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5 230 N. Maryland Avenue, Suite 306
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9 Attorneys for Plaintiff,
10 **BERJ PARSEGHIAN**

FILED
Superior Court of California
County of Los Angeles

09/12/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: C. Wilson Deputy

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

13 BERJ PARSEGHIAN, in the public interest,

Case No.: 21STCV29355

14 Plaintiff,

Dept. 30

Hon. Barbara M. Scheper

15 v.

16 Smart & Final LLC; and DOES 1 through 100,
17 inclusive,

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

18 Defendant.

1 In the above-entitled action, Plaintiff Berj Parseghian and Defendant Smart & Final LLC,
2 having agreed that a judgment be entered pursuant to the terms of the Stipulated Consent Judgment
3 entered into by the parties in resolution of this Proposition 65 action, and following the issuance of an
4 order approving the Parties' Stipulation to Judgment on this day, IT IS HEREBY ORDERED,
5
6 ADJUGED AND DECREED that pursuant to Code of Civil Procedure § 664.6, judgment is hereby
7 entered in accordance with the terms of the Stipulated Consent Judgment attached hereto as Exhibit
8 A. By written request of the parties, the Court will retain jurisdiction to enforce the settlement under
9 Code of Civil Procedure § 664.6.

10 The Stipulated Consent Judgment is approved.

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12 **IT IS SO ORDERED.**

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15 Date: 09/12/2022

Barbara M. Schepers

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Honorable Barbara M. Schepers
Judge of the Superior Court

EXHIBIT A

1 Caspar Jivalagian, Esq., State Bar No.: 282818
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6 Attorneys for Plaintiff,
BERJ PARSEGHIAN
7

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

10 BERJ PARSEGHIAN,
11 Plaintiff,

12 v.

13 Smart & Final LLC; and DOES 1 through 100,
14 inclusive,
15 Defendant.
16

Case No.: 21STCV29355

[PROPOSED] CONSENT JUDGMENT AS
TO SMART & FINAL LLC.

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

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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 SMART & FINAL LLC
5 (hereinafter "SMART & FINAL" or "Defendant"). Collectively Parseghian and SMART & FINAL
6 shall be referred to hereafter as the "Parties" and each of them as a "Party." Parseghian is an
7 individual residing in California who seeks to promote awareness of exposures to toxic chemicals and
8 improve human health by reducing or eliminating hazardous substances contained in consumer
9 products. Defendant 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, Crystallized Ginger, 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 Products Description**

19 The product that is covered by this Consent Judgment is identified as First Street - Crystalized
20 Ginger; UPC #: 7 97565 20401 0. All such items shall be referred to herein as the "Covered
21 Product."

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about April 6, 2021, Parseghian served SMART & FINAL and various public
24 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
25 Safety Code §25249.7(d) (the "Notice"), alleging that SMART & FINAL was in violation of
26 Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users
27 in 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 Parseghian.

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1.4.2 On August 9, 2021, Parseghian, 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 the Covered Product manufactured, distributed, or sold by Defendant.

1.5 Effective Date

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.

2. STIPULATION TO JURISDICTION/NO ADMISSION

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant 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.

Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, 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, SMART & FINAL 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 exposes a person to a "Daily Lead

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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 SMART & FINAL 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 SMART & FINAL prior to the Effective Date and all claims as to such Covered Products 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

If SMART & FINAL 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 - www.P65Warnings.ca.gov/food

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. In addition, for any Covered Product sold

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over the internet, the Warning shall appear prior to completion of purchase 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.

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.

SMART & FINAL must display 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.

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 five thousand dollars (\$5,000.00) 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 (i.e., \$3,750.00) remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty (i.e., \$1,250.00) remitted to Parseghian, as

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provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

All civil penalty payments shall be mailed to Parseghian's counsel, to be forwarded to the appropriate government agencies. KJT Law Group, LLP will make sure the payments are forwarded to OEHHA and Parseghian.

Defendant shall mail a \$5000.00 check payable to "KJT Law Group, LLP" via certified mail to the following payment address, within thirty (30) days following the Effective Date:

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

5. REIMBURSEMENT OF FEES AND COSTS

The parties reached an accord on the compensation due to Parseghian and his 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 fifty thousand dollars (\$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 \$50,000.00 check payable to "KJT Law Group," via certified mail to the address for Parseghian's counsel referenced above, within thirty (30) days following the Effective Date.

Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

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

As to those matters that were raised or could have been 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,

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subsidiaries, predecessors, successors, and any other upstream entities in the distribution chain for the Covered Product including Western Mixers Produce & Nuts, Inc. (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, and users (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 prior to the Effective Date. 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, Parseghian, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in her representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other Claims that he could make against Defendant, Releasees or Downstream Releasees arising after the Effective Date with respect to violations of Proposition 65 based upon the Covered Products. With respect to the foregoing waivers and releases in this paragraph, Parseghian hereby specifically waives any and all rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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.

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6.2 Defendant's Release of Parseghian

Defendant waives any and all claims against Parseghian, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Parseghian and his 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 Defendant shall provide written notice to Parseghian of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

9. NOTICES

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

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other party at the following addresses:

For SMART & FINAL LLC:

Michael Hambly
The Food Lawyers
1880 Century Park East, Suite 611
Los Angeles, CA 90067
P: (310) 556-40721
E. michael.hambly@thefoodlawyers.com

and

For BERJ 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

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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 eighteen 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:

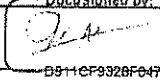
Date: 7/5/2022
By: BERJ PARSEGHIAN
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BERJ PARSEGHIAN

Date: July 11, 2022
By: [Signature]
JOE ANGULO, GENERAL COUNSEL
SMART & FINAL LLC

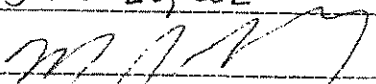
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APPROVED AS TO FORM:

Date: 7/5/2022

By: 
DocuSigned by: Berj Parseghian
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Date: June 23, 2022

By: 

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
BERJ PARSEGHIAN

MICHAEL HAMBLY, ESQ.
ATTORNEY FOR DEFENDANT,
SMART & FINAL LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

KJT LAW GROUP, LLP