

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Kaloustian and Forager Project, LLC**

This Settlement Agreement is entered into by and between Tamar Kaloustian ("Kaloustian"), represented by her attorneys KJT Law Group, LLP on the one hand, and Forager Project, LLC a Delaware Limited Liability Company ("Forager"), on the other hand, with Kaloustian and Forager collectively referred to as the "Parties."

1.2. **General Allegations**

Kaloustian alleges that Forager manufactured and distributed and offered for sale in the State of California Organic Grain-Free Os Chocolate, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The product covered by this Settlement Agreement is defined to include "Forager Project – Organic Grain-Free Os Chocolate / Toasted cassava cereal with plant protein"; UPC #: 8 14558 02134 5, that Forager has sold, offered for sale, manufactured, or distributed in California and that contain lead. All such items shall be referred to herein as the "Covered Products."

1.4. **Notice of Violation**

On July 6, 2020, Kaloustian alleges it served Forager and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that

provided Forager and such public enforcers with notice that Forager was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Forager's compliance with Proposition 65. Specifically, Forager denies the allegations contained in Kaloustian's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Forager of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Forager of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Forager. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Forager under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean thirty (30) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Beginning on the Effective Date, Forager shall be 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 2.2. In the event that Proposition 65 is repealed or preempted as to food products, then Forager shall have no further obligation pursuant to this Agreement with respect to, and to the extent that the Covered Products are so affected.

As used in this Settlement Agreement, 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 Forager knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession, and/or is no longer under the control of Forager prior to the Effective Date and all claims as to such Covered Products are released in this Settlement Agreement.

For purposes of this Settlement Agreement, unless the law, regulations, or case law, prescribes otherwise 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.

2.2 Clear and Reasonable Warnings

If Forager is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning") unless the law, regulations, or case law requires otherwise:

Option 1:

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

Option 2:

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

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

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 over the internet, the Warning shall appear 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.

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."

Forager will 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 Settlement Agreement, 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 Settlement Agreement, when Forager is required to provide a warning for a Covered Product pursuant to Section 2.1, Forager 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 Kaloustian alleges that any Covered Product fails to adhere to this Agreement, then Kaloustian shall inform Forager in a reasonably prompt manner of its test results, including information sufficient to permit Forager to identify the Covered Products at issue and investigate. The Parties shall first attempt to resolve the matter prior to Kaloustian taking any further legal action.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, Forager shall pay a total of Fifty-Five Thousand Dollars (\$55,000.00) ("Total Settlement Payment") as a full and complete settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Forager's attention. The Total Settlement Payment shall be made as prescribed herein.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, \$6,000.00 of the Total Settlement Payment shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Kaloustian.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$49,000.00 of the Total Settlement Payment shall be considered reimbursement of Kaloustian's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to Kaloustian and its counsel under the private attorney general doctrine and principles of contract law.

6. PAYMENT INFORMATION

Forager shall mail these payments within thirty (30) business days following the date that the last Party to execute this Settlement Agreement send the signature to the other's attorney, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to Plaintiff and for attorneys' fees, 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

7. RELEASE OF ALL CLAIMS

7.1. Release of Forager, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, Kaloustian, and anyone acting by or through her or on her behalf, including but not limited to, their respective agents, managers, heirs, executors, administrators, assigns, successors in interest, attorneys, insurers, and indemnitors (collectively, the “Kaloustian Releasers”), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Products, including, without limitation, all actions, and causes of action, in law or in equity, claims, suits, liabilities, demands, obligations, damages, costs, fines, penalties, liens, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever whether now known or unknown, suspected or unsuspected, and whether or not concealed or hidden, including, but not limited to, the dispute, any such claims made or referenced in the Covered Products, which the Kaloustian Releasers, or any of them, now own or hold or have at any time heretofore owned or held against Forager, and its past, present and/or future respective equity owners, parents, subsidiaries, affiliates, wholesalers, retailers, or dealers, distributors, sister and related companies and each and all of their past, present or future shareholders, members, directors, officers, consultants, affiliated entities or corporations, subsidiaries, divisions, franchisees, partners, joint venturers, agents, investors, creditors, insurers, indemnitors, guarantors, administrators, attorneys, employees, representatives, successors, predecessors, licensors, licensees, customers, agents, managers, heirs, executors, and assigns of any of the foregoing, for any alleged violations of Proposition 65,

or any other alleged violation of statutory or common law, arising from alleged exposures to lead or other chemicals in relation to the Covered Products.

Kaloustian also, in her capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind against Forager. Kaloustian acknowledges that she is familiar with California Civil Code section 1542, which provides as follows:

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

Kaloustian, in her capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Forager shall have no further obligations pursuant to this Settlement Agreement.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement 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 Forager:
Alexis Hager
ahager@foragerproject.com
Forager Project, LLC a Delaware Corporation
235 Montgomery St. Suite 730
San Francisco, CA 94104

with a copy to:

Gino Maurelli, Esq.
gmaurelli@bhfs.com
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street, Suite 2200
Denver, CO 80202

For Kaloustian: Tro Krikorian, Esq.
 KJT Law Group, LLP
 230 N. Maryland Ave., Suite 306
 Glendale, CA 91206

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. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

13. DRAFTING

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

14. ASSIGNMENT

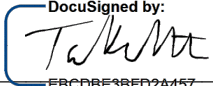
Kaloustian acknowledges, represents and warrants that it has not assigned, sold, transferred or otherwise disposed of any of the claims or other matters that are being released herein.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.

Executed this 4/1/2021 day of Sherman Oaks, 2021, at _____, California.

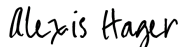
DocuSigned by:

EB0DBE3BF02A457...
Tamar Kaloustian

4/5/2021

Executed this ___ day of _____, 2021, at San Francisco, California.

Forager Project, LLC a Delaware Limited Liability Company

DocuSigned by:



By: Alexis Hager

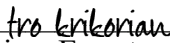
Its: CFO & COO

APPROVED AS TO FORM BY:

4/1/2021

Executed this ___ day of _____, 2021, at GLENDALE, California.

DocuSigned by:



Tro Krikorian, Esq. Attorney for Tamar Kaloustian
KJT Law Group, LLP

4/5/2021

Executed this ___ day of _____, 2021, at Los Angeles, California.

DocuSigned by:



Jonathan C. Sandler, Esq. Attorney for Forager Project, LLC a
Delaware Limited Liability Company
Brownstein Hyatt Farber Schreck, LLP