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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.

PLANT SNACKS, LLC,

Defendant.

Case No.: 20STCV39657

**[PROPOSED] CONSENT JUDGMENT AS
TO PLANT SNACKS, LLC**

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

KJTLAWGROUP^{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 PLANT SNACKS, LLC (hereinafter “PLANT SNACKS” or “Defendant”). Collectively Kaloustian and PLANT SNACKS 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.

1.2 Allegations and Representations

Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in California, cassava root chips, which contain lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead 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 Products Description

The products that are covered by this Consent Judgment are defined as "Cassava Root Chips." All such items shall be referred to herein as the “Covered Products.”

1.4 Notices of Violation/Complaint

1.4.1 On or about April 20, 2020, Kaloustian served PLANT SNACKS 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 PLANT SNACKS was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

1.4.2 On October 15, 2020, 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 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, Plant Snacks 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 Products that expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

1 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
2 shall mean to directly ship a Covered Product into California for sale in California or to sell a
3 Covered Product to a distributor that Plant Snacks knows or has reason to know will sell the Covered
4 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that
5 has left the possession, and is no longer under the control of Plant Snacks prior to the Effective Date
6 and all claims as to such Covered Products are released in this Consent Judgment.

7 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
8 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
9 gram of product, multiplied by grams of product per serving of the product (using the largest serving
10 size appearing on the product label), multiplied by servings of the product per day (using the largest
11 number of recommended daily servings appearing on the label), which equals micrograms of lead
12 exposure per day. If the label contains no recommended daily servings, then the number of
13 recommended daily servings shall be one.

14 **3.2 Clear and Reasonable Warnings**

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

17
18 **Option 1:**

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

22 **Option 2:**

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

24 Plant Snacks shall use the phrase "cancer and" in the Warning if Plant Snacks has reason to
25 believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if Plant Snacks
26 has reason to believe that another Proposition 65 chemical is present which may require a cancer
27 warning.
28

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

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

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

25 For purposes of this Consent Judgment, when Plant Snacks is required to provide a warning
26 for a Covered Product pursuant to Section 3.1, Plant Snacks may satisfy the warning requirement by
27
28

1 providing the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business
2 that is subject to Proposition 65 to which it is selling or transferring the Covered Product.

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

4 With regard to all claims that have been raised or which could be raised with respect to failure
5 to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay
6 a civil penalty of \$8,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned
7 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
8 State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of
9 the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d)
10 and the instructions directly below.

11 Defendant shall issue two separate checks for the penalty payment: (a) one check made
12 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
13 total penalty (i.e., \$6,000.00) and (b) one check in an amount representing 25% of the total penalty
14 (i.e., \$2000.00) made payable directly to Kaloustian. Defendant shall mail these payments within ten
15 (10) business days following the Effective Date, at which time such payments shall be mailed to the
16 following addresses respectively:

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

18 **KJT LAW GROUP LLP**

19 **230 N. Maryland Avenue, Suite 306**

20 **Glendale, CA 91206**

21 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
22 addresses:

23 For United States Postal Delivery:

24 Mike Gyurics

25 Senior Accounting Officer -- MS 19-B

26 Office of Environmental Health Hazard Assessment

27 P.O. Box 4010

28 Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

1 Mike Gyurics
2 Fiscal Operations Branch Chief
3 Office of Environmental Health Hazard Assessment
4 1001 I Street
5 Sacramento, CA 95814

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

7 The parties reached an accord on the compensation due to Kaloustian and her counsel under
8 the private attorney general doctrine and principles of contract law. Under these legal principles,
9 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,
10 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.
11 Defendant shall pay Kaloustian's counsel \$67,000.00 for all attorneys' fees, expert and investigation
12 fees and related costs associated with this matter and the Notice. Defendant shall mail a check
13 payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced
14 above within ten (10) business days following the Execution Date. Other than the payment required
15 hereunder, each side is to bear its own attorneys' fees and costs.

16 **6. RELEASE OF ALL CLAIMS**

17 **6.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

18 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on
19 behalf of herself, *and on behalf of the public interest*, hereby waives and releases any and all claims
20 against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors
21 and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees,
22 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively
23 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,
24 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,
25 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
26 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or
27 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65
28 and/or under Business and Professions Code §17200, *et seq.* about exposure to lead arising from the
sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant,

1 Releasees or Downstream Releasees in California prior to Ninety (90) days after the Effective Date.
2 Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with
3 Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of
4 lead in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved
5 with prejudice by this Consent Judgment.

6 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
7 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
8 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
9 releases any other Claims that she could make against Defendant, Releasees or Downstream
10 Releasees arising up to Ninety (90) days after the Effective Date with respect to violations of
11 Proposition 65 and/or Business and Professions Code §17200 based upon the Covered Products.
12 With respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically
13 waives any and all rights and benefits which she now has, or in the future may have, conferred by
14 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

20 6.2 Defendant's Release of Kaloustian

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

26 7. SEVERABILITY AND MERGER

27 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
28 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 Kaloustian 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 other party at the following addresses:

For Plant Snacks, LLC:

Erik K. Swanholt
Foley & Lardner LLP
 555 South Flower Street, Suite 3300
 Los Angeles, CA 90071-2418
 Telephone: 213.972.4614
 Email: eswanholt@foley.com and
 For Kaloustian:

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

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

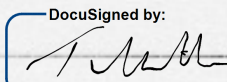
This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

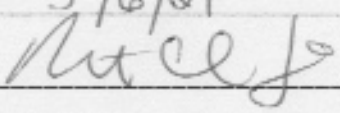
16. AUTHORIZATION

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:

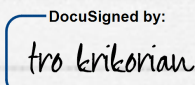
Date: 5/13/2021

By: 
DocuSigned by:
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TAMAR KALOUSTIAN

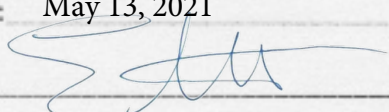
Date: 5/6/21
 By: 
ROBERT CRAIN, OWNER
[print name]
PLANT SNACKS, LLC INC.

APPROVED AS TO FROM:

Date: 5/13/2021

By: 
DocuSigned by:
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TRO KRIKORIAN, ESQ.

**ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN**

Date: May 13, 2021
 By: 
ERIK K. SWANHOLT, ESQ.
**ATTORNEY FOR DEFENDANT,
PLANT SNACKS, LLC**

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

 Judge of the Superior Court