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5 Attorneys for Plaintiff,  
TAMAR KALOUSTIAN  
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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF LOS ANGELES**  
9

10 TAMAR KALOUSTIAN,  
11 Plaintiff,

12 v.

13 PURE NATURE FOODS, LLC,  
14 Defendant.

Case No.: 21STCV18702

**[PROPOSED] CONSENT JUDGMENT AS  
TO PURE NATURE FOODS LLC**

(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 PURE NATURE FOODS LLC (hereinafter “PURE NATURE” or “Defendant”). Collectively Kaloustian and PURE NATURE 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, Churros, which Kaloustian alleges causes lead exposures above regulatory safe harbor levels, 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 strongly denies the allegations and contends that there is no exposure and no violation of Proposition 65 regarding lead.

**1.3 Covered Product Description**

The products that are covered by this Consent Judgment are The Daily Crave - Beyond Churros (the “Covered Product”).

**1.4 Notices of Violation/Complaint**

1.4.1 On or about March 18, 2021, Kaloustian issued to PURE NATURE, Gelson’s Markets, and various public enforcement agencies a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that PURE NATURE and Gelson’s Markets were in violation of Proposition 65 for failing to warn consumers that the Covered Product allegedly exposed users in California to lead. No public enforcer diligently prosecuted the

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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 May 18, 2021, 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 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.

**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, 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.

Defendant denied and continues to deny any wrongdoing whatsoever, including that the products, including the Product, violate Proposition 65 or contain actionable levels of lead. Defendant enters into this Consent Judgment solely to avoid the legal costs and inconveniences that would be incurred in defending against the allegations in the Complaint. 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 to lead or failure to warn of the same. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

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**3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING**

**3.1** Beginning on the Effective Date, PURE NATURE 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.

**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 PURE NATURE 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 PURE NATURE 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**

If PURE NATURE 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, which is 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](http://www.P65Warnings.ca.gov/food)

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**Option 2:**

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

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

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.

For purposes of this Consent Judgment, 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 Consent Judgment, when PURE NATURE is required to provide a warning for a Covered Product pursuant to Section 3.1, PURE NATURE 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.

**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 four thousand five hundred dollars (\$4,500.00) 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

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total penalty (i.e., \$3,375.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,125.00) 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 OEHHHA shall be delivered directly to OEHHHA 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

**5. REIMBURSEMENT OF FEES AND COSTS**

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

Defendant shall pay Kaloustian's counsel thirty-eight thousand dollars (\$38,000.00) for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice.

Defendant shall mail a check payable to "KJT Law Group," via certified mail to the address for

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Kaloustian's counsel referenced above within ten (10) business days following the Effective Date.

Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

**6. RELEASE OF ALL CLAIMS AND ENFORCEMENT**

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

For any claim or violation relating to a failure to warn under Proposition 65 on Covered Products manufactured prior to the Effective Date, 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, manufacturers, licensors, licensees, auctioneers, retailers (including but not limited to Gelson's Market), 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 manufactured by Defendant, Releasees or Downstream Releasees prior to 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. 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 Releasees arising up to six (6) months after the Effective Date with respect to violations of Proposition 65 based upon the Covered Product. With respect to the foregoing waivers and releases in this

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paragraph, Kaloustian hereby specifically waives any and all rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, 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.

**6.2 Defendant’s Release of Kaloustian**

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

**6.3** A Party may, by motion or application for an order to show cause, attempt to enforce the terms and conditions contained in this Consent Judgment. Prior to bringing any motion or application to enforce, the enforcing Party shall meet and confer regarding the basis of the anticipated motion or application in an attempt to resolve it informally, including providing the other Party a reasonable opportunity of at least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution fail, the enforcing Party may file its enforcement motion or application. This Consent Judgment may only be enforced by the Parties or a public enforcer.

**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.

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**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 PURE NATURE FOODS, LLC:  
  
Will Wagner  
**Greenberg Traurig, LLP**  
1201 K Street, Suite 1100  
Sacramento, CA 95814  
Phone: 916-868-0655  
Fax: 916-448-1709

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.

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**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 attorneys' fees and costs.

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**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:**

6/21/2021

Date: \_\_\_\_\_

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By: \_\_\_\_\_  
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TAMAR KALOUSTIAN

Date: 7-7-2021

  
By: \_\_\_\_\_

MIGUEL A. REYNA

[print name]

PURE NATURE FOODS, LLC

**APPROVED AS TO FROM:**

6/21/2021

Date: \_\_\_\_\_

DocuSigned by:  
  
By: \_\_\_\_\_  
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**TRO KRIKORIAN, ESQ.**  
ATTORNEY FOR PLAINTIFF,  
TAMAR KALOUSTIAN

Date: 7/8/21

  
By: \_\_\_\_\_

**WILL WAGNER, ESQ.**  
ATTORNEY FOR DEFENDANT,  
PURE NATURE FOODS, LLC

**IT IS SO ORDERED, ADJUDGED, AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_

Judge of the Superior Court

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