with the terms
18 of this Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect to
19 the alleged or actual failure to warn about exposures to lead and cadmium from Covered Products.
20 With respect to the foregoing waivers and releases in this paragraph, PHSA on behalf of itself,
21 hereby specifically waives any and all rights and benefits which he now has, or in the future may
22 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
23 provides as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
25 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
27 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
28 SETTLEMENT WITH THE DEBTOR.

1 **5.2 HITE Release of PHSA**

2 HITE on behalf of itself, its past and current agents, representatives, attorneys, successors,
3 and/or assignees, hereby waives any and all claims against PHSA, its attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been
5 taken or made) by PHSA and its attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
7 respect to the Covered Products.

8 **6. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and
10 shall be null and void if, for any reason, it is not approved and entered by the Court.

11 **7. SEVERABILITY**

12 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
13 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
14 not be adversely affected.

15 **8. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed,
18 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
19 then HITE may provide Plaintiff with written notice of any asserted change in the law, and shall
20 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
21 that, the Covered Products are so affected.

22 **9. JOINT PREPARATION**

23 The Parties have jointly participated in the preparation of this Consent Judgment and this
24 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or
25 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
26 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
27 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
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1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
2 this regard, the Parties hereby waive California Civil Code § 1654.

3 **10. ENTIRE AGREEMENT**

4 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
5 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
6 commitments, or understandings related thereto, if any, are hereby merged herein. No
7 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
8 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of
9 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
10 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth
11 in writing between the Parties.

12 **11. NOTICES**

13 Unless specified herein, all correspondence and notice required to be provided pursuant to
14 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
15 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
16 or (c) a recognized overnight courier on any Party by the other at the following addresses:

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18 For HITE: Gi Nam Lee, Esq.
19 LPL Lawyers
20 3600 Wilshire Blvd, Suite 1510
Los Angeles, CA 90010

21 For PHSA: Public Health And Safety Advocates, LLC
22 10429 Eastborne St.
Los Angeles, CA 90049

23 With a Copy to: James K. Kawahito
24 Kawahito Law Group APC
25 Attn. PHSA v. HITE
26 300 Corporate Pointe, Suite 340
Culver City, CA 90230
jkawahito@kawahitolaw.com

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

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which,
4 when taken together, shall constitute one and the same document.

5 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

6 PHSA and his attorneys agree to comply with the reporting form requirements referenced
7 in California Health and Safety Code Section 25249.7(f).

8 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

9 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
10 motion is required to obtain judicial approval of this Consent Judgment. In furtherance of
11 obtaining such approval, PHSA shall be responsible for preparing the motion to approve the
12 Consent Judgment. HITE and their respective counsel agree to mutually employ their best efforts
13 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
14 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall
15 include at a minimum, cooperating in Plaintiff's drafting and filing of any papers in support of the
16 required motion for judicial approval.

17 **15. MODIFICATION**

18 This Consent Judgment may be modified only: (1) by written agreement of the parties and
19 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion
20 of any party and entry of a modified consent judgment by the Court. The Attorney General shall
21 be served with notice of any proposed modification to this Consent Judgment at least forty-five
22 days in advance of its consideration by the Court. To the extent either party alleges a breach of
23 this Consent Judgment, written notice shall be provided to the party in alleged breach and the
24 Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute
25 before either Party files a motion to enforce.

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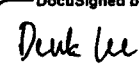
16. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 7/17/2023

By: _____
Public Health And Safety Advocates, LLC

Date: 7/17/2023

By: _____
DocuSigned by:
88200AC8ADD8454...
Hite USA, Inc., dba Sho International

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT