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5 Attorneys for Plaintiff,
6 TAMAR KALOUSTIAN

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

11 TAMAR KALOUSTIAN,
12 Plaintiff,

13 v.

14 Whole Foods Market California, Inc., a
California Corporation; and DOES 1 through
15 100, inclusive,
16 Defendant.

Case No.: 21STCV18132

**[PROPOSED] CONSENT JUDGMENT AS
TO WHOLE FOODS MARKET
CALIFORNIA, INC.**

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

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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 WHOLE FOODS MARKET CALIFORNIA, INC. (hereinafter “WFM” or “Defendant”). Collectively Kaloustian and WFM 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 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 Product Description

The product that is covered by this Consent Judgment are identified as 365 - Whole Foods Market - Grain Free - Cassava Flour Tortillas. All such items shall be referred to herein as the “Covered Product.”

1.4 Notices of Violation/Complaint

1.4.1 On or about January 26, 2021, Kaloustian served WFM and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &

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1 Safety Code §25249.7(d) (the "Notice"), alleging that WFM was in violation of Proposition 65 for
2 failing to warn consumers and customers that the Covered Product exposed users in California to
3 lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days
4 plus service time relative to the provision of the Notice to them by Kaloustian.

5
6 1.4.2 On May 14, 2021, Kaloustian, acting in the interest of the general public in the State
7 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
8 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures
9 to lead contained in the Covered Product manufactured, distributed, or sold by Defendant.

10 1.5 **Effective Date**

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

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

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

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

23
24 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
25 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
26 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
27 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
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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, WFM 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, or a level permissible by Proposition 65 regulation in effect on or after the Effective Date, 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 WFM 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 WFM prior to the Effective Date and all claims as to such Covered Product are released in this Consent Judgment.

3.1.2 For purposes of this Consent Judgment, 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.

3.2 Clear and Reasonable Warnings

1 If WFM is required to provide a warning pursuant to Section 3.1, one of the following warnings
2 must be utilized ("Warning"):

3 **Option 1:**

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

7 **Option 2:**

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

9 WFM shall use the phrase "cancer and" in the Warning if WFM has reason to believe that the
10 "Daily Lead Exposure Level" is greater than 15 micrograms of lead.

11 The Warning shall be securely affixed to or printed upon the label of each Covered Product
12 and it must be set off from other surrounding information. In addition, for any Covered Product sold
13 over the internet, the Warning shall appear on the checkout page in full text or through a clearly
14 marked hyperlink using the word **"WARNING"** in all capital and bold letters when a California
15 delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the
16 hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the
17 Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying
18 method must be utilized to identify which products on the checkout page are subject to the Warning.
19

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

3 WFM must display the above Warning with such conspicuousness, as compared with other
4 words, statements or designs on the label, or on its website, if applicable, to render the Warning likely
5 to be read and understood by an ordinary individual under customary conditions of purchase or use
6 of the product.

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8 For purposes of this Consent Judgment, the term "label" means a display of written, printed or
9 graphic material that is printed on or affixed to a Covered Product or its immediate container or
10 wrapper.

11 For purposes of this Consent Judgment, WFM may satisfy the warning requirement by
12 providing the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business
13 that is subject to Proposition 65 to which it is selling or transferring the Covered Product.

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

15
16 With regard to all claims that have been raised or which could be raised with respect to failure
17 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a
18 civil penalty of \$8,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned
19 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
20 State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of
21 the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d)
22 and the instructions directly below.

23
24 Defendant shall issue two separate checks for the penalty payment: (a) one check made
25 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
26 total penalty (i.e., \$6,000.00 and (b) one check in an amount representing 25% of the total penalty
27 (i.e., \$2,000.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten
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1 (10) business days following the Effective Date, at which time such payments shall be mailed to the
2 following addresses respectively:

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

4 **KJT LAW GROUP LLP**
5 **230 N. Maryland Avenue, Suite 306**
6 **Glendale, CA 91206**

7 All payments owed to OEHHHA shall be delivered directly to OEHHHA at the following
8 addresses:

9 For United States Postal Delivery:

10 Mike Gyurics
11 Senior Accounting Officer – MS 19-B
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA. 95812-0410

15 For Non-United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
19 1001 I Street
20 Sacramento, CA 95814

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

22 The parties reached an accord on the compensation due to Kaloustian and her counsel under
23 the private attorney general doctrine and principles of contract law. Under these legal principles,
24 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,
25 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.

26 Defendant shall pay Kaloustian's counsel \$62,000.00 for all attorneys' fees, expert and investigation
27 fees and related costs associated with this matter and the Notice. Defendant shall mail a check
28 payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced
above.

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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 and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream Releasees") and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale, distribution, or use of any Covered Product sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California, up through the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the Covered Product. The release provisions shall not extend to third-party websites and internet sellers who fail to provide clear and reasonable warnings pursuant to Section 3.2. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents, representatives, attorneys, and successors and/or assignees, and not in her representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other Claims that she could make against Defendant, Releasees or Downstream

1 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With
2 respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives
3 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of
4 the provisions of Section 1542 of the California Civil Code, which provides as follows:

5
6 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
7 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
8 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
9 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
10 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

11
12 **6.2 Defendant’s Release of Kaloustian**

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

18
19 **7. SEVERABILITY AND MERGER**

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

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

27
28 **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

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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 Whole Foods Market California, Inc.:

J.T. Wells Blaxter, Esq.
BLAXTER & BLACKMAN, LLP
601 Montgomery Street, Suite 1110
San Francisco, California 94111
Phone: 415-500-7700

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

1 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
4 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
5 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
6 preparation and drafting of this Consent Judgment.
7

8 **11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by email or facsimile, each of
10 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
11 same document.

12 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL**

13 Kaloustian agrees to comply with the requirements set forth in California Health & Safety
14 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
15 Defendants shall support approval of such Motion.
16

17 This Consent Judgment shall not be effective until it is approved and entered by the Court
18 and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve
19 months after it has been fully executed by the Parties.

20 **13. MODIFICATION**

21 This Consent Judgment may be modified only by further stipulation of the Parties and the
22 approval of the Court or upon the granting of a motion brought to the Court by either Party.
23

24 **14. ATTORNEY'S FEES**

25 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
26 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
27 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
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1 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
2 Code of Civil Procedure Section 2016, et seq.

3 **15. RETENTION OF JURISDICTION**

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

6 **16. AUTHORIZATION**

7 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party
8 he or she represents to stipulate to this Consent Judgment.

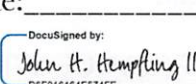
9 **STIPULATED AND AGREED TO:**

10 Date: 10/16/2023

11 By: 
DocuSigned by:
EBCDRE3BFD2A457

12 TAMAR KALOUSTIAN

13 Date: October 9, 2023

14 By: 
DocuSigned by:
John H. Hempfling II
DF9A9164E574FE

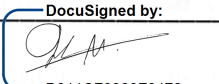
15 John H. Hempfling II

16 [print name]

17 WHOLE FOODS MARKET CALIFORNIA,
18 INC.

19 **APPROVED AS TO FROM:**

20 Date: 10/16/2023

21 By: 
DocuSigned by:
D911CF9328E0472

22 TRO KRIKORIAN, ESQ.
23 ATTORNEY FOR PLAINTIFF,
24 TAMAR KALOUSTIAN

25 Date: October 16, 0223

26 By: 

27 J.T. WELLS BLAXTER, ESQ.
28 ATTORNEY FOR DEFENDANT,
WHOLE FOODS MARKET CALIFORNIA,
INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

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