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8 Attorneys for Plaintiff,
9 CONSUMER ADVOCACY GROUP, INC.

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

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 Q MARKET & PRODUCE, INC., a
17 California Corporation;
18 OVERSEAS FOOD DISTRIBUTION, a
19 California Limited Liability Corporation;
20 OVERSEAS FOOD DISTRIBUTION, a
business entity form unknown; and DOES 1
through 10;

21 Defendants.

CASE NO. BC719925

CONSENT JUDGMENT [PROPOSED]

[Assigned for All Purposes to the Hon.
Barbara M. Scheper, Dept. 30]

Complaint: August 29, 2018
Trial Date: November 25, 2019

22
23 **1. INTRODUCTION**

24 1.1 This Consent Judgment is entered into by and between Plaintiff CONSUMER
25 ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) acting on behalf of itself and in the interest
26 of the public, and Defendant OVERSEAS FOOD DISTRIBUTION, LLC (“Defendant” or
27 “OFD”) with each a Party to the action and collectively referred to as “Parties.”
28

1 1.2 **Defendants and Products**

2 1.2.1 CAG alleges that OFD is a California limited liability corporation which
3 employs ten or more persons. For purposes of this Consent Judgment only, OFD is deemed a
4 person in the course of doing business in California and subject to the provisions of the Safe
5 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
6 25249.6 et seq. (“Proposition 65”).

7 1.2.2 CAG alleges that OFD manufactures, causes to be manufactured, sells, or
8 distributes certain Ground Cinnamon products in California.

9 1.3 **Chemicals of Concern**

10 1.3.1 Lead and Lead Compounds have been listed by the State of California as
11 known to cause cancer and birth defects or other reproductive harm.

12 1.4 **Notice of Violation**

13 1.4.1 On or about April 10, 2018, CAG served OFD and various public
14 enforcement agencies with a document titled “60-Day Notice of Intent to Sue for Violation of the
15 Safe Drinking Water and Toxic Enforcement Act of 1986” (“Notice”), AG # 2018-00545, that
16 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for
17 failing to warn individuals in California of exposures to lead and lead compounds, contained in
18 certain Ground Cinnamon products sold by OFD in California. No public enforcer has
19 commenced or diligently prosecuted the allegations set forth in the Notice.

20 1.5 **Complaint**

21 On August 29, 2018, CAG filed a Complaint against OFD for civil penalties and
22 injunctive relief (the “Complaint”) in Los Angeles County Superior Court, Case No. BC719925,
23 alleging that Defendants violated Proposition 65 for allegedly failing to give clear and reasonable
24 warnings of alleged exposure to lead and lead compounds in certain Ground Cinnamon products
25 OFD distributed and/or sold in California.

26 1.6 **Consent to Jurisdiction**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
28 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction

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

6 **1.7 No Admission**

7 This Consent Judgment resolves claims that are denied and disputed. The Parties enter
8 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
9 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment
10 shall be construed as an admission by the Parties of any material allegation in the Notice or the
11 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind,
12 including without limitation, any admission concerning any alleged or actual violation of
13 Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including
14 but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and
15 reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this
16 Consent Judgment, nor compliance with its terms, shall constitute or be construed as an
17 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, or of
18 fault, wrongdoing, or liability by OFD, its officers, directors, employees, or parent, subsidiary or
19 affiliated corporations, or be offered or admitted as evidence in any administrative or judicial
20 proceeding or litigation in any court, agency, or forum. Furthermore, nothing in this Consent
21 Judgment shall prejudice, waive or impair any right, remedy, argument, or defense the Parties
22 may have in any other or future legal proceeding, except as expressly provided in this Consent
23 Judgment.

24 **2. DEFINITIONS**

25 2.1 “Covered Products” means Ground Cinnamon, which includes but is not limited
26 to: “GOLCHIN GROUND CINNAMON; International Spices & Herbs; Net Wt 3 oz (85g);
27 “ALL NATURAL” “PREMIUM QUALITY” “Keep away from heat, sunlight & moisture”
28 “PACKED IN THE U.S.A.” “746646538315” “OFD” “Est. 1984 OVERSEAS FOOD

1 DISTRIBUTION” “Overseas Food Distribution LLC, Chatsworth, CA 91311” “Visit us at:
2 www.golchinproducts.com.” The Covered Products are limited to those sold by or supplied by
3 OFD and subject to the “Notice” served by CAG.

4 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
5 Court.

6 2.3 “Lead” means Lead and Lead compounds.

7 2.4 “Listed Chemical” means Lead.

8 2.5 “Notice” means Plaintiff’s April 10, 2018 Notice, AG # 2018-00545.

9 **3. INJUNCTIVE RELIEF & CLEAR AND REASONABLE WARNINGS**

10 3.1 After the Effective Date, OFD shall not sell, offer for sale in California, or ship
11 for sale in California any Covered Products unless the level of Lead does not exceed 550 parts
12 per billion (“ppb”). For any Covered Products that exceed those respective levels of Lead that are
13 sold in California after the Effective Date, OFD must provide a Proposition 65 compliant
14 warning for the Covered Products as set forth below. Any warning provided pursuant to this
15 section shall be affixed to the packaging of, or directly on, the Covered Products, and be
16 prominently placed with such conspicuousness as compared with other words, statements,
17 designs, or devices as to render it likely to be read and understood by an ordinary individual
18 under customary conditions before purchase or use. The equilateral triangle pictogram shall be
19 in yellow with a black exclamation mark; provided however, the pictogram may be in white
20 instead of yellow if the Covered Product label does not contain any color.. The Parties agree that
21 the following warning language shall constitute compliance with Proposition 65 with respect to
22 the alleged Listed Chemical in the Covered Products distributed and/or sold by the Defendants
23 after the Effective Date:

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

27 3.2 For any Covered Products still existing in Defendants’ inventory as of the
28 Effective Date, Defendant shall place a Proposition 65 compliant warning on them. Any

1 warning provided pursuant to this section shall be affixed to the packaging of, or directly on, the
2 Covered Products, and be prominently placed with such conspicuousness as compared with other
3 words, statements, designs, or devices as to render it likely to be read and understood by an
4 ordinary individual under customary conditions before purchase or use. The Parties agree that
5 the foregoing warning language shall constitute compliance with Proposition 65 with respect to
6 the alleged Listed Chemical in the Covered Products existing in Defendant’s inventory as of the
7 Effective Date.

8 **4. SETTLEMENT PAYMENT**

9 4.1 **Payment and Due Date:** Within ten (10) days of the Effective Date, Defendant
10 shall pay a total of seventy five thousand dollars and zero cents (\$75,000) in full and complete
11 settlement of any and all claims for civil penalties, damages, attorney’s fees, expert fees or any
12 other claim for costs, expenses or monetary relief of any kind for claims that were or could have
13 been asserted in the Notice or Complaint, as follows:

14 4.1.1 **Civil Penalty:** Defendant shall issue two separate checks totaling
15 \$8,572.00 as follows for alleged civil penalties pursuant to Health & Safety Code § 25249.12:

16 (a) Defendant will issue one check made payable to the State of
17 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of
18 \$6,429.00 representing 75% of the total civil penalty and Defendant will issue a second check to
19 CAG in the amount of \$2,143.00 representing 25% of the total civil penalty;

20 (b) Separate 1099s shall be issued for each of the above payments:
21 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
22 0284486) in the amount of \$6,429.00. Defendant will also issue a 1099 to CAG in the amount of
23 \$2,143.00 and deliver it to CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard,
24 Suite 240W, Beverly Hills, California 90212.

25 4.1.2 **Additional Settlement Payments:** OFD shall issue one check for
26 \$6,428.00 to “Consumer Advocacy Group, Inc.” pursuant to Health & Safety Code § 25249.7(b)
27 and California Code of Regulations, Title 11 § 3203(d). CAG will use this portion of the Total
28 Settlement Payment as follows, eighty five percent (85%) for fees of investigation, purchasing

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

18 **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall issue a
19 check in the amount of \$60,000.00 payable to "Yeroushalmi & Yeroushalmi" as complete
20 reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert
21 fees, and any and all other costs and expenses incurred as a result of investigating, bringing this
22 matter to the OFD's attention, litigating, negotiating a settlement in the public interest, and
23 seeking and obtaining court approval of this Consent Judgment.

24 **4.2** Other than the payment to OEHHA described above, all payments referenced in
25 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
26 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The
27 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard
28

1 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.
2 OFD shall provide written confirmation to CAG concurrently with payment to OEHHA.

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

4 5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on
5 behalf of itself and in the public interest, and OFD and their officers, directors, insurers,
6 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
7 companies, and their successors and assigns and all downstream entities in the distribution chain
8 of the Covered Products, and all the predecessors, successors and assigns of any of them, and all
9 of the respective officers, directors, shareholders, members, managers, employees, agents, and
10 the suppliers of the Covered Products only as to Covered Products sold to the Defendant
11 (collectively, “Released Parties”), of all claims for alleged or actual violations of Proposition 65
12 for exposures to the Listed Chemical from the Covered Products manufactured, distributed or
13 sold by OFD up through the Effective Date as set forth in the Notice and Complaint. Compliance
14 with the terms of this Consent Judgment shall be deemed to constitute compliance by the
15 Released Parties with Proposition 65 regarding alleged exposures to Listed Chemical from the
16 Covered Products.. Nothing in this Section affects CAG’s right to commence or prosecute an
17 action under Proposition 65 against any person other than Defendant or Released Parties.

18 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
19 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
20 indirectly, any form of legal action and releases all claims, including, without limitation, all
21 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
22 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
23 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,
24 fixed or contingent (collectively “Claims”), against the Released Parties arising from any actual
25 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the
26 Covered Products manufactured, distributed or sold by the Released Parties through the Effective
27 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from
28 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby

1 waives any and all rights and benefits which it now has, or in the future may have, conferred
2 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold
3 by the Released Parties through the Effective Date arising from any violation of Proposition 65
4 or any other statutory or common law regarding the failure to warn about exposure to the Listed
5 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California
6 Civil Code, which provides as follows:

7
8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

14 CAG understands and acknowledges that the significance and consequence of this waiver of
15 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
16 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
17 violation of Proposition 65 or any other statutory or common law regarding the Covered
18 Products manufactured, distributed or sold by the Released Parties through the Effective Date
19 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the
20 Covered Products, CAG will not be able to make any claim for those damages, penalties or other
21 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these
22 consequences for any such Claims arising from any violation of Proposition 65 or any other
23 statutory or common law regarding the failure to warn about exposure to the Listed Chemical
24 from the Covered Products as may exist as of the date of this release but which CAG does not
25 know exist, and which, if known, would materially affect their decision to enter into this Consent
26 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,
27 error, negligence, or any other cause.

28 **6. ENTRY OF CONSENT JUDGMENT**

6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
California Health & Safety Code section 25249.7(f). The Parties will act in good faith in order

1 to obtain the Court’s approval of this Consent Judgment. Upon entry of the Consent Judgment,
2 CAG and OFD waive their respective rights to a hearing and trial on the allegations in the
3 Complaint.

4 6.2 If this Consent Judgment is not approved in full by the Court: (a) this Consent
5 Judgment and any and all prior agreements between the Parties merged herein shall terminate
6 and become null and void, and the actions shall revert to the status that existed prior to the
7 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
8 thereof, or of the negotiation, documentation, or other part or aspect of the Parties’ settlement
9 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
10 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
11 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

12 **7. MODIFICATION OF JUDGMENT**

13 7.1 This Consent Judgment may be modified only upon written agreement of the
14 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
15 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

16 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

18 **8. RETENTION OF JURISDICTION**

19 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
20 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

21 **9. SERVICE ON THE ATTORNEY GENERAL**

22 9.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
23 California Attorney General so that the Attorney General may review this Consent Judgment
24 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the
25 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may
26 then submit it to the Court for approval.

27 **10. ATTORNEY FEES**

28 10.1 Except as specifically provided in Section 4.1.3, each Party shall bear its own

1 attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

2 **11. GOVERNING LAW**

3 11.1 The validity, construction, terms, and performance of this Consent Judgment shall
4 be governed by the laws of the State of California, without reference to any conflicts of law
5 provisions of California law.

6 11.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
7 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
8 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
9 rendered inapplicable by reason of law generally as to the Covered Products, then OFD may
10 provide written notice to CAG of any asserted change in the law, and shall have no further
11 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
12 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve OFD
13 from any obligation to comply with any other pertinent state or federal law or regulation.

14 11.3 The Parties, including their counsel, have participated in the preparation of this
15 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
16 Consent Judgment was subject to revision and modification by the Parties and has been accepted
17 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty
18 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a
19 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent
20 Judgment agrees that any statute or rule of construction providing that ambiguities are to be
21 resolved against the drafting Party should not be employed in the interpretation of this Consent
22 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

23 **12. EXECUTION AND COUNTERPARTS**

24 12.1 This Consent Judgment may be executed in counterparts and by means of
25 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
26 one document and have the same force and effect as original signatures.

27 **13. NOTICES**

28 13.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

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If to CAG:

Reuben Yeroushalmi, Esq.
Yeroushalmi & Yeroushalmi
9100 Wilshire Boulevard, Suite 240W
Beverly Hills, CA 90212

If to Defendant OVERSEAS FOOD DISTRIBUTION, LLC:

Steve Javidzad
Shawn Javidzad
Overseas Food Distribution, LLC
6095 Malburg Way
Vernon, CA 90058

14. **AUTHORITY TO STIPULATE**

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

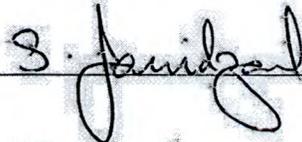
AGREED TO:

AGREED TO:

Date: 11/20, 2019

Date: Nov-19-, 2019





Name: Michael Marcus

Name: Steve Javidzad

Title: Director

Title: Member

CONSUMER ADVOCACY GROUP, INC.

OVERSEAS FOOD DISTRIBUTION, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT