

1 **LAW OFFICE OF STEPHEN M. FRAYNE**  
Stephen M. Frayne (SBN 188938)  
2 3090 Glascock St., STE 101  
Oakland, CA 94601  
3 Tel: 510-479-1081  
Email: stevefrayne@yahoo.com

4 Attorneys for Plaintiff  
5 Shichu Yu

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **IN AND FOR THE COUNTY OF ALAMEDA**

8 SHICHU YU, an individual,

9 Plaintiff,

10 v.

11 KENOVER MARKETING CORP., a New  
12 York corporation, and DOES 1 through 100,  
inclusive,

13 Defendants.  
14

Case No.

**[PROPOSED] CONSENT JUDGMENT**

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

1       **1.    INTRODUCTION**

2               **1.1       Parties**

3               This Consent Judgment is entered into by and between Shichu Yu, (“Yu” or “Plaintiff”) and  
4 Kenover Marketing Corp. (“Defendant” or “KMC”), with Yu and KMC each individually referred to  
5 as a “Party” and collectively referred to as the “Parties.”

6               **1.2       Plaintiff**

7               Yu is an individual residing in the state of California, acting in the interest of the general  
8 public. He seeks to promote awareness of exposures to toxic chemicals and to improve human health  
9 by reducing or eliminating hazardous substances contained in consumer products.

10              **1.3       Defendant**

11              KMC employs ten or more individuals and is a “person in the course of doing business” for  
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
13 section 25249.6 *et seq.* (“Proposition 65”).

14              **1.4       General Allegations**

15              Yu alleges that KMC manufactures, imports, sells, and distributes for sale “Kedem Tea  
16 Biscuits Original” that contain acrylamide. Yu further alleges that KMC does so without providing a  
17 sufficient health hazard warning as required by Proposition 65 and related Regulations. Pursuant to  
18 Proposition 65, acrylamide is listed as a chemical known to cause cancer and reproductive harm.

19              **1.5       Notices of Violation**

20              On or around June 21, 2021, Yu served KMC, Ralphs Grocery Company, the California  
21 Attorney General, and all other required public enforcement agencies with a 60-Day Notice of  
22 Violation of Proposition 65 (“Notice”). The Notice alleged that KMC had violated Proposition 65 by  
23 failing to sufficiently warn consumers in California of the health hazards associated with exposures  
24 to acrylamide contained in “Kedem Tea Biscuits Original.”

25              No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
26 violations alleged in the Notice.

27       ///

28       ///

1           **1.6 “Covered Products” Description**

2           The products covered by this Consent Judgment are “Kedem Tea Biscuits Original”  
3 manufactured or processed by KMC that allegedly contain acrylamide and are manufactured, sold,  
4 imported, or distributed for sale in California by KMC and/or the Releasees (as defined in section 4.1)  
5 (“Covered Products”), whether sold under the brand name KMC, or any other brand or private label  
6 at all grocery, retail, and other locations and sales channels, including on the Internet.

7           **1.7 Complaint**

8           On February 2, 2022, Yu filed a Complaint against KMC for the alleged violations of  
9 Proposition 65 that are the subject of the Notice (“Complaint”).

10          **1.8 No Admission**

11          KMC denies the material factual and legal allegations of the Notice and Complaint, and  
12 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
13 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing  
14 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,  
15 issue of law, or violation of law; nor shall compliance with this Consent Judgment be construed as an  
16 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall  
17 not, however, diminish or otherwise affect KMC’s obligations, responsibilities, and duties under this  
18 Consent Judgment.

19          **1.9 Jurisdiction**

20          For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
21 Court has jurisdiction over KMC as to the allegations in the Complaint, that venue is proper in the  
22 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
23 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

24          **1.10 Effective Date**

25          For purposes of this Consent Judgment, the term “Effective Date” means the date on which  
26 the Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

27        ///

28        ///

1       **2. INJUNCTIVE RELIEF**

2               **2.1 Reformulation of Covered Products**

3               Any Covered Products that KMC sells, imports, or distributes for sale in California on and  
4 after 180 days following the Effective Date shall not exceed 281 parts per billion (“ppb”) for  
5 acrylamide, using tests performed by a laboratory accredited by the State of California, a federal  
6 agency, or a nationally recognized accrediting organization, or an accredited laboratory in the  
7 Products’ country of origin that is either generally recognized or is a government agency/regulator,  
8 using LC-MS/MS (Liquid Chromatograph-Mass Spectrometry), HPLC-MS (High Performance  
9 Liquid Chromatograph-Mass Spectrometry), or GS-MS/MS (Gas Chromatograph-Mass  
10 Spectrometry), unless such Covered Products comply with the warning requirements of Section 2.2.


11               **2.2 Clear and Reasonable Warnings**

12               Under certain circumstances, as detailed below, KMC shall (if required to do so by this  
13 Consent Judgment) cause a warning to be provided for Covered Products. Such warning shall be  
14 required only for Covered Products manufactured on or after 180 days following the Effective Date  
15 that contain acrylamide in a concentration exceeding the 281-ppb level set forth in section 2.1 above,  
16 and that are manufactured and packaged for distribution for authorized sale or use in California.


17               (a)       KMC shall not distribute for sale in California any such Covered Products unless the  
18 label, as defined by Cal. Code Regs. tit. 27, § 25600.1, contains a clear and reasonable warning that  
19 complies with Proposition 65 warning regulations, including Cal. Code Regs. tit. 27, § 25600 *et seq.*

20               (b)       The parties agree that KMC shall be in compliance with this Section 2.2 if it uses (but  
21 is not required to use) one of the following Proposition 65 warning statements for any such Covered  
22 Products.

23               **Option 1:**

24                **WARNING:** Consuming this product can expose you to  
25 Acrylamide, which is known to the State of California to cause cancer.  
26 For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

26               **Option 2:**

27                **WARNING:** Cancer – [www.P65Warnings.cs.gov](http://www.P65Warnings.cs.gov)

1           If subsequently enacted changes to Proposition 65 or its implementing regulations require  
2 or allow the use of additional or different information on any warning specifically applicable to  
3 the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe  
4 Harbor Warning may be utilized in place of or in addition to, as applicable, the warnings set  
5 forth in this Section.

6           (c)     KMC’s responsibilities to provide the warning described in this Section 2.2 shall  
7 continue so long as Proposition 65 remains in full force and effect or until a warning is no longer  
8 legally required. KMC may move the Court for a determination that the warning is no longer  
9 legally required.

### 10           **2.3     Sell-Through Period**

11           Notwithstanding anything else in this Consent Judgment, the injunctive requirements of  
12 Section 2.2 shall not apply to Covered Products that are already in the stream of commerce as of the  
13 Effective Date or that are manufactured before 180 days following the Effective Date, which Covered  
14 Products are expressly subject to the releases provided in Section 4, without regard to when such  
15 Covered Products were, or are in the future, distributed or sold to customers. As a result, the obligation  
16 of KMC, or any Releasees (if applicable), do not apply to these Covered Products manufactured  
17 before 180 days following the Effective Date.

### 18           **2.4     Duties Limited to California**

19           This Consent Judgment shall have no effect on products manufactured for sale outside  
20 California, or offered for sale outside California.

## 21           **3.     MONETARY SETTLEMENT TERMS**

### 22           **3.1     Settlement Amount**

23           KMC shall pay seventy-five thousand dollars (\$75,000.00) in settlement and total  
24 satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment.  
25 This includes civil penalties in the amount of seven thousand five hundred dollars (\$7,500.00)  
26 pursuant to Health and Safety Code section 25249.7(b) and attorneys’ fees and costs in the amount  
27 of sixty-seven thousand five hundred dollars (\$67,500.00) pursuant to Code of Civil Procedure  
28 section 1021.5.



1 The portion of the settlement attributable to attorneys' fees and costs, sixty-seven thousand  
2 five hundred dollars (\$67,500.00), shall be paid to Yu's counsel, who are entitled to attorneys'  
3 fees and costs incurred by them in this action, including but not limited to investigating potential  
4 violations, bringing this matter to KMC's attention, as well as litigating and negotiating a  
5 settlement in the public interest.

6 KMC shall provide their payment to Yu's counsel in one check, sixty-seven thousand  
7 five hundred dollars (\$67,500.00) payable to Law Office of Stephen M. Frayne and delivered  
8 to the following address:

9 Stephen M. Frayne  
10 Law Office of Stephen M. Frayne  
11 3090 Glascock St., STE 101  
Oakland, CA 94601

### 12 **3.4 Timing**

13 The above-mentioned checks shall be issued within fourteen (14) days after the Effective  
14 Date.

## 15 **4. CLAIMS COVERED AND RELEASED**

### 16 **4.1 Yu's Public Release of Proposition 65 Claims**

17 For any claim or violation arising under Proposition 65 alleging or involving a failure to warn  
18 about exposures to acrylamide from the Covered Products up through the Effective Date, Plaintiff,  
19 acting on its own behalf and for the general public, releases KMC and its owners, parents, subsidiaries,  
20 and affiliated entities under common ownership; the directors, officers, agents, employees, attorneys,  
21 and assigns of each of the foregoing, including KMC; and each entity to which KMC directly or  
22 indirectly distributes or sells Covered Products, including but not limited to downstream distributors,  
23 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, the  
24 "Releasees"). Compliance with the terms of this Consent Judgment constitutes compliance with  
25 Proposition 65 with respect to the alleged or actual failure to warn about exposures to acrylamide  
26 from Covered Products manufactured, imported, sold, or distributed by Kenover after the Effective  
27 Date. This Consent Judgment is a full, final, and binding resolution of all claims that were or could  
28 have been asserted against KMC and/or Releasees for failure to provide warnings for alleged exposure

1 to acrylamide contained in the Covered Products.

## 2 **4.2 Yu's Individual Release of Claims**

3 Yu, in his individual capacity, also provides a release to KMC and/or Releasees, which shall  
4 be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,  
5 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every  
6 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of or  
7 relating to Covered Products or any other products or brands that are manufactured, imported, sold,  
8 or distributed for sale in California by KMC.

9 Yu and Yu's counsel represent and warrant that they have not filed and are not contemplating  
10 filing, that they are not aware of any other person who has filed or is contemplating filing, and that  
11 they have not engaged and do not intend to engage in any advertising or solicitation to locate  
12 additional persons to file, any form of complaint against KMC and/or Releasees.

## 13 **4.3 KMC's Release of Yu**

14 KMC hereby waives any and all claims against Yu and his attorneys and other representatives,  
15 for any and all actions taken or statements made by Yu and his attorneys and other representatives in  
16 this matter, whether in the course of investigating claims or otherwise seeking to enforce Proposition  
17 65 against KMC.

## 18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved by the Court and shall be null and  
20 void if it is not approved by the Court within one year after it has been fully executed by the Parties,  
21 or by such additional time as the Parties may agree to in writing.

## 22 **6. SEVERABILITY**

23 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is  
24 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely  
25 affected.

## 26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the state of California  
28 as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise



1 rendered inapplicable for reasons, including but not limited to changes in the law, then KMC may  
2 provide written notice to Yu of any asserted change, and shall have no further injunctive  
3 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered  
4 Products are so affected.

5 In the event the California Office of Health Hazard Assessment adopts a regulation or safe  
6 use determination, or issues an interpretive guideline that exempts Covered Products from meeting  
7 the requirements of Proposition 65; or if acrylamide cases are permanently enjoined by a court of  
8 competent jurisdiction; or if Proposition 65 is determined to be preempted by federal law or a  
9 burden on First Amendment rights with respect to acrylamide in Covered Products or Covered  
10 Products substantially similar to Covered Products, then KMC shall be relieved of its obligation to  
11 comply with Section 2 herein.

12 **8. ENFORCEMENT**

13 In any action to enforce the terms of this Consent Judgment, the prevailing party shall  
14 be entitled to its reasonable attorneys' fees and costs.

15 **9. NOTICE**

16 Unless otherwise specified herein, all correspondence and notice required by this  
17 Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,  
18 registered, or certified mail, return receipt requested; or (iii) a recognized overnight courier to  
19 the following addresses:

20 If to KMC:

21 Ashley Simonsen  
22 Covington & Burling LLP  
23 1999 Avenue of the Stars  
24 Los Angeles, CA 90067-4643

If to Yu:

25 Stephen M. Frayne  
26 Law Office of Stephen M. Frayne  
27 3090 Glascock St., STE 101  
28 Oakland, CA 94601

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

**9. COUNTERPARTS; DIGITAL SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile signature, each of  
which shall be deemed an original, and all of which, when taken together, shall constitute one and

1 the same document.

2 **10. POST EXECUTION ACTIVITIES**

3 Yu agrees to comply with the reporting form requirements referenced in Health and Safety  
4 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
5 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
6 motion Yu shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
7 employ their best efforts, including those of their counsel, to support the entry of this agreement as  
8 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this  
9 Section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding  
10 to any objection that any third-party may make, and appearing at the hearing before the Court if so  
11 requested.

12 **11. MODIFICATION**

13 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry  
14 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any  
15 Party, and the entry of a modified consent judgment thereon by the Court.

16 **12. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment and acknowledge that they  
18 have read, understand, and agree to all of the terms and conditions contained herein.

19 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

20 If a dispute arises with respect to either Party’s compliance with the terms of this Consent  
21 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or  
22 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
23 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

24 **14. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the  
26 Parties with respect to the entire subject matter herein, and supersedes any and all prior discussions,  
27 negotiations, commitments, and understandings related hereto. No representations, oral or otherwise,  
28 express or implied, other than those contained herein have been made by any Party. No other

