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

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ALAMEDA**

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

14 Plaintiff,

15 v.

16 ROM AMERICA, INC., a California
17 Corporation;
18 GREENLAND SUPERMARKET, INC. a
19 Nevada Corporation;
20 and DOES 1-10

21 Defendants.

CASE NO. 22CV009370

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

22
23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between plaintiff, CONSUMER
25 ADVOCACY GROUP, INC. (referred to as "CAG") acting on behalf of itself and in the interest
26 of the public, and defendant, ROM AMERICA, INC. (hereinafter referred to as "Defendant"),
27 with each a Party to the action collectively referred to as "Parties."
28

1 **1.2 Defendant and Products**

2 1.2.1 Defendant is a California corporation which employs ten or more persons.

3 Defendant distributes, and sells:

4 (1) Dried Anchovy products including but not limited to “Dried Anchovy”; “Net
5 Wt. 12oz”; “Net 310g”; “UPC 0 37557 80510 9”; “Dasi Anchovy”; “Net Wt. 12oz”; “Net
6 310g”; “UPC 0 37557 80509 3” (Hereinafter referred to as the “Dried Anchovy”) and;

7 (2) Dried Mushroom products including but not limited to “Rom America, Inc.”;
8 “Dried Mushroom”; “Net Wt. 6 oz (170 g)”; “Product of China”; “UPC 0 37557 80501 7”
9 (Hereinafter referred to as the “Dried Mushroom”)

10 1.2.2 Dried Anchovy and Dried Mushroom shall hereinafter be referred to as the
11 “Covered Products”.

12 For purposes of this Consent Judgment, Defendant is deemed a person in the
13 course of doing business in California and are subject to the provisions of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.
15 (“Proposition 65”).

16 **1.3 Chemicals of Concern**

17 1.3.1 Lead and Lead Compounds (hereinafter “Lead”) are known to the State of
18 California to cause cancer and/or birth defects or other reproductive harm.

19 1.3.2 Cadmium and Cadmium Compounds (hereinafter “Cadmium”) are known
20 to the State of California to cause cancer and/or birth defects or other reproductive harm.

21 **1.4 Notices of Violation**

22 1.4.1 On or about October 15, 2021 CAG served Defendant and various public
23 enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
24 “Notice 1”) that provided the Defendant with notice of alleged violations of Health & Safety
25 Code § 25249.6 for failing to warn individuals in California of exposures to Lead and Cadmium
26 contained in Dried Anchovy sold and/or distributed by Defendant. No other public enforcer has
27 commenced or diligently prosecuted the allegations set forth in the Notice.
28

1 1.4.2 On or about September 20, 2022 CAG served Defendant and various
2 public enforcement agencies with a document entitled “60-Day Notice of Violation” (hereinafter
3 “Notice 2”) that provided the Defendant with notice of alleged violations of Health & Safety
4 Code § 25249.6 for failing to warn individuals in California of exposures to Cadmium contained
5 in Dried Mushroom sold and/or distributed by Defendant. No other public enforcer has
6 commenced or diligently prosecuted the allegations set forth in the Notice.

7 1.4.3 Notice 1 and Notice 2 are referred to as the “Notices”

8 **1.5 Complaint**

9 1.5.1 On April 1, 2022, CAG filed a complaint for civil penalties and injunctive
10 relief (“Complaint”) in Alameda Superior Court, Case No. 22CV009370 against Defendant. The
11 Complaint alleges, among other things, that Defendant violated Proposition 65 by failing to give
12 clear and reasonable warnings of exposure to Lead and Cadmium from Dried Anchovy.

13 **1.6 Consent to Jurisdiction**

14 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
15 has jurisdiction over the allegations of violations contained in the Complaint and Notices and
16 personal jurisdiction over Defendant as to the acts alleged in the Complaint and Notices, that
17 venue is proper in the County of Alameda and that this Court has jurisdiction to enter this
18 Consent Judgment as a full settlement and resolution of the allegations contained in the
19 Complaint and Notice 2 and of all claims which were or could have been raised by any person or
20 entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising
21 therefrom or related thereto.

22 **1.7 No Admission**

23 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
24 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
25 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
26 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
27 the Notices and the Complaint (each and every allegation of which Defendant denies), any fact,
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1 conclusion of law, issue of law or violation of law, including without limitation, any admission
2 concerning any violation of Proposition 65 or any other statutory, regulatory, common law, or
3 equitable doctrine, or the meaning of the terms “knowingly and intentionally expose” or “clear
4 and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
5 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
6 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
7 fault, wrongdoing, or liability by any Defendant, its officers, directors, employees, or parent,
8 subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative
9 or judicial proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this
10 Consent Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the
11 Parties may have in any other or future legal proceeding, except as expressly provided in this
12 Consent Judgment.

13 **2. DEFINITIONS**

14 2.1 “Covered Products” means products specifically identified in Paragraph 1.2.1 sold
15 or supplied by Defendant.

16 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
17 Court.

18 2.3 “Listed Chemicals(s)” mean:

19 “Lead” as to Dried Anchovy.

20 “Cadmium” as to Dried Anchovy and Dried Mushroom.

21 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
22 **WARNINGS.**

23 3.1 After the Effective Date, Defendant shall not sell in California, offer for sale in
24 California, or ship for sale in California:

25 3.1.1 any Dried Anchovy unless the level of Lead does not exceed 34 parts per
26 billion (“ppb”) and the level of Cadmium does not exceed 85 ppb unless Proposition 65
27 compliant warnings are used as set forth in the following paragraphs.
28

1 3.1.2 any Dried Mushroom unless the level of Cadmium does not exceed 40 ppb
2 unless Proposition 65 compliant warnings are used as set forth in the following paragraphs.

3 3.2 For any Covered Products that exceeds their respective levels of Listed Chemical
4 that are placed into the stream of commerce in California after the Effective Date,
5 Defendant must provide a Proposition 65 compliant warning for the Covered Products as set
6 forth below. Any warning provided pursuant to this section shall be affixed to the packaging of,
7 or directly on, the Covered Products, and be prominently placed with such conspicuousness as
8 compared with other words, statements, designs, or devices as to render it likely to be read and
9 understood by an ordinary individual under customary conditions before purchase or use. The
10 warning must be set off from other surrounding information, enclosed in a box. Where the
11 packaging of the Covered Product includes consumer information as defined by California Code
12 of Regulations title 27 §25600.1(c) in a language other than English, the warning must also be
13 provided in that language in addition to English. Should Defendant sell or distribute any Covered
14 Product through the internet the warning will be posted in the manner provided for with respect
15 to internet sales, as provided for in 27 CCR sections 25601 and 25602, as they may be
16 subsequently amended.

17 The Parties agree that the following warning language shall constitute compliance with
18 Proposition 65 with respect to the alleged Listed Chemical(s) in the Covered Products placed
19 into the steam of commerce by Defendant after the Effective Date:

20
21 For Dried Anchovy:

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

26
27 For Dried Mushroom:
28

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

5 3.3 For any Covered Products still existing in the Defendant's inventory as of the
6 Effective Date, Defendant shall place a Proposition 65 compliant warning on them, unless the
7 Covered Products does not exceed their respective levels of Listed Chemical. Any warning
8 provided pursuant to this section shall comply with the warning requirements under Section 3.2
9 above.

10 3.5 For any Covered Product where the Defendant uses a consumer product sign,
11 label, or shelf tag to provide a warning, which includes consumer information in a language
12 other than English, the warning must also be provided in that foreign language in addition to
13 English.

14 3.6 Changes in the law and regulations applicable to Prop 65 occurring after this date
15 shall be incorporated into the terms of this Consent Judgment.

16 **4. SETTLEMENT PAYMENT**

17 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, or by July
18 15, 2023, whichever is later, Defendant shall pay a total of One Hundred and Eighty Thousand
19 Dollars (\$180,000) in full and complete settlement of all monetary claims by CAG related to the
20 Notices, as follows:

21 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling Twenty
22 Eight Thousand Six Hundred Dollars (\$28,600) as penalties pursuant to Health & Safety Code §
23 25249.12:

24 (a) Defendant will issue a check made payable to the State of California's
25 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of Twenty One
26 Thousand Four Hundred and Fifty Dollars (\$21,450) representing 75% of the total penalty and
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1 Defendant will issue a separate check to CAG in the amount of Seven Thousand One Hundred
2 and Fifty Dollars (\$7,150) representing 25% of the total penalty; and

3 (b) Separate 1099s shall be issued for each of the above payments:

4 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
5 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
6 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

7 4.1.2 **Additional Settlement Payments:** Defendant shall make a separate
8 payment, in the amount of Twenty One Thousand Four Hundred Dollars (\$21,400) as an
9 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
10 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue
11 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as
12 follows, eighty percent (80%) for fees of investigation, purchasing and testing for Proposition 65
13 listed chemicals in various products, and for expert fees for evaluating exposures through various
14 mediums, including but not limited to consumer product, occupational, and environmental
15 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining
16 experts who assist with the extensive scientific analysis necessary for those files in litigation and
17 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees;
18 twenty percent (20%) for administrative costs incurred during investigation and litigation to
19 reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or
20 entities believed to be responsible for such exposures and attempting to persuade those persons
21 and/or entities to reformulate their products or the source of exposure to completely eliminate or
22 lower the level of Proposition 65 listed chemicals including but not limited to costs of
23 documentation and tracking of products investigated, storage of products, website enhancement
24 and maintenance, computer and software maintenance, investigative equipment, CAG's
25 member's time for work done on investigations, office supplies, mailing supplies and postage.
26 Within 30 days of a request from the Attorney General, CAG shall provide to the Attorney
27 General copies of documentation demonstrating how the above funds have been spent. CAG
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1 shall be solely responsible for ensuring the proper expenditure of such additional settlement
2 payment.

3 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay One
4 Hundred and Thirty Thousand Dollars (\$130,000) to “Yeroushalmi & Yeroushalmi” as
5 reimbursement for reasonable investigation fees and costs, attorneys’ fees, and any other costs
6 incurred as a result of investigating, bringing this matter to Defendant’s attention, litigating, and
7 negotiating a settlement in the public interest.

8 4.2 Other than the payment to OEHHA described above, all payments referenced in
9 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
10 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
11 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
12 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
13 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
14 payment to OEHHA was delivered.

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

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

10 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
11 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
12 indirectly, any form of legal action and releases all claims, including, without limitation, all
13 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
14 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
15 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
16 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
17 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
18 about exposure to Listed Chemicals from the Covered Products. In furtherance of the foregoing,
19 as to alleged exposures to Listed Chemicals from the Covered Products, CAG on behalf of itself
20 only, hereby waives any and all rights and benefits which it now has, or in the future may have,
21 conferred upon it with respect to Claims arising from any violation of Proposition 65 or any
22 other statutory or common law regarding the failure to warn about exposure to Listed Chemicals
23 from the Covered Products by virtue of the provisions of section 1542 of the California Civil
24 Code, which provides as follows:

25
26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 CAG understands and acknowledges that the significance and consequence of this waiver of
4 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
5 resulting from, or related directly or indirectly to, in whole or in part, claims arising from any
6 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
7 about exposure to Listed Chemicals from the Covered Products, including but not limited to any
8 exposure to, or failure to warn with respect to exposure to Lead and Cadmium from the Dried
9 Anchovy and Cadmium from Dried Mushroom, CAG will not be able to make any claim for
10 those damages against Released Parties. Furthermore, CAG acknowledges that it intends these
11 consequences for any such Claims arising from any violation of Proposition 65 or any other
12 statutory or common law regarding the failure to warn about exposure to Listed Chemicals from
13 Covered Products as may exist as of the date of this release but which CAG does not know exist,
14 and which, if known, would materially affect their decision to enter into this Consent Judgment,
15 regardless of whether their lack of knowledge is the result of ignorance, oversight, error,
16 negligence, or any other cause.

17 **6. ENTRY OF CONSENT JUDGMENT**

18 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
19 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
20 Defendant waive their respective rights to a hearing or trial on the allegations of the Complaint.

21 6.2 Upon entry of an order approving this Consent Judgment, the Complaint in this
22 action shall be deemed amended to include all the claims raised in the Notice 2 outlined in
23 Section 1.4.

24 6.3 The Parties shall make all reasonable efforts possible to have the Consent
25 Judgment approved by the Court.

26 6.4 If this Consent Judgment is not approved in full by the Court, (a) this Consent
27 Judgment and any and all prior agreements between the Parties merged herein shall terminate
28 and become null and void, and the actions shall revert to the status that existed prior to the

1 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
2 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
3 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
4 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
5 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

6 **7. MODIFICATION OF JUDGMENT**

7 7.1 This Consent Judgment may be modified only upon written agreement of the
8 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
9 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

10 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
11 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

12 **8. RETENTION OF JURISDICTION**

13 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
14 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

15 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
16 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

17 **10. DUTIES LIMITED TO CALIFORNIA**

18 9.1 This Consent Judgment shall have no effect on Covered Products sold by
19 Defendant outside the State of California.

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

21 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
22 California Attorney General so that the Attorney General may review this Consent Judgment
23 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
24 has received the aforementioned copy of this Consent Judgment, and in the absence of any
25 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
26 approve this Consent Judgment.
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28 **11. ATTORNEY FEES**

1 11.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
2 own costs and attorney fees in connection with this action.

3 **12. GOVERNING LAW**

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

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

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

2 13.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document and have the same force and effect as original signatures.

5 **14. NOTICES**

6 14.1 Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

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8 If to CAG:

9 Reuben Yeroushalmi
10 YEROUSHALMI & YEROUSHALMI
11 9100 Wilshire Boulevard, Suite 240W
12 Beverly Hills, CA 90212
13 (310) 623-1926
14 Email: lawfirm@yeroushalmi.com

15 If to Defendant.:

16 Yohan Lee
17 Law Offices of Yohan Lee
18 5681 Beach Blvd,
19 Second Floor
20 Buena Park, CA 90621
21 714.523.2700
22 Email: ylee@yleelaw.com

23 **15. AUTHORITY TO STIPULATE**

24 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
25 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf
26 of the party represented and legally to bind that party.

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AGREED TO: Date: <u>May 4</u> , 2023 <u>Michael Marcus</u> Name: <u>Michael Marcus</u> Title: <u>Director</u> CONSUMER ADVOCACY GROUP, INC.	AGREED TO: Date: <u>May 4</u> , 2023 <u>Doo Hwan Kim</u> Name: <u>DOO HWAN KIM</u> Title: <u>CEO</u> ROM AMERICA, INC.
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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT