

1 Caspar Jivalagian, Esq., State Bar No.: 282818
Vache Thomassian, Esq., State Bar No.: 289053
2 **KJT LAW GROUP, LLP**
230 N. Maryland Avenue, Suite 306
3 Glendale, California 91206
Telephone: 818-507-8525
4 Facsimile: 818-507-8588

5 Attorneys for Plaintiff,
TAMAR KALOUSTIAN

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10 TAMAR KALOUSTIAN,

11 Plaintiff,

12 v.

13 LUCHI, LLC,

14 Defendant.

Case No.: 21STCV18173

[PROPOSED] CONSENT JUDGMENT AS
TO LUCHI, LLC

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

KJTLAWGROUP^{LLP}
Jivalagian | Thomassian

15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between Tamar Kaloustian,
4 acting on behalf of the public interest (hereinafter “Kaloustian”) and Luchi, LLC (hereinafter
5 “Defendant”). Collectively Kaloustian and Defendant shall be referred to hereafter as the “Parties”
6 and each of them as a “Party.” Kaloustian is an individual residing in California who seeks to promote
7 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
8 hazardous substances contained in consumer products.

9 **1.2 Allegations and Representations**

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

16 **1.3 Covered Product Description**

17 The products covered by this Consent Judgment are defined as Epic Protein. The items shall
18 be referred to herein as the “Covered Product.”

19 **1.4 Notices of Violation/Complaint**

20 1.4.1 On or about December 3, 2020, Kaloustian served Defendant and various public
21 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
22 Safety Code §25249.7(d) (the "Notice"), alleging that Defendant was in violation of Proposition 65 for
23 failing to warn consumers and customers that the Covered Product exposed users in California to
24 lead. To the best of the Parties’ knowledge, no public enforcer diligently prosecuted the claims
25 threatened in the Notice within sixty days plus service time relative to the provision of the Notice to
26 Defendant by Kaloustian.

27 1.4.2 On May 13, 2021, Kaloustian, acting in the interest of the general public in the State
28 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Health & Safety Code §25249.6 (the “Complaint”) based on the alleged failure to warn of exposures to lead contained in 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 17 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, conclusion, 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 and 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 sixty (60) days after the Effective Date, Defendant 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 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 Defendant 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 Defendant prior to sixty (60) days after
6 the Effective Date and all claims as to such Covered Product 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 Defendant is required to provide a warning pursuant to Section 3.1, one of the following
16 warnings must be utilized ("Warning"):

17 **Option 1:**

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

21 **Option 2:**

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For any Covered Product sold by Defendant via the internet, the Warning shall be provided by including either the Warning or a clearly marked hyperlink using the word **"WARNING"** in all capital and bold letters on the product display page, or by otherwise prominently displaying the Warning to the purchaser prior to completing the purchase when a California delivery address is indicated for any purchase of any Covered Product. For any Covered Product that is not sold over the internet, 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.

Consistent with Proposition 65, 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. The warning content may contain information that is supplemental to the content required by Section 3.2 of this Consent Judgment only to the extent that it identifies the source of the exposure or provides information on how to avoid or reduce exposure to the identified 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."**

The Warning shall be displayed with such conspicuousness as compared with other words, statements, or designs on the label, or on its website, 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 affixed to a Covered Product or its immediate container or wrapper.

The warning requirements set forth in Sections 3.1 and 3.2 of this Consent Judgment supersede any and all prior agreements concerning the Covered Product. For purposes of this Consent Judgment, the Parties agree that Defendant shall be deemed to be in compliance with this Consent Judgment by either adhering to Sections 3.1 and 3.2 of this Consent Judgment or by complying with the warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date. As an alternative means of complying with the warning requirements of this Consent Judgment, Defendant

KJTLAWGROUP LLP
Jivalagian | Thomassian

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

may provide a notification meeting the requirements of 27 C.C.R. § 25600.2 (2020) (as it may be amended from time to time).

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 eighteen thousand dollars (\$18,000.00) 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., \$13,500.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$4,500.00) 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:

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 forty one thousand five hundred dollars (\$41,500.00) for all
12 attorneys' fees, expert and investigation fees and related costs associated with this matter and the
13 Notice. Defendant shall mail a check payable to "KJT Law Group," via certified mail to the address
14 for Kaloustian's counsel referenced above within ten (10) business days following the Execution Date.

15 Other than the payment required 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, this Consent
19 Judgment is a full, final and binding resolution between Kaloustian, on behalf of herself and in the
20 public interest, and Defendant, of any violation of Proposition 65 in relation to the Covered Product
21 that was or could have been asserted by Kaloustian or on behalf of her past and current agents,
22 representatives, attorneys, successors, and/or assigns ("Releasers") arising out of the matters alleged in
23 the Notice of Violation and/or Complaint, and Releasers hereby waive and release any and all claims
24 against Defendant, its parent companies, corporate affiliates, subsidiaries, predecessors, successors,
25 shareholders, directors, officers, agents, employees, attorneys, successors and assigns (collectively
26 "Releasees") and each of its distributors, wholesalers, marketplace hosts, licensors, licensees,
27 auctioneers, franchisees, dealers, customers, owners, purchasers, users, retailers, including but not
28 limited to Erewhon Markets, and their respective officers, directors, attorneys, representatives,
shareholders, agents, and employees, and sister and parent entities (collectively "Downstream

1 Releasees”) for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees
 2 of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the
 3 alleged failure of Defendant, Releasees and/or Downstream Releasees to provide warnings under
 4 Proposition 65 about exposure to lead arising from the sale, distribution, or use of any Covered
 5 Product sold, manufactured or distributed by Defendant, Releasees and/or Downstream Releasees in
 6 California prior to Ninety (90) days after the Effective Date. Compliance with the Consent Judgment
 7 by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant,
 8 Releasee, and/or Downstream Releasee with respect to the presence of lead in the Covered Product.
 9 Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent
 10 Judgment.

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

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

24 **6.2 Defendant’s Release of Kaloustian**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the Covered Product.

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 Product. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, 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 Product is 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 LUCHI, LLC:
Jennifer K. Singh
Grimaldi Law Offices
75 Broadway Street, Suite 202
San Francisco, CA 94111
Phone: 415-463-2659

and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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. ENFORCEMENT

No action to enforce this Consent Judgment may be commenced or maintained, and no Notice of Violation related to the Covered Product may be served or filed against Defendant by Kaloustian, unless the Party seeking enforcement or alleging a violation notifies the other Party of the specific acts alleged to breach the Consent Judgment at least sixty (60) days before serving or filing any action or Notice of Violation with an opportunity to cure within thirty (30) days of receipt of such notification, without penalty. Any notice must include: (1) the Covered Product’s name, (2) the date(s) when the Covered Product was sold after the Effective Date in California, (3) the retailer who allegedly sold the Covered Product, and (4) other supporting evidence for the allegations in the notice.

16. RETENTION OF JURISDICTION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

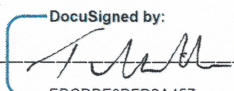
17. AUTHORIZATION

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: 6/10/2021

Date: 6/14/2021

By: 
EBDCDBE3BF02A457...
TAMAR KALOUSTIAN

By: *Mark Malinsky*
Mark Malinsky
[print name]
LUCHI, LLC

APPROVED AS TO FROM:

Date: 6/10/2021

Date: 6/15/2021

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

By: *J.K. Singh*
JENNIFER K. SINGH, ESQ.
ATTORNEY FOR DEFENDANT,
LUCHI, LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

KJT LAWGROUP LLP
Jivallagian | Thomassian