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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By *Danielle Dubocovich*
Deputy

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6 Attorneys for Plaintiffs,
7 Consumer Advocacy Group, Inc.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF ALAMEDA**

10 CONSUMER ADVOCACY GROUP, INC.,
11 in the public interest,

12 Plaintiff,

13 v.

14 THE SPICE LAB, INC., a Florida Profit
15 Corporation; DVC INDUSTRIES, INC., a
16 Florida Profit Corporation; MARSHALLS
17 OF CA, INC., a business entity form
18 unknown; THE TJX COMPANIES, INC., a
19 Delaware Corporation; MARSHALLS OF
20 MA, INC., a Massachusetts Domestic Profit
21 Corporation; MARMAXX OPERATING
22 CORP., a Delaware Corporation and DOES
23 I-30;

24 Defendants.

CASE NO. RG17868410

CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 520

Judge: Hon. Julia Spain

Complaint filed: July 20, 2017

FAC filed: January 30, 2018

22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
24 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the
25 public, and defendants THE SPICE LAB, NO. 1 INC. (erroneously sued as THE SPICE LAB)
26 INC.) and DVC INDUSTRIES, INC. (referred to as "Defendants" collectively) with each a Party
27 to the action and collectively referred to as "Parties."
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1 1.2 **Defendants and Products**

2 1.2.1 Defendants include Florida corporations which employ ten or more
3 persons. Defendant DVC Industries, Inc. (d/b/a "The Spice Lab") packages ground cinnamon,
4 ground ginger, and ground turmeric in different-sized offerings for sale through retailers.
5 Without limitation, the ground cinnamon, ground ginger and ground turmeric offerings include:
6 (1) "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8
7 oz"; 1285-054460892-00399-24-9; 85404040078197 FLA1; (2) "The Spice Lab"; "Gourmet
8 Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz"; 1285-059725327-00399-06-
9 9; 85404040143222 FLA7; (3) "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon";
10 "Processed and Packaged in the USA"; "No. 1"; "Net Wt. 4.5 oz."; "Please visit
11 TheSpiceLab.com"; "3181 W. McNab Rd, Pompano Beach FL, 33069"; "Best By 6/2019 Batch
12 4459"; 16110156104017; (4) "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon";
13 "Premium"; "No. 1"; "Net Wt. 1.8 oz."; "TheSpiceLab.com"; "3181 W. McNab Rd, Pompano
14 beach FL 33069"; Batch 5122; 1285-061582105; 8540-4040-165506-FLA14; (5) "Healing
15 Spices"; "Nature's Way to Ensure Overall Body Wellness"; "Cinnamon"; "Net Wt. 4 oz"; "The
16 Spice Lab- 4000 N. Dixie Hwy. Pompano Beach, FL 33064"; "Item# 5001121 - Batch 5453";
17 110162766405; (6) The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1";
18 "Net Wt. 1.8 oz"; "Batch 7282"; "Kosher/Processed in USA"; 8540-4040-234658- FLA3"
19 (hereinafter "GROUND CINNAMON"), Ground Ginger, including "The Spice Lab"; "Gourmet
20 Spices"; "Ground Ginger"; "Premium No. 1"; "Net Wt. 1.8 oz"; 1285-012836000-00399-24-9;
21 85404040078203 FLA2" (hereinafter "GROUND GINGER"), and Ground Turmeric, including
22 "The Spice Lab"; "Gourmet Spices"; "Ground Turmeric"; "Premium No. 1"; "Net Wt. 1.8 oz";
23 1285-060498535-0039-07-9; 85404060153158 FLA11 (hereinafter "GROUND TURMERIC")
24 (collectively referred to hereinafter "Covered Products"). For purposes of this Consent
25 Judgment, Defendants are deemed a person in the course of doing business in California and are
26 subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986,
27 California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65").
28

1 **1.3 Chemicals Of Concern**

2 1.3.1 Lead and Lead Compounds (hereinafter "Lead") are known to the State of
3 California to cause cancer and/or birth defects or other reproductive harm.

4 **1.4 Notices of Violation.**

5 1.4.1 On April 12, 2017, CAG served certain defendants in this action,
6 including Marshalls of MA, Inc., Marshalls of CA, Inc., The Spice Lab, Inc., DVC Industries,
7 Inc., and various public enforcement agencies with a document entitled "60-Day Notice of
8 Violation" (hereinafter "AG # 2017-00537 Notice") that provided the recipients with notice of
9 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
10 California of exposures to Lead contained in Ground Cinnamon, including but not limited to
11 "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz";
12 1285-054460892-00399-24-9; 85404040078197 FLA1 sold by Defendants. No other public
13 enforcer has commenced or diligently prosecuted the allegations set forth in the AG # 2017-
14 00537 Notice.

15 1.4.2 On April 12, 2017, CAG served certain defendants in this action,
16 including Marshalls of MA, Inc., Marshalls of CA, Inc., The Spice Lab, Inc., DVC Industries,
17 Inc., and various public enforcement agencies with a document entitled "60-Day Notice of
18 Violation" (hereinafter "AG # 2017-00539 Notice") that provided the recipients with notice of
19 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
20 California of exposures to Lead contained in Ground Ginger, including but not limited to "The
21 Spice Lab"; "Gourmet Spices"; "Ground Ginger"; "Premium No. 1"; "Net Wt. 1.8 oz"; 1285-
22 012836000-00399-24-9; 85404040078203 FLA2 sold by Defendants. No other public enforcer
23 has commenced or diligently prosecuted the allegations set forth in the AG # 2017-00539 Notice.

24 1.4.3 On April 12, 2017 CAG served certain defendants in this action, including
25 Marshalls of MA, Inc., Marshalls of CA, Inc., The Spice Lab, Inc., DVC Industries, Inc., and
26 various public enforcement agencies with a document entitled "60-Day Notice of Violation"
27 (hereinafter "AG # 2017-00541 Notice") that provided the recipients with notice of alleged
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1 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
2 exposures to Lead contained in Ground Cinnamon, including but not limited to, "The Spice
3 Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz"; 1285-
4 059725327-00399-06-9; 85404040143222 FLA7 sold by Defendants. No other public enforcer
5 has commenced or diligently prosecuted the allegations set forth in the AG # 2017-00541 Notice.

6 1.4.4 On April 12, 2017, CAG served certain defendants in this action,
7 including Marshalls of MA, Inc., Marshalls of CA, Inc., The Spice Lab, Inc., DVC Industries,
8 Inc., and various public enforcement agencies with a document entitled "60-Day Notice of
9 Violation" (hereinafter "AG # 2017-00542 Notice") that provided the recipients with notice of
10 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
11 California of exposures to Lead contained in Ground Turmeric, including but not limited to "The
12 Spice Lab"; "Gourmet Spices"; "Ground Turmeric"; "Premium No. 1"; "Net Wt. 1.8 oz"; 1285-
13 060498535-0039-07-9; 85404060153158 FLA11 sold by Defendants. No other public enforcer
14 has commenced or diligently prosecuted the allegations set forth in the AG # 2017-00542 Notice.

15 1.4.5 On June 6, 2017, CAG served certain defendants in this action, including
16 Marshalls of MA, Inc., Marshalls of CA, Inc., The TJX Companies, Inc., DVC Industries, Inc.,
17 The Spice Lab, Inc., and various public entities with a document entitled "60 Day Notice of
18 Violation" (hereinafter "AG # 2017-01530 Notice") that provided the recipients with notice of
19 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
20 California of exposures to Lead contained in Ground Cinnamon, including but not limited to,
21 "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium"; "No. 1"; "Net Wt. 1.8
22 oz"; "TheSpiceLab.com"; "3181 W. McNab Rd, Pompano Beach FL 33069"; Batch 5122; 1285-
23 061582105; 8540-4040-165506-FLA14 sold by Defendants. No other public enforcer has
24 commenced or diligently prosecuted the allegations set forth in the AG # 2017-01530 Notice.
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26 1.4.6 On June 6, 2017, CAG served certain defendants in this action, including
27 DVC Industries, Inc., The Spice Lab, Inc., Burlington Coat Factory, Burlington Coat Factory
28 Warehouse, Burlington Coat Factory Warehouse Corp., and various public entities with a

1 document entitled "60 Day Notice of Violation" (hereinafter "AG # 2017-01537 Notice") that
2 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
3 failing to warn individuals in California of exposures to Lead contained in Ground Cinnamon,
4 including but not limited to, "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon";
5 "Processed and Packaged in the USA"; "No. 1"; "Net Wt. 4.5 oz"; "Please visit
6 TheSpiceLab.com"; "3181 W. McNab Rd, Pompano Beach FL 33069"; "Best by 6/2019 Batch
7 4459"; 16110156104017 sold by Defendants. No other public enforcer has commenced or
8 diligently prosecuted the allegations set forth in the AG # 2017-01537 Notice.

9 1.4.7 On June 23, 2017, CAG served certain defendants in this action, including
10 DVC Industries, Inc., The Spice Lab, Inc., Burlington Coat Factory, Burlington Coat Factory
11 Warehouse, Burlington Coat Factory Warehouse Corp., and various public entities with a
12 document entitled "60 Day Notice of Violation" (hereinafter "AG # 2017-01607 Notice") that
13 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
14 failing to warn individuals in California of exposures to Lead contained in Ground Cinnamon,
15 including but not limited to, "Healing Spices"; "Nature's Way to Ensure Overall Body
16 Wellness"; "Cinnamon"; "Net Wt. 4 oz"; "The Spice Lab - 4000 N. Dixie Hwy. Pompano
17 Beach, FL 33064"; "Item # 5001121 - Batch 5453"; 110162766405 sold by Defendants. No
18 other public enforcer has commenced or diligently prosecuted the allegations set forth in the AG
19 # 2017-01607 Notice.
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21 1.4.8 On September 6, 2017, CAG served certain defendants in this action,
22 including DVC Industries, Inc., The Spice Lab, Inc., Marshalls of MA, Inc., Marshalls of CA,
23 Inc., and various public entities with a document entitled "60 Day Notice of Violation"
24 (hereinafter "AG # 2017-02081 Notice") that provided the recipients with notice of alleged
25 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of
26 exposures to Lead contained in Ground Cinnamon, including but not limited to, "The Spice
27 Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz"; Batch
28 7282"; "Kosher/Processed in USA"; 8540-4040-234658-FLA3 sold by Defendants. No other

1 public enforcer has commenced or diligently prosecuted the allegations set forth in the AG #
2 2017-02081 Notice.

3 1.4.9 On or about October 23, 2017, CAG served DVC Industries, Inc., The
4 Spice Lab, Inc., Marshalls of MA, Inc., Marshalls of CA, Inc., The TJX Companies, Inc.,
5 Marmaxx Operating Corp. and various public entities with a document entitled "60 Day Notice
6 of Violation" (hereinafter "AG # 2017-02383 Notice") that provided the recipients with notice of
7 alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in
8 California of exposures to Lead contained in Ground Cinnamon, including but not limited to,
9 "The Spice Lab"; "Gourmet Spices"; "Ground Cinnamon"; "Premium No. 1"; "Net Wt. 1.8 oz";
10 "8540-4040-208125-FLA10" sold by Defendants. No other public enforcer has commenced or
11 diligently prosecuted the allegations set forth in the AG # 2017-02383 Notice.

12 1.4.10 On or about October 31, 2017, CAG served DVC Industries, Inc., The
13 Spice Lab, Inc., Marshalls of MA, Inc., Marshalls of CA, Inc., The TJX Companies, Inc.,
14 Marmaxx Operating Corp., T.J. Maxx of CA, LLC, "The Secret Pantry" and various public
15 entities with a document entitled "60 Day Notice of Violation" (hereinafter "AG # 2017-02416
16 Notice") that provided the recipients with notice of alleged violations of Health & Safety Code §
17 25249.6 for failing to warn individuals in California of exposures to cadmium and Lead
18 contained in Ground Cinnamon, including but not limited to, "The Secret Pantry"; "Healing
19 Spices"; "Nature's Way to Ensure Overall Body Wellness"; "Net Wt. 8.3 oz."; Item #5001 106 -
20 Batch # 7933;" "TJ Maxx 85-4040-698853-000599-17-9" sold by Defendants. No other public
21 enforcer has commenced or diligently prosecuted the allegations set forth in the AG # 2017-
22 02416 Notice.

23 1.4.11 CAG represents that the Notices of Violation referenced in sections 1.4.1
24 through 1.4.10 above are all of the Notices of Violation that it served relating to the Covered
25 Products prior to the Effective Date. If additional Notices of Violation served prior to the
26 Effective Date relating to the Covered Products exist but are not identified above, they will be
27 deemed to be covered by this Consent Judgment and of no further force and effect.
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1 1.5 **Complaints.**

2 On July 20, 2017, CAG filed a Complaint for civil penalties and injunctive relief in
3 Alameda Superior Court, Case No. RG17868410. CAG filed a First Amended Complaint
4 ("FAC") against Defendants and others on January 30, 2018. The complaint and FAC alleged
5 among other things, that Defendants violated Proposition 65 by failing to give clear and
6 reasonable warnings of exposure to Lead from the Covered Products.

7 On April 30, 2018, CAG filed a Complaint for civil penalties and injunctive relief in
8 Alameda Superior Court, Case No. RG18902811. The complaint alleges, among other things,
9 that certain of the Defendants violated Proposition 65 by failing to give clear and reasonable
10 warnings of exposure to Lead from the Covered Products.

11 On June 21, 2018, CAG filed a Complaint for civil penalties and injunctive relief in Los
12 Angeles County Superior Court, Case No. BC 710959. The complaint alleges, among other
13 things, that certain of the Defendants violated Proposition 65 by failing to give clear and
14 reasonable warnings of exposure to Lead and cadmium from the Covered Products.

15 Alameda Superior Court Case No. RG17868410, Alameda Superior Court Case No. RG
16 18902811, and Los Angeles County Superior Court Case No. BC 710959 are collectively
17 referred to herein as the "Complaints."

18 The Parties desire to save the time, expense and resources that would otherwise be
19 unnecessarily spent litigating claims relating to Covered Products that are part of Alameda
20 Superior Court Case No. RG18902811 and Los Angeles County Superior Court Case No. BC
21 710959. Accordingly, immediately after the Parties stipulate to this proposed Consent Judgment
22 (and before it has been approved and entered), CAG will file dismissals without prejudice of the
23 claims relating to the Covered Products that are part of Alameda Superior Court Case No.
24 RG18902811 and Los Angeles County Superior Court Case No. BC 710959.
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1 **1.6 Consent to Jurisdiction**

2 For purposes of this Consent Judgment, the Parties stipulate that this Court has
3 jurisdiction over the allegations of violations contained in the Complaints and personal
4 jurisdiction over Defendants as to the acts alleged in the Complaints, that venue is proper in the
5 County of Alameda and that this Court has jurisdiction to enter this Consent Judgment as a full
6 settlement and resolution of the allegations contained in the Complaints and of all claims which
7 were or could have been raised by any person or entity based in whole or in part, directly or
8 indirectly, on the facts alleged therein or arising therefrom or related thereto.

9 **1.7 No Admission**

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

2 2.1 "Covered Products" means Covered Products sold by DVC Industries, Inc.
3 "Covered Products" are limited to those products described in Section 1.2.1, which were subject
4 to the "Notices of Violation" served by CAG.

5 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
6 Court.

7 2.3 "Lead" means lead and lead compounds.

8 2.4 "Notices" means all Notices of Violation relating to the Covered Products served
9 by CAG through the Effective Date, including without limitation Notice AG # 2017-02081,
10 Notice AG # 2017-01607, Notice AG # 2017-01537, Notice AG # 2017-01530, Notice AG #
11 2017-00542, Notice AG # 2017-00541, Notice AG # 2017-00539, Notice AG # 2017-00537,
12 AG # 2017-02383, and Notice AG # 2017-02416..

13 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
14 **WARNINGS.**

15 3.1 As of the Effective Date, Defendants shall not sell DVC Industries GROUND
16 CINNAMON that is offered for sale in California unless the products are reformulated to contain
17 less than 550 ppb of lead, shall not sell DVC Industries GROUND TURMERIC unless the
18 products are reformulated to contain less than 375 ppb of lead, and shall not sell DVC Industries
19 GROUND GINGER unless the products are reformulated to contain less than 720 ppb of lead.

20 3.2 For any Covered Products offered for sale in California still existing in
21 Defendants' inventory as of the Effective Date that do not comply with the lead levels set forth
22 in paragraph 3.1, Defendant shall place a Proposition 65 compliant warning. Any warning
23 provided pursuant to this section shall be affixed to the packaging of, or directly on, the Covered
24 Products, and be prominently placed with such conspicuousness as compared with other words,
25 statements, designs, or devices as to render it likely to be read and understood by an ordinary
26 individual under customary conditions before purchase or use. The warning shall state:
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2 **⚠ WARNING:** This product can expose you to chemicals including lead,
3 which is known to the State of California to cause cancer and birth defects or
4 other reproductive harm. For more information, go to www.P65Warnings.ca.gov

5 3.3 If modifications or amendments to Proposition 65 or its regulations after the
6 Effective Date are inconsistent with, or provide warning specifications or options different
7 from, the specifications in this Consent Judgment, Defendants may modify the content and
8 delivery methods of its warnings to conform to the modified or amended provisions of
9 Proposition 65 or its regulations.

10 **4. SETTLEMENT PAYMENT**

11 4.1 **Payment and Due Date:** Within 10 business days after: (a) the approval of the
12 Consent Judgment; and (b) Defendants' receipt of accurate 2018 W-9 forms for each of the
13 payment recipients set forth in Section 4 of this agreement, Defendants shall pay a total of one
14 hundred fifty thousand dollars and zero cents (\$150,000) in full and complete settlement of all
15 monetary claims by CAG related to the Notices, as follows:

16 4.1.1 **Civil Penalty:** Defendants shall issue separate checks totaling Eleven
17 thousand four hundred and thirty dollars (\$11,430) as penalties pursuant to Health & Safety
18 Code § 25249.12:

19 (a) Defendants will issue a check made payable to the State of California's
20 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of Eight
21 thousand five hundred and seventy-two dollars and fifty cents (\$8,572.50) representing 75% of
22 the total penalty and Defendants will issue a check to CAG in the amount of Two thousand eight
23 hundred and fifty-seven dollars and fifty cents (\$2,857.50) representing 25% of the total penalty.
24 and

25 (b) Separate 1099s shall be issued for each of the above payments:
26 Defendants will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
27 0284486) in the amounts of \$8,572.50. Defendants will also issue a 1099 to CAG c/o
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1 Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California
2 90212.

3 **4.1.2 Additional Settlement Payments:** Defendants shall make a separate
4 payment, in the amount of Eight thousand five hundred and seventy dollars (\$8,570) as an
5 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
6 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendants will
7 issue a separate check to CAG for the Additional Settlement Payment. CAG will use this
8 payment as follows, eighty five percent (85%) for fees of investigation, purchasing and testing
9 for Proposition 65 listed chemicals in various products, and for expert fees for evaluating
10 exposures through various mediums, including but not limited to consumer product,
11 occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of
12 hiring consulting and retaining experts who assist with the extensive scientific analysis necessary
13 for those files in litigation and to offset the costs of future litigation enforcing Proposition 65 but
14 excluding attorney fees; fifteen percent (15%) for administrative costs incurred during
15 investigation and litigation to reduce the public's exposure to Proposition 65 listed chemicals by
16 notifying those persons and/or entities believed to be responsible for such exposures and
17 attempting to persuade those persons and/or entities to reformulate their products or the source of
18 exposure to completely eliminate or lower the level of Proposition 65 listed chemicals including
19 but not limited to costs of documentation and tracking of products investigated, storage of
20 products, website enhancement and maintenance, computer and software maintenance,
21 investigative equipment, CAG's member's time for work done on investigations, office supplies,
22 mailing supplies and postage. Within 30 days of a request from the Attorney General, CAG shall
23 provide to the Attorney General copies of documentation demonstrating how the above funds
24 have been spent. CAG shall be solely responsible for ensuring the proper expenditure of such
25 additional settlement payment.
26

27 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendants shall pay
28 One hundred and thirty thousand dollars (\$130,000) to "Yeroushalmi & Yeroushalmi" as

1 reimbursement for reasonable investigation fees and costs, attorneys' fees, and any other costs
2 incurred as a result of investigating, bringing this matter to Defendant's attention, litigating, and
3 negotiating a settlement in the public interest.

4 4.2 Other than the payment to OEHHA described above, all payments
5 referenced in paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben
6 Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA
7 90212. The payment to OEHHA shall be delivered to Office of Environmental Health Hazard
8 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.
9 Concurrently with payment to OEHHA, Defendant shall provide CAG with written confirmation
10 that the payment to OEHHA was delivered.

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

12 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
13 behalf of itself and in the public interest and Defendants, of any alleged violation of Proposition
14 65 that was or could have been asserted by CAG against Defendants for failure to provide
15 Proposition 65 warnings of exposure to Lead from the Covered Products as set forth in the
16 Notices for the Covered Products, and fully resolves all claims that have been or could have been
17 asserted in this action up to and including the date of entry of Judgment for failure to provide
18 Proposition 65 warnings for the Covered Products regarding Lead. CAG, on behalf of itself and
19 in the public interest, hereby discharges Defendants and their parent companies, subsidiaries,
20 divisions, affiliates, suppliers, franchisees, licensors, licensees, customers, distributors,
21 wholesalers, retailers, all upstream, and all downstream entities in the distribution chain of any of
22 the Covered Products, and the predecessors, successors and assigns of any of them, and all of
23 their respective officers, directors, shareholders, members, managers, employees, agents
24 (collectively, "Released Parties"), sold by Defendants only from all claims up through the
25 Effective Date for violations of Proposition 65 based on exposure to based on exposure to Lead
26 from the Covered Products. Compliance with the terms of this Consent Judgment shall be
27 deemed to constitute compliance by the Released Parties with Proposition 65 regarding alleged
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1 exposures to Lead from the Covered Products. Nothing in this Section affects CAG's right to
2 commence or prosecute an action under Proposition 65 against any person other than Defendants
3 or Released Parties.

4 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
5 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
6 indirectly, any form of legal action and releases all claims, including, without limitation, all
7 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
8 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
9 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
10 fixed or contingent (collectively "Claims"), against the Released Parties arising from any
11 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
12 about exposure to Lead from the Covered Products. In furtherance of the foregoing, as to alleged
13 exposures to Lead from the Covered Products, CAG on behalf of itself only, hereby waives any
14 and all rights and benefits which it now has, or in the future may have, conferred upon it with
15 respect to Claims arising from any violation of Proposition 65 or any other statutory or common
16 law regarding the failure to warn about exposure to Lead from the Covered Products by virtue of
17 the provisions of section 1542 of the California Civil Code, which provides as follows:

18
19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
20 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
21 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
22 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
23 DEBTOR.

24 CAG understands and acknowledges that the significance and consequence of this waiver of
25 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
26 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
27 violation of Proposition 65 or any other statutory or common law regarding the failure to warn
28 about exposure to Lead from the Covered Products, including but not limited to any exposure to
or failure to warn with respect to exposure to Lead from the Covered Products, CAG will not be
able to make any claim for those damages against Released Parties. Furthermore, CAG

1 acknowledges that it intends these consequences for any such Claims arising from any violation
2 of Proposition 65 or any other statutory or common law regarding the failure to warn about
3 exposure to Lead from Covered Products as may exist as of the date of this release but which
4 CAG does not know exist, and which, if known, would materially affect their decision to enter
5 into this Consent Judgment, regardless of whether their lack of knowledge is the result of
6 ignorance, oversight, error, negligence, or any other cause.

7 **6. ENFORCEMENT OF JUDGMENT**

8 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
9 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
10 California, Alameda County, giving the notice required by law, enforce the terms and conditions
11 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
12 only after that Party first provides 60 days notice to the Party allegedly failing to comply with the
13 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
14 comply in an open and good faith manner.

15 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
16 proceeding to enforce the terms of this Consent Judgment, CAG shall serve a Notice of Violation
17 ("NOV") on the Defendant(s) alleged to be in violation of this Consent Judgment. The NOV
18 shall include for each of the Covered Products alleged to be in violation: the date(s) the alleged
19 violation(s) was observed and the location at which the Covered Product(s) were offered for sale
20 and shall be accompanied by photographs of all product labeling and all test data obtained by
21 CAG regarding the Covered Product(s), including an identification of the component(s) of the
22 Covered Product(s) that were tested.

23 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
24 alleged violation if, within 60 days of receiving such NOV, Defendant(s) serve a Notice
25 of Election ("NOE") that meets one of the following conditions:

26 (a) The Covered Product(s) identified in the NOV were shipped by
27 Defendants for sale in California before the Effective Date, or
28

1 (b) Since receiving the NOV Defendant(s) have taken corrective
2 action by either (i) requesting that its customers or stores in California, as applicable,
3 remove the Covered Product(s) from the lot or lots tested (as identified on the labeling
4 provided with the NOV) from sale in California and destroy or return the Covered
5 Product(s) to Defendants or vendor, as applicable, or (ii) providing a clear and reasonable
6 warning for the Covered Product(s) identified in the NOV pursuant to 27 Cal. Code Regs.
7 § 25603.

8 6.2.2 **Contested NOV.** Defendant(s) may serve an NOE informing CAG of its
9 election to contest the NOV within 30 days of receiving the NOV.

10 (a) In its election, Defendants may request that the sample(s) of
11 Covered Product(s) tested by CAG be subject to confirmatory testing at an EPA-
12 accredited laboratory of Defendant's(s) choosing.

13 (b) If the confirmatory testing establishes that the Covered Products do
14 not contain Lead in excess of the levels allowed in Section 3.1, above, CAG shall take no
15 further action regarding the alleged violation. If the testing does not establish compliance
16 with Section 3.1, above, Defendants may withdraw its NOE to contest the violation and
17 may serve a new NOE pursuant to Section 6.2.1.

18 (c) If Defendants do not withdraw an NOE to contest the NOV, the
19 Parties shall meet and confer for a period of no less than 30 days before CAG may seek
20 an order enforcing the terms of this Consent Judgment.

21 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
22 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
23 violation of Proposition 65 or this Consent Judgment.

24
25 **7. ENTRY OF CONSENT JUDGMENT**

26 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
27 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
28

1 Defendants waive their respective rights to a hearing or trial on the allegations of the Complaints
2 and FAC.

3 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
4 and any and all prior agreements between the parties merged herein shall terminate and become
5 null and void, and the actions shall revert to the status that existed prior to the execution date of
6 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
7 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
8 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
9 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
10 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

11 **8. MODIFICATION OF JUDGMENT**

12 8.1 This Consent Judgment may be modified only upon written agreement of the
13 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
14 any party as provided by law and upon entry of a modified Consent Judgment by the Court.
15 Defendants may move to modify the Consent Judgment on the basis that a judgment entered
16 after a trial on the merits in a matter where CAG is the plaintiff has resulted in the application of
17 lead levels at parts-per-billion that are different from the levels contained in Section 3.1 above.

18 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
19 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

21 **9. RETENTION OF JURISDICTION**

22 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
23 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

24 **10. DUTIES LIMITED TO CALIFORNIA**

25 10.1 This Consent Judgment shall have no effect on Covered Products sold by
26 Defendants outside the State of California.

27
28

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

2 11.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
3 California Attorney General so that the Attorney General may review this Consent Judgment
4 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
5 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
6 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
7 the Parties may then submit it to the Court for approval.

8 **12. ATTORNEY FEES**

9 12.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own
10 costs and attorney fees in connection with the Complaints, including without limitation this
11 action.

12 **13. ENTIRE AGREEMENT**

13 13.1 This Consent Judgment contains the sole and entire agreement and understanding
14 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
15 negotiations, commitments and understandings related hereto. No representations, oral or
16 otherwise, express or implied, other than those contained herein have been made by any party
17 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
18 deemed to exist or to bind any of the Parties.

19 **14. GOVERNING LAW**

20 14.1 The validity, construction and performance of this Consent Judgment shall be
21 governed by the laws of the State of California, without reference to any conflicts of law
22 provisions of California law.

23 14.2 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
25 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
26 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
27 rendered inapplicable by reason of law generally as to the Covered Products, then any Defendant
28

1 subject to this Consent Judgment may provide written notice to CAG of any asserted change in
2 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to
3 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
4 shall be interpreted to relieve a Defendant from any obligation to comply with any pertinent state
5 or federal law or regulation.

6 14.3 The Parties, including their counsel, have participated in the preparation of this
7 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
8 Consent Judgment was subject to revision and modification by the Parties and has been accepted
9 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
10 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
11 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
12 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
13 resolved against the drafting Party should not be employed in the interpretation of this Consent
14 Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15 **15. EXECUTION AND COUNTERPARTS**

16 15.1 This Consent Judgment may be executed in counterparts and by means of
17 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
18 one document and have the same force and effect as original signatures.

19 **16. NOTICES**

20 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
21 Class Mail.

22 If to CAG:

23
24 Reuben Yeroushalmi
25 YEROUSHALMI & YEROUSHALMI
26 9100 Wilshire Boulevard, Suite 240W
27 Beverly Hills, CA 90212
28 (310) 623-1926

1 If to DVC Industries, Inc. or The Spice Lab No. 1, Inc.:

2 John F. Walker
3 SACRO & WALKER LLP
4 701 N. Brand Boulevard, Suite 800
5 Glendale, California 91203

6 AND

7 Brett Cramer
8 DVC Industries, Inc.
9 4000 N. Dixie Highway, Ste 100
10 Pompano Beach, Florida 33064

11 **17. AUTHORITY TO STIPULATE**

12 17.1 Each signatory to this Consent Judgment certifies that he or she is fully
13 authorized by the party he or she represents to enter into this Consent Judgment and to
14 execute it on behalf of the party represented and legally to bind that party.

15 AGREED TO:

15 AGREED TO:

16 Date: August 16 2018

16 Date: Aug 14 2018

17 [Signature]
18 Name: Michael Marcus

17 [Signature]
18 Name: P. Brett CRAMER

19 Title: Director
20 CONSUMER ADVOCACY GROUP,
21 INC.

19 Title: V. President
20 DVC INDUSTRIES, INC.
21 THE SPICE LAB NO. 1, INC.

22
23 **IT IS SO ORDERED.**

24 Date: 10/24/18

25 [Signature]
26 JUDGE OF THE SUPERIOR COURT **JULIA A. SPAIN**
27

28

Case Title: ConsumerAdvocacy Gourp v. The Spice Lab Inc.
Case No. RG17-868410

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct:

I am a Deputy Clerk employed by the Alameda County Superior Court. I am over the age of 18 years. My business address is 24405 Amador Street, Hayward, California. I served the CONSENT JUDGMENT by placing copies in envelopes addressed as shown below and sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Yeroushalmi, Reuben
Yeroushalmi & Associates
9100 Wilshire Blvd. Ste. 240w
Beverly Hills, CA 90212

Walker, John
SNR Denton US LLP
525 Market Street 26th Floor
San Francisco, CA 94105-2708

Dated: 10/30/2018

Chad Finke
Executive Officer/Clerk of the Superior Court

By: *Danielle Labrecque*
Danielle Labrecque, Deputy Clerk