

Caspar Jivalagian, Esq., State Bar No.: 282818
Vache Thomassian, Esq., State Bar No.: 289053
Tro Krikorian, Esq., State Bar No.: 317183
KJT LAW GROUP, LLP
230 N. Maryland Avenue, Suite 306
Glendale, California 91206
Telephone: 818-507-8525
Facsimile: 818-507-8588

Attorneys for Plaintiff,
BERJ PARSEGHIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

BERJ PARSEGHIAN,

Plaintiff,

v.

Fly By Jing, Inc.; Costco Wholesale Corporation,
Inc.; and DOES 1 through 100, inclusive,
Defendant.

Case No.: 24STCV02895

**[PROPOSED] CONSENT JUDGMENT AS
TO FLY BY JING, INC.**

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

KJTLAWGROUP^{LLP}
jivalagian | Thomassian

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between Berj Parseghian,
4 acting on behalf of the public interest (hereinafter “Parseghian”) and FLY BY JING, INC.
5 (hereinafter “FBJ” or “Defendant”). Collectively Parseghian and FBJ shall be referred to hereafter as
6 the “Parties” and each of them as a “Party.” Parseghian is an individual residing in California who
7 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
8 or eliminating hazardous substances contained in consumer products. Defendant employs ten or
9 more persons and is a person in the course of doing business for purposes of Proposition 65, Cal.
10 Health & Safety Code §§ 25249.6 et seq.

11 **1.2 Allegations and Representations**

12 Parseghian alleges that Defendant has offered for sale in the State of California and has sold in
13 California, products, which contain lead, and that such sales have not been accompanied by
14 Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm. Defendant denies the
16 allegations and contends that there is no exposure and no violation under Proposition 65 for an
17 alleged failure to warn.

18 **1.3 Covered Product Description**

19 The product that is covered by this Consent Judgment are identified as Fly by Jing – Not
20 Traditional but Personal – Sichuan Chili Crisp; UPC #: 8 60001 68780 3. All such items shall be
21 referred to herein as the “Covered Product.”

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about February 7, 2023, Parseghian served FBJ, Costco Wholesale
24 Corporation, and various public enforcement agencies with a document entitled "60-Day Notice of

1 Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that FBJ was in
2 violation of Proposition 65 for failing to warn consumers and customers that the Covered Product
3 exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in
4 the Notice within sixty days plus service time relative to the provision of the Notice to them by
5 Parseghian.
6

7 1.4.2 On February 5, 2024, Parseghian, acting in the interest of the general public in the
8 State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations
9 of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of
10 exposures to lead contained in the Covered Product manufactured, distributed, or sold by Defendant.
11

12 **1.5 Effective Date**

13 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
14 Consent Judgment is entered as a judgment of the Court.

15 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this
16 Consent Judgment is signed by all parties in Clause 16 below.

17 **2. STIPULATION TO JURISDICTION/NO ADMISSION**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter, that
20 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
21 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
22 claims which were or could have been raised in the Complaint based on the facts alleged therein
23 and/or in the Notice.
24

25 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
26 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
27 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
28

or violation of law, such being specifically denied by Defendant, including, but not limited to, any admission related to exposure of failure to warn. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING

3.1 Beginning on the Effective Date, FBJ shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that FBJ knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that has left the possession, and is no longer under the control of FBJ prior to the Effective Date and all claims as to such Covered Product are released in this Consent Judgment.

3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

1 If FBJ is required to provide a warning pursuant to Section 3.1, one of the following warnings
2 must be utilized ("Warning"):

3 **Option 1:**

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

7 **Option 2:**

8 **WARNING:** Can expose you to lead, a [carcinogen and] reproductive toxicant. See
9 <http://www.P65Warnings.ca.gov/food>
10

11
12 FBJ shall use the phrase "cancer and" or "carcinogen and" in the Warning if FBJ has reason to
13 believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead.

14 The Warning shall be securely affixed to or printed upon the label of each Covered Product
15 and it must be set off from other surrounding information. In addition, for any Covered Product sold
16 over the internet, the Warning shall appear on the checkout page in full text or through a clearly
17 marked hyperlink using the word "**WARNING**" in all capital and bold letters when a California
18 delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the
19 hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the
20 Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying
21 method must be utilized to identify which products on the checkout page are subject to the Warning.
22

23 The Warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all
25 capital letters and in bold print. No statements intended to or likely to have the effect of diminishing
26 the impact of the Warning on the average lay person shall accompany the Warning. Further, no
27 statements may accompany the Warning that state or imply that the source of the listed chemical has
28

1 an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a
 2 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
 3 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
 4 word "**WARNING.**"

5 FBJ must display the above Warning with such conspicuousness, as compared with other
 6 words, statements or designs on the label, or on its website, if applicable, to render the Warning likely
 7 to be read and understood by an ordinary individual under customary conditions of purchase or use
 8 of the product. For purposes of this Consent Judgment, the term "label" means a display of written,
 9 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
 10 container or wrapper. The warning must be set off from other surrounding information, enclosed in a
 11 box. If consumer information on the package is in a foreign language, the warning must also be
 12 provided in the foreign language.

13 3.3 Conforming Covered Products

14 A Conforming Covered Product is a Covered Product that contains a Warning pursuant to
 15 Section 3.2. In the absence of a Warning pursuant to Section 3.2, a Conforming Covered Product is
 16 one for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as
 17 determined by the exposure methodology set forth in Section 3.1.2 and the quality control
 18 methodology described in Section 3.4.

19 3.4 Testing and Quality Control Methodology

20 3.4.1 Beginning within one year of the Effective Date, FBJ shall arrange for lead
 21 testing of the Covered Products at least once a year for a minimum of five consecutive years by
 22 arranging for testing of three (3) randomly selected samples of the Covered Product, in the form
 23 intended for sale to the end-user, which FBJ intends to sell or is manufacturing for sale in California,
 24 directly selling to a consumer in California or "Distributing into the State of California." If tests
 25
 26
 27
 28

1 conducted pursuant to this Section demonstrate that no Warning is required for a Covered Product
2 during each of five consecutive years, then the testing requirements of this Section will no longer be
3 required as to that Covered Product. However, if during or after the five-year testing period, FBJ
4 changes ingredient suppliers for the Covered Product and/or reformulates the Covered Product, FBJ
5 shall test that Covered Product annually for at least four (4) consecutive years after such change is
6 made.
7

8 3.4.2 For purposes of measuring the “Daily Lead Exposure Level,” the average lead
9 detection result of the three (3) randomly selected samples of the Covered Product will be
10 controlling.

11 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
12 laboratory method that complies with the performance and quality control factors appropriate for the
13 method used, including limit of detection and limit of quantification, sensitivity, accuracy and
14 precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-
15 MS”) achieving a limit of quantification of less than or equal to 0.005 mg/kg.
16

17 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
18 accredited and independent third party laboratory.

19 3.4.5 Nothing in this Consent Judgment shall limit FBJ’s ability to conduct, or
20 require that others conduct, additional testing of the Covered Products, including the raw materials
21 used in their manufacture.
22

23 3.4.6 Within thirty (30) days of Plaintiff’s written request, FBJ shall deliver lab
24 reports obtained pursuant to Section 3.4 to Plaintiff. FBJ shall retain all test results and
25 documentation for a period of five years from the date of each test.

26 3.4.7 The testing requirements under this Section 3.4 do not apply to any Covered
27 Product for which FBJ has provided the Warning specified in Section 3.2 continuously and
28

uninterrupted after the Effective Date; however, in the event FBJ ceases to provide the Warning specified in Section 3.2, FBJ shall be required to comply with the testing requirements of this Section beginning immediately after the date the Warning ceases to be provided.

4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a civil penalty of \$16,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Parseghian, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$12,000.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$4,000.00 made payable directly to Parseghian. Defendant shall mail these payments within thirty (30) calendar days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to Plaintiff shall be delivered to the following payment address:

KJT LAW GROUP LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206

All payments owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics
Senior Accounting Officer -- MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

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

5. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Parseghian and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Parseghian's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant attention, and negotiating a settlement in the public interest. Defendant shall pay Parseghian's counsel \$50,000.00 for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a check payable to "KJT Law Group," via certified mail to the address for Parseghian's counsel referenced above according to the following schedule:

- (1) \$6,000 to be paid within 30 calendar days following the Effective Date;
- (2) \$22,000 to be paid within 60 calendar days following the Effective Date;
- (3) \$22,000 to be paid within 90 calendar days following the Effective Date.

6. RELEASE OF ALL CLAIMS

6.1 Parseghian's Release of Defendant, Releasees, and Downstream Releasees

As to those matters raised in the Complaint and in the Notice of Violation, Parseghian, on behalf of himself, and on behalf of the public interest, hereby waives and releases any and all claims against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors

1 and assigns (collectively “Releasees”) and each of its distributors, wholesalers, licensors, licensees,
 2 auctioneers, retailers, including but not limited to Costco Wholesale Corporation, franchisees,
 3 dealers, customers, owners, purchasers, users (collectively “Downstream Releasees”) and their
 4 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
 5 sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees
 6 (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or
 7 claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear,
 8 accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale,
 9 distribution, or use of any Covered Product sold, manufactured or distributed by Defendant,
 10 Releasees or Downstream Releasees in California, up through the Effective Date. Compliance with
 11 the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by
 12 that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the
 13 Covered Product. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice
 14 by this Consent Judgment.

17 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,
 18 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
 19 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
 20 releases any other Claims that she could make against Defendant, Releasees or Downstream
 21 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With
 22 respect to the foregoing waivers and releases in this paragraph, Parseghian hereby specifically waives
 23 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of
 24 the provisions of Section 1542 of the California Civil Code, which provides as follows:

26 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
 27 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
 28 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF**

1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
2 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

3 **6.2 Defendant's Release of Parseghian**

4 Defendant waives any and all claims against Parseghian, his attorneys and other
5 representatives, for any and all actions taken or statements made (or those that could have been taken
6 or made) by Parseghian and his attorneys and other representatives, in the course of investigating
7 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
8 respect to the Covered Product.
9

10 **7. SEVERABILITY AND MERGER**

11 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
12 document are held by a court to be unenforceable, the validity of the enforceable provisions
13 remaining shall not be adversely affected.

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

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California.
21

22 **9. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
25 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
26 other party at the following addresses:
27
28

For Fly by Jing, Inc.:

Michael Hambly, Esq.
THE FOOD LAWYERS
1880 Century Park E, Suite 611
Los Angeles, CA 90067
Phone: 310-556-0721

and

For Parseghian:

Tro Krikorian, Esq.
KJT LAW GROUP, LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206
Phone: 818-507-8528
Fax: 818-507-8588

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

10. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES

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

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

Parseghian agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and Defendants shall support approval of such Motion.

This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve months after it has been fully executed by the Parties.

13. MODIFICATION

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

14. ATTORNEY'S FEES

A party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

15. RETENTION OF JURISDICTION

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

16. AUTHORIZATION

Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment.

STIPULATED AND AGREED TO:

Date: 2/7/2025

By: BERJ PARSEGHIAN
17B4A0E5087E404...

BERJ PARSEGHIAN

Date: 2/4/2025

By: [Signature]

Matt Dunaj
[print name]
FLY BY JING, INC.

APPROVED AS TO FORM:

Date: 2/7/2025

By: [Signature]
D914CF9328F0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
BERJ PARSEGHIAN

Date: Feb. 4, 2025
By: [Signature]

MICHAEL HAMBLY, ESQ.
ATTORNEY FOR DEFENDANT,
FLY BY JING, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

KJT LAW GROUP LLP
Jivallagian | Thomassian