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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 KIM SENG COMPANY DBA IHA
18 BEVERAGE, a California Corporation, *et*
19 *al.*,

20 Defendants.

CASE NO. 21STCV43592

[Assigned for All Purposed to the Hon.
Stephen Goorvitch, Dept. 39]

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

21 **1. INTRODUCTION**

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

27 **1.2 Defendant and Products**

28 1.2.1 CAG alleges that Defendant is a California corporation which employs ten
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

4 1.2.2.1 **Five Spice Powder** including but not limited to (i) “Super Brand”;
5 “Ngu Vi Huong”; “Five Spice Powder”; “Net Wt: 3oz (85g)”; “UPC 6
6 10232 01233 9”; “Product of China” and (ii) “Super Brand”; “Five Spice
7 Powder”; “Net Wt: 3oz (85g)”; “UPC 6 10232 01233 9”;
8 “X000R8BSRF”; “Super Chinese 5 Spice Pow..ian Seasoning Mixed
9 Spice”; “Product of China”;

10 1.2.2.2 **Galangal Powder** including but not limited to “Super Brand”;
11 “Dried Galangal Powder”; “Net Wt: 4oz (113g)”; “UPC 6 10232 02267 3-
12 ”; “Product of China”;

13 1.2.2.3 **Lamb Spice Seasoning** including but not limited to “Spice-
14 grains”; “L640”; “GIA VI NAU DE”; “Lamb Spice Seasoning”; “Net Wt.
15 3oz (85.5g)”; “UPC 6 10232 03964 0”;

16 1.2.2.4 **Dried Prickly Ash Powder** including but not limited to “Super
17 Brand”: “Dried Prickly Ash Powder”; “Net Wt: 4oz (113 g)”; “Product of
18 China”; “UPC 6 10232 01251 3.”; and

19 1.2.2.5 **Lime Stone Paste w/ Turmeric** including but not limited to "Lime
20 Stone Paste w/Turmeric"; "Net Wt: 3.5 oz (100g)"; "UPC 6 10232 03807
21 0"; "Product of Thailand".

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 Inorganic Arsenic Compounds and Inorganic Arsenic Oxides (hereinafter
2 “Arsenic”) are known to the State of California to cause cancer and/or birth defects or other
3 reproductive harm.

4 1.4 **Notices of Violation**

5 1.4.1 On or about March 24, 2021, CAG served Defendant and various public
6 enforcement agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-00770)
7 (hereinafter “Notice 1”) 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 Lead
9 contained in Five Spices Powder and Galangal Powder sold and/or distributed by Defendant. No
10 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
11 1. The Parties agree that Notice 1 is part of this settlement and Consent Judgment.

12 1.4.2 On or about July 9, 2021, CAG served Defendant and various public enforcement
13 agencies with second notice, another document entitled “60-Day Notice of Violation” (AG#
14 2021-01677) (hereinafter “Notice 2”) that provided the Defendant with notice of alleged
15 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
16 exposures to Lead contained in Lamb Spice Seasoning sold and/or distributed by Defendant. No
17 other public enforcer has commenced or diligently prosecuted the allegations set forth in Notice
18 2. The Parties agree that Notice 2 is part of this settlement and Consent Judgment.

19 1.4.3 On or about July 9, 2021, CAG served Defendant and various public enforcement
20 agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-01688) (hereinafter
21 “Notice 3”) that provided the Defendant with notice of alleged violations of Health & Safety
22 Code § 25249.6 for failing to warn individuals in California of exposures to Lead contained in
23 Five Spice Powder sold and/or distributed by Defendant. No other public enforcer has
24 commenced or diligently prosecuted the allegations set forth in Notice 3. The Parties agree that
25 Notice 3 is part of this settlement and Consent Judgment.
26

1 1.4.4 On or about August 27, 2021, CAG served Defendant and various public
2 enforcement agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-02155)
3 (hereinafter “Notice 4”) that provided the Defendant with notice of alleged violations of Health
4 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Lead
5 contained in Dried Prickly Ash Powder sold and/or distributed by Defendant. No other public
6 enforcer has commenced or diligently prosecuted the allegations set forth in Notice 4. The
7 Parties agree that Notice 4 is part of this settlement and Consent Judgment.

8 1.4.5 On or about November 12, 2021, CAG served Defendant and various public
9 enforcement agencies with a document entitled “60-Day Notice of Violation” (AG# 2021-02826)
10 (hereinafter “Notice 5”) that provided the Defendant with notice of alleged violations of Health
11 & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Arsenic
12 contained in Lime Stone Paste w/ Turmeric sold and/or distributed by Defendant. No other
13 public enforcer has commenced or diligently prosecuted the allegations set forth in Notice 5.
14 The Parties agree that Notice 5 is part of this settlement and Consent Judgment.

15 **1.5 Complaint**

16 1.5.1 On November 29, 2021, CAG filed a complaint for civil penalties and
17 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. 21STCV43592 against
18 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65
19 by failing to give clear and reasonable warnings of exposure to Lead from the Covered Products.
20

21 1.5.2 Upon entry of an order approving this Consent Judgment, the Complaint
22 on file in this matter shall be deemed amended to include the claims alleged in Notice 5 for
23 Limestone Paste with Turmeric containing Arsenic listed in Section 1.4.5.

24 1.5.4 Upon acceptance by the Court of this Consent Judgment, Kim Seng and
25 CAG agree that this lawsuit will be dismissed with prejudice as to Kim Seng only.

26 **1.6 Consent to Jurisdiction**

27 1.6.1 For purposes of this Consent Judgment only, the Parties stipulate that this
28

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

8 **1.7 No Admission**

9 **1.7.1** This Consent Judgment resolves claims that are denied and disputed. The
10 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
11 claims between the Parties for the purpose of avoiding prolonged litigation. Defendant expressly
12 maintains that all of its warnings on the Covered Products provide a clear and reasonable
13 warning of exposure to Lead and Arsenic from the Covered Products and that said Proposition
14 65 compliant warnings were on the Covered Products prior to Defendant's receipt of the
15 Proposition 65 Notices. Nothing in this Consent Judgment shall be construed as an admission by
16 the Parties of any material allegation of the Complaint (each and every allegation of which
17 Defendant denies), any fact, conclusion of law, issue of law or violation of law, including
18 without limitation, any admission concerning any violation of Proposition 65 or any other
19 statutory, regulatory, common law, or equitable doctrine, or the meaning of the terms
20 "knowingly and intentionally expose" or "clear and reasonable warning" as used in Health and
21 Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms,
22 shall constitute or be construed as an admission by the Parties of any fact, conclusion of law,
23 issue of law, or violation of law, or of fault, wrongdoing, or liability by any Defendant, its
24 officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or
25 admitted as evidence in any administrative or judicial proceeding or litigation in any court,
26 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or
27

1 impair any right, remedy, argument, or defense the Parties may have in any other or future legal
2 proceeding, except as expressly provided in this Consent Judgment.

3 **1.8 Purpose of Consent Judgment**

4 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
5 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
6 the parties for the purpose of avoiding prolonged litigation. The Parties intend that this Consent
7 Judgment provide, to the maximum extent permitted by law, *res judicata and collateral estoppel*
8 protection for Defendant against any and all other claims based on the same or similar
9 allegations under Proposition 65 pertaining to the Listed Chemicals in the Covered Products.

10 **2. DEFINITIONS**

11 2.1 "Covered Products" means Five Spices Powder, Galangal Powder, Lamb Spice
12 Seasoning, Five Spice Powder, Dried Prickly Ash Powder and Lime Stone Paste w/ Turmeric
13 sold or supplied by Defendant manufactured through the date of this Consent Judgment.

14 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
15 Court.

16 2.3 "Lead" means Lead and Lead Compounds.

17 2.4 "Arsenic" means Inorganic Arsenic Compounds and Inorganic Arsenic Oxides.

18 2.5 "Notices" means Notice 1 – Notice 5, as described in section 1.4.

19 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
20 **WARNINGS.**

21 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
22 California, or ship for sale in California any Covered Products unless the level of Lead does not
23 exceed 34 parts per billion ("ppb"), and the level of Arsenic does not exceed 20 ppb without the
24 warning set forth in Section 3.2.

25 3.2 For any Covered Products that will be offered by Defendant for sale in California
26 exceeding the levels specified in section 3.1, after the Effective Date, Defendant shall place a
27

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

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

27 or

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

6 or

7 **WARNING:** Consuming this product can expose you to
8 chemicals including Arsenic and Lead, which are known to the
9 State of California to cause cancer and birth defects or other
10 reproductive harm. For more information go to
11 www.P65Warnings.ca.gov/food.

12 or

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

15 3.3 For any Covered Products still existing in the Defendant's inventory as of the
16 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
17 Covered Products does not exceed their respective levels of Lead, or Arsenic. Any warning
18 provided pursuant to this section shall comply with the warning requirements under Section 3.2
19 above.

20 3.4 The Parties have agreed that an essential term of this settlement is that the
21 injunctive relief agreed to herein is a full and complete recitation of this settlement term, as
22 enumerated above, and acceptable to both Parties such that warnings may be provided without
23 product reformulation when the Covered Products contain levels of Lead and/or Arsenic in
24 exceedance of levels enumerated in section 3.1.

25 **4. SETTLEMENT PAYMENT**

26 4.1 **Payment and Due Date:** Within one hundred and five days (105) days of the
27 Effective Date, Defendant shall pay an all-inclusive total of Seventy-five Thousand dollars
28

1 (\$75,000.00) in full and complete settlement of any and all claims for monetary relief of any
2 kind, including but not limited to claims for civil penalties, damages, attorney's fees, expert fees,
3 or any other claim for costs, expenses, or monetary relief of any kind, for all claims that were or
4 could have been asserted in the Notices and Complaint (the "Total Settlement Payment"). The
5 \$75,000.00 Total Settlement Payment shall be allocated as follows:

6 **4.1.1 Civil Penalty:** Defendant shall issue separate checks totaling five
7 thousand, three hundred and eighty dollars (\$5,380.00) as penalties pursuant to Health & Safety
8 Code § 25249.12:

9 (a) Defendant will issue a check made payable to the State of California's
10 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand
11 and thirty-five dollars (\$4,035.00) representing 75% of the total penalty and Defendant will issue
12 a separate check to CAG in the amount of one thousand, three hundred and forty-five dollars
13 (\$1,345.00) representing 25% of the total penalty; and

14 (b) Separate 1099s shall be issued for each of the above payments:
15 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
16 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
17 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

18 **4.1.2 Additional Settlement Payments:** In full, final and complete resolution
19 of any claim for additional settlement payments for the claims alleged in the Notices and
20 Complaint, Defendant shall make a separate payment, in the amount of three thousand nine
21 hundred and ninety-five dollars (\$3,995.00) as an additional settlement payment to "Consumer
22 Advocacy Group, Inc." pursuant to Health & Safety Code § 25249.7(b) and California Code of
23 Regulations, Title 11 § 3203(d). Defendant will issue a separate check to CAG for the
24 Additional Settlement Payment. CAG will use this portion of the Total Settlement Payment as
25 follows, eighty five percent (85%) for fees of investigation, purchasing and testing for
26 Proposition 65 listed chemicals in various products, and for expert fees for evaluating exposures
27

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

17
18 **4.1.3 Reimbursement of Attorneys' Fees and Costs:** In full and complete
19 resolution of any claims to Plaintiff's attorney's fees and expenses related to this matter,
20 Defendant shall pay sixty-five thousand six hundred and twenty-five dollars (\$65,625.00) to
21 "Yeroushalmi & Yeroushalmi" as full and complete reimbursement for any and all costs,
22 reasonable investigation fees, expenses, attorneys' fees, expert fees, and any and all other costs
23 and expenses of any kind incurred as a result of investigating, bringing this matter to Defendant's
24 attention, preparing and serving the Notice, litigating, negotiating a settlement in the public
25 interest, and seeking and obtaining court approval of this Consent Judgment.

26 **4.2** Other than the payment to OEHHA described above, all payments referenced in
27 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
28

1 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
2 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
3 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
4 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
5 payment to OEHHA was delivered.

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

7 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
8 behalf of itself and in the public interest and Defendant for the alleged failure to provide
9 Proposition 65 warning of exposure to Lead, and Arsenic from the Covered Products as set forth
10 in the the five Notices and filed Lawsuit, 21STCV43592, and fully resolves all claims for all
11 products and chemicals that have been asserted against Defendant by CAG in these Notices and
12 Lawsuit up through the Effective Date for the alleged failure to provide Proposition 65 warnings
13 for the Covered Products. CAG, on behalf of itself and in the public interest, hereby discharges
14 Defendant and its officers, directors, insurers, employees, parents, shareholders, divisions,
15 subdivisions, subsidiaries, and their successors and assigns (“Defendant Releasees”) and all
16 customers, retailers and downstream entities in the distribution chain of the Covered Products to
17 whom Defendant distributed or sold Covered Products, and the predecessors, successors and
18 assigns of any of them, and all of their respective officers, directors, shareholders, members,
19 managers, employees, agents only as to Covered Products sold by the Defendant (collectively,
20 “Downstream Releasees”), for all Covered Products placed into the stream of commerce up
21 through the Effective Date for violations of Proposition 65 based on exposure to Lead and
22 Arsenic, from the Covered Products. Defendant’s compliance with the terms of this Consent
23 Judgment shall be deemed to constitute compliance with Proposition 65 regarding alleged
24 exposures to Lead, and Arsenic, from the Covered Products. Nothing in this Section affects
25 CAG’s right to commence or prosecute an action under Proposition 65 against any person other
26 than Defendant Releasees or Downstream Releasees after the Effective Date.
27

1 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
3 indirectly, any form of legal action and releases all claims, including, without limitation, all
4 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
5 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
6 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
7 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
8 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
9 about exposure to Lead and Arsenic, from the Covered Products that could have originally been
10 brought in the current lawsuit including Lime Stone Paste w/ Turmeric which was not included
11 in the current lawsuit but deemed amended therein pursuant to Section 1.5.2 herein . If there
12 were chemicals listed in the Notice which were not named in the current lawsuit, CAG waives
13 the right to file lawsuits for those chemicals in the Covered Products, including Lime Stone Paste
14 w/ Turmeric. In furtherance of the foregoing, as to alleged exposures to Lead and Arsenic from
15 the Covered Products, CAG on behalf of itself only, hereby waives any and all rights and
16 benefits which it now has, or in the future may have, conferred upon it with respect to Claims
17 arising from any violation of Proposition 65 or any other statutory or common law regarding the
18 failure to warn about exposure to Lead and Arsenic from the Covered Products by virtue of the
19 provisions of section 1542 of the California Civil Code, which provides as follows:

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

26 CAG understands and acknowledges that the significance and consequence of this waiver of
27 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
28 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
29 violation of Proposition 65 or any other statutory or common law regarding the failure to warn

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

11 **6. ENFORCEMENT OF JUDGMENT**

12 6.1 Any alleged violation of the terms of this Consent Judgment shall be enforced
13 exclusively hereunder by the Parties hereto and may only be through the terms of the entered
14 consent judgment. Before CAG moves to enforce the terms of this Consent Judgment, CAG must
15 provide written notice to Defendant of any alleged violation, including the date and location of
16 the alleged violation and provide all evidence supporting the alleged violation including any
17 applicable test results, product photographs, and purchase receipts, subject to a reasonable
18 confidentiality agreement if requested. The Parties will thereafter meet and confer for a
19 minimum period of 30 days to allow time for Defendant to present CAG any relevant
20 compliance information and/or corrective action taken related to the alleged violation, including
21 if applicable the date of manufacture, import, distribution, or sale of the Covered Product at issue
22 for purposes of determining the applicability of the release hereunder. If the Parties cannot
23 resolve the alleged violation, either Party may move to enforce the terms of this Consent
24 Judgment consistent with the terms herein. If the Parties cannot resolve the alleged violation at
25 the conclusion of the meet and confer process, CAG has the right to enforce the terms of the
26 Consent Judgment herein and seek penalties and fees against Defendant.
27

1 6.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
2 prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs.

3 **7. ENTRY OF CONSENT JUDGMENT**

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

9 7.2 The Parties shall make good faith efforts to have the Consent Judgment approved
10 by the Court.

11 7.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
12 Judgment and any and all prior agreements between the Parties merged herein shall terminate
13 and become null and void, and the actions shall revert to the status that existed prior to the
14 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
15 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
16 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
17 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer in
18 good faith to determine whether to modify the terms of the Consent Judgment and to resubmit it
19 for approval.
20

21 **8. MODIFICATION OF JUDGMENT**

22 8.1 This Consent Judgment may be modified only upon written agreement of the
23 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
24 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

25 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
27
28

1 **9. RETENTION OF JURISDICTION**

2 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
3 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

4 9.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
5 prevailing party shall be entitled to recover its reasonable attorney's fees and costs as determined
6 by the Court or agreement of the Parties.

7 **10. DUTIES LIMITED TO CALIFORNIA**

8 10.1 This Consent Judgment shall have no effect on Covered Products sold by
9 Defendant outside the State of California.

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

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

17 **12. ATTORNEY FEES**

18 12.1 Except as specifically provided in Section 4.1.3, 6.2, and 9.2, each Party shall
19 bear its own costs and attorney fees in connection with the claims alleged in the Notices and
20 Complaint which are entirely resolved in this Consent Judgment.

21 **13. GOVERNING LAW**

22 13.1 The validity, construction and performance of this Consent Judgment shall be
23 governed by the laws of the State of California, without reference to any conflicts of law
24 provisions of California law.

25 13.2 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
27

1 YEROUSHALMI & YEROUSHALMI
2 9100 Wilshire Boulevard, Suite 240W
3 Beverly Hills, CA 90212
4 (310) 623-1926
5 Email: lawfirm@yeroushalmi.com

6 If to Kim Seng Company:
7 Kathleen N. Strickland
8 Briana Bramer
9 Matthew Linnell
10 ROPERS MAJESKI PC
11 505 Sansome Street, Suite 1925
12 San Francisco, CA 94111
13 (415) 543-4800
14 Email: kathleen.strickland@ropers.com

15 **16. AUTHORITY TO STIPULATE**

16 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
17 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
18 the party represented and legally to bind that party.

19 AGREED TO: 20 Date: <u>April 7</u> , 2022 21 <u>Michael Marcus</u> 22 Name: <u>Michael Marcus</u> 23 Title: <u>Director</u> 24 CONSUMER ADVOCACY GROUP, INC.	20 AGREED TO: 21 Date: <u>04/07</u> , 2022 22 <u>GARY TSAI</u> 23 Name: <u>GARY TSAI</u> 24 Title: <u>Manager/Director</u> 25 KIM SENG COMPANY, dba IHA 26 BEVERAGE
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27 **IT IS SO ORDERED.**

1 Date: _____

JUDGE OF THE SUPERIOR COURT

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