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 4 230 N. Maryland Avenue, Suite 306
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 6 Attorneys for Plaintiff,
TAMAR KALOUSTIAN

FILED
 Superior Court of California
 County of Los Angeles
06/16/2022
 Sherri R. Carter, Executive Officer / Clerk of Court
 By: J. Marquez Deputy

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

10 TAMAR KALOUSTIAN, in the public interest,
 11
 12 Plaintiff,
 13
 14 v.
 15 LOTUS FOODS, INC., and DOES 1 through
 100, inclusive,
 16 Defendant.

Case No.: 21STCV03245

Dept. 45
Hon. Mel Red Recana

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

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In the above-entitled action, Plaintiff Tamar Kaloustian and Defendant Lotus Foods, Inc.,
having agreed that a judgment be entered pursuant to the terms of the Stipulated Consent Judgment
entered into by the parties in resolution of this Proposition 65 action, and following the issuance of an
order approving the Parties' Stipulation to Judgment on this day, IT IS HEREBY ORDERED,
ADJUGED AND DECREED that pursuant to Code of Civil Procedure § 664.6, judgment is hereby
entered in accordance with the terms of the Stipulated Consent Judgment attached hereto as Exhibit
A. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code
of Civil Procedure § 664.6.

IT IS SO ORDERED.

Date: 06/16/2022



A handwritten signature in black ink, appearing to read "Mel Red Recana".

Mel Red Recana / Judge

Honorable Mel Red Recana
Judge of the Superior Court

KJT LAWGROUP LLP
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EXHIBIT A

KJT LAW GROUP LLP
By: [Signature]

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3 Glendale, California 91206
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5 Attorneys for Plaintiff,
TAMAR KALOUSTIAN

7 George W. Dowell, IV (234579)
Lange, Kim & Dowell LLP
8 6849 Old Dominion Drive
Suite 225
9 McLean, Virginia 22101
Tel: (703) 506-1260
10 Email: george@dowell-law.com

11 Jennifer Adams, State Bar No.: 319347
Amin Talati Wasserman LLP
12 100 S Wacker Dr, Ste 2000
Chicago, IL 60606
13 Tel: (312) 327-3383
Email: jennifer@amintalati.com

15 Attorneys for Defendant,
LOTUS FOODS, INC.

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

19 TAMAR KALOUSTIAN,

20 Plaintiff,

21 v.

22 LOTUS FOODS, INC.,

23 Defendant.

Case No.: 21STCV03245

~~[PROPOSED]~~ CONSENT JUDGMENT AS
TO LOTUS FOODS, INC.

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

KJT LAW GROUP LLP
11001 1/28/2021 11:00:00 AM

1 **1. INTRODUCTION**

2 **1.1 The Parties**

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

12 **1.2 Allegations and Representations**

13 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in
14 California, Rice Ramen Noodle Soup, which contain lead and expose consumers to this chemical at a
15 level requiring a Proposition 65 warning. Lead is listed under Proposition 65 as a chemical known to
16 the State of California to cause cancer and birth defects or other reproductive harm. Defendant
17 denies the allegations and contends that there is no exposure requiring a warning and no violation
18 under Proposition 65 for an alleged failure to warn.

19 **1.3 Covered Products Description**

20 The products that are covered by this Consent Judgment are defined as "Rice Ramen Noodle
21 Soup." All such items shall be referred to herein as the "Covered Products."

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about July 06, 2020, Kaloustian served LOTUS FOODS and various public
24 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health and
25 Safety Code §25249.7(d) (the "Notice"), alleging that LOTUS FOODS was in violation of Proposition
26 65 for failing to warn consumers and customers that the Covered Products exposed users in
27 California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice
28 within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

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LAW OFFICES

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1.4.2 On January 27, 2021, Kaloustian, acting in the interest of the general public in the State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures to lead contained in Covered Products manufactured, distributed, or sold by LOTUS FOODS.

1.5 Effective Date and Application of this Consent Judgment

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

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

This Consent Judgment may apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered Products that Lotus Foods distributes or sells exclusively outside the State of California.

2. STIPULATION TO JURISDICTION/NO ADMISSION

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

The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent

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KALAMAZOO, MICHIGAN

1 Judgment shall be construed as an admission by LOTUS FOODS of any fact, finding, issue of law, or
2 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
3 admission by LOTUS FOODS of any fact, finding, conclusion, issue of law, or violation of law, such
4 being specifically denied by LOTUS FOODS, including, but not limited to, any admission related to
5 exposure of failure to warn. However, this section shall not diminish or otherwise affect the
6 obligations, responsibilities, and duties of LOTUS FOODS under this Consent Judgment.

8 **3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING**

9 **3.1** Beginning One Hundred and Twenty (120) Days from the Effective Date, LOTUS
10 FOODS shall be permanently enjoined from manufacturing for sale in the State of California,
11 "Distributing into the State of California," or directly selling in the State of California, any Covered
12 Products that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead
13 per day unless it meets the warning requirements under Section 3.2.

14 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
15 shall mean to directly ship a Covered Product into California for sale in California or to sell a
16 Covered Product to a distributor that LOTUS FOODS knows or has reason to know will sell the
17 Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered
18 Product that has left the possession, and is no longer under the control of LOTUS FOODS prior to
19 the Effective Date and all claims as to such Covered Products are released in this Consent Judgment.

20 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
21 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
22 gram of product, multiplied by grams of product per serving of the product (using the largest serving
23 size appearing on the product label), multiplied by servings of the product per day (using the largest
24 number of recommended daily servings appearing on the label), which equals micrograms of lead
25 exposure per day. If the label contains no recommended daily servings, then the number of
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2000 10th Street, Suite 1000
San Francisco, CA 94103

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recommended daily servings shall be one.

3.2 Clear and Reasonable Warnings

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

Option 1:

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

Option 2:

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

LOTUS FOODS shall use the phrase "cancer and" in the Warning if LOTUS FOODS has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if LOTUS FOODS has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

The Warning shall be provided to California consumers in manner that complies with 27 C.C.R. §25602(a). In addition, for any Covered Product sold over the internet, the Warning shall appear prior to checkout on the primary product page, or as a pop-up when a California zip code is input into the shipping instructions, or on the checkout page in full text or through a clearly marked hyperlink using the word **"WARNING"** in all capital and bold letters when a California delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. Given LOTUS FOODS' lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Covered Products sold through LOTUS FOODS' website, provided that LOTUS FOODS complies with the notice requirements set forth in 27 C.C.R. 25600.2.

KJT LAW GROUP LLP
By, Yaghoob H. Davari

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The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word **"WARNING"** shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word **"WARNING."**

LOTUS FOODS must display or direct consumers to the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this Consent Judgment, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

For purposes of this Consent Judgment, when LOTUS FOODS is required to provide a warning for a Covered Product pursuant to Section 3.1, LOTUS FOODS may satisfy the warning requirement by providing the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business that is subject to Proposition 65 to which it is selling or transferring the Covered Product.

If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning, the Parties agree that the new safe harbor warning may be utilized in place of the warnings set forth in this Section.

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LAWYERS

1 If Kaloustian alleges that any Covered Products fail to adhere to this Consent Judgment, then
2 Kaloustian shall inform LOTUS FOODS in a reasonably prompt manner of its test results, including
3 information sufficient to permit LOTUS FOODS to identify the Covered Products at issue and
4 investigate. LOTUS FOODS shall, within thirty (30) days following such notice, provide Kaloustian
5 with testing information demonstrating LOTUS FOODS' compliance with the Consent Judgment, or
6 proof that omission of the Warning was due to the Covered Products being sold, manufactured or
7 distributed up to One Hundred and Twenty (120) days following the Effective Date. The Parties shall
8 first attempt to resolve the matter prior to Kaloustian taking any further legal action.
9

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

11 With regard to all claims that have been raised or which could be raised with respect to failure
12 to warn pursuant to Proposition 65 with regard to lead in the Covered Products, LOTUS FOODS
13 shall pay a civil penalty of (\$10,000.00) pursuant to Health and Safety Code section 25249.7(b), to be
14 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
15 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
16 remaining 25% of the penalty remitted to Kaloustian, as provided by California Health & Safety Code
17 § 25249.12(d) and the instructions directly below.
18

19 LOTUS FOODS shall issue two separate checks for the penalty payment: (a) one check
20 made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75%
21 of the total penalty (i.e., \$7,500.00) and (b) one check in an amount representing 25% of the total
22 penalty (i.e., \$2,500.00) made payable directly to Kaloustian. LOTUS FOODS shall mail these
23 payments within ten (10) business days following the Effective Date, at which time such payments
24 shall be mailed to the following addresses respectively:

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

26 **KJT LAW GROUP LLP**
27 **230 N. Maryland Avenue, Suite 306**
28 **Glendale, CA 91206**

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

3
4 For United States Postal Delivery:

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

10 For Non-United States Postal Service Delivery:

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

16 **5. REIMBURSEMENT OF FEES AND COSTS**

17 The parties reached an accord on the compensation due to Kaloustian and her counsel under
18 the private attorney general doctrine and principles of contract law. Under these legal principles,
19 LOTUS FOODS shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of
20 investigating, bringing this matter to LOTUS FOODS attention, and negotiating a settlement in the
21 public interest. LOTUS FOODS shall pay Kaloustian's counsel (\$50,000.00) for all attorneys' fees,
22 expert and investigation fees and related costs associated with this matter and the Notice. LOTUS
23 FOODS shall mail a check payable to "KJT Law Group," via certified mail to the address for
24 Kaloustian's counsel referenced above within ten (10) business days following the Execution Date.
25 Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

26 **6. RELEASE OF ALL CLAIMS**

27 **6.1 Kaloustian's Release of LOTUS FOODS, Releasees, and Downstream Releasees**

28 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 LOTUS FOODS its parent companies, corporate affiliates, subsidiaries, predecessors,

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1 successors and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors,
 2 licensees, auctioneers, retailers, including but not limited to Whole Foods Market California, Inc.,
 3 franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream Releasees") and
 4 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees,
 5 and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation,
 6 fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or
 7 claimed, for the alleged failure of LOTUS FOODS, Releasees or Downstream Releasees to provide
 8 clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the
 9 sale, distribution, or use of any Covered Products sold, manufactured or distributed by LOTUS
 10 FOODS, Releasees or Downstream Releasees in California prior to One Hundred and Twenty (120)
 11 days after the Effective Date. Compliance with the Consent Judgment by LOTUS FOODS or a
 12 Releasee shall constitute compliance with Proposition 65 by that LOTUS FOODS, Releasee, or
 13 Downstream Releasee with respect to the presence of lead in the Covered Products. Plaintiff agrees
 14 that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.
 15

16
 17 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
 18 representatives, attorneys, and successors and/or assignees, and *not* in her 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 LOTUS FOODS, Releasees or Downstream
 21 Releasees arising up to One Hundred and Twenty (120) days after the Effective Date with respect to
 22 violations of Proposition 65 based upon the Covered Products. With respect to the foregoing waivers
 23 and releases in this paragraph, Kaloustian hereby specifically waives any and all rights and benefits
 24 which she now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of
 25 the California Civil Code, which provides as follows:
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KJT LAWGROUP LLP
Attorneys at Law

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

6.2 LOTUS FOODS's Release of Kaloustian

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

7. SEVERABILITY AND MERGER

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

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

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. Compliance with the terms of this Consent Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then LOTUS FOODS shall provide written notice to Kaloustian of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and

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OF CALIFORNIA, LLP

1 to the extent that, the Covered Products are so affected.

2 **9. NOTICES**

3 Unless specified herein, all correspondence and notices required to be provided pursuant to
4 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
5 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
6 other party at the following addresses:
7

8 For LOTUS FOODS, INC.:

9 George W. Dowell
10 Lange, Kim & Dowell LLP
11 6849 Old Dominion Drive
12 Suite 225
13 McLean, Virginia 22101
14 Email: george@dowell-law.com

15 Abhishek K. Gurnani
16 **Amin Talati Wasserman, LLP**
17 100 S. Wacker Dr., Suite 2000
18 Chicago, IL 60606
19 Telephone: 312.327.3325
20 Email: abhishek@amintalati.com and

21 For Kaloustian:

22 Tro Krikorian, Esq.
23 **KJT LAW GROUP, LLP**
24 230 N. Maryland Ave. Suite 306
25 Glendale, CA 91206
26 Phone: 818-507-8528
27 Fax: 818-507-8588

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

30 **10. DRAFTING**

31 The terms of this Consent Judgment have been reviewed by the respective counsel for each
32 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
33 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
34 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,

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10000 Wilshire Blvd., Suite 2000
Beverly Hills, CA 90210

1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
2 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
3 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
4 preparation and drafting of this Consent Judgment.

5
6 **11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

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

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

11 Kaloustian agrees to comply with the requirements set forth in California Health & Safety
12 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
13 LOTUS FOODS shall not oppose approval of such Motion.

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

17
18 **13. MODIFICATION**

19 This Consent Judgment may be modified only by further stipulation of the Parties and the
20 approval of the Court or upon the granting of a motion brought to the Court by either Party. In the
21 event that Proposition 65 is repealed or preempted as to food products, then LOTUS FOODS shall
22 have no further obligation pursuant to this Consent Judgment with respect to, and to the extent that
23 the Covered Products are so affected.

24
25 **14. ATTORNEY'S FEES**

26 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
27 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
28

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1 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
2 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
3 Code of Civil Procedure Section 2016, et seq.
4

5 **15. RETENTION OF JURISDICTION**

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

8 **16. AUTHORIZATION**

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

11 **STIPULATED AND AGREED TO:**

12 Date: 7/22/2021
13 DocuSigned by:
14 [Signature]
15 EBCDBE3BFD2A457...
16 TAMAR KALOUSTIAN

Date: 8/6/21
By: [Signature]
Ken Lee
[print name]
LOTUS FOODS, INC.

18 **APPROVED AS TO FROM:**

19 Date: 7/22/2021
20 DocuSigned by:
21 [Signature]
22 D911CF9328F0472...
23 TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: 8/9/21
By: [Signature]
GEORGE W. DOWELL, ESQ.
ATTORNEY FOR DEFENDANT,
LOTUS FOODS, INC.

24 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

25 Dated: _____
26 _____
27 Judge of the Superior Court
28