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

26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
27 **IN AND FOR THE COUNTY OF ALAMEDA**

28 ENVIRONMENTAL HEALTH
ADVOCATES, INC.,

Plaintiff,

v.

PARLE PRODUCTS PVT. LTD., an Indian
corporation, NORTH PARK PRODUCE,
INC., a California corporation, HOUSE OF
SPICES (INDIA), INC., a New York
corporation, FOUR J'S FAMILY FOOD,
INC., a California corporation, and DOES 3
through 100, inclusive,

Defendants.

Case No. 21CV000535

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and House of Spices (India), Inc. (“Defendant” or “HOS”) with EHA and HOS
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
9 reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

11 HOS employs ten or more individuals and for purposes of this Consent Judgment only, is a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that HOS manufactures, imports, sells, and/or distributes for sale Parle Hide n’
16 Seek Moulded Cookies and Parle Bakesmith Marie Cookies that contain Acrylamide. EHA further
17 alleges that HOS does so without providing a sufficient warning as required by Proposition 65 and
18 related regulations. HOS denies these allegations and asserts that its products are safe and in
19 compliance with all applicable laws, rules and regulations.

20 **1.5 Notice of Violation**

21 On or around June 4, 2021, EHA served Defendants Parle Product PVT., North Park Product,
22 Inc., California Attorney General, and all other required public enforcement agencies with 60-Day
23 Notices of Violation of Proposition 65 for Parle Hide n’ Seek Moulded Cookies (“Initial Hide n’ Seek
24 Notice”). On or around February 10, 2022, EHA served Defendants HOS, Parle Product PVT., North
25 Park Product, Inc., California Attorney General, and all other required public enforcement agencies
26 with an amended 60-Day Notice of Violation of Proposition 65 adding HOS as a distributor (“Amended
27 Hide n’ Seek Notice”). On or around March 3, 2022, EHA served Defendants HOS, Parle Product
28 PVT., North Park Product, Inc., California Attorney General, and all other required public enforcement

1 agencies with an amended 60-Day Notice of Violation of Proposition 65, adding Vista North Park
2 Produce as a retailer and correcting HOS' registered agent's address ("Second Amended Hide n' Seek
3 Notice"). On or around July 8, 2022, EHA served Defendants HOS, Parle Product PVT., North Park
4 Product, Inc., California Attorney General, and all other required public enforcement agencies with an
5 amended 60-Day Notice of Violation of Proposition 65, adding Four J's Food Family, Inc. as a retailer
6 ("Third Hide n' Seek Amended Notice")

7 On or around June 4, 2021, EHA served Defendants Parle Product PVT., North Park Product,
8 Inc., California Attorney General, and all other required public enforcement agencies with a 60-Day
9 Notice of Violation of Proposition 65 for Parle Bakesmith Marie Cookies ("Initial Marie Notice"). On
10 or around February 10, 2022, EHA served Defendants HOS, Parle Product PVT., North Park Product,
11 Inc., California Attorney General, and all other required public enforcement agencies with an amended
12 60-Day Notice of Violation of Proposition 65 adding HOS as a distributor ("Amended Marie Notice").
13 On or around March 3, 2022, EHA served Defendants HOS, Parle Product PVT., North Park Product,
14 Inc., California Attorney General, and all other required public enforcement agencies with an amended
15 60-Day Notice of Violation of Proposition 65, adding Vista North Park Produce as a retailer and
16 correcting HOS' registered agent's address ("Second Amended Marie Notice"). On or around July 8,
17 2022, EHA served Defendants HOS, Parle Product PVT., North Park Product, Inc., California Attorney
18 General, and all other required public enforcement agencies with an amended 60-Day Notice of
19 Violation of Proposition 65, adding Four J's Food Family, Inc. as a retailer ("Third Marie Amended
20 Notice") (collectively referred to as "Notices").

21 The Notices alleged that Defendants had violated Proposition 65 by failing to sufficiently warn
22 consumers in California of the health hazards associated with exposures to Acrylamide contained in
23 cookies products, including but not limited to Parle Hide n' Seek Moulded Cookies and Parle
24 Bakesmith Marie Cookies distributed by HOS that allegedly contain Acrylamide and are imported,
25 sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as defined in
26 section 4.1).

27 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
28 violations alleged in the Notices.

1 **1.6 Product Description**

2 The products covered by this Consent Judgment are Parle Hide n’ Seek Moulded Cookies and
3 Parle Bakesmith Marie Cookies distributed by HOS that allegedly contain Acrylamide and are
4 imported, sold, shipped, delivered, or distributed for sale to consumers in California by Releasees (as
5 defined in section 4.1) (“Covered Products”).

6 **1.7 State of the Pleadings**

7 On or around October 20, 2021, EHA filed Complaints against HOS for the alleged violations
8 of Proposition 65 that are the subject of the Notices (“Complaints”), in the instant action and related
9 case 21CV000534.

10 **1.8 No Admission**

11 HOS denies the material factual and legal allegations of the Notices and Complaints and
12 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
13 California, including Covered Products, have been, and are, in compliance with all applicable laws,
14 rules and regulations. Nothing in this Consent Judgment shall be construed as an admission of any fact,
15 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
16 Judgment be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation
17 of law. This Section shall not, however, diminish or otherwise affect HOS' obligations, responsibilities,
18 and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment and the Complaints only, the Parties stipulate that this
21 Court has jurisdiction over HOS as to the allegations in the Complaints, that venue is proper in the
22 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
23 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
26 Consent Judgment is approved by the Court upon a Motion to Approve Consent Judgment.
27
28

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation of the Covered Products**

3 Except as otherwise provided herein, any Covered Products that are manufactured by HOS on
4 and after the Effective Date that HOS sells in California or distributes for sale in California shall not
5 exceed 281 parts per billion (“ppb”) for Acrylamide using testing performed by a laboratory accredited
6 by the State of California, a federal agency, or a nationally recognized accrediting organization, using
7 LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), unless such Covered Products comply with
8 the warning requirements of Section 2.2. As used in this Section 2, “distributed for sale in California”
9 means to directly ship Covered Products into California or to sell Covered Products to a distributor
10 HOS know will sell Covered Products in California.

11 HOS will also have the option of filing a motion to modify this Consent Judgment and seek a
12 reformulation level greater than 281 ppb by demonstrating that it has utilized quality control measures
13 that reduce the concentration of acrylamide to the “lowest level currently feasible,” as that term is used
14 by the California Office of Environmental Health Hazard Assessment (“OEHHA”). HOS is permitted
15 to establish the “lowest level currently feasible” without being bound by reformulation levels agreed
16 upon in prior court approved consent judgments. EHA shall not oppose such a motion provided HOS
17 has provided a sworn affidavit that it was unable to reach 281 ppb despite its best efforts.

18 In the event OEHHA at any time adopts a safe harbor level for acrylamide in Covered Products
19 that is higher than the reformulation level in this Consent Judgment, HOS is permitted to use the
20 established safe harbor level without further notice to EHA. Subject to Section 2.3 below, if EHA
21 alleges that any Covered Product fails to qualify as a reformulated Covered Product (for which EHA
22 alleges that no warning has been provided), then EHA shall inform HOS in writing in a reasonably
23 prompt manner of its test results, including information sufficient to permit HOS to identify the
24 Covered Product(s) at issue. HOS shall, within thirty (30) days following such notice, provide EHA
25 with testing information for two (2) different batches of the Product from an independent third-party
26 laboratory meeting the requirements of Sections 2.1 demonstrating HOS’ compliance with the Consent
27 Judgment. The two tests shall be averaged, with the averaged level of acrylamide controlling. In the
28 event HOS demonstrates compliance with Section 2.1, EHA will not take any further legal action.

1 **2.2 Clear and Reasonable Warnings**

2 For Covered Products that contain Acrylamide in a concentration exceeding the Reformulation
3 Standard set forth in section 2.1 above, and which are distributed or directly sold by HOS in the State
4 of California on or after the Effective Date, HOS shall provide one of the following warning statements.

5 **Option 1:**

6 **WARNING:** Consuming this product can expose you to chemicals
7 including Acrylamide, which is known to the State of California to cause
8 cancer and birth defects or other reproductive harm. For more information
9 go to www.P65Warnings.ca.gov/food

9 **Option 2:**

10 **WARNING:** Cancer and [Reproductive Harm] –
11 www.P65Warnings.ca.gov/food

11 **Option 3:**

12 **CALIFORNIA WARNING:**
13 Consuming this product can expose you to acrylamide, a
14 probable human carcinogen formed in some foods during cooking or
15 processing at high temperatures. Many factors affect your cancer risk,
16 including the frequency and amount of the chemical consumed. For more
17 information including ways to reduce your exposure, see
18 www.P65Warnings.ca.gov/acrylamide

16 This warning statement shall be prominently displayed on the Covered Products, on the
17 packaging of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is
18 displayed with such conspicuousness, as compared with other words, statements, or designs as to render
19 it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is
20 displayed on the Covered Products’ packaging, it must be in a type size no smaller than the largest type
21 size used for other consumer information (warnings, directions for use, ingredient lists, and nutritional
22 information) on the product. In no case shall a warning statement displayed on the Covered Products’
23 packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any
24 websites under the exclusive control of HOS where Covered Products are directly sold into California.
25 HOS shall instruct any third-party website to which it directly sells its Covered Products to include the
26 same warning for online sales of the Covered Products in California; however, HOS shall have no
27 liability for any third-party website’s failure to provide the warning.

1 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
2 (Memo Line "Prop 65 Penalties") at the following addresses:

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Federal Express 2-Day Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 HOS agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
16 simultaneous with its penalty payment to EHA.

17 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required
18 on or before the Effective Date. Relevant information is set out below:

- 19 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 20 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

21 **3.3 Attorney's Fees and Costs**

22 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
23 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
24 limited to investigating potential violations, bringing this matter to HOS' attention, as well as litigating
25 and negotiating a settlement in the public interest.

26 HOS shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
27 counsel by physical check or by electronic means, including wire transfers, at HOS' discretion, as
28 follows: fifty-four thousand dollars (\$54,000.00) in Attorney's Fees and Costs shall be paid as follows:

- 1 • One payment of \$24,000.00, due fourteen (14) days after Plaintiff provides Notice of Entry of
2 the Consent Judgment .
- 3 • One payment of \$30,000.00, due ninety (90) days after Plaintiff provides Notice of Entry of the
4 Consent Judgment .

5 The attorney fee payments shall be made payable to Entorno Law, LLP. The address for this
6 entity is:

7 Noam Glick
8 Entorno Law, LLP
9 225 Broadway, Suite 1900
10 San Diego, CA 92101

11 **4. CLAIMS COVERED AND RELEASE**

12 **4.1 EHA's Public Release of Proposition 65 Claims**

13 Plaintiff, acting on its own behalf and in the public interest, releases HOS, and its parents,
14 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
15 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
16 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
17 Products, including but not limited to downstream distributors, wholesalers, customers, retailers, and
18 marketplaces franchisees, franchisors, cooperative members, suppliers, licensees, licensors, and
19 manufacturers, including Parle Products Pvt. Ltd., and all of the foregoing entities' owners, directors,
20 officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors,
21 successors, and assigns (collectively referred to as the "Releasees") from all claims for violations of
22 Proposition 65 up through the Effective Date based on exposure to Acrylamide from Covered Products
23 as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance
24 with Proposition 65 with respect to exposures to Acrylamide from Covered Products as set forth in the
25 Notices. This Consent Judgment is a full, final, and binding resolution of all claims under Proposition
26 65 that were or could have been asserted against HOS and/or Releasees for failure to comply with
27 Proposition 65 for alleged exposure to Acrylamide from Covered Products. This release does not
28 extend to any third-party retailers selling the product on a website who, after receiving instruction from
HOS to include a warning as set forth above in section 2.2, do not include such a warning.

1 **4.2 EHA’s Individual Release of Claims**

2 EHA, in its individual capacity, also provides a release to HOS and/or Releasees, which shall
3 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
4 costs, expenses, attorneys’ fees, damages, losses, claims, liabilities, and demands of every nature,
5 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
6 actual exposures to any Proposition 65 Chemical in Covered Products manufactured, imported, sold,
7 or distributed by HOS before the Effective Date.

8 **4.3 HOS’s Release of EHA**

9 HOS on its own behalf, and on behalf of Releasees as well as its past and current agents,
10 representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA
11 and its attorneys and other representatives, for any and all actions taken or statements made by EHA
12 and its attorneys and other representatives, whether in the course of investigating claims, otherwise
13 seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered Products.

14 **4.4 Mutual Release of Known and Unknown Claims**

15 The Parties certify that they have read the following provisions of California Civil Code Section
16 1542:

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

22 The Parties expressly waive and relinquish all rights and benefits which they may have under
23 California Civil Code Section 1542 to the fullest extent such provisions may lawfully be waived. The
24 Parties acknowledge that this Section 4.4 applies only as between the Parties and does not extend to the
25 general public (but does extend to and include any claim against the Releasees).

26 **4.5 Dismissal of Parallel Actions**

27 Upon entry of this Consent Judgment EHA agrees to dismiss with prejudice the lawsuit,
28 *Environmental Health Advocates, Inc. v. Parle Products Pvt. Ltd., House of Spices, (India), Inc., Four J’s*
Family Food, Inc., Alameda Superior Court Case No. 21CV000534, which asserts claims for the same
cookie products covered by this Consent Judgment.

1 **4.6 Public Benefit**

2 It is HOS' understanding that the commitments it has agreed to herein, and actions to be taken
3 by HOS under this Consent Judgment confer a significant benefit to the general public, as set forth in
4 Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of
5 HOS that to the extent any other private party serves a notice and/or initiates an action alleging a
6 violation of Proposition 65 with respect to HOS' alleged failure to provide a warning concerning
7 actual or alleged exposure to Acrylamide from the Covered Products it has distributed, sold, or
8 offered for sale in California, or will distribute, sell, or offer for sale in California, such private party
9 action would not confer a significant benefit on the general public as to those Covered Products
10 addressed in this Consent Judgment, provided that HOS is in material compliance with this Consent
11 Judgment.

12 **5. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved by the Court and shall be null and
14 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
15 by such additional time as the Parties may agree to in writing.

16 **6. SEVERABILITY**

17 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
18 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California as
21 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
22 rendered inapplicable for reasons, including but not limited to changes in the law, then HOS may
23 provide written notice to EHA of any asserted change, and shall have no further injunctive obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so
25 affected.

26 In the event the California Office of Health Hazard Assessment adopts a regulation or safe use
27 determination, or issues an interpretive guideline that exempts Covered Products from meeting the
28 requirements of Proposition 65; or if Acrylamide cases are permanently enjoined by a court of

1 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a burden
2 on First Amendment rights with respect to Acrylamide in Covered Products or Covered Products
3 substantially similar to Covered Products, then HOS shall be relieved of its obligation to comply with
4 Section 2 herein.

5 **8. ENFORCEMENT**

6 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
7 to its reasonable attorneys' fees and costs.

8 **9. NOTICE**

9 Unless otherwise specified herein, all correspondence and notice required by this Consent
10 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
11 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
12 the following addresses:

13 If to HOS:

14 Jacob P. Wilson
15 Conkle, Kremer & Engel PLC
16 3130 Wilshire Boulevard, STE 500
Santa Monica, California 90403-2351
j.wilson@conklelaw.com

If to EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 2100
San Diego, CA 92101
noam@entornolaw.com

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

19 **10. COUNTERPARTS; DIGITAL SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
22 same document.

23 **11. POST EXECUTION ACTIVITIES**

24 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
25 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
26 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
27 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
28 employ their reasonable best efforts, including those of their counsel, to support the entry of this

1 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
2 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
3 responding to any objection that any third-party may make, and appearing at the hearing before the
4 Court if so requested.

5 **12. MODIFICATION**

6 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
7 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
8 Party, and the entry of a modified consent judgment thereon by the Court.

9 **13. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
11 have read, understand, and agree to all of the terms and conditions contained herein.

12 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

13 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
14 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
15 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
16 in the absence of such a good faith attempt to resolve the dispute beforehand.

17 **15. ENTIRE AGREEMENT**

18 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
19 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
20 commitments, and understandings related hereto. No representations, oral or otherwise, express or
21 implied, other than those contained herein have been made by any Party. No other agreements, oral or
22 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

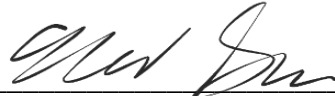
23 **AGREED TO:**

AGREED TO:

24
25 Date: 08/21/2023

Date: August 21, 2023

26
27 By: 

By: 

28 ENVIRONMENTAL HEALTH
ADVOCATES, INC.

HOUSE OF SPICES (INDIA), INC.

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IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT