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Attorneys for Defendant House of Spices (India), Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP, LLC,
IN THE PUBLIC INTEREST,

PLAINTIFF,

V.

HOUSE OF SPICES (INDIA) INC.,
PIONEER CASH & CARRY, INC.,
and DOES 1-30

DEFENDANTS.

CASE NO. 22STCV34988

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 74

Judge: Hon. Colin Leis.

Complaint filed: November 3, 2022

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Consumer Protection Group, LLC (“CPG”) acting on behalf of itself and in the interest of the public, and Defendant House of

1 Spices (India) Inc. (“HOS” or “Defendant”), with each referred to as a “Party” and collectively
2 referred to as “Parties.”

3 **1.2 Defendant and Products**

4 Defendant is a New York corporation that regularly conducts business in California and
5 employs ten (10) or more persons. CPG alleges that Defendant manufactured, caused to be
6 manufactured, sold, or distributed Laxmi brand garlic powder (“Garlic Powder”) (referred to
7 hereinafter as “Covered Products”). For purposes of this Consent Judgment, Defendant is deemed a
8 person in the course of doing business in California and subject to the provisions of the Safe
9 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6
10 et seq. (“Proposition 65”). The Covered Products are limited only to those sold or supplied by
11 Defendant.

12 **1.3 Listed Chemicals.**

13 Lead has been listed by the State of California as a chemical known to cause cancer and
14 birth defects or other reproductive harm.

15 **1.4 Notice of Violation.**

16 On or about April 14, 2022, Plaintiff gave notice of alleged violations of Health and Safety
17 Code section 25249.6, concerning consumer product exposures, subject to a private action to HOS,
18 Pioneer Cash & Carry, Inc., and to the California Attorney General, County District Attorneys, and
19 City Attorneys for each County containing a population of at least 750,000 people in whose
20 jurisdiction the violations allegedly occurred, concerning Garlic Powder containing Lead.

21 **1.5 Complaint.**

22 On November 3, 2022, CPG filed a Complaint for civil penalties and injunctive relief
23 (“Complaint”) in the above-captioned action. In the First Cause of Action, CPG alleges, among
24 other things, that Defendant violated Proposition 65 by failing to give clear and reasonable warnings
25 of exposure to Lead arising from the Garlic Powder.

26 **1.6 Consent to Jurisdiction.**

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

1 over Defendant 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 and final
3 settlement and resolution of the allegations contained in the Complaint and of all claims which were
4 or could have been raised by any person or entity based in whole or in part, directly or indirectly, on
5 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 by HOS. The Parties
8 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims
9 between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent
10 Judgment shall be construed as an admission by the Parties of any material allegation of the Notice
11 or the Complaint, any fact, conclusion of law, issue of law or violation of law, including without
12 limitation, any admission concerning any alleged violation of Proposition 65 or any other statutory,
13 regulatory, common law, or equitable doctrine. Nothing in this Consent Judgment, nor compliance
14 with its terms, shall constitute or be construed as an admission by the Parties, or give rise to any
15 inference, of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing,
16 or liability by Defendant, their officers, directors, employees, or parent, subsidiary or affiliated
17 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or
18 litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
19 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
20 other or future legal proceeding, except as expressly provided in this Consent Judgment.

21 **1.8** The “Effective Date” is the date that Notice of this Consent Judgment is served on
22 HOS after it is entered as a judgment of the Court.

23 **2. INJUNCTIVE RELIEF**

24 **2.1** As of the Effective Date, Defendant shall cease selling, offering for sale in
25 California, or distributing for sale in California, unless the Covered Product contain no more than
26 10 parts per billion (ppb) or contain a warning as described in Section 2.3.

27 **2.2** Covered Products manufactured or in the supply chain on or prior to the Effective
28 Date irrespective of their sale date shall be exempted from the requirements in section 2.1.

1 **3. SETTLEMENT PAYMENTS**

2 **3.1 Payment and Due Date.**

3 Within thirty days (30) after the Consent Judgment is entered by the Court or one hundred
4 and twenty days (120) days after this Consent Judgment is executed by the parties, whichever is
5 later, Defendant must pay a total of one hundred and fifty thousand dollars (\$150,000.00) in full and
6 complete settlement of all monetary claims by CPG related to the Notice and Complaint as to
7 Defendant, as follows:

8 **3.1.1 Civil Penalty:** Defendant agrees to pay twelve thousand dollars (\$12,000.00)
9 as penalties pursuant to Health & Safety Code § 25249.12:

10 Counsel for CPG shall be responsible to issue a check made payable to the State of
11 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of
12 nine thousand dollars (\$9,000.00) representing 75% of the total penalty and another check to CPG
13 in the amount of three thousand dollars (\$3,000.00) representing 25% of the total penalty; and

14 **3.1.2 Reimbursement of Attorneys' Fees and Costs:** Defendant must pay one
15 hundred and thirty-eight thousand dollars (\$138,000.00) to Blackstone Law, APC as complete
16 reimbursement for any and all reasonable investigation fees and costs, attorneys' fees, expert fees,
17 report costs, and any and all other costs and expenses incurred as a result of investigating, bringing
18 this matter to the Defendant's attention, litigating, negotiating a settlement in the public interest, and
19 seeking and obtaining court approval of this Consent Judgment.

20 **3.2** All payments referenced in paragraphs 3.1.1, 3.1.2, and 3.1.3 above, must be made
21 payable to Plaintiff's counsel, Blackstone Law APC in a single lump sum payments of \$150,000.00
22 (one hundred and fifty thousand dollars by wire transfer. Plaintiff's counsel will provide HOS with
23 wire instructions.

24 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

25 **4.1** This Consent Judgment is a full, final, and binding resolution between CPG, on
26 behalf of itself and in the public interest, on the one hand, and (i) Defendant and its officers,
27 directors, attorneys, agents, insurers, employees, managers, parents, shareholders, divisions,
28 subdivisions, subsidiaries, partners, affiliates, sister companies, and their successors and assigns

1 (collectively referred to as “Defendant Releasees”); (ii) all entities to which Defendant Releasees
2 directly or indirectly has distributed or sold the Covered Product, including, but not limited to,
3 Pioneer Cash & Carry, Inc., downstream distributors, upstream suppliers, wholesalers, customers,
4 retailers (iii) and the successors and assigns of any of them (the released entities listed in (i) through
5 (iv) of this Section 4.1 are collectively referred to as “Released Parties”) for all claims for violations
6 of Proposition 65 for alleged exposures to Lead from the Covered Product manufactured,
7 distributed, or sold by Defendant on or before the Effective Date. Defendant’s compliance with this
8 Consent Judgment shall constitute compliance by any Released Parties with Proposition 65 with
9 respect to Lead in the Covered Product manufactured, distributed, or sold after the Effective Date.
10 Nothing in this Section affects CPG’s right to commence or prosecute an action under Proposition
11 65 against any person other than the Released Parties. CPG agrees that any and all claims in the
12 Complaint are resolved with prejudice by this Consent Judgment.

13 **4.2** CPG on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and/or assignees (collectively, the “CPG Releasers”), hereby waives all rights to
15 institute or participate in, directly or indirectly, any form of legal action and releases all claims,
16 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
17 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
18 limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether
19 known or unknown, fixed or contingent (collectively “Claims”), against the Released Parties arising
20 from any violation of Proposition 65 or any other statutory or common law regarding alleged
21 exposures to, or the failure to warn about alleged exposures to Lead from the Covered Product. It is
22 possible that Claims not known to the Parties arising out of the facts alleged in the Notice or the
23 Complaint and relating to the Covered Product will develop or be discovered. CPG, on behalf of
24 itself and the CPG Releasers, acknowledges that this Consent Judgment is expressly intended to
25 cover and include all such Claims. CPG has full knowledge of the contents of California Civil
26 Code §1542. CPG, on behalf of itself and the CPG Releasers, acknowledges that the Claims
27 released in this Section 4 may include unknown Claims, and nevertheless waives California Civil
28 Code §1542 as to any such unknown Claims. California Civil Code §1542 reads as follows:

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

6
7 CPG understands and acknowledges that the significance and consequence of this waiver of
8 California Civil Code §1542.

9 **4.3** Similarly, HOS waives any and all claims against CPG, its attorneys and other
10 representatives, for any and all actions taken, or statements made (or those that could have been
11 taken or made) by CPG and its attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
13 and/or with respect to the Subject Product. HOS represents that its signatory to this Settlement
14 Agreement has full authority to enter into and legally bind HOS to this Settlement Agreement.

15 **5. ENFORCEMENT OF JUDGMENT**

16 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
17 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
18 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may
19 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
20 30 days' notice to the Party allegedly failing to comply with the terms and conditions of this
21 Consent Judgment, and attempts to resolve such Party's failure to comply in an open and good faith
22 manner.

23 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
24 proceeding to enforce the terms of this Consent Judgment, CPG shall provide a Notice of Violation
25 ("NOV") to the Defendant. The NOV shall include for each of the Covered Product: the date(s) the
26 alleged violation(s) was observed and the location at which the Covered Product were offered for
27 sale, and shall be accompanied by all test data obtained by CPG regarding the Covered Product,
28 including an identification of the component(s) of the Covered Product that were tested.

1 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind
2 regarding the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a
3 Notice of Election (“NOE”) not to contest the NOV that meets one of the following conditions:

4 (a) A statement that the Covered Product was manufactured and shipped
5 by the Defendant for sale in California before the Effective Date; or

6 (b) A statement that since receiving the NOV the Defendant has taken
7 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
8 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores
9 in California, as applicable, remove the Covered Product identified in the NOV from sale in
10 California and destroy or return the Covered Product to the Defendant or vendor, as applicable; or
11 (iii) refute the information provided in the NOV.

12 **5.2.2 Contested NOV.** Defendant may serve a Notice of Election (“NOE”)
13 informing CPG of its election to contest the NOV within 60 days of receiving the NOV.

14 (a) In its election, the Defendant may request that the sample(s) of
15 Covered Product tested by CPG be subject to confirmatory testing at an EPA-accredited laboratory.

16 (b) If the confirmatory testing establishes that the Covered Product do not
17 contain Lead in excess of the level allowed in Section 2.1, above, CPG shall take no further action
18 regarding the alleged violation. If the testing does not establish compliance with Section 2.1, above,
19 the Defendant may withdraw its NOE to contest the violation and may serve a new NOE pursuant to
20 Section 5.2.1.

21 (c) If the Defendant does not withdraw a NOE to contest the NOV, the
22 Parties shall meet and confer for a period of no less than 30 days before CPG may seek an order
23 enforcing the terms of this Consent Judgment.

24 **5.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
25 prevailing Party shall be entitled to recover its reasonable attorney’s fees and costs.

26 **6. ENTRY OF CONSENT JUDGMENT**

27 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
28 California Health & Safety Code § 25249.7(f).

1 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
2 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
3 become null and void, and the actions shall revert to the status that existed prior to the execution
4 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
5 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
6 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
7 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
8 the terms of the Consent Judgment and to resubmit it for approval.

9 **7. MODIFICATION OF JUDGMENT**

10 **7.1** This Consent Judgment may be modified only upon written agreement of the Parties
11 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party
12 as provided by law and upon entry of a modified Consent Judgment by the Court.

13 **7.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to
14 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

15 **7.3** Within thirty (30) days of receiving payments as outlined in Section 3, CPG shall
16 file a request for dismissal without prejudice of Defendant with respect to the Complaint.

17 **8. RETENTION OF JURISDICTION**

18 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
19 of this Consent Judgment under Code of Civil Procedure § 664.6.

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

21 **9.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
22 California Attorney General so that the Attorney General may review this Consent Judgment prior
23 to its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney
24 General has received the aforementioned copy of this Consent Judgment, and in the absence of any
25 written objection by the Attorney General to the terms of this Consent Judgment, the Parties may
26 then submit it to the Court for approval.

1 **10. ATTORNEY FEES**

2 **10.1** Except as specifically provided in Section 3.1.3, each Party shall bear its own costs
3 and attorney fees in connection with this action.

4 **11. ENTIRE AGREEMENT**

5 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
6 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
7 negotiations, commitments and understandings related hereto. No representations, oral or
8 otherwise, express or implied, other than those contained herein have been made by any Party
9 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
10 to exist or to bind any of the Parties.

11 **12. GOVERNING LAW**

12 **12.1** The validity, construction and performance of this Consent Judgment shall be
13 governed by the laws of the State of California, without reference to any conflicts of law provisions
14 of California law.

15 **12.2** The terms of this Consent Judgment shall be governed by the laws of the State of
16 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered
17 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are
18 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or
19 rendered inapplicable by reason of law generally as to the Covered Product, then the Defendant
20 subject to this Consent Judgment may provide written notice to CPG of any asserted change in the
21 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to
22 the extent that, the Covered Product are so affected, without any shall have no recourse to claw back
23 payments already made in accordance to Section 3 of this Consent Judgment. Nothing in this
24 Consent Judgment shall be interpreted to relieve a Defendant from any obligation to comply with
25 any pertinent state or federal law or regulation.

26 **12.3** The Parties, including their counsel, have participated in the preparation of this
27 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
28 Consent Judgment was subject to revision and modification by the Parties and has been accepted

1 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
2 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
3 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
4 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
5 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
6 regard, the Parties hereby waive California Civil Code §1654.

7 **13. EXECUTION AND COUNTERPARTS**

8 **13.1** This Consent Judgment may be executed in counterparts and by means of facsimile
9 or portable document format (pdf), which taken together shall be deemed to constitute one
10 document and have the same force and effect as original signatures.

11 **14. NOTICES**

12 **14.1** Any notices under this Consent Judgment shall be by personal delivery
13 or email.

14 If to CPG:

15 Jonathan M. Genish, Esq.
16 Blackstone Law, APC
17 8383 Wilshire Blvd., Suite 745
18 Beverly Hills, CA 90211
19 jgenish@blackstonepc.com

20 If to HOS:

21 Jacob P. Wilson, Esq.
22 Conkle, Kremer & Engel, PLC
23 3130 Wilshire Blvd., Suite 500
24 Santa Monica, CA 90403
25 j.wilson@conklelaw.com

1 **15. AUTHORITY TO STIPULATE**

2 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the Party represented and legally to bind that Party.

5 **AGREED TO:**

AGREED TO:

6
7 Date: April 15, 2024

Date: April 22, 2024

8
9 By:  _____

By:  _____

Consumer Protection Group, LLC

House of Spices (India), Inc.

10
11 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

12
13
14 Dated: _____

15
16 Judge of the Superior Court
17 Hon. Colin Leis