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7  
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Environmental Health Advocates, Inc.

9  
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF ALAMEDA**

12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.,

14 Plaintiff,

15 v.

16 BOSSEN WEST, INC., a California  
17 corporation; LEADWAY  
18 INTERNATIONAL, INC., a California  
19 corporation; AMAZON.COM, INC., a  
20 Delaware corporation; and DOES 1 through  
21 100, inclusive,

22 Defendants.

Case No. 24CV065140

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and  
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,  
4 (“EHA” or “Plaintiff”) and Leadway International, Inc. (“Defendant” or “Leadway”) with EHA and  
5 Leadway each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general  
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 Leadway employs ten or more individuals and for purposes of this Consent Judgment only, is  
12 a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic  
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Leadway manufactures, imports, sells, and distributes for sale Bubble Tea  
16 Powder Mix - Taro Grade A that contains Lead. EHA further alleges that Leadway does so without  
17 providing a sufficient health hazard warning as required by Proposition 65 and related Regulations.  
18 Leadway denies these allegations and asserts that its products are safe and in compliance with all  
19 applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around August 21, 2023, EHA served Defendants Bossen West, Inc., Leadway,  
22 Amazon.com Inc., the California Attorney General, and all other required public enforcement agencies  
23 with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Leadway had  
24 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
25 associated with exposures to Lead contained in drink mix products, including but not limited to Bubble  
26 Tea Powder Mix - Taro Grade A manufactured or processed by Leadway that allegedly contain Lead  
27 and are imported, sold, shipped, delivered, or distributed for sale to consumers in California by  
28 Releasees (as defined in section 4.1).

1 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
2 violations alleged in the Notice.

### 3 **1.6 Product Description**

4 The products covered by this Consent Judgment are taro drink mix products, original and  
5 premium flavors, including but not limited to Bubble Tea Powder Mix - Taro Grade A manufactured  
6 or processed by Leadway that allegedly contain Lead and are imported, sold, shipped, delivered, or  
7 distributed for sale to consumers in California by Releasees (as defined in section 4.1) (“Covered  
8 Products”).

### 9 **1.7 State of the Pleadings**

10 On or around February 23, 2024, EHA filed a Complaint against Leadway for the alleged  
11 violations of Proposition 65 that are the subject of the Notice (“Complaint”).

### 12 **1.8 No Admission**

13 Leadway denies the material factual and legal allegations of the Notice and Complaint and  
14 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
15 California, including Covered Products, have been, and are, in compliance with all applicable laws,  
16 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,  
17 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
18 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation  
19 of law. This Section shall not, however, diminish or otherwise affect Leadway's obligations,  
20 responsibilities, and duties under this Consent Judgment.

### 21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
23 Court has jurisdiction over Leadway as to the allegations in the Complaint, that venue is proper in the  
24 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
25 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

### 26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this  
28 Consent Judgment is approved by the Court, as discussed in Section 5.

1           **1.11 Compliance Date**

2           For purposes of this Consent Judgment, the term “Compliance Date” means one hundred and  
3 twenty (120) days from the date on which this Consent Judgment is approved and entered as a judgment  
4 of the Court, as discussed in Section 5.

5           **2. INJUNCTIVE RELIEF**

6           **2.1 Reformulation of the Covered Products**

7           Beginning on or before the Compliance Date, Leadway shall be permanently enjoined from  
8 manufacturing, distributing, or directly selling in the State of California, any Covered Product that  
9 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of Lead based on a  
10 single serving per day unless such Covered Products comply with the warning requirements of Section  
11 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the recommended serving  
12 size in Covered Product by the concentration of lead in Covered Products. As used in this Section 2,  
13 “distributed for sale in CA” means to directly ship Covered Products into California or to sell Covered  
14 Products to a distributor Leadway knows will sell Covered Products in California.

15           **2.2 Clear and Reasonable Warnings**

16           For Covered Products that contain Lead in a concentration exceeding the “Daily Lead Exposure  
17 Level” set forth in section 2.1 above, and which are distributed or directly sold by Leadway in the  
18 State of California on or after the Compliance Date, Leadway shall provide one of the following  
19 warning statements, pursuant to Cal. Code Regs. tit. 27 § 25607.1, as it exists as of the date of execution  
20 of this Consent Judgment, or as it may be amended in the future, which are:

21           **Option 1:**

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

25           **Option 2:**

26                   **WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

27           One of the above warning statements shall be enclosed in a box and prominently displayed on  
28 the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign

1 provided that the statement is displayed with such conspicuousness, as compared with other words,  
2 statements, or designs as to render it likely to be read and understood by an ordinary individual prior  
3 to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type  
4 size no smaller than the largest type size used for other "consumer information" on the product, as that  
5 term is defined in Cal. Code Regs. Tit. 27, §25600.1. In no case shall a warning statement displayed  
6 on the Covered Products' packaging appear in a type size smaller than 6-point type. If the Covered  
7 Products' packaging contains consumer information in a foreign language, a warning statement in that  
8 language is required.

9 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold  
10 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603(a)  
11 must be provided by including either the warning or a clearly marked hyperlink using the word  
12 "WARNING" on the product display page, or by otherwise prominently displaying the warning to the  
13 purchaser prior to completing the purchase. If an on-product warning is provided pursuant to Cal. Code  
14 Regs. Tit. 27, § 25603(a), the warning provided on the website may use the same content as the on-  
15 product warning. For purposes of this section, a warning is not prominently displayed if the purchaser  
16 must search for it in the general content of the website. These requirements extend to any websites  
17 under the exclusive control of Leadway where Covered Products are sold into California. In addition,  
18 Leadway shall instruct any third-party website to which it directly sells its Covered Products to include  
19 the same online warning, as set forth above, as a condition of selling the Covered Products in California.

### 20 **2.3 Sell-Through Period**

21 Notwithstanding anything else in this Consent Judgment, Covered Products that are  
22 manufactured, packaged, or put into commerce on or after the date this Agreement is executed shall be  
23 subject to the release of liability pursuant to this Consent Judgment, without regard to when such  
24 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligations  
25 of Leadway, or any Releasees (if applicable), stated in this Section 2 do not apply to Covered Products  
26 manufactured, packaged, or put into commerce between the date this Agreement is executed and the  
27 Compliance Date.

28 ///

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Settlement Amount**

3 Leadway shall pay fifty thousand dollars (\$50,000.00) in settlement and total satisfaction of  
4 all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes  
5 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code  
6 section 25249.7(b) and attorneys' fees and costs in the amount of forty five thousand dollars  
7 (\$45,000.00) pursuant to Code of Civil Procedure section 1021.5.

8 **3.2 Civil Penalty**

9 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
10 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
11 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
12 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars  
13 (\$5,000.00) in civil penalties shall be paid as follows:

- 14
- 15 • One payment of \$3,750.00 to OEHHA, due fourteen (14) days after the Effective Date.
  - 16 • One payment of \$1,250.00 to EHA, due fourteen (14) days after the Effective date.

17 All payments owed to EHA shall be delivered to the following address:

18 Isaac Fayman  
19 Environmental Health Advocates  
20 225 Broadway, Suite 2100  
21 San Diego, CA 92101

22 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA  
23 (Memo Line "Prop 65 Penalties") at the following addresses:

24 For United States Postal Service Delivery:

25 Mike Gyurics  
26 Fiscal Operations Branch Chief  
27 Office of Environmental Health Hazard Assessment  
28 P.O. Box 4010  
Sacramento, CA 95812-4010

For Federal Express 2-Day Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

Leadway agrees to provide EHA's counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to EHA.

Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required. Relevant information is set out below:

- "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

All payments referenced in this section shall be paid within fourteen (14) days of the date the Court approves EHA's motion to approve this Consent Judgment.

### **3.3 Attorney's Fees and Costs**

The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to Leadway's attention, as well as litigating and negotiating a settlement in the public interest.

Leadway shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's counsel by physical check or by electronic means, including wire transfers, at Leadway's discretion, as follows: forty-five thousand dollars (\$45,000.00) in Attorney's Fees and Costs shall be paid as one payment of \$45,000.00, due fourteen (14) days after the Effective Date.

The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this entity is:

Noam Glick  
Entorno Law, LLP  
225 Broadway, Suite 1900  
San Diego, CA 92101

## **4. CLAIMS COVERED AND RELEASE**

### **4.1 EHA's Public Release of Proposition 65 Claims**

Plaintiff, acting on its own behalf and in the public interest, releases Leadway, Bossen West, Inc., and Amazon.com, Inc., as well as their parents, subsidiaries, affiliated entities under common ownership or control, joint ventures, predecessors, successors, and assigns, and each of their directors,

1 officers, members, principals, agents, employees, attorneys, insurers and accountants (“Defendant  
2 Entities”), and each entity to whom any Defendant directly or indirectly distributes, ships, or sells the  
3 Covered Products, including but not limited to downstream distributors, wholesalers, customers,  
4 retailers, including but not limited to marketplaces franchisees, franchisors, cooperative members,  
5 suppliers, licensees, and licensors, and all of the foregoing entities’ owners, directors, officers, agents,  
6 principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and  
7 assigns (collectively referred to as the “Releasees”) from all claims for violations of Proposition 65 up  
8 through the Compliance Date based on exposure to Lead from Covered Products as set forth in the  
9 Notice(s). Compliance with the terms of this Consent Judgment constitutes compliance with  
10 Proposition 65 with respect to exposures to Lead from Covered Products as set forth in the Notice(s).  
11 This Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that  
12 were or could have been asserted against Leadway and/or Releasees for failure to comply with  
13 Proposition 65 for alleged exposure to Lead from Covered Products. This release does not extend to  
14 any third-party retailers selling the product on a website who, after receiving instruction from Leadway  
15 to include a warning as set forth above in section 2.2, do not include such a warning.

#### 16 **4.2 EHA’s Individual Release of Claims**

17 EHA, in its individual capacity, also provides a release to Leadway and/or Releasees, which  
18 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
19 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every  
20 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of  
21 alleged or actual exposures to Lead in Covered Products manufactured, imported, sold, or distributed  
22 by Leadway before the Compliance Date.

#### 23 **4.3 Leadway’s Release of EHA**

24 Leadway on its own behalf, and on behalf of any of its affiliated Releasees, as well as its past  
25 and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all  
26 claims against EHA and its attorneys and other representatives, for any and all actions taken or  
27 statements made by EHA and its attorneys and other representatives, whether in the course of  
28 investigating claims, otherwise seeking to enforce Proposition 65 against them, in this matter or with



1 respect to the Covered Products.

2 **4.4 California Civil Code Section 1542**

3 It is possible that other claims not known to the Parties arising out of the facts alleged in the  
4 Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself  
5 only, on one hand, and Leadway on behalf of itself only, on the other hand, acknowledge that this  
6 Settlement Agreement is expressly intended to cover and include all such claims up through the  
7 Compliance Date. The Parties acknowledge that the claims released in Sections 4.1, 4.2 and 4.3 may  
8 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
9 unknown claims. California Civil Code section 1542 reads as follows:

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

17 EHA and Leadway each acknowledge and understand the significance and consequences of this  
18 specific waiver of California Civil Code § 1542.

19 **4.5 No Other Known Claims or Violations**

20 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged  
21 violations of Proposition 65 by Leadway or for which Leadway bears legal responsibility other than  
22 those that are fully resolved by this Consent Judgment.

23 **5. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
25 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or  
26 by such additional time as the Parties may agree to in writing. Upon execution of this Consent  
27 Judgment by the Parties, EHA shall dismiss the complaint and all causes of action and claims against  
28 defendants Bossen West, Inc. and Amazon.com, Inc. from this action, with prejudice.

**6. SEVERABILITY**

Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

1     **7. GOVERNING LAW**

2             The terms of this Consent Judgment shall be governed by the laws of the state of California as  
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
4 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the  
5 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues  
6 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition  
7 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65  
8 is determined to be preempted by federal law or a burden on First Amendment rights with respect to  
9 lead in Covered Products or Covered Products substantially similar to Covered Products, then Leadway  
10 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any  
11 Covered Products are so affected by modifying the agreement via the mechanisms set forth in Section  
12 12.

13     **8. ENFORCEMENT**

14             The injunctive terms of this Consent Judgment may be enforced by public agency prosecutors pursuant  
15 to California Health and Safety Code section 25249.7(c), and/or by private party prosecutors acting “in  
16 the public interest” under California Health and Safety Code section 25249.7(d). In any action to  
17 enforce the terms of this Consent Judgment, the prevailing party shall be entitled to its reasonable  
18 attorneys’ fees and costs.

19     **9. NOTICE**

20             Unless otherwise specified herein, all correspondence and notice required by this Consent  
21 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified  
22 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to  
23 the following addresses:

24     If to Leadway:

25     Sophia B. Castillo  
26     Keller and Hackman LLP  
27     3 Embarcadero Center, Suite 1420  
28     San Francisco, CA 94111  
   castillo@khlaw.com

24     If to EHA:

25     Noam Glick  
26     Entorno Law, LLP  
27     225 Broadway, Suite 2100  
28     San Diego, CA 92101  
   noam@entornolaw.com

Any Party may, from time to time, specify in writing to the other, a change of address to which

1 notices and other communications shall be sent.

2 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

6 **11. POST EXECUTION ACTIVITIES**

7 EHA agrees to comply with the reporting form requirements referenced in Health and Safety  
8 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
9 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
10 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
11 employ their reasonable best efforts, including those of their counsel, to support the entry of this  
12 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
13 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,  
14 responding to any objection that any third-party may make, and appearing at the hearing before the  
15 Court if so requested.

16 **12. MODIFICATION**

17 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of  
18 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
19 Party, and the entry of a modified consent judgment thereon by the Court.

20 **13. AUTHORIZATION**

21 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
22 have read, understand, and agree to all of the terms and conditions contained herein.

23 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

24 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
25 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in  
26 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed  
27 in the absence of such a good faith attempt to resolve the dispute beforehand.  
28

1 **15. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the Parties  
3 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,  
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
5 implied, other than those contained herein have been made by any Party. No other agreements, oral or  
6 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

7 **AGREED TO:**

**AGREED TO:**

8  
9 Date: 11/08/2024

Date: Nov. 7th, 2024

10  
11 By:   
12 ENVIRONMENTAL HEALTH  
13 ADVOCATES, INC.

By:   
LEADWAY, INC.

14 **IT IS SO ORDERED.**

15  
16 Date: \_\_\_\_\_

17  
18 JUDGE OF THE SUPERIOR COURT