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12 WHITNEY R. LEEMAN, PH.D.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA

14 COUNTY OF SAN FRANCISCO

15 UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 STARBUCKS CORPORATION, *et al.*,

20 Defendants.

Case No. CGC-16-555322

**[PROPOSED] CONSENT JUDGMENT  
AS TO DEFENDANT WALONG  
MARKETING, INC.**

(Health and 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 by plaintiff Whitney R. Leeman, Ph.D. (“Leeman”), and  
4 defendant Walong Marketing, Inc. (“Walong”), with Leeman and Walong each individually referred  
5 to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is an individual residing in California who seeks to promote awareness of exposures  
8 to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances  
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Leeman alleges that Walong sells or distributes for sale in California dried teas containing  
16 lead, and that it does so without providing the warning required by Proposition 65. Lead is listed  
17 pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.  
18 Walong denies Leeman’s allegations.

19 **1.5 Covered Tea Products**

20 For purposes of this Consent Judgment, “Covered Tea Products” are defined as dried teas  
21 (loose leaf and bagged) containing lead that are sold or distributed for sale in California by Walong  
22 including, but not limited to, the (i) *Asian Taste Dong Ding Oolong Tea, UPC #6 73367 64217 8*, and  
23 (ii) *Tea King of China Oolong Tea, UPC #6 942808 601086* identified in Leeman’s Notice.

24 **1.6 Notice of Violation**

25 On August 19, 2016, Leeman served Walong, the California Attorney General, and all other  
26 requisite public enforcement agencies with a 60-day notice of violation (“Notice”). The Notice  
27 alleges that Walong violated Proposition 65 by failing to warn its customers and consumers in  
28 California of the health hazards associated with exposures to lead from the Covered Tea Products.

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

3 **1.7 Complaint**

4 On November 10, 2016, Leeman filed the instant action, naming Walong as a defendant for  
5 the alleged violations that are the subject of the Notice. On June 1, 2016, Leeman filed a second  
6 amended complaint. On or about April 11, 2018, Leeman filed a third amended complaint  
7 (“Complaint”), the operative pleading in this action.

8 **1.8 No Admission**

9 Walong denies the material, factual, and legal allegations made in the Notice and Complaint,  
10 and maintains that all of the products it has sold or distributed for sale in California, including the  
11 Covered Tea Products, have been, and are, in compliance with all laws. Nothing in this Consent  
12 Judgment shall be construed as an admission by Walong of any fact, finding, conclusion, issue of  
13 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed  
14 as an admission by Walong of any fact, finding, conclusion, issue of law, or violation of law, the  
15 same being specifically denied by Walong. This Section shall not, however, diminish or otherwise  
16 affect Walong’s obligations, responsibilities, and duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
19 jurisdiction over Walong as to the allegations in the Complaint, that venue is proper in the County of  
20 San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this Consent  
21 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
24 the motion for approval of this Consent Judgment is granted by the Court, including the date of any  
25 unopposed tentative ruling granting the approval motion.  
26  
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1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Comply with Brewed Tea Standard or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, Walong agrees to only sell or  
4 distribute for sale in or into California, Covered Tea Products that: (a) meet the “Brewed Tea  
5 Standard” set forth in Section 2.2; or (b) are sold and offered for sale with a clear and reasonable  
6 warning pursuant to Section 2.3.

7 **2.2 Brewed Tea Standard**

8 Covered Tea Products containing no more than ten (10) parts per billion (micrograms/liter) of  
9 lead (“Brewed Tea Standard”) are exempt from the warning requirements of Section 2.3. To  
10 determine if a Covered Tea Product complies with the Brewed Tea Standard, it shall be prepared by  
11 placing one prepackaged tea bag, or for loose leaf teas, two grams of dried tea leaves in 200  
12 milliliters (mL) of boiling ultra-pure water, steeping for five minutes and, after five minutes,  
13 decanting a representative sample of the resulting infusion for analysis. The sample shall be analyzed  
14 according to U.S. Environmental Protection Agency testing methodology 6020 using inductively  
15 coupled plasma mass spectrometry (ICP-MS).

16 **2.3 Warnings**

17 Commencing on the Effective Date and continuing thereafter, those Covered Tea Products  
18 sold or distributed for sale in California by Walong that do not meet the Brewed Tea Standard, shall  
19 be accompanied by a clear and reasonable warning, in accordance with this Section or Title 27  
20 California Code of Regulations section 25600, et seq. The warning shall be prominently placed in  
21 relation to the Covered Tea Product with such conspicuousness when compared with other words,  
22 statements, designs, or devises as to render it likely to be read and understood by an ordinary  
23 individual under customary conditions of purchase or use.

1 A warning shall be deemed reasonable if transmitted in accordance with Title 27 California  
2 Code of Regulations §§ 25607.1 and 25607.2. The following warning statement shall be deemed  
3 clear:

4 **WARNING:** Consuming this product can expose you to  
5 chemicals including lead, which is known to the  
6 State of California to cause birth defects or other  
7 reproductive harm. For more information go to  
8 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

### 8 **3. MONETARY SETTLEMENT TERMS**

#### 9 **3.1 Civil Penalty Payment**

10 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all claims  
11 referred to in the Notice, Complaint, and this Consent Judgment, Walong agrees to pay \$3,500 in  
12 civil penalties. Walong's civil penalty payment will be allocated according to Health and Safety  
13 Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the  
14 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
15 twenty-five percent (25%) of the penalty payment retained by Leeman. Walong shall issue its  
16 payment in two checks for the following amounts made payable to (a) "OEHHA" in the amount of  
17 \$2,625; and (b) "Whitney R. Leeman, Client Trust Account" in the amount of \$875. Leeman's  
18 counsel shall be responsible for delivering OEHHA's portion of the penalty payment.

#### 19 **3.2 Reimbursement of Attorney's Fees and Costs**

20 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without  
21 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized, the  
22 Parties negotiated the compensation to be paid to Leeman and her counsel under general contract  
23 principles and the private attorney general doctrine codified at California Code of Civil Procedure  
24 section 1021.5 for all work performed through the mutual execution of this Consent Judgment and  
25 court approval of the same, but exclusive of fees and costs on appeal, if any. Walong agrees to pay  
26 \$16,000 by a check made payable to "The Chanler Group" for all fees and costs incurred  
27 investigating, bringing this matter to Walong's attention, litigating, and negotiating a settlement in  
28 the public interest.

1           **3.3     Payment Timing; Payments Held in Trust**

2           All payments due under this Consent Judgment shall be held in trust until the Court approves  
3 the Parties’ settlement. Walong shall deliver its civil penalty and attorneys’ fee reimbursement  
4 payments to its counsel within fifteen (15) days of the date that this Consent Judgment is fully  
5 executed by the Parties. Walong’s counsel shall provide Leeman’s counsel with written  
6 confirmation following its receipt of the settlement funds. Thereafter, Walong’s counsel shall hold  
7 the settlement funds in trust until, and disburse the funds to Leeman’s counsel within five (5) days  
8 after the Effective Date.

9           **3.4     Payment Address**

10          All payments required by this Consent Judgment shall be delivered to:

11                           The Chanler Group  
12                           Attn: Proposition 65 Controller  
13                           2560 Ninth Street  
                              Parker Plaza, Suite 214  
                              Berkeley, CA 94710

14   **4.     CLAIMS COVERED AND RELEASED**

15           **4.1     Leeman’s Public Release of Proposition 65 Claims**

16          Leeman, acting on her own behalf and on behalf of her past and current agents,  
17 representatives, attorneys, successors, and assignees hereby releases Walong and its parents,  
18 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and  
19 attorneys (“Releasees”), and each entity to whom Walong directly or indirectly distributes or sells  
20 Covered Tea Products including, but not limited to, Walong’s downstream distributors, wholesalers,  
21 customers, retailers (including, but not limited to, Tawa Supermarket, Inc.), franchisees, cooperative  
22 members, licensors, and licensees (“Downstream Releasees”), based on the alleged or actual failure  
23 to warn about exposures to lead in Covered Tea Products imported, manufactured, sold, or  
24 distributed for sale by Walong before the Effective Date, as set forth in the Notice. Compliance  
25 with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Walong  
26 with respect to the failure to warn about exposures to lead in Covered Tea Products sold or  
27 distributed for sale by Walong after the Effective Date.  
28

1           **4.2     Leeman’s Individual Release of Claims**

2           Leeman, in her individual capacity only and *not* in her representative capacity, on her own  
3 behalf and on behalf of her past and current agents, representatives, attorneys, successors, and  
4 assignees, also provides a release to Walong, Releasees, and Downstream Releasees which shall be  
5 effective as a full and final accord and satisfaction, as a bar to all suits, actions, and causes of action  
6 in law or in equity, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities,  
7 and demands of any nature, character, or kind, whether known or unknown, suspected or  
8 unsuspected, arising out of alleged or actual exposures to lead in Covered Tea Products imported,  
9 manufactured, sold, or distributed for sale by Walong before the Effective Date.

10           **4.3     Walong’s Release of Leeman**

11           Walong, on its own behalf, and on behalf of its past and current agents, representatives,  
12 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her  
13 attorneys and other representatives, for any and all actions taken or statements made by Leeman and  
14 her attorneys and other representatives, whether in the course of investigating claims, seeking to  
15 enforce Proposition 65 against Walong in this matter, or with respect to the Covered Tea Products.

16           **5.     COURT APPROVAL**

17           This Consent Judgment is not effective until it is approved and entered by the Court, and shall  
18 be null and void if it is not approved and entered by the Court within one year after it has been fully  
19 executed by the Parties, or by such additional time to which the Parties may agree in writing.

20           **6.     AGREEMENT TO DISMISS RETAIL CUSTOMER**

21           Leeman agrees that within 10 days of the Effective Date or her receipt of the settlement  
22 payments required by Sections 3.1 and 3.2 from Walong, she will file a request for dismissal without  
23 prejudice as to defendant Tawa Supermarket, Inc.

24           **7.     SEVERABILITY**

25           If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any  
26 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
27 adversely affected.

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California  
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
4 rendered inapplicable by reason of law generally or as to the Covered Tea Products, then Walong  
5 may provide written notice to Leeman of any asserted change in the law, and shall have no further  
6 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
7 Covered Tea Products are so affected.

8 **9. NOTICE**

9 Unless specified herein, all correspondence and notice required by this Consent Judgment  
10 shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return  
11 receipt requested; or (c) a recognized overnight courier, and with contemporaneous copies by email  
12 where indicated below, on any Party by the other at the following addresses:

13 For Walong Marketing, Inc.:

14 Chang Hua K. Chen, Chief Executive Officer  
15 Walong Marketing, Inc.  
16 6281 Regio Avenue, Floor 1  
17 Buena Park, CA 90620

Roseann C. Stevenson, Esq.  
1105 Oleander Way  
Simi Valley, CA 93065  
rcs@rcsesq.com

Iris Leong  
Legal Counsel  
Tawa Services, Inc.  
irisl@tawa.com

19 For Leeman:

20 The Chanler Group  
21 Attn: Proposition 65 Coordinator  
22 2560 Ninth Street  
23 Parker Plaza, Suite 214  
24 Berkeley, CA 94710-2565

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

27 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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



1 **11. POST EXECUTION ACTIVITIES**

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

11 **12. MODIFICATION**

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

15 **13. ENFORCEMENT**

16 **13.1 First Notice of Breach**

17 To allege a violation of this Consent Judgment, Plaintiff shall provide written notice to  
18 Walong in accordance with this section (“Notice of Breach”). The Notice of Breach shall include: (a)  
19 a declaration that the specific Covered Tea Product alleged to be in violation of the Consent  
20 Judgment was purchased in California and tested in excess of the Brewed Tea Standard within three  
21 months of the Notice of Breach and that no warning was provided for the specific Covered Tea  
22 Product; (b) any and all test results that support the allegation that the Covered Tea Product violates  
23 this Consent Judgment; (c) copies of (i) relevant purchase information for the allegedly violating  
24 Covered Tea Product; (ii) images of the packaging or labeling of the allegedly violating Covered Tea  
25 Product showing the SKU, UPC, Lot, and/or Batch number(s), if any; and (iii) all other test results  
26 conducted on the same Covered Tea Product performed within three months of the Notice of Breach.  
27 Upon receipt of the Notice of Breach, Walong and Plaintiff shall meet and confer for not less than  
28 thirty days in an effort to resolve the alleged violation informally. During this time, Plaintiff shall not

1 file any motion, application, action, or pleading regarding the violation(s) alleged in the Notice of  
2 Breach.

3 Walong may rebut the Notice of Breach and demonstrate compliance with the Consent  
4 Judgment to avoid additional civil fines by: (1) if the identity of the supplier of the finished Covered  
5 Tea Product is known to Walong and additional Covered Tea Product can be readily obtained from  
6 such supplier, showing that the average of all verified lead test results performed on samples of the  
7 same Covered Tea Product obtained from such supplier, and collected within three months of the  
8 Notice of Breach, complies with the Brewed Tea Standard, or (2) if the identity of the supplier of the  
9 finished Covered Tea Product is not known to the Walong or additional Covered Tea Product cannot  
10 be readily obtained from such supplier, showing that the average of all verified lead test results  
11 performed on samples of the same Covered Tea Product, and collected within three months of the  
12 Notice of Breach, complies with the Brewed Tea Standard, or (3) providing the most recent  
13 certificate of analysis or other proof, from Walong or its supplier of the Covered Tea Product in  
14 question, as evidence that the Covered Tea Product meets either the Brewed Tea Standard or that the  
15 dried leaves of such Covered Tea Product do not exceed six (6) parts per million  
16 (milligrams/kilograms) before brewing when prepared using a scientifically validated preparation  
17 method and analyzed according to EPA testing methodology 6020 using ICP-MS, or alternative  
18 methodologies utilized by federal or state agencies for the purpose of measuring lead concentration of  
19 6 ppm in food.

20 If Walong cannot demonstrate compliance within ninety (90) days of receiving Plaintiff's  
21 Notice of Breach, it must pay a stipulated civil penalty of \$2,500 to be allocated according to Section  
22 3.1.

### 23 **13.2 Subsequent Notice(s) of Breach**

24 If Defendant rebuts Plaintiff's first Notice of Breach and demonstrates compliance other than  
25 by reliance on its supplier's representations, a subsequent Notice of Breach on the same specific  
26 Covered Tea Product shall be deemed to be a First Notice of Breach, subject to the same procedures,  
27 showings and penalties set forth in Section 13.1.  
28

1 To allege a subsequent or additional violation of this Consent Judgment by Walong, Plaintiff  
2 must follow the procedures set forth in Section 13.1. Walong may rebut the subsequent Notice(s) of  
3 Breach and demonstrate compliance with the Consent Judgment following the procedures set forth in  
4 Section 13.1, except that if Defendant rebutted a first Notice of Breach by providing a certificate of  
5 analysis or other proof from the supplier(s) of the Covered Tea Product in question, it may not  
6 respond to any subsequent or additional Notice of Breach issued on the same Covered Tea Product  
7 more than four months after the first Notice of Breach by relying on a certificate of analysis or other  
8 proof from the same supplier for the same Covered Tea Product. Instead, to demonstrate compliance,  
9 Walong must show compliance with the Brewed Tea Standard in subsequent Notices of Breach on  
10 the same Covered Tea Product, using the testing protocol set forth in Section 2.1 and 2.2 of this  
11 Consent Judgment.

12 If Walong cannot rebut the subsequent Notice of Breach and demonstrate compliance within  
13 ninety (90) days of receiving Plaintiff's subsequent Notice(s) of Breach, it must pay a stipulated civil  
14 penalty of \$5,000 for the second, and each subsequent, Notice of Breach as to which it cannot  
15 demonstrate compliance.

### 16 **13.3 Notice of Significant Exceedance**

17 Notwithstanding the forgoing, if Plaintiff's Notice of Breach includes three or more test  
18 results for the same product, each of which (1) exceeds 25 ppb and (2) is accompanied by the  
19 information set forth in the second sentence of Section 13.1 of this Consent Judgment, then the  
20 Defendant may rebut the Notice of Breach and demonstrate compliance with the Consent Judgment  
21 only by showing that the average of all verified lead test results performed on samples of the same  
22 Covered Tea Product collected within two months of the Notice of Breach, complies with the Brewed  
23 Tea Standard.

24 Absent agreement to the contrary, the Parties shall maintain the confidentiality of test results  
25 exchanged among them pursuant to this Section 13, whether as regards a First Notice of Breach or a  
26 Subsequent Notice of Breach, except to the extent that disclosure is required in an enforcement action  
27 or is otherwise required by law.  
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**14. AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: 3/24/2018

Date: 4/3/18

By:   
WHITNEY R. LEEMAN, PH.D.

By:  for  
Chang Hua K. Chen, Chief Executive Officer  
WALONG MARKETING, INC.