

1 Plaintiff Shichu Yu and Defendant Kenover Marketing Corp. agreed through their
2 respective counsel to enter judgment pursuant to the terms of their settlement in the form of a
3 stipulated judgment (“Consent Judgment”). This Court issued an Order approving the Proposition
4 65 Settlement and Consent Judgment on _____.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and
6 Safety Code, section 25249.7(f)(4) and Code of Civil Procedure, section 664.6, judgment is
7 hereby entered in accordance with the terms of the Amended Consent Judgment attached hereto
8 as **Exhibit A**.

9 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement
10 under Code of Civil Procedure, section 664.6.

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12 **IT IS SO ORDERED.**

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15 Dated: _____

JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

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. 22CV006412

**[PROPOSED] AMENDED 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. She 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.

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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.

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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.
For more information go to www.P65Warnings.ca.gov/food.

26 **Option 2:**

27  **WARNING:** Cancer – www.P65Warnings.ca.gov/food.

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.

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22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Settlement Amount**

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

1 section 1021.5.

2 **3.2 Civil Penalty**

3 The portion of the settlement attributable to civil penalties shall be allocated according to Health
4 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty, five
5 thousand six hundred and twenty-five dollars (\$5,625.00), paid to the California Office of
6 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)
7 of the penalty, one thousand eight hundred and seventy-five dollars (\$1,875.00), paid to Yu
8 individually. These payments will be sent to the below addresses:

9 All payments owed to Yu shall be delivered to the following address:

10 Stephen M. Frayne
11 Law Office of Stephen M. Frayne
12 3090 Glascock St., STE 101
Oakland, CA 94601

13 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
14 (Memo Line “Prop 65 Penalties”) at the following addresses:

15 For United States Postal Service Delivery:

16 Mike Gyurics
17 Fiscal Operations Branch Chief
18 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

19 For Non-United States Postal Service Delivery:

20 Mike Gyurics
21 Fiscal Operations Branch Chief
22 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

23 KMC agrees to provide Yu’s counsel with a copy of the check payable to OEHHA,
24 simultaneous with its penalty payments to Yu.

25 Plaintiff and her counsel will provide completed IRS 1099, W-9, or other tax forms as
26 required. Relevant information is set out below:

- 27 • “Law Office of Stephen M. Frayne” (EIN: 87-3654086) at the address provided in Section 3.3;
- 28 and

1 65 that were or could have been asserted against KMC and/or Releasees for failure to provide
2 warnings for alleged exposure to acrylamide contained in the Covered Products based on the
3 allegation of the Notice and Complaint.

4 **4.2 Yu's Individual Release of Claims**

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

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

15 **4.3 KMC's Release of Yu**

16 KMC hereby waives any and all claims against Yu and her attorneys and other representatives,
17 for any and all actions taken or statements made by Yu and her attorneys and other representatives in
18 this matter, whether in the course of investigating claims or otherwise seeking to enforce Proposition
19 65 against KMC.

20 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

25 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is
26 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
27 affected.
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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 as applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law, then KMC may
5 provide written notice to Yu of any asserted change, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
7 Products are so affected.

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

15 **8. ENFORCEMENT**

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

18 **9. NOTICE**

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

23 If to KMC:

24 Ashley Simonsen
25 Covington & Burling LLP
26 1999 Avenue of the Stars
27 Los Angeles, CA 90067-4643

23 If to Yu:

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

28 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.

1 **9. COUNTERPARTS; DIGITAL SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document.

5 **10. POST EXECUTION ACTIVITIES**

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

15 **11. MODIFICATION**

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

19 **12. AUTHORIZATION**

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

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

24 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
25 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or
26 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
27 filed in the absence of such a good faith attempt to resolve the dispute beforehand.
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1 **14. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter herein, and supersedes any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any Party. No
6 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
7 or to bind any Party.

8
9 **AGREED TO:**

AGREED TO:

10 Date: 5/27/2021

10 Date: 5/23/22

11 By: *Shichu Yu*
12 SHICHU YU

11 By: *[Signature]*
12 KENOVER MARKETING CORP.

13
14
15 Date: _____

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17 JUDGE OF THE SUPERIOR COURT