

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Kaloustian and Akua Life, PBC:**

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 Akua Life, PBC ("Akua"), on the other hand, with Kaloustian and Akua collectively referred to as the "Parties" And individually as "Party."

1.2. **General Allegations**

Kaloustian alleges that Akua manufactured, distributed and offered for sale in the State of California kelp jerky that cause exposures to lead and cadmium without first providing warnings under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has listed lead and cadmium under Proposition 65 as chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The products covered by this Consent Judgment are defined as kelp jerky. All such products shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On January 7, 2021, Kaloustian issued to Akua, Beyond the Shoreline, Inc., Nowhere Partners, Corp., 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 Akua and such public enforcers with notice that Akua was allegedly in violation of California Health & Safety Code section 25249.6. 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 Akua's compliance with Proposition 65. Specifically, Akua denies the material factual and legal allegations contained in Kaloustian's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, 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 Akua 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 Akua of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Akua. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Akua under this Settlement Agreement.

1.6. **Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.7. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete copy of the Agreement is delivered to each Party's counsel.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Beginning on the Effective Date, Akua 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 exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day or to a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day, unless it meets the warning requirements under Section 2.2.

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 to a consumer or to sell a Covered Product to a distributor that Akua 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 is no longer under the control of Akua prior to the Effective Date and all claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, the "Daily Lead Exposure Level" and the "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of product per serving of the product as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead or cadmium 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 Akua 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 [lead and/or cadmium], which [is or are] 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 – <http://www.p65warnings.ca.gov/food>

Akua shall use the phrase "cancer and" in the Warning if Akua has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if Akua has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. Akua may reference lead, cadmium, or both in the warning, depending on what chemical causes an exposure above the thresholds set in Section 2.1.

The Warning shall comply with the safe harbor provisions of 27 C.C.R. § 25607.1-.2, as those regulations may be amended from time to time, or any subsequent regulatory section setting forth safe harbor warnings for food products.

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, Akua shall pay fifteen thousand dollars (\$15,000.00) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Akua's attention.

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

In settlement of all the claims referred to in this Settlement Agreement, one thousand five hundred (\$1,500.00) 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. Kaloustian’s counsel shall be responsible for delivering OEHHA’s and Kaloustian’s portions of any penalty payment made under this Agreement.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, thirteen thousand five hundred (\$13,500.00) 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

Akua shall mail these payments within fifteen (15) business days following the Effective Date, 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

Other than this payment, the Parties agree to bear their own fees and costs.

7. RELEASE OF ALL CLAIMS

7.1. Release of Akua, 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, on behalf of herself, 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 Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Akua, and its respective equity owners, parents, corporate subsidiaries, affiliates, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and related companies, (b) each of Akua's distributors, wholesalers, manufacturers, vendors, licensors, licensees, auctioneers, retailers

(including but not limited to Nowhere Partners, Corp. d/b/a Erewhon Markets and Beyond the Shoreline, Inc. and their respective subsidiaries, affiliates, parents, franchisees, cooperative members, and licensees), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users (collectively "Releasees") for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead and cadmium in relation to the Covered Product.

Kaloustian, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, 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, fees (including but not limited to attorneys' fees), damages, losses, claims, liabilities, and demands of any nature, character, or kind, known or unknown, suspected or unsuspected, relating to the Covered Product, against Akua and the Releasees. 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 only, and on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her 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 he may lawfully waive such rights or benefits pertaining to the released matters.

8. PUBLIC BENEFIT

The Parties understand and agree that the commitments Akua has agreed to herein, and actions to be taken by Akua under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Akua's failure to provide a Proposition 65 warning concerning the Covered Product, such private party action would not confer a significant benefit on the general public, provided that Akua is in material compliance with this Agreement.

9. 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 Covered Product, then Akua shall have no further obligations pursuant to this Settlement Agreement.

10. SEVERABILITY

If, subsequent to the execution of this Agreement, any of the provisions of this Agreement are deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected, but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to, the intent of the Parties in entering into this Agreement.

11. 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 Akua: Will Wagner
Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

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.

12. 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.

13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTIONS 25249.7(f)

Kaloustian agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

14. 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.

15. MODIFICATION

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

16. DRAFTING

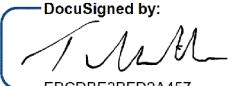
No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed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

17. 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. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligations that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

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

7/8/2021 Sherman Oaks
Executed this __ day of _____, 2021, at _____, California.

DocuSigned by:

EBCDBE3BFD2A457...
Tamar Kaloustian

07/12/2021 Doylestown, Pennsylvania
Executed this __ day of _____, 2021, at _____, ~~California~~

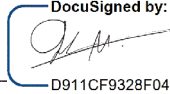
Akua Life, PBC


By: Matthew Lebo

Its: CFO

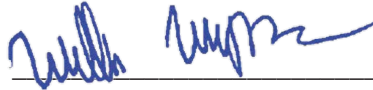
APPROVED AS TO FORM BY:

7/8/2021
Executed this ___ day of _____, 2021, at Glendale, California.

DocuSigned by:

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

Executed this 12th day of July, 2021, at Sacramento, California.



Will Wagner, Esq. Attorney for Akua Life, PBC
Greenberg Traurig, LLP