

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY SMITH
3 9465 Wilshire Blvd., Ste. 300
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 PINNACLE BRANDS, LLC, CVS
15 PHARMACY, INC.,

16 Defendants.

Case No.: CGC-22-600727

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: November 4, 2024

Hearing Time: 9:30 AM

Complaint Filed: July 14, 2022

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Pinnacle Brands, LLC
4 (“Pinnacle” or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Balabbo is an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. Pinnacle is alleged to be a person in the
8 course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et
9 seq.

10 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
11 individuals to diethanolamine (DEA) from its sales of Pinnacle Fresh ‘N Clean hand sanitizers,
12 UPC # 810025090753 without providing a clear and reasonable exposure warning pursuant to
13 Proposition 65. DEA is listed pursuant to Proposition 65 as a chemical known to the State of
14 California to cause cancer.

15 1.3 **Notice of Violation/Action.** On or about July 21, 2021, Balabbo served CVS
16 Pharmacy, Inc. (“CVS”), Pinnacle, and various public enforcement agencies with documents
17 entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the
18 “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
19 customers that use of Pinnacle Fresh ‘N Clean hand sanitizers, UPC # 810025090753 expose users
20 in California to DEA. No public enforcer has brought and is diligently prosecuting the claims
21 alleged in the Notice. On July 14, 2022, Balabbo filed a complaint (the “Complaint”).

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
24 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
25 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
26 of all claims which were or could have been raised in the Action based on the facts alleged therein
27 and in the Notice.

28

1 1.5 Defendant denies the material allegations contained in Balabbo’s Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term “Covered Products” means Pinnacle Fresh ‘N Clean
10 hand sanitizers, UPC # 810025090753 that are manufactured, distributed, shipped into California
11 and offered for sale in California by Pinnacle that expose users to DEA.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 **Clear and Reasonable Warning.** Commencing within sixty (60) days after the
16 Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in
17 this §§ 3.1 and 3.2 must be provided for all Covered Products that Defendant manufacturers,
18 imports, distributes, sells, or offers for sale in California. There shall be no obligation for Defendant
19 to provide a warning for Covered Products that enter the stream of commerce prior to the date this
20 Consent Judgment is signed by both Parties. The warning shall consist of either the **Warning** or
21 **Alternative Warning** described in §§ 3.1(a) or (b), respectively:

22 (a) **Warning.** The “Warning” shall consist of the statement:

23 ⚠ **WARNING:** This product can expose you to chemicals including
24 diethanolamine (DEA), which is known to the State of California to cause cancer.
25 For more information go to www.P65Warnings.ca.gov.

26 (b) **Alternative Warning:** Pinnacle may, but is not required to, use the alternative short-
27 form warning as set forth in this § 3.1(b) (“**Alternative Warning**”) as follows:

28 ⚠ **WARNING:** Cancer - www.P65Warnings.ca.gov.

1 3.2 A **Warning** or **Alternative Warning** provided pursuant to § 3.1 must print the word
2 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
3 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
4 triangle with a black outline, except that if the sign or label for the Covered Product does not use
5 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
6 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
7 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
8 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
9 displayed with such conspicuousness, as compared with other words, statements, or designs as to
10 render it likely to be read and understood by an ordinary individual under customary conditions of
11 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
12 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
13 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
14 “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section
15 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Pinnacle
16 shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with
17 applicable warning regulations adopted by OEHHA.

18 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
19 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
20 Pinnacle offers Products for sale to consumers in California. The requirements of this Section shall
21 be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
22 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
23 warning to the purchaser prior to completing the purchase. To comply with this Section, Pinnacle
24 shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to
25 do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post
26 the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide
27 such sellers with written notice in accordance with Title 27, California Code of Regulations, §
28

1 25600.2. Third-party internet sellers of the Covered Product that have been provided with written
2 notice in accordance with Title 27, California Code of Regulations, § 25600.2 are not released in
3 Section 5 of this Agreement if they fail to meet the warning requirements herein.

4 **3.3 Compliance with Warning Regulations.** Defendant shall be deemed to be in
5 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
6 Judgment or by complying with warning regulations adopted by OEHHA applicable to the Covered
7 Product and exposures at issue after the Effective Date, or within sixty (60) days after the Effective
8 Date.

9 **4. MONETARY TERMS**

10 **4.1 Civil Penalty.** Pinnacle shall pay \$2,000.00 as a Civil Penalty pursuant to Health
11 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
12 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
13 Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

14 4.1.1 Within thirty (30) days of the Effective Date, Brodsky Smith shall issue
15 two separate payments for the Civil Penalty payment for (a) “OEHHA” in the amount of
16 \$1,500.00; and (b) “Brodsky Smith in Trust for Balabbo” in the amount of \$500.00. Payment
17 owed to OEHHA (EIN: 68-0284486) pursuant to this Section may be delivered to OEHHA
18 (Memo Line “Prop 65 Penalties”) at one of the following address(es):

19 For United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

1 4.2 **Attorneys' Fees and Costs.** Pinnacle shall pay \$23,000.00 to Brodsky Smith as
2 complete reimbursement for Balabbo's attorneys' fees and costs incurred as a result of
3 investigating, bringing this matter to the attention of Pinnacle, litigating and negotiating and
4 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
5 Procedure § 1021.5.

6 4.3 **Settlement Payment.** "Settlement Payment" shall mean all monies paid pursuant to
7 this Agreement, including the Civil Penalty and agreed upon Attorneys' Fees and Costs, to resolve
8 claims alleged in the Action.

9 4.3.1 The Settlement Payment is \$25,000.
10 Within fifteen (15) days of the Effective Date, Lewis Brisbois shall issue one check for the
11 Settlement Payment to "Brodsky Smith" in the amount of \$25,000. Lewis Brisbois's payment
12 obligation of paying the full \$25,000.00 is subject to 4.3.2 below. Lewis Brisbois shall not have
13 any obligation to pay any of the \$25,000.00 that is not received from Pinnacle pursuant to 4.3.2
14 below. The Settlement Payment shall be delivered to the following address:

15 Evan J. Smith
16 Brodsky Smith
17 Two Bala Plaza, Ste. 805
18 Bala Cynwyd, PA 19004

19 4.3.2 Pursuant to this Section, Pinnacle agrees to pay the Settlement Payment in
20 six (6) separate payments with the first payment due as of May 15, 2024. Monies owed for the
21 Settlement Payment pursuant to this Section are to be held in escrow by Lewis Brisbois and Garth
22 Ward until the Effective Date, and/or within 15 days of the Effective Date. Pursuant to this Section
23 the Settlement Payment shall be made as follows:

24 (a) By or before May 15, 2024, Pinnacle shall issue a settlement payment
25 check to "Lewis Brisbois in Trust for Brodsky Smith" in the amount of \$5,000;

26 (b) By or before June 15, 2024, Pinnacle shall issue a settlement payment
27 check to "Lewis Brisbois in Trust for Brodsky Smith" in the amount of \$4,000;

28 (c) By or before July 15, 2024, Pinnacle shall issue a settlement payment
check to "Lewis Brisbois in Trust for Brodsky Smith" in the amount of \$4,000;

1 (d) By or before August 15, 2024, Pinnacle shall issue a settlement
2 payment check to “Lewis Brisbois in Trust for Brodsky Smith” in the amount of \$4,000;

3 (e) By or before September 15, 2024, Pinnacle shall issue a settlement
4 payment check to “Lewis Brisbois in Trust for Brodsky Smith” in the amount of \$4,000;

5 (f) By or before October 15, 2024, Pinnacle shall issue a settlement
6 payment check to “Lewis Brisbois in Trust for Brodsky Smith” in the amount of \$4,000.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
9 acting on her own behalf, and on behalf of the public interest, and Pinnacle, and its parents,
10 shareholders, members, directors, officers, managers, employees, representatives, agents,
11 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
12 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
13 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
14 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
15 retailers, including but not limited to CVS, and its parents, subsidiaries, and affiliates, franchisees,
16 and cooperative members (“Downstream Releasees”), of all claims for violations of Proposition 65
17 based on exposure to DEA from use of the Covered Products manufactured, distributed, or sold by
18 Pinnacle prior to the Effective Date, as set forth in the Notice. It is the Parties’ intention that this
19 Consent Judgment shall have preclusive effect such that no other actions by private enforcers,
20 whether purporting to act in his, her, or its interests or the public interest shall be permitted to
21 pursue and take any action with respect to any violation of Proposition 65 based on exposure to
22 DEA from use of the Covered Products that was alleged in the Complaint, or that could have been
23 brought pursuant to the Notice against Pinnacle and the Downstream Releasees (“Proposition 65
24 Claims”). Pinnacle’s compliance with the terms of this Consent Judgment constitutes compliance
25 with Proposition 65 by Pinnacle with regard to exposure to DEA from use of the Covered Products.

26 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
27 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
28

1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action and releases Pinnacle, Defendant Releasees, and Downstream Releasees from any and
3 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
4 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
5 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
6 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
7 Products manufactured, distributed, or sold by Pinnacle, Defendant Releasees or Downstream
8 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
9 specifically waives any and all rights and benefits which she now has, or in the future may have,
10 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
11 follows:

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

18 5.3 Pinnacle waives any and all claims against Balabbo, her attorneys and other
19 representatives, for any and all actions taken, or statements made (or those that could have been
20 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
21 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
22 and with respect to Covered Products.

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
26 merged within it. No representations or terms of agreement other than those contained herein exist
27 or have been made by any Party with respect to the other Party or the subject matter hereof.
28

1 **7. NOTICE FOR DEFENDANT**

2 7.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following address:

6 For Defendant:

7 Garth Ward
8 Lewis Brisbois
9 550 W. C St., Ste. 1700
 San Diego, CA 92101

10 Any party, from time to time, may specify in writing to the other party a change of address to
11 which all notices and other communications shall be sent.

12 **8. NOTICE FOR PLAINTIFF**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
16 by the other party at the following address:

17 Evan Smith
18 Brodsky Smith
19 9465 Wilshire Blvd., Ste. 300
 Beverly Hills, CA 90212

20 Any party, from time to time, may specify in writing to the other party a change of address to
21 which all notices and other communications shall be sent.

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

23 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
24 which shall be deemed an original, and all of which, when taken together, shall constitute one and
25 the same document.

26
27
28

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
4 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
8 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
9 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25
26
27
28

1 **14. AUTHORIZATION**

2 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 document and certify that he or she is fully authorized by the Party he or she represents to execute
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
6 explicitly provided herein each Party is to bear its own fees and costs.

7
8 **AGREED TO:**

AGREED TO:

9 Date: 9/16/24

Date: 9/16/24

10 By: [Signature]
11 **PRECILA BALABBO**

By: [Signature]
PINNACLE BRANDS, LLC

12
13 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

14
15 Dated: _____

16 _____
17 Judge of Superior Court

18
19
20
21
22
23
24
25
26
27
28