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Attorneys for Plaintiff,
TAMAR KALOUSTIAN

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

TAMAR KALOUSTIAN,

Plaintiff,

v.

Rhythm Superfoods, LLC; Whole Foods Market
California, Inc., a California Corporation; and
DOES 1 through 100, inclusive,
Defendant.

Case No.: 20STCV19267

**[PROPOSED] CONSENT JUDGMENT AS
TO RHYTHM SUPERFOODS, LLC.**

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

KJT LAWGROUP LLP
Jivalagian Thomassian

1. INTRODUCTION**1.1 The Parties**

This [Proposed] Consent Judgment is hereby entered into by and between Tamar Kaloustian, acting on behalf of the public interest (hereinafter "Kaloustian") and RHYTHM SUPERFOODS, LLC (hereinafter "RHYTHM" or "Defendant"). Collectively Kaloustian and RHYTHM shall be referred to hereafter as the "Parties" and each of them as a "Party." Kaloustian is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Defendant employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 Allegations and Representations

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

1.3 Covered Product Description

The product that is covered by this Consent Judgment are identified as Organic Beet Chips. All such items shall be referred to herein as the "Covered Product."

1.4 Notices of Violation/Complaint

1.4.1 On or about February 20, 2020, Kaloustian served RHYTHM and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that RHYTHM was in violation of Proposition 65 for

1 failing to warn consumers and customers that the Covered Product exposed users in California to
2 cadmium. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty
3 days plus service time relative to the provision of the Notice to them by Kaloustian.

4 1.4.2 On May 20, 2020, Kaloustian, acting in the interest of the general public in the State
5 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
6 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures
7 to cadmium contained in the Covered Product manufactured, distributed, or sold by Defendant.
8

9 **1.5 Effective Date**

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

12 For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this
13 Consent Judgment is signed by all parties in Clause 16 below.
14

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

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

23 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
24 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
25 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
26 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
27 admission related to exposure of failure to warn. However, this section shall not diminish or
28

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, RHYTHM 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 cadmium exposure level of more than 4.1 micrograms of cadmium 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 RHYTHM 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 RHYTHM prior to the Effective Date and all claims as to such Covered Product are released in this Consent Judgment.

3.2 Clear and Reasonable Warnings

If RHYTHM 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 cadmium, 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.

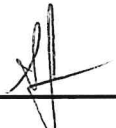
The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. In addition, for any Covered Product sold

1 over the internet, the Warning shall appear on the checkout page in full text or through a clearly
2 marked hyperlink using the word "**WARNING**" in all capital and bold letters when a California
3 delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the
4 hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the
5 Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying
6 method must be utilized to identify which products on the checkout page are subject to the Warning.
7

8 The Warning shall be at least the same size as the largest of any other health or safety
9 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all
10 capital letters and in bold print. No statements intended to or likely to have the effect of diminishing
11 the impact of the Warning on the average lay person shall accompany the Warning. Further, no
12 statements may accompany the Warning that state or imply that the source of the listed chemical has
13 an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a
14 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
15 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
16 word "**WARNING**."
17

18 RHYTHM must display the above Warning with such conspicuousness, as compared with
19 other words, statements or designs on the label, or on its website, if applicable, to render the Warning
20 likely to be read and understood by an ordinary individual under customary conditions of purchase
21 or use of the product.
22

23 For purposes of this Consent Judgment, the term "label" means a display of written, printed or
24 graphic material that is printed on or affixed to a Covered Product or its immediate container or
25 wrapper.
26
27
28



For purposes of this Consent Judgment, RHYTHM 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.

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 cadmium in the Covered Product, Defendant shall pay a civil penalty of \$8,000.00 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 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., \$6,000.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$2,000.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten (10) business 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 Kaloustian and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Kaloustian'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 Kaloustian's counsel \$67,000.00 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 Kaloustian's counsel referenced above in three installments as follows:

- \$25,000.00 due sixty (60) days following the Effective Date.
- \$25,000.00 due one hundred twenty (120) days following the Effective Date.
- 17,000.00 due one hundred eighty (180) days following the Effective Date.

6. **RELEASE OF ALL CLAIMS**

6.1 **Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

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



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

14
 15
 16 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
 17 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
 18 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
 19 releases any other Claims that she could make against Defendant, Releasees or Downstream
 20 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With
 21 respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives
 22 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of
 23 the provisions of Section 1542 of the California Civil Code, which provides as follows:
 24

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

1 **6.2 Defendant's Release of Kaloustian**

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

8 **7. SEVERABILITY AND MERGER**

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

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

16 **8. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within the State of California. Compliance with the terms of this Consent Judgment
19 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
20 alleged exposures to cadmium arising from the Covered Product. In the event that Proposition 65 is
21 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
22 Product, then Defendant shall provide written notice to Kaloustian of any asserted change in the law,
23 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
24 extent that, the Covered Product is so affected.

25
26 **9. NOTICES**

27 Unless specified herein, all correspondence and notices required to be provided pursuant to
28



1 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
 2 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
 3 other party at the following addresses:

4
 5 For Rhythm Superfoods, LLC:

6 J.T. Wells Blaxter, Esq.
BLAXTER & BLACKMAN, LLP
 7 601 California Street, Suite 1505
 San Francisco, California 94108
 8 Phone: 415-500-7700

9 and

10 For Kaloustian:

11 Tro Krikorian, Esq.
KJT LAW GROUP, LLP
 12 230 N. Maryland Ave. Suite 306
 Glendale, CA 91206
 13 Phone: 818-507-8528
 Fax: 818-507-8588

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

16
 17 **10. DRAFTING**

18 The terms of this Consent Judgment have been reviewed by the respective counsel for each
 19 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
 20 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
 21 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
 22 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
 23 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
 24 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
 25 preparation and drafting of this Consent Judgment.
 26
 27
 28

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

Kaloustian 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

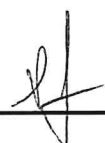
This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

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.

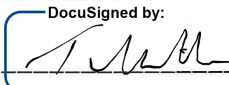


16. AUTHORIZATION

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: 9/28/2021

By: 
EBDCDBE3BFD2A457...

TAMAR KALOUSTIAN

Date: 9/27/21

By: 

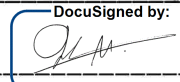
Scott G. Jensen

[print name]

RHYTHM SUPERFOODS, LLC

APPROVED AS TO FROM:

Date: 9/28/2021

By: 
D911CF9328F0472...TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: September 27, 2021

By: Wells Blaxter

J.T. WELLS BLAXTER, ESQ.
ATTORNEY FOR DEFENDANT,
RHYTHM SUPERFOODS, LLC**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: _____

Judge of the Superior Court