

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ORGANIC SPICES, INC.

Consumer Advocacy Group, Inc. (“CAG”) and Organic Spices, Inc., Organic Spices dba Spicely Organics (hereinafter referred to as “Organic”), (CAG and Organic collectively referred to as, the “Parties”) enter into this agreement (“Settlement Agreement”) for the purpose of avoiding prolonged and costly litigation to settle CAG’s allegations that Organic violated Proposition 65. The effective date of this Settlement Agreement shall be August 21, 2019, provided it is fully executed by all Parties hereto (the “Effective Date”).

**1.0 Introduction**

1.1 CAG is a California-based entity that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.

1.2 Organic previously sold, at various times, Ground Ginger, including but not limited to “Organic Ginger Ground”; “USDA Organic”; “Certified Gluten Free”; “Non GMO Verified”; “Vegan”; “Sugar Free, Salt Free”; “Spicely Organic Spices ®”; “8 26998 04006 0”

(referred to throughout as the “Covered Products”). The Covered Products are limited to those manufactured, and/or sold, and/or distributed and/or given away by Organic only.

1.3 CAG alleges that Covered Products contain Lead and Lead Compounds (“Lead”), and that Organic did not provide a required warning in compliance with the California Safe Drinking Water and Toxic Enforcement Act (*Cal. Health & Safety Code* § 25249.5, *et seq.* (“Proposition 65”)). Organic denies CAG’s material allegations.

1.4 On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and male reproductive toxicity. On October 1, 1992, the Governor of California added Lead to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of lead and lead compounds to the list of chemicals known to the State to cause cancer and reproductive toxicity, lead and lead compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.

1.5 Lead is referred to hereinafter as the “Listed Chemical”.

1.6 On or about February 26, 2019 (Attorney General Notice #2019-00412), CAG served, Organic, Spicely Organics, Albertsons Companies, Inc., The Vons Companies, Inc., and Pavilions, and certain relevant public enforcement

agencies with documents entitled “Sixty-Day Notice Of Intent To Sue For Violations Of The Safe Drinking Water And Toxic Enforcement Act of 1986” regarding Covered Products containing the Listed Chemical.

1.7 The Sixty-Day Notice (referred to as “Notice”) alleged that Organic and the other noticed parties violated Proposition 65 by failing to warn consumers in California that use of Covered Products exposes persons to the Listed Chemical.

1.8 The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65 (the “Dispute”).

1.9 By execution of this Settlement Agreement, the Parties do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission against interest by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission against interest or evidence of fault, wrongdoing, or liability by Organic, its officers, directors, employees, or parents, subsidiaries or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG or Organic may have against one another in any other pending

legal proceeding as to allegations unrelated to the Dispute or claims released herein.

## **2.0 Release**

This Settlement Agreement is a full, final, and binding release and resolution between CAG, acting in its individual capacity, on the one hand, and (a) Organic, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, attorneys, predecessors, successors, and assigns (collectively “Releasees”) and (b) all entities to whom Releasees directly or indirectly provide, distribute, give away or sell the Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including, without limitation, Albertson’s Companies, Inc., Pavilions, The Vons Companies (collectively, “Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising only in connection with the Covered Products manufactured, shipped, and/or otherwise distributed on or prior to the Effective Date, even if sold or otherwise distributed by Downstream Releasees after the Effective Date.

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives and releases with respect to the Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action,

including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) (collectively "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted in respect of any Covered Products sold up to or on the Effective Date, only to the extent that such Claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Covered Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Covered Products.

CAG acknowledges that it is familiar with Section 1542 of Civil Code, which provides as follows:

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

CAG, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such

rights or benefits pertaining to the released matters. The release in this section shall come into effect on the Effective Date but may be revoked by CAG after the due dates upon notice to Organic if the full amount of payments set forth in Section 4.0 below are not paid in full.

### **3.0 Organic's Duties**

3.1 Organic agrees, promises, and represents that within three months after the Effective Date Organic shall reformulate any Covered Products manufactured three or more months after the Effective Date and offered for sale in California to a point where the level of Lead in the Covered Products does not exceed 720 parts per billion ("ppb") or provide a warning as set out in Section 3.2.


3.2 Organic agrees, promises, and represents that, within three months of the Effective Date, to the extent it manufactures and ships or sells any Covered Products that have not been reformulated, it will provide warnings on such Covered Products that comply with Proposition 65. The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. The Parties agree that product labeling by Organic in accordance with this Settlement Agreement and stating (at Organic's option) one of the three forms of warning below:

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

or

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

or

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

shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products for any Covered Products manufactured three or more months after the Effective Date that have not been reformulated and were or are directly or indirectly distributed, given away and/or directly or indirectly sold by Releasees or Downstream Releasees after the Effective Date.

#### **4.0 Payments**

Organic agrees, to pay a total of fifty-two thousand dollars (\$52,000.00) by separate checks apportioned as follows:

4.1.1 Penalty: Organic shall issue two separate checks for a total amount of twelve thousand dollars (\$12,000.00) as follows: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of nine thousand dollars, (\$9,000.00), representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of three thousand dollars (\$3,000.00), representing 25% of the total penalty. OEHHA's check shall be delivered to Office of Environmental Health Hazard Assessment P.O.

Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics. CAG's check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. Additionally, two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010 Sacramento, CA 95812-4010, Attn: Mike Gyurics (EIN: 68-0284486) in the amount of \$9,000.00. The second 1099 shall be issued in the amount of \$3,000.00 to CAG and delivered to Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, CA 90212.

4.1.2 Attorneys' Fees and Costs: forty thousand dollars (\$40,000.00) of such payment shall be paid to Yeroushalmi & Yeroushalmi, as CAG's attorneys, for reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Organic's attention. The check shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212. By the Effective Date, Yeroushalmi & Yeroushalmi shall provide Organic with its Employer Identification Number.

## **5.0 Authority to Enter Into Settlement Agreement**

5.1 CAG represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind CAG to this Settlement Agreement.

5.2 Organic represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind Organic to this Settlement Agreement.



**6.0 Report of the Settlement Agreement to the Office of the Attorney General Of California**

6.1 CAG shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the Parties' execution of this Settlement Agreement.

**7.0 Execution in Counterparts and Facsimile**

7.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute the same document. A facsimile or portable document format (PDF) signature shall be as valid as the original.

**8.0 Modification of Settlement Agreement**

8.1 Any modification to this Settlement Agreement shall be in writing and signed by the Parties.

**9.0 Application of Settlement Agreement**

9.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, CAG and the Releasees and Downstream Releasees identified in Section 2 above. The Settlement Agreement shall apply to Covered Products sold in California or to California consumers. On and after the Effective Date, the Parties agree that compliance by Organic with this Settlement Agreement shall constitute compliance with Proposition 65 with respect to the Covered Products.

**10.0 Enforcement of Settlement Agreement**

10.1 Any party may file suit before the Superior Court of the County of Los Angeles, consistent with the terms and conditions set forth in paragraphs 10.2 and

10.3 of this Settlement Agreement, to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

10.2 No action to enforce this Settlement Agreement may be commenced or maintained, and no notice of violation related to the Covered Products may be served or filed against Organic by CAG, unless the party seeking enforcement or alleging violation notifies the other party of the specific acts alleged to breach this Settlement Agreement at least 60 days before serving or filing any action or Notice of Violation and, if the entity receiving the notice of violation is Organic, if Organic fails to comply with the requirements set forth in Section 10.3 below. Any notice by CAG to Organic must contain (a) the name of the product, (b) specific dates when the product was sold after the Effective Date in California without reformulation, (c) the store or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the notice.

10.2.1. Notwithstanding the above, CAG may bring an action to enforce any breach of the monetary settlement terms in Section 4.0, above, upon five (5) days written notice by CAG to Organic of the alleged breach in accordance with the notification requirements set forth in Section 12.0, below.

10.3 Within 30 days of receiving the notice described in Section 10.2, Organic shall either (1) send the store or other place at which the product was available for sale to the public a letter directing that the offending product be immediately removed from inventory and returned to Organic for full credit, including

shipping costs, or (2) refute the information provided under Section 10.2. Should the parties be unable to resolve the dispute, any party may seek relief under Section 10.1.

**11.0 Notification Requirements**

11.1 Any notice required or permitted hereunder shall be effective only if given in writing and delivered in person, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CAG:

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

For Organic:

Judith M. Praitis  
SIDLEY AUSTIN LLP  
555 W 5th Street, 40th Floor  
Los Angeles, CA 90013.

Any party may change its designee(s) for purposes of notification by providing written notice of such change pursuant to this section.

**12.0 SEVERABILITY**

12.1 If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**13.0 GOVERNING LAW**


13.1 The terms of this Settlement Agreement shall be governed by the laws of

the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Listed Chemical and/or the Covered Products, then Organic shall provide written notice to CAG of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

WHEREFORE, the Parties agree to the foregoing Settlement Agreement by virtue of their signatures below.

CONSUMER ADVOCACY GROUP, INC.

Dated: 8/16/19

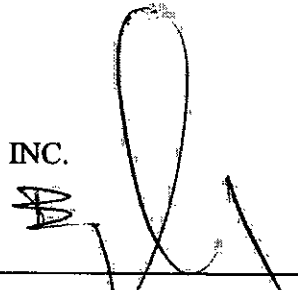
By: 

Printed Name: Michael Marcus

Title: Director

ORGANIC SPICES, INC.

bc  
Dated: 8/16/2019

By: 

Printed Name: Bin Chen

Title: CEO