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11 Attorneys for Defendant
12 **SUNFLOWER FARMERS MARKETS, LLC**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF LOS ANGELES**

15 **TAMAR KALOUSTIAN, in the public**
16 **interest,**

17 **Plaintiff,**

18 **v.**

19 **SUNFLOWER FARMERS MARKETS, LLC;**
20 **and DOES 1 through 100, inclusive,**

21 **Defendants.**

Case No. BC649679

Assigned For All Purposes To The
Honorable Yvette M. Palazuelos, Dept. 28

AMENDED CONSENT JUDGMENT
[PROPOSED]

22 **1. INTRODUCTION**

23 1.1 **The Parties.** This Consent Judgment is entered into by and between Tamar
24 Kaloustian acting on behalf of the public interest ("Kaloustian") and Sunflower Farmers Markets,
25 LLC ("Sunflower") with Kaloustian and Sunflower collectively referred to as the "Parties" and
26 each of them as a "Party."

27 1.2 **Allegations and Representations.** Kaloustian alleges that Sunflower has exposed
28 individuals to lead from Turkish apricots without providing clear and reasonable warnings under
Proposition 65. Lead is listed under Proposition 65 as a chemical known to the State of
California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation.**

1 On or about October 26, 2016, Kaloustian served Sunflower and various public
2 enforcement agencies with a notice that alleged that Sunflower North America violated Health &
3 Safety Code §25249.6, by failing to warn individuals that Turkish Apricots sold by Sunflower
4 exposed users in California to Lead (the "Notice"). No public enforcer has brought and is
5 diligently prosecuting the claims alleged in the Notice.

6 1.4 **Complaint.** On February 7, 2017, Kaloustian filed a complaint in the matter.

7 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
8 has jurisdiction over Sunflower as to the allegations contained in the Complaint filed in this
9 matter, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to
10 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
11 resolution of all claims which were or could have been raised in the Complaint based on the facts
12 alleged therein and/or in the Notice.

13 1.6 Sunflower denies the material allegations contained in Kaloustian's Notices and
14 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
15 Judgment shall be construed as an admission by Sunflower of any fact, finding, issue of law, or
16 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
17 an admission by Sunflower of any fact, finding, conclusion, issue of law, or violation of law, such
18 being specifically denied by Sunflower. However, this section shall not diminish or otherwise
19 affect the obligations, responsibilities, and duties of Sunflower under this Consent Judgment.

20 **2. DEFINITIONS**

21 2.1 **Covered Products.** The term "Covered Products" means Turkish Apricots sold in
22 bulk or under a Sprouts Farmers Market private label (including but not limited to its "Bulk
23 Foods" branded products).

24 2.2 **Effective Date.** The term "Effective Date" means the date the Court approves this
25 Consent Judgment.

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1 **3. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

2 3.1 As of the Effective Date, Sunflower shall not sell or offer any Covered Products
3 for sale in California that contain lead in excess of 40 parts per billion (40 ppb), without
4 providing a clear and reasonable warning pursuant to this Section 3.

5 3.2 For any Covered Products that contain more than 40 ppb lead, Sunflower shall
6 display the following warning where the product is offered for sale:

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

10 The words in brackets are optional.

11 3.3 The warning must be prominently displayed with such conspicuousness as
12 compared with other words, statements, designs or devices, as to render the warning likely to be
13 read and understood by an ordinary individual under customary conditions of purchase or use.

14 **4. MONETARY TERMS**

15 4.1 Within 30 days of the entry of an order approving this Consent Judgment pursuant
16 to Health & Safety Code § 25249.7(f), Sunflower shall pay the sum of \$45,000.00, comprising
17 \$6,000.00 in civil penalties and \$39,000.00 in attorney's fees. The payment shall be made by wire
18 transfer to KJT Law Group, LLP, which shall be solely responsible for allocation of the payment
19 as specified below. The civil penalty shall be apportioned by Kaloustian in accordance with
20 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
21 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
22 Civil Penalty remitted to Kaloustian, as provided by California Health & Safety Code
23 § 25249.12(d).

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Kaloustian
26 acting on its own behalf, and on behalf of the public interest, and Sunflower, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates

1 (including but not limited to all affiliates doing business as Sprouts Farmers Market), and their
2 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
3 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
4 not limited to manufacturers, suppliers, growers, distributors, wholesalers, customers, licensors,
5 licensees retailers, franchisees, and cooperative members (“Downstream Releasees”), of all
6 claims for violations of Proposition 65 based on exposure to lead from Covered Products as set
7 forth in the Notices, with respect to any Covered Products manufactured, distributed, or sold by
8 Defendant Releasees prior to the Effective Date. Defendant Releasees’ compliance with the
9 terms of this consent judgment constitutes compliance with Proposition 65 with regard to the
10 Covered Products.

11 5.2 In addition to the foregoing, Kaloustian, on behalf of itself, its past and current
12 agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative
13 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases Sunflower, Defendant Releasees, and Downstream Releasees from any
15 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
16 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
17 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
18 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
19 or arising from Covered Products manufactured, distributed, or sold by Sunflower, Defendant
20 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this
21 paragraph, Kaloustian hereby specifically waives any and all rights and benefits which she now
22 has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
23 California Civil Code, which provides as follows:

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

27 5.3 Sunflower waives any and all claims against Kaloustian, its attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been

1 taken or made) by Kaloustian and its attorneys and other representatives, whether in the course of
2 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
3 and/or with respect to Covered Products.

4 **6. ENFORCEMENT**

5 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
6 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
7 California, County of Los Angeles, giving the notice required by law, enforce the terms and
8 conditions contained herein. A Party may enforce any of the terms and conditions of this Consent
9 Judgment only after that Party first provides 30 days' notice to the Party allegedly failing to
10 comply with the terms and conditions of this Consent Judgment and attempts to resolve such
11 Party's failure to comply in an open and good faith manner.

12 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
13 proceeding to enforce Section 3 of this Consent Judgment, Kaloustian shall provide a written
14 notice of violation ("NOV") to Sunflower. The NOV shall include information sufficient for
15 Sunflower to be able to understand and correct the violation, and at a minimum for each Covered
16 Product must contain: (a) the name of the Covered Product, (b) a valid Sunflower (or affiliate)
17 store receipt or other proof of purchase that includes specific dates when the Covered Product was
18 sold in California, (c) the store(s) at which the Covered Product was available for sale to
19 consumers, and (d) any other evidence or other support for the allegations in the notice, including
20 all test data obtained by Kaloustian regarding the Covered Products. Kaloustian shall retain any
21 untested samples of the Covered Product and make available to Sunflower for confirmatory
22 testing upon Sunflower's request.

23 6.3 **Notice of Election.** Within 30 days of receiving an NOV, Sunflower shall serve a
24 notice of election (NOE) either contesting or not contesting the NOV.

25 6.3.1 **Non-Contested NOV.** If Sunflower serves an NOE not contesting the
26 NOV, and has taken corrective action by posting warnings that comply with Section 3.2 at
27 the store(s) identified in the NOV, Kaloustian shall take no further action regarding the
28 alleged violation.

1 6.3.2 **Contested NOV.** Sunflower may serve a Notice of Election (“NOE”)
2 informing Kaloustian of its election to contest the NOV within 30 days of receiving the
3 NOV.

4 (a) In its election, Sunflower may request that the sample(s) of Covered
5 Product(s) tested by Kaloustian be subject to confirmatory testing at an accredited
6 laboratory selected by Sunflower.

7 (b) If the confirmatory testing establishes that the Covered Products do
8 not contain lead in excess of 40 ppb, Kaloustian shall take no further action regarding the
9 alleged violation. If the confirmatory

10 (c) testing confirms that the Covered Product does contain lead in
11 excess of 40 ppb, Sunflower may withdraw its NOE to contest the violation and may serve
12 a new NOE pursuant to Section 6.3.1.

13 (d) If Sunflower does not withdraw an NOE to contest the NOV or take
14 action under Section 6.3.1, the Parties shall meet and confer for a period of no less than 30
15 days before Kaloustian may seek an order enforcing the terms of this Consent Judgment.

16 6.4 In any proceeding brought by either Party to enforce this Consent Judgment, the
17 prevailing party shall be entitled to recover its reasonable attorney’s fees and costs.

18 **7. INTEGRATION**

19 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
20 any and all prior negotiations and understandings related hereto shall be deemed to have been
21 merged within it. No representations or terms of agreement other than those contained herein
22 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

23 **8. GOVERNING LAW**

24 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
25 California and apply within the State of California. In the event that Proposition 65 is repealed or
26 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
27 Sunflower shall have no further obligations pursuant to this Consent Judgment with respect to,
28 and to the extent that, Covered Products are so affected.

1 **9. NOTICES**

2 9.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
5 party; and email by the other party at the following addresses:

6 For Sunflower:

7
8 Derek Mirza
9 Sr. Corporate Counsel
10 Sprouts Farmers Market, Inc.
11 5455 E. High St., Suite 111
12 Phoenix, Arizona 85054
13 derekmirza@sprouts.com

14 With a copy to:

15 Jeffrey Margulies
16 Norton Rose Fulbright US LLP
17 555 South Flower Street, Forty-First Floor
18 Los Angeles, California 90071
19 jeff.margulies@nortonrosefulbright.com

20 For Kaloustian:

21 Vache Thomassian
22 KJT LAW GROUP, LLP
23 230 N. Maryland Ave. Suite 306
24 Glendale, California 91206
25 vache@kjtlawgroup.com

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

28 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

1 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 11.1 Kaloustian agrees to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Sunflower shall support approval of such Motion.

6 11.2 This Consent Judgment shall not be effective until it is approved and entered by
7 the Court and shall be null and void if, for any reason, it is not approved by the Court. In such
8 case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached
9 within 30 days, the case shall proceed on its normal course.

10 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
12 Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall
13 proceed on its normal course on the trial court's calendar.

14 **12. MODIFICATION**

15 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either
17 Party.

18 **13. ATTORNEY'S FEES**

19 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
20 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

21 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
22 pursuant to law.

23 **14. RETENTION OF JURISDICTION**

24 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
25 Consent Judgment.

26 **15. AUTHORIZATION**

27 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
28 their respective Parties and have read, understood and agree to all of the terms and conditions of

1 this document and certify that he or she is fully authorized by the Party he or she represents to
2 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
3 Except as explicitly provided herein each Party is to bear its own fees and costs.

4 **AGREED TO:**

AGREED TO:

5 4/30/2019

6 Date:

Date: 4/30/19

7 By:

DocuSigned by:
TAMAR KALOUSTIAN
EBC0DE30FD2A4E7

By:

D.R.M.

8 TAMAR KALOUSTIAN

SUNFLOWER FARMERS MARKETS,
9 LLC

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

11 Dated: _____

12 _____
13 Judge of Superior Court

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