

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Citizens of California Safety Corp. (“CCSC” or “Plaintiff”) and Organic Spices, Inc., dba Spicely Organics (“Organic Spices, Inc.” or “Defendant”). Each is a “Party” and collectively both are referred to as the “Parties”

1.2 General Allegations. CCSC alleges Organic Spices, Inc. either imports, and/or manufactures, and/or markets, and/or distributes, and/or sells or offers for sale Products (defined below) that contain detectable levels of lead in the State of California without first providing consumers of the Products with “clear and reasonable warnings” as that phrase is defined in the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5 *et seq.* Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are all sizes, packaging, and forms of ground cardamom and ground cinnamon (“Products”) that Organic Spices, Inc. either imports, manufactures, markets, distributes, sells or offers for sale in California.

1.4 Notice of Violation. On November 9, 2020, CCSC served Organic Spices, Inc. and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled “60 Day Notice of Violation” (“Notice”) that provided Organic Spices, Inc., and such others, including public enforcers, with notice that alleged Organic Spices, Inc. was in violation of Proposition 65 for failing to warn California consumers that use of the Products will expose them to lead. To the Parties’ knowledge, none of the public prosecutors with authority to prosecute violations of Proposition 65 has commenced and is diligently prosecuting an action based on the allegations set forth in the Notice.

1.5 No Admission. The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein. Organic Spices, Inc. denies the material factual and legal allegations contained in the Notice and maintains that all products that are or have been sold or distributed in or into California, including the Products, have been and are in compliance with Proposition 65 and all other laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by Organic Spices, Inc. of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Organic Spices, Inc. of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Organic Spices, Inc. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities and duties of the Parties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date both Parties have notice that this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF, REFORMULATION, AND WARNINGS

2.1 Reformulation of Products. For Products manufactured more than six (6) months after the Effective Date, and continuing thereafter, Organic Spices, Inc. shall provide a “clear and reasonable warning” as set forth in Section 2.3 below for Products with consumer exposures that exceed the “safe harbor” maximum allowable dose level (“MADL”) for lead published by the Office of Environmental Health Hazard Assessment, including any successor agency (“OEHHA”). Products that do not exceed the MADL for lead shall not require Warnings (defined below) under this Settlement Agreement. Products manufactured on or prior to six (6) months after the Effective Date may be sold by any person at any time without a Warning.

2.2 Product Management. In ascertaining its obligations under Section 2.1, Organic Spices, Inc. shall be entitled to rely in good faith on test results for finished products or raw materials provided by its manufacturers or suppliers. Organic Spices, Inc. shall maintain test results for Products for at least three (3) years. Organic Spices, Inc. shall implement an inventory system where it can identify the manufacture date of any finished Product subject to this Settlement Agreement.

2.3 Clear and Reasonable Warning. If Organic Spices, Inc. is required to provide a clear and reasonable warning pursuant to Section 2.1, Organic Spices, Inc. may select, in its sole discretion, one of the two following forms of warning (“Warning”):

(a) **"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.”

(b) any form of “safe harbor” warning applicable to the Products in regulations adopted by OEHHA and in effect at the time the Product is manufactured.

2.4 Compliance with Warning Regulations. As between the Parties, the Parties agree that Organic Spices, Inc. shall be deemed to be in compliance with this Settlement Agreement and Proposition 65 by complying with either Section 2.1 or 2.3 of this Settlement Agreement. A warning on a Product label, or on the exterior consumer-ready packaging, shall be presumed to comply with Proposition 65 and this Settlement Agreement, provided the warning is prominently displayed and reasonably likely to be seen by an average user prior to exposure, when compared with similar consumer information on the product label or on the exterior, consumer ready packaging.

2.5 Compliance with Internet Warnings. If a warning under Section 2.1 is required, Organic Spices, Inc. shall be deemed to be in compliance with Proposition 65 and this Settlement Agreement by complying with any form of the internet warning requirements in OEHHA's regulations in effect on or after the manufacture date of a Product.

3 Payments Organic Spices, Inc. agrees to pay a total of \$10,000.00, as a complete accord and satisfaction, and in full, final and complete settlement of any and all claims as set forth herein. All payments shall be sent to Brown Bear Law APC within fifteen (15) business days of the Effective Date. Except for the payments expressly set forth below, each Party is responsible for its own costs or expenses.

3.1 Penalties. In settlement of all claims referred to in this Settlement Agreement, within thirty (30) days Organic Spices, Inc. shall pay \$500.00 (five-hundred dollars) as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA (\$375.00) and the remaining 25% of the Civil Penalty remitted to Brown Bear Law for CCSP. Brown Bear Law shall be responsible for ensuring that the Civil Penalty payments to: (a) "OEHHA" in the amount of \$375.00 and to (b) "Citizens of California Safety Corp." in the amount of \$125.00 are delivered within ten (10) days of receipt of said Civil Penalty payments from Organic Spices, Inc.

3.2 Attorney Fees and Costs: Organic Spices, Inc. shall pay a total of \$9,500.00 (nine thousand, five hundred dollars) to "Brown Bear Law, APC" as compensation for reasonable attorney fees and costs and other costs incurred as a result of bringing this matter.

3.3 Payment Procedures. All payments owed by Organic Spices, Inc. pursuant to this Settlement Agreement shall be delivered by wire transfer or by check, as Organic Spices, Inc. shall elect. The wire transfer instructions are:

Brown Bear Law, APC IOLTA Account— name associated with account Shant Vayvayan
Routing Number 122235821 [International Banks can use USBKUS44IMT]
Account Number 157524044896

U.S. Bank
Wire Transfer Department
PO Box 64830
St. Paul, MN 55164-0830 a/c 6550113516

For payments by check, Organic Spices, Inc., shall send all three (3) checks as follows:

For courier delivery: Brown Bear Law, 6232 Wynne Ave, Tarzana, CA 91335.

For U.S. Mail delivery: Brown Bear Law, APC IOLTA Acct., PO Box 573423, Tarzana, CA 91357.

4. RELEASE

4.1 Release of Organic Spices, Inc. and Upstream and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between CCSC, acting on its own behalf, and including its members, employees, officers, directors, attorneys, agents predecessors, successors and assignees (“Releasors”), on the one hand, and Organic Spices, Inc., of any violation of Proposition 65 that was or could have been asserted by Releasors. CCSC hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, damages or any other relief that could be sought relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity whether known or unknown, fixed or contingent (collectively “Claims”), against Organic Spices, Inc. including its owners, members, shareholders, employees, officers, directors, attorneys, representatives, agents, corporate affiliates (including parents, subsidiaries or sister entities), and their respective predecessors, successors and assignees, its upstream suppliers, downstream distributors, wholesalers, customers, marketers, retailers, and any other persons who imported, manufactured, marketed, distributed, sold or offered for sale the Products (collectively “Releasees”) up through the Effective Date.

4.2 Release of CCSC. Organic Spices, Inc. hereby waives any and all claims against CCSC, and its attorneys, for any and all actions taken or statements made by CCSC and/or its attorneys, in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products up through the Effective Date.

4.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. CCSC in its private capacity only, and on behalf of all Releasors, and Organic Spices, Inc., each respectively acknowledge that this Agreement is expressly intended to cover and include all such Claims up through the Effective Date, including all rights of action thereof. The Parties each acknowledge that the claims released may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims.

California Civil Code § 1542 reads 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.

CCSC and Organic Spices, Inc. each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Organic Spices, Inc. with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products on and after the Effective Date.

4.5 Public Benefit. It is the Parties' understanding that the commitments Organic Spices, Inc. has agreed to herein, and the actions to be taken by Defendant under this Settlement Agreement, including payment of a Civil Penalty, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Defendant's failure to provide a warning concerning exposure to lead prior to use of the Products it has imported, manufactured, market, distributed, sold, or offered for sale in California, or will import, manufacture, market, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Organic Spices, Inc. is in material compliance with this Settlement Agreement.

5. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Organic Spices, Inc. shall have no further obligations pursuant to this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to, the intent of the Parties in entering into this Settlement Agreement.

7. NOTICES

Unless specified herein, all notices and correspondence required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For: Organic Spices, Inc.

Judith M. Praitis

Faegre Drinker Biddle & Reath LLP
1800 Century Park East, Suite 1500
Los Angeles, CA 90067

For: CCSC

Shant Vayvayan, Esq.
Brown Bear Law, APC
PO Box 573423
Tarzana, CA 91357

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

8. COUNTERPARTS

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

9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

CCSC agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

11. MODIFICATION/ENFORCEMENT

This Settlement Agreement may be modified only by a written agreement of the Parties. This Settlement Agreement is enforceable solely by the Parties hereto.

12. AUTHORIZATION

The undersigned represent that each is authorized to execute this Settlement Agreement and the Parties have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

It is so AGREED:

Date: 5/27, 2021

ORGANIC SPICES INC.

By:  _____

Title: CEO

Date: June 1, 2021

**CITIZENS OF CALIFORNIA
SAFETY CORP.**

By:  _____

Melody Rahimi

Title: Director