

Richard Drury (CBN 163559)
Rebecca Davis (CBN 271662)
LOZEAU | DRURY LLP
410 12th Street, Suite 250
Oakland, CA 94607
Telephone: (510) 836-4200
Fax: (510) 836-4205
Email: richard@lozeaudrury.com
rebecca@lozeaudrury.com

Attorneys for Plaintiff
CENTER FOR FOOD SAFETY

Joshua G. Simon (CBN 264714)
CALL & JENSEN
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Telephone: (949) 717-3000
Fax: (949) 717-3100
Email: jsimon@calljensen.com

Attorney for Defendant
DR. PRAEGER'S SENSIBLE FOODS, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

CENTER FOR FOOD SAFETY, a non-profit
corporation,

Plaintiff,

vs.

DR. PRAEGER'S SENSIBLE FOODS, INC.,
a New Jersey corporation,

Defendant.

Case No. RG18915114

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 1, 2018

Trial Date: None set

1 **1. INTRODUCTION**

2 **1.1** On August 1, 2018, Plaintiff Center for Food Safety, a non-profit corporation, as
3 a private enforcer and in the public interest (“CFS”), initiated this action by filing a Complaint
4 for Injunctive Relief and Civil Penalties pursuant to the provisions of California Health and
5 Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Dr. Praeger’s Sensible Foods,
6 Inc. (“Dr. Praeger’s” or “Defendant”). CFS and Dr. Praeger’s are hereinafter referred to
7 individually as a “Party” or collectively as the “Parties.”

8 **1.2** Center for Food Safety is a 501 (c)(3) California non-profit corporation working
9 to protect human health and the environment by curbing the use of harmful food production
10 technologies and by promoting organic and other forms of sustainable agriculture. CFS has
11 diligently prosecuted this matter and is settling the case in the public interest.

12 **1.3** Defendant is a business entity that has employed ten or more persons at all times
13 relevant to this action, and qualifies as a “person in the course of business” within the meaning
14 of Proposition 65.

15 **1.4** The Complaint is based on allegations contained in CFS’s May 16, 2018 Notice
16 of Violations (the “Notice”) that was served on the California Attorney General, other public
17 enforcers, and Dr. Praeger’s. A true and correct copy of the Notice is attached hereto as Exhibit
18 A, and incorporated herein by reference. The products identified in the Notice are: (1) Dr.
19 Praeger’s Purely Sensible Foods Kids Broc Star! Broccoli Littles; (2) Dr. Praeger’s Purely
20 Sensible Foods Kids Kale & Potatoes – Oh My! Kale Littles; (3) Dr. Praeger’s Purely Sensible
21 Foods Kids It’s Easy Being Green! Spinach Littles; (4) Dr. Praeger’s Purely Sensible Foods
22 Kids Sweet Sunshine Sweet Potato Littles, and any private label variants of the products
23 supplied by Dr. Praeger’s (collectively, the “Covered Products”). More than 60 days have
24 passed since the Notice was served on the Attorney General, public enforcers, and Dr.
25 Praeger’s.

26 **1.5** CFS’s Notice and Complaint allege that ingestion of the Covered Products has
27 exposed and continues to expose persons in California to acrylamide (the “Listed Chemical”)
28 without first providing clear and reasonable warnings in violation of California Health and

1 Safety Code section 25249.6. Dr. Praeger's denies all material allegations contained in the
2 Notice and Complaint, asserts numerous affirmative defenses to the allegations of violations,
3 and specifically denies the Covered Products required a Proposition 65 warning or otherwise
4 cause harm to any person.

5 **1.6** The Parties have entered into this Consent Judgment in order to settle,
6 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.

7 **1.7** Nothing in this Consent Judgment shall constitute or be construed as an
8 admission by any of the Parties, of any fact, issue of law, or violation of law at any time, for any
9 purpose. Nothing in this Consent Judgment shall be construed as giving rise to any
10 presumption or inference of admission or concession or waiver of any defense by the Parties as
11 to any fault, wrongdoing or liability, including without limitations, any alleged violation of
12 Proposition 65.

13 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have,
15 individually or jointly, in any current or future legal proceeding unrelated to these proceedings.
16 This paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties
17 of any Party with respect to this Consent Judgment.

18 **1.9** On December 11, 2018, the Parties participated in arm's-length mediation with the
19 Honorable James Warren (Ret.) in San Francisco, California. At the conclusion of mediation, the
20 Parties reached agreement on the material terms of settlement.

21 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered as
22 a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 **2.1** For purposes of this Consent Judgment only, the Parties stipulate that this Court
25 has subject matter jurisdiction over the allegations of violations contained in the Complaint, that
26 this court has personal jurisdiction over Dr. Praeger's as to the acts alleged in the Complaint,
27 that venue is proper in Alameda County, and that this Court has jurisdiction to enter this
28 Consent Judgment as a full and final resolution of all claims up through and including the

Effective Date that were or could have been asserted in this action based on the facts alleged in the Notice and Complaint.

3. DR. PRAEGER'S DUTIES

3.1 Reformulation of Covered Products. Beginning six (6) months after the Effective Date (the "Compliance Date"), Dr. Praeger's shall be permanently enjoined from manufacturing or causing to be manufactured for sale in the State of California, purchasing, distributing into the State of California, or directly selling in the State of California, any of the Covered Products that exceeds the following acrylamide concentration limits (the "Acrylamide Levels") unless it meets the warning requirements under Section 3.3. Such concentrations shall be determined by use of a test performed by an accredited laboratory using either GC/MS (Gas Chromatograph/Mass Spectrometry), LC-MS/MS (Liquid Chromatograph-Mass Spectrometry) or any other testing method agreed upon by the Parties. Compliance with Acrylamide Levels shall be determined after cooking each Covered Product as if prepared for consumption in accordance with the instructions on the packaging label of that Covered Product.

3.1.1 The average acrylamide concentration of the Covered Product as prepared per cooking instructions on the Covered Product's packaging, shall not exceed, on average, 250 parts per billion ("ppb") by weight (the "Average Level"). The Average Level is determined by randomly selecting and testing at least 1 sample from 5 different lots of the Covered Product (or the maximum number of lots available for testing if less than 5).

3.1.2 The acrylamide concentration of any individual unit prepared per cooking instructions on the Covered Product's packaging, shall not exceed 300 ppb by weight (the "Unit Level"), based on a representative composite sample taken from the individual unit being tested.

3.2 Warning

3.2.1 If Dr. Praeger's is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning"):

WARNING: Consuming this product can expose you to chemicals including acrylamide which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov/food.

1
2 or

3 **WARNING:** Cancer – www.P65Warnings.ca.gov

4 **3.2.2** The Warning shall appear on the label of each Covered Product. If the
5 Warning is provided on the label, it must be set off from other surrounding information and
6 enclosed in a box. Alternatively, for Covered Products sold over the internet, the Warning shall
7 appear on the checkout page when a California delivery address is indicated for any purchase of a
8 Covered Product. An asterisk or other identifying method must be utilized to identify which
9 products on the checkout page are subject to the Warning. In no event shall any internet or website
10 Warning be contained in or made through a link.

11 The Warning shall be at least the same size as the largest of any other health or safety
12 warnings also appearing on the website or on the label or containers of the Covered Products'
13 packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No
14 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
15 average lay person shall accompany the Warning.

16 Dr. Praeger's must display the above Warning with such conspicuousness, as compared
17 with other words, statements or designs on the label or container, or on its website, if applicable,
18 to render the Warning likely to be read and understood by an ordinary individual under customary
19 conditions of purchase or use of the product.

20 If subsequently enacted changes to Proposition 65 or its implementing regulations permit
21 the use of additional or different information on any warning, any Party may seek to modify the
22 warning set forth in this Section pursuant to Section 9 of this Stipulated Consent Judgment.

23 **3.3 Testing and Quality Control Methodology**

24 **3.3.1** Beginning within one year of the Compliance Date, and for a period of
25 three years thereafter, Dr. Praeger's shall arrange for Acrylamide testing of the Covered
26 Products at least once per year by arranging for testing of five randomly selected samples of
27 each of the Covered products to determine the Average Level of the samples, as well as the Unit
28 Level of each individual sample. The samples of each Covered Product shall be tested after the
Covered Product has been prepared per cooking instructions on the Covered Product's

1 packaging. If tests conducted pursuant to this Section demonstrate that no Warning is required
2 for a Covered Product during each of three consecutive years, then the testing requirements of
3 this Section will no longer be required as to that Covered Product.

4 **3.3.2** All testing pursuant to this Consent Judgment shall be performed by an
5 independent third party laboratory certified by the California Environmental Laboratory
6 Accreditation Program or an independent third-party laboratory that is registered with the
7 United States Food & Drug Administration.

8 **3.3.3** Nothing in this Consent Judgment shall limit Dr. Praeger's ability to
9 conduct, or require that others conduct, additional testing of the Covered Products, including the
10 raw materials used in their manufacture.

11 **3.3.4** Beginning on the Compliance Date and continuing for a period of three
12 years, Dr. Praeger's shall retain all test results and documentation from the date of each test.
13 Within thirty (30) days of CFS' written request (which shall not be made more than once per
14 year), Dr. Praeger's shall deliver lab reports obtained pursuant to Section 3.3.1 to CFS.

15 **4. SETTLEMENT PAYMENTS**

16 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
17 additional settlement payments, attorney's fees, and costs, Dr. Praeger's shall make, or have
18 made on its behalf, a total payment of \$147,350.00 ("Total Settlement Amount") to CFS in six
19 periodic check payments (the "Periodic Payments") made payable to Lozeau Drury LLP and
20 delivered to Lozeau Drury LLP, 410 12th Street, Suite 250, Oakland, California, 94607
21 according to the following payment schedule ("Due Dates"):

- 22 • Payment 1 -- \$49,117 postmarked within 5 days of the Effective Date
- 23 • Payment 2 -- \$19,646.60 postmarked within 35 days of the Effective Date
- 24 • Payment 3 -- \$ 19,646.60 postmarked within 65 days of the Effective Date
- 25 • Payment 4 -- \$ 19,646.60 postmarked within 95 days of the Effective
26 Date
- 27 • Payment 5 -- \$ 19,646.60 postmarked within 125 days of the Effective
28 Date

- Payment 6 -- \$ 19,646.60 postmarked within 155 days of the Effective Date ("Final Payment Date")

4.2 Allocation of Payments. The Total Settlement Amount shall be allocated as follows:

4.2.1 Civil Penalty. \$49,789.50 shall be considered a civil penalty pursuant to California Health and Safety Code § 25249.7(b)(1). CFS shall remit 75% (\$37,560.50) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). CFS will retain the remaining 25% (\$12,229.00) of the civil penalty.

4.2.2 Additional Settlement Payment. \$37,560.50 shall be considered an Additional Settlement Payment ("ASP") pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. These funds shall be distributed as follows:

4.2.3 Center for Food Safety. \$12,447.37 of the ASP funds shall be distributed to Plaintiff CFS. CFS will use the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. These activities are detailed below and support CFS's overarching goal of curbing the use of harmful food production technologies. CFS intends to restrict the use of ASP funds received from the Consent Judgment for the following purposes:

4.2.4 ASP funds will be used by CFS to support CFS programs and activities that seek to educate the public about the health and environmental impact of toxic chemicals such as acrylamide in food, and conduct advocacy work to reduce the amount of toxic chemicals in food. ASP funds may also be used by CFS to obtain, analyze, and test additional food products that may contain acrylamide and other toxic chemicals and are sold to California consumers, and investigate those companies that are manufacturing and selling those products that violate Proposition 65. CFS's use of the ASP funds will have a direct and primary effect within the State of California because its education and advocacy campaigns will be focused on California consumers and products sold and distributed in California. California Consumers will

1 also directly and primarily benefit from their education and/or elimination of exposure to
2 acrylamide and/or other toxic chemicals in food products by providing clear and reasonable
3 warnings to California consumers prior to ingestion of the products.

4 **4.2.5 Clean Label Project.** \$25,113.13 of the ASP funds shall be distributed to
5 the Clean Label Project ("CLP"), a nonprofit focused on health and transparency in consumer
6 product labeling. CLP will use the ASP for activities that address the same public harm as
7 allegedly caused by Defendant in this matter. These activities are detailed below and support
8 CLP's overarching goal of health and transparency in consumer product labeling and its vision is
9 to reduce contamination across all consumer products. CLP will restrict use of the ASP received
10 from this Consent Judgment to the following purposes:

11 **4.2.6** ASP funds will be used by CLP for research and educational purposes
12 associated with reducing or remediating exposures to acrylamide and other toxic chemicals
13 contained in consumer products sold in California and/or to increase consumer awareness of the
14 health hazards posed by acrylamide and other toxic chemicals in consumer products sold in
15 California and how such hazards may be mitigated. Specifically, CLP will use the ASP funds to
16 support its activities that educate the public about the potential harms of acrylamide and other
17 toxic chemicals in food and ways to reduce those harms. As part of these educational efforts,
18 CLP will create infographics that explain in an easy to understand manner the hazards of
19 acrylamide and other toxic chemicals, and ways to reduce those hazards. In addition, CLP will
20 also present this information through webinars for California residents. In addition, CLP will
21 use the ASP funds to test additional products and create a California-specific webpage analyzing
22 toxic chemical levels of products sold in California.

23 **4.2.7** CLP's activities will have a direct and primary effect within the State of
24 California because the funds will be used to educate California consumers about the harms of
25 acrylamide and other toxic contaminants contained in foods, and ways to reduce those hazards.
26 CLP's activities will also have a direct and primary effect within the State of California because
27 CLP will create a web page that specifically analyzes Proposition 65 toxic contaminants in foods
28 and other products that are sold in California.

1 **4.2.8** CLP shall be fully accountable in that it will maintain adequate records to
2 document and will be able to demonstrate how the ASP funds will be spent and can assure that
3 the funds are being spent only for the proper, designated purposes described in this Consent
4 Judgment. CLP shall provide the Attorney General, within thirty days of any request, copies of
5 documentation demonstrating how such funds have been spent.

6 **4.2.9 Attorneys' Fees.** \$58,350.00 shall be distributed to Lozeau Drury LLP as
7 reimbursement of CFS's attorney's fees and reasonable costs incurred in bringing this action.
8 \$1,650.00 shall be distributed to CFS as reimbursement to CFS for reasonable attorneys' fees
9 incurred in bringing this action. Except as explicitly provided herein, each Party shall bear its
10 own fees and costs.

11 **5. ENFORCEMENT**

12 **5.1** In the event that Dr. Praeger's fails to remit the Total Settlement Amount
13 owed under Section 4 of this Consent Judgment on or before the Final Payment Date, CFS shall
14 provide written notice of the delinquency to Dr. Praeger's via electronic mail. If Dr. Praeger's
15 fails to deliver the Total Settlement Amount within five (5) business days from the written
16 notice, Dr. Praeger's shall be deemed to be in material breach of its obligations under this
17 Consent Judgment, and the Total Settlement Amount shall accrue interest on the outstanding
18 balance calculated from the date such outstanding payment was due at the statutory judgment
19 interest rate provided in the California Code of Civil Procedure section 685.010. Dr. Praeger's
20 agrees to pay CFS's reasonable attorney's fees and costs for any efforts to collect the payment
21 due under this Consent Judgment.

22 **5.2** The Parties agree that any legal action to enforce this Consent Judgment shall
23 be brought in Alameda County Superior Court. The Parties agree that Alameda County
24 Superior Court has subject matter jurisdiction over the enforcement of this Consent Judgment
25 and personal jurisdiction over Dr. Praeger's and that venue is proper in Alameda County.

26 **5.3** If CFS purchases a Covered Product in California that has a best-by or sell-by
27 (or equivalent) date or other code that reflects that the Covered Product was manufactured by or
28 for Dr. Praeger's on or after the Compliance Date, or if the manufacture date is not apparent from

1 the label, CFS shall inform Dr. Praeger's in a reasonably prompt manner, including information
2 sufficient to permit Dr. Praeger's, including but not limited to testing results, to identify the alleged
3 violation of this Consent Judgment. Dr. Praeger's shall, within thirty (30) days following such
4 notice, provide CFS with documentation that Dr. Praeger's is in compliance with the terms of this
5 Consent Judgment.

6 **5.4** If a dispute arises with respect to either Party's compliance with the terms of
7 this Consent Judgment entered after its entry by the Court, the Parties seeking compliance of
8 another Party shall make a good faith attempt to resolve the dispute by conferring with the other
9 Party in person, by telephone, or by written communication before seeking relief from the Court.
10 Any Party that fails to meet and confer or otherwise attempt in good faith to resolve any dispute
11 arising under this Consent Judgment prior to seeking judicial enforcement, shall forfeit any
12 attorney's fees and cost to which that Party may otherwise be entitled.

13 **5.5** In the event Proposition 65 is repealed, amended or found to be pre-empted,
14 and as a result of such repeal or amendment the Covered Products are no longer subject to
15 Proposition 65, then Dr. Praeger's shall have no further obligation pursuant to this Consent
16 Judgment with respect to the Covered Products.

17 **6. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

18 **6.1** This Consent Judgment is a full, final, and binding resolution between CFS,
19 on behalf of itself and in the public interest, and Dr. Praeger's and its respective officers,
20 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
21 franchisees, licensees, customers, distributors, wholesalers, retailers, and all other upstream and
22 downstream entities in the distribution chain of any Covered Product, and the predecessors,
23 successors, and assigns of any of them (collectively, "Released Parties"). CFS hereby fully
24 releases and discharges the Released Parties from any and all claims, actions, causes of action,
25 suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could
26 have been asserted from the handling, use, or consumption of the Covered Products, as to any
27 alleged violation of Proposition 65 or its implementing regulations arising from the failure to
28

1 provide Proposition 65 warnings on the Covered Products regarding lead and cadmium up to
2 and including the Effective Date.

3 **6.2** This Consent Judgment is a full, final, and binding resolution between CFS,
4 on behalf of itself and in the public interest, and Dr. Praeger's and its officers, directors,
5 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
6 franchisees, licensees, customers, manufacturers, distributors, wholesalers, retailers, and all
7 other upstream and downstream entities in the distribution chain of any Covered Product, and
8 the predecessors, successors, and assigns of any of them (collectively, "Released Parties").
9 CFS, on behalf of itself and in the public interest, hereby fully releases and discharges the
10 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
11 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the
12 handling, use, or consumption of the Covered Products, as to any alleged violation of
13 Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65
14 warnings on the Covered Products regarding acrylamide for Covered Products manufactured,
15 distributed, or sold prior to the Compliance Date.

16 **6.3** CFS and Dr. Praeger's each waive and release any and all claims they may
17 have against each other for all actions or statements made or undertaken in the course of seeking
18 or opposing enforcement of Proposition 65 in connection with the claims in the Notice and
19 Complaint with respect to Covered Products manufactured, distributed, or sold prior to the
20 Compliance Date, provided, however, that nothing in Section 5 shall affect or limit any Party's
21 right to seek to enforce the terms of this Consent Judgment.

22 **6.4** It is possible that other claims not known to the Parties, arising out of the
23 facts alleged in the Notices and Complaint, and relating to the Covered Products, will develop
24 or be discovered. CFS on behalf of itself only, and Dr. Praeger's on behalf of itself only,
25 acknowledge that this Consent Judgment is expressly intended to cover and include all such
26 claims up through and including the Effective Date, including all rights of action therefore. CFS
27 and Dr. Praeger's acknowledge that the claims released in Sections 6.1 and 6.2 above may
28

1 include unknown claims, and nevertheless waive California Civil Code section 1542 as to any
2 such unknown claims. California Civil Code section 1542 reads as follows:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
4 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR
5 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
6 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
7 THE DEBTOR.

8 CFS on behalf of itself only, and Dr. Praeger's on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **6.5** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to
13 acrylamide in the Covered Products as set forth in the Notice and Complaint.

14 **6.6** Nothing in this Consent Judgment is intended to apply to any occupational or
15 environmental exposures arising under Proposition 65, nor shall it apply to any of Dr. Praeger's
16 products other than the Covered Products.

17 **7. MOTION FOR COURT APPROVAL**

18 **7.1** Upon execution of this Consent Judgment by the Parties, CFS shall notice,
19 prepare, and file a Motion for Approval & Entry of Consent Judgment pursuant to 11 California
20 Code of Regulations §3000, *et seq.* This motion shall be served upon Dr. Praeger's and upon
21 the California Attorney General's Office. Dr. Praeger's and CFS shall use their best efforts to
22 support entry of this Consent Judgment in the form submitted to the Court for approval

23 **7.2** If, after service of the Motion for Approval & Entry of Consent Judgment,
24 the California Attorney General objects in writing to any term in this Consent Judgment or files
25 any opposition to the motion, the Parties shall use their best efforts to resolve the concern in a
26 timely manner prior to the hearing on the motion.

27 **7.3** This Consent Judgment shall be effective only after it has been entered by the
28 court. Otherwise, it shall be of no force or effect and cannot be used in any other proceeding for
any purpose.

1 **8. RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
3 Consent Judgment.

4 **9. MODIFICATION OF CONSENT JUDGMENT**

5 **9.1** This Consent Judgment after its entry by the Court may be modified only upon
6 written agreement of the Parties and upon entry of a modified Consent Judgment by the Court
7 thereon.

8 **9.2** If Dr. Praeger's seeks to modify this Consent Judgment under Section 9.1, then
9 Dr. Praeger's must provide written notice to CFS of its intent ("Notice of Intent"). If CFS seeks
10 to meet and confer regarding the proposed modification in the Notice of Intent, then CFS must
11 provide written notice to Dr. Praeger's within thirty (30) days of receiving the Notice of Intent. If
12 CFS notifies Dr. Praeger's in a timely manner of CFS's intent to meet and confer, then the Parties
13 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
14 or via telephone within thirty (30) days of CFS's notification of its intent to meet and confer.
15 Within thirty (30) days of such meeting, if CFS disputes the proposed modification, CFS shall
16 provide to Dr. Praeger's a written basis for its position. The Parties shall continue to meet and
17 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it
18 become necessary, the Parties may agree in writing to different deadlines for the meet-and-confer
19 period.

20 **9.3** In the event that Dr. Praeger's initiates or otherwise requests a modification
21 under Section 9.1, and the meet and confer process leads to a joint motion or application for a
22 modification of the Consent Judgment, Dr. Praeger's shall reimburse CFS its costs and reasonable
23 attorney's fees for the time spent in the meet-and-confer process and filing and arguing the motion
24 or application. CFS shall not be reimbursed for costs or attorney's fees for an uncontested motion,
25 or for a ministerial motion (such as a change in name or contact information) or if CFS does not
26 expend more than four (4) hours of attorney time on the joint motion. In the event that CFS
27 initiates or otherwise requests a modification under Section 9.1, and the meet and confer process
28 leads to a joint motion or application for a modification of the Consent Judgment, CFS shall

1 reimburse Dr. Praeger's its costs and reasonable attorney's fees for the time spent in the meet-
2 and-confer process and filing and arguing the motion or application. Dr. Praeger's shall not be
3 reimbursed for costs or attorney's fees for an uncontested motion, or for a ministerial motion
4 (such as a change in name or contact information) or if Dr. Praeger's does not expend more than
5 four (4) hours of attorney time on the joint motion. Where the meet-and-confer process does not
6 lead to a joint motion or application in support of a modification of the Consent Judgment, then
7 either Party may seek judicial relief on its own. In any such contested court proceeding, CFS may
8 seek costs and any attorney's fees incurred in opposing the motion pursuant to California Code
9 of Civil Procedure section 1021.5.

10 **10. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

11 In the event that, after entry of this Consent Judgment in its entirety, any of the provisions
12 of this Consent Judgment are held by a court to be unenforceable, the validity of the remaining
13 enforceable provisions shall not be adversely affected.

14 **11. GOVERNING LAW**

15 The terms and conditions of this Consent Judgment shall be governed by and construed in
16 accordance with the laws of the State of California.

17 **12. DRAFTING**

18 The terms of this Consent Judgment have been reviewed by the respective counsel for each
19 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
20 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
21 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
22 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
23 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
24 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
25 equally in the preparation and drafting of this Consent Judgment.

26 **13. ENTIRE AGREEMENT, AUTHORIZATION**

27 **13.1** This Consent Judgment contains the sole and entire agreement and
28 understanding of the Parties with respect to the entire subject matter herein, and any and all prior

1 discussions, negotiations, commitments, and understandings related hereto. No representations,
2 oral or otherwise, express or implied, other than those contained herein have been made by any
3 Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
4 deemed to exist or to bind any Party.

5 **13.2** Each person signing this Consent Judgment on behalf of a Party certifies that
6 he or she is fully authorized by that Party to stipulate to the terms and conditions of this Consent
7 Judgment on behalf of that Party, to enter into and execute this Consent Judgment on behalf of that
8 Party, and to legally bind that Party to this Consent Judgment.

9 **14. EXECUTION AND COUNTERPARTS**

10 This Consent Judgment may be executed in counterparts, which taken together shall be
11 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid
12 as the original signature.

13 **15. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
16 divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,
17 successors, and assigns. This Consent Judgment shall have no
18 application to Covered Products which are distributed or sold exclusively outside the State of
19 California and which are not used by California consumers.

20 **16. PROVISION OF NOTICE**

21 All notices required to be given to either Party to this Consent Judgment by the other shall
22 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via
23 email may also be sent.

24 **For Center for Food Safety:**

25 Adam Keats
26 Center for Food Safety
27 303 Sacramento St., 2nd Floor
28 San Francisco, CA 94111
Email: AKeats@centerforfoodsafety.org

1 With a copy to:

2 Rebecca Davis
3 LOZEAU | DRURY LLP
4 410 12th Street, Suite 250
5 Oakland, CA 94607
6 Ph: 510-836-4200
7 Email: rebecca@lozeaudrury.com

8 **For Dr. Praeger's:**

9 Joshua G. Simon (CBN 264714)
10 CALL & JENSEN
11 610 Newport Center Drive, Suite 700
12 Newport Beach, CA 92660
13 P: 949.717.3000
14 Email: jsimon@calljensen.com

15 With a copy to:

16 ABHISHEK K. GURNANI
17 AMIN TALATI UPADHYE, LLP
18 100 S. Wacker Drive, Suite 2000
19 Chicago, IL 60606
20 Telephone: 312-466-1033
21 Email: abhishek@amintalati.com

22 Jeffrey D. Cohen
23 Dr. Praeger's Sensible Foods, Inc.
24 Nine Boumar Place
25 Elmwood Park, NJ 07407
26 P: 201.703.1300
27 Email: jeff@drpraegers.com

28 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF
CONSENT JUDGMENT**

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to:

(1) Find that the terms and provisions of this Consent Judgment represent a fair and equitable settlement of all matters raised by the allegations of the Complaint that the matter has been diligently prosecuted, and that the public interest is served by such settlement; and

(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: _____, 201

CENTER FOR FOOD SAFETY

By: _____
Its: _____

Dated: March 19, 2019

DR. PRAEGER'S SENSIBLE FOODS, INC.

By: JEFFREY D. COHEN
Its: EVP

APPROVED AS TO FORM:

Dated: _____, 2019

LOZEAU | DRURY LLP

By: _____
Rebecca L. Davis
Attorneys for Plaintiff Center for Food Safety

Dated: March 20, 2019

CALL & JENSEN

By: Joshua G. Simon
Joshua G. Simon
Attorney for Defendant Dr. Praeger's Sensible Foods, Inc.

(2) Make the findings pursuant to California Health and Safety Code section 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: MARCH 20, 2019

CENTER FOR FOOD SAFETY

By: Adam Keats
Its: AUTHORIZED REPRESENTATIVE

Dated: _____, 2019

DR. PRAEGER'S SENSIBLE FOODS,
INC.

By:
Its:

APPROVED AS TO FORM:

Dated: MARCH 20, 2019

LOZEAU | DRURY LLP

By: Rebecca L. Davis
Attorneys for Plaintiff Center for Food Safety

Dated: _____, 2019

CALL & JENSEN

By: _____
Joshua G. Simon
Attorney for Defendant Dr. Praeger's Sensible
Foods, Inc.

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Judge of the Superior Court