

KJT LAW GROUP, LLP  
Attorneys for Plaintiff

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Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

**FILED**  
Superior Court of California  
County of Los Angeles  
**12/09/2021**  
Sheri R. Carter, Executive Officer / Clerk of Court  
By:                     M. Mori                     Deputy

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

TAMAR KALOUSTIAN, in the public interest,	Case No.: 20STCV19291
Plaintiff,	
v.	Dept. 72
	Hon. Curtis A. Kin
EARTHLY TREATS, INC.; WHOLE FOODS	<del>(PROPOSED)</del>
MARKET CALIFORNIA, INC.; a California	<b>CONSENT JUDGMENT</b>
Corporation; and DOES 1 through 100, inclusive,	
Defendant.	

1 It is hereby adjudged and decreed as follows:

2 The products that are covered by this Consent Judgment are identified as Cauliflower Tortilla  
3 Chips Sea Salt, Cauliflower Stalks Sea Salt, and Cauliflower Pretzels. All such items shall be referred  
4 to herein as the "Covered Products."

5 Commencing ninety (90) days after the entry of judgment, Defendant shall not ship, sell, or  
6 offer to sell in California a Covered Product(s) that is/are manufactured, distributed, or sold by  
7 Defendant for which the serving size suggested on the label results in an intake of more than 0.5  
8 micrograms of lead per day unless the label of the Covered Product contains a Proposition 65-  
9 compliant warning as set forth below.  
10

11 Reformulation Option: The Covered Products shall be deemed to comply with  
12 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for  
13 lead if the product exposes a person to a "Daily Lead Exposure Level" equal to or less than 0.5  
14 micrograms of lead per day.  
15

16 If Defendant is required to provide a warning, one of the following warnings must be utilized  
17 ("Warning"):

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

21 OR

22 **WARNING:** [Cancer and] Reproductive Harm - <http://www.p65warnings.ca.gov/food>.

23 Where utilized as an alternative to meeting the reformulation criteria set forth above,  
24 Defendant shall provide the warning language set forth above.

25 Such warning shall be prominently affixed to or printed on each Covered Product's label or  
26 package. If printed on the label, the warning shall be contained in the same section that states other  
27 safety warnings, if any, concerning the use of the Covered Product.  
28

**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 Products, Defendant shall pay a civil penalty of \$6,500.00 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 Kaloustian, 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., \$4,875.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,625.00) made payable directly to Kaloustian. Defendant shall mail these payments within ten (10) business days following the entry of judgment, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to Plaintiff shall be delivered to:

**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

Within ten (10) business days following the entry of judgment, Defendant shall pay Kaloustian's counsel \$48,100.00 for all attorneys' fees, and costs. Other than this payment, each side is to bear its own attorneys' fees and costs.

**RELEASE OF ALL CLAIMS**

As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on behalf of herself, *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 and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, including Whole Foods Market California, Inc. (collectively "Downstream Releasees") and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,

1 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
2 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
3 releases any other Claims that she could make against Defendant, Releasees or Downstream  
4 Releasees with respect to violations of Proposition 65 based upon the Covered Products. With  
5 respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives  
6 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of  
7 the provisions of Section 1542 of the California Civil Code, which provides as follows:  
8

9  
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
11 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
12 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
13 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
14 SETTLEMENT WITH THE DEBTOR.

15 Defendant waives any and all claims against Kaloustian, her attorneys and other  
16 representatives, for any and all actions taken or statements made (or those that could have been taken  
17 or made) by Kaloustian and her attorneys and other representatives, in the course of investigating  
18 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with  
19 respect to the Covered Products.

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Date: December 9, 2021



*Curtis A. Kin*  
Hon. Curtis A. Kin  
Curtis A. Kin / Judge