

Caspar Jivalagian, Esq., State Bar No.: 282818  
Vache Thomassian, Esq., State Bar No.: 289053  
Tro Krikorian, Esq., State Bar No.: 317183  
**KJT LAW GROUP, LLP**  
230 N. Maryland Avenue, Suite 306  
Glendale, California 91206  
Telephone: 818-507-8525  
Facsimile: 818-507-8588

Attorneys for Plaintiff,  
**BERJ PARSEGHIAN**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF LOS ANGELES**

**BERJ PARSEGHIAN,**

Plaintiff,

v.

**TIERRA FARM, INC.,**

Defendant.

Case No.: 21STCV43272

**[PROPOSED] CONSENT JUDGMENT AS  
TO TIERRA FARM, INC.**

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

**KJT** LAWGROUP, LLP  
Jivalagian | Thomassian

**1. INTRODUCTION****1.1 The Parties**

This [Proposed] Consent Judgment is hereby entered into by and between Berj Parseghian, acting on behalf of the public interest (hereinafter "Parseghian") and TIERRA FARM, INC. (hereinafter "TIERRA FARM" or "Defendant"). Collectively Parseghian and TIERRA FARM shall be referred to hereafter as the "Parties" and each of them as a "Party." Parseghian 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**

Parseghian alleges that Defendant has offered for sale in the State of California and has sold in California, Ginger, 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 Products Description**

The product that is covered by this Consent Judgment is identified as Organic Crystalized Ginger. All such items shall be referred to herein as the "Covered Product."

**1.4 Notices of Violation/Complaint**

1.4.1 On or about May 6, 2021, Parseghian served TIERRA FARM and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that TIERRA FARM was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Parseghian.

1.4.2 On November 24, 2021, Parseghian, 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 the 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 16 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, 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 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, TIERRA FARM 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

1 Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning  
2 requirements under Section 3.2.

3 3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California"  
4 shall mean to directly ship a Covered Product into California for sale in California or to sell a  
5 Covered Product to a distributor that TIERRA FARM knows or has reason to know will sell the  
6 Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered  
7 Product that has left the possession, and is no longer under the control of TIERRA FARM prior to  
8 the Effective Date and all claims as to such Covered Products are released in this Consent Judgment.

9 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be  
10 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per  
11 gram of product, multiplied by grams of product per serving of the product (using the largest serving  
12 size appearing on the product label), multiplied by servings of the product per day (using the largest  
13 number of recommended daily servings appearing on the label), which equals micrograms of lead  
14 exposure per day. If the label contains no recommended daily servings, then the number of  
15 recommended daily servings shall be one.

### 16 3.2 Clear and Reasonable Warnings

17 If TIERRA FARM is required to provide a warning pursuant to Section 3.1, one of the following  
18 warnings must be utilized ("Warning"):

#### 19 Option 1:

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

#### 23 Option 2:

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

25 TIERRA FARM shall use the phrase "cancer and" in the Warning if TIERRA FARM has  
26 reason to believe that the "Daily Lead Exposure Level" is greater than 1.5 micrograms of lead or if  
27  
28

1 TIERRA FARM has reason to believe that another Proposition 65 chemical is present which may  
2 require a cancer warning.

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

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

20 TIERRA FARM must display the above Warning with such conspicuousness, as compared  
21 with other words, statements or designs on the label, or on its website, if applicable, to render the  
22 Warning likely to be read and understood by an ordinary individual under customary conditions of  
23 purchase or use of the product.

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

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Jivagan I. Thomasian

For purposes of this Consent Judgment, when TIERRA FARM is required to provide a warning for a Covered Product pursuant to Section 3.1, TIERRA FARM 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 five thousand dollars (\$5,000.00) 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 Parseghian, 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., \$3,750.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,250.00) made payable directly to Parseghian. 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:

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 Parseghian and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Parseghian'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 Parseghian's counsel fifty thousand dollars (\$50,000.00) 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 Parseghian'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**

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

As to those matters raised in the Complaint and in the Notice of Violation, Parseghian, on behalf of himself, *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

1 about exposure to lead arising from the sale, distribution, or use of any Covered Products sold,  
2 manufactured or distributed by Defendant, Releasees or Downstream Releasees in California prior to  
3 the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall  
4 constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee  
5 with respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all claims  
6 in the Complaint are resolved with prejudice by this Consent Judgment.

7 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,  
8 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
9 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
10 releases any other Claims that he could make against Defendant, Releasees or Downstream Releasees  
11 arising after the Effective Date with respect to violations of Proposition 65 based upon the Covered  
12 Products. With respect to the foregoing waivers and releases in this paragraph, Parseghian hereby  
13 specifically waives any and all rights and benefits which he now has, or in the future may have,  
14 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as  
15 follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
18 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
19 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
20 SETTLEMENT WITH THE DEBTOR.

## 21 6.2 Defendant's Release of Parseghian

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

## 27 7. SEVERABILITY AND MERGER

28 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



1 remaining shall not be adversely affected.

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

6 **8. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of California  
8 and apply within the State of California. Compliance with the terms of this Consent Judgment  
9 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to  
10 alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is  
11 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
12 Products, then Defendant shall provide written notice to Parseghian of any asserted change in the law,  
13 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
14 extent that, the Covered Products are so affected.

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant to  
17 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
18 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
19 other party at the following addresses:

20 For TIERRA FARM, INC.:

21 Jeffrey F. Allen  
22 Bond, Schoeneck & King PLLC  
23 350 Linden Oaks, Third Floor  
24 Rochester, NY 14625  
P: (585) 362-4709  
E. jeffreyalen@bsk.com

25 and

For Parseghian:

26 Tro Krikorian, Esq.  
27 KJT LAW GROUP, LLP  
28 230 N. Maryland Ave. Suite 306  
Glendale, CA 91206

1 Phone: 818-507-8528  
2 Fax: 818-507-8588

3 Any party, from time to time, may specify in writing to the other party a change of address to which all  
4 notices and other communications shall be sent.

5 **10. DRAFTING**

6 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
7 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
8 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
9 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
10 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that  
11 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion  
12 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the  
13 preparation and drafting of this Consent Judgment.

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

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

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

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

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

25 **13. MODIFICATION**

26 This Consent Judgment may be modified only by further stipulation of the Parties and the  
27 approval of the Court or upon the granting of a motion brought to the Court by either Party.  
28

1       **14. ATTORNEY'S FEES**

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

7       **15. RETENTION OF JURISDICTION**

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

10       **16. AUTHORIZATION**

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

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**STIPULATED AND AGREED TO:**

12/28/2021

Date: \_\_\_\_\_  
By: BERJ PARSEGHIAN  
17B4A0E5087E404

BERJ PARSEGHIAN

Date: 12/22/21

By: Gunther Fishgold  
[print name]  
TIERRA FARM, INC.

**APPROVED AS TO FROM:**

12/28/2021

Date: \_\_\_\_\_  
By: [Signature]  
D911CE9328E0472

**TRO KRIKORIAN, ESQ.**  
ATTORNEY FOR PLAINTIFF,  
BERJ PARSEGHIAN

Date: 12/23/2021  
By: [Signature]

**JEFFREY F. ALLEN, ESQ.**  
ATTORNEY FOR DEFENDANT,  
TIERRA FARM, INC.

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

Dated: \_\_\_\_\_  
Judge of the Superior Court

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