

1 Caspar Jivalagian, Esq., State Bar No.: 282818
Vache Thomassian, Esq., State Bar No.: 289053
2 Tro Krikorian, Esq., State Bar No.: 317183
KJT LAW GROUP, LLP
3 230 N. Maryland Avenue, Suite 306
Glendale, California 91206
4 Telephone: 818-507-8525
Facsimile: 818-507-8588

5 Attorneys for Plaintiff,
6 **BERJ PARSEGHIAN**

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10
11 **BERJ PARSEGHIAN,**
12 **Plaintiff,**

13 **v.**

14 **Enjoy Life Natural Brands, LLC; Trader Joe's**
15 **Company; and DOES 1 through 100, inclusive,**
16 **Defendant.**

Case No.: 22STCV21923

**[PROPOSED] CONSENT JUDGMENT AS
TO ENJOY LIFE NATURAL BRANDS, 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 Berj Parseghian, acting on behalf of the public interest (hereinafter “Parseghian”) and ENJOY LIFE NATURAL BRANDS, LLC (hereinafter “ELNB” or “Defendant”). Collectively Parseghian and ELNB shall be referred to hereafter as the “Parties” and each of them as a “Party.” Parseghian alleges that he 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. For the purpose of this Consent Judgment only, Defendant stipulates that it 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 offered for sale in the State of California products, which contain cadmium, and that such sales have not been accompanied by Proposition 65 warnings. Cadmium 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, as set forth in the Complaint.

1.3 Covered Product Description

The product that is covered by this Consent Judgment is identified as Enjoy Life - Chocolate Protein Bites - Dark Raspberry; UPC #: 8 19597 01235 4. The item shall be referred to herein as the “Covered Product.”

1 **1.4 Notices of Violation/Complaint**

2 1.4.1 On or about July 9, 2021, Parseghian served ELNB, Trader Joe’s Company, then a
3 customer of ELNB, and various public enforcement agencies with a document entitled "60-Day
4 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), and claiming that
5 ELNB and Trader Joe’s were in violation of Proposition 65 for failing to warn consumers and
6 customers that the Covered Product exposed users in California to cadmium. No public enforcer
7 diligently prosecuted the claims identified in the Notice within sixty days plus the statutory service
8 time relative to the provision of the Notice.

9
10 1.4.2 On July 7, 2022, Parseghian, acting in the interest of the general public in the State of
11 California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
12 Health & Safety Code §25249.6 (the “Complaint”) based on the alleged failure to warn of exposures
13 to cadmium contained in the Covered Product manufactured, distributed, or sold by Defendant.

14 **1.5 Effective Date**

15 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
16 Consent Judgment is entered as a judgment of the Court.

17 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
18 Consent Judgment is signed by all parties in Clause 16 below.

19
20 **2. STIPULATION TO JURISDICTION/NO ADMISSION**

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

By the Effective Date, ELNB agrees to discontinue manufacturing the Covered Product. The injunctive relief in Section 3 does not apply to any Covered Product that was manufactured, distributed, or sold prior to the Effective Date and all claims as to such Covered Product is released in this Consent Judgment.

In the event ELNB decides to manufacture or sell the Covered Product again in the future, any Covered Product sold in the State of California shall comply with Cal. Health & Safety Code §25249.6 regulations and the applicable provisions contained in the Consent Judgment entered February 15, 2018 in *As You Sow v. Trader Joe’s Company, et al*, SFSC Case No 15-548791.

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 cadmium in the Covered Product, Defendant shall pay a civil penalty of \$20,000.00 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.

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1 Defendant shall issue two separate checks for the penalty payment: (a) one check made
2 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
3 total penalty (i.e., \$15,000.00) and (b) one check in an amount representing 25% of the total penalty
4 (i.e., \$5,000.00) made payable directly to Parseghian. Defendant shall mail these payments within
5 thirty (30) business days following the Effective Date, at which time such payments shall be mailed to
6 the following addresses respectively:
7

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

9 **KJT LAW GROUP LLP**
10 **230 N. Maryland Avenue, Suite 306**
11 **Glendale, CA 91206**

12 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
13 addresses:

14 For United States Postal Delivery:

15 Mike Gyurics
16 Senior Accounting Officer -- MS 19-B
17 Office of Environmental Health Hazard Assessment
18 P.O. Box 4010
19 Sacramento, CA. 95812-0410

20 For Non-United States Postal Service Delivery:

21 Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 1001 I Street
25 Sacramento, CA 95814

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

27 The parties reached an accord on the compensation due to Parseghian and his counsel under
28 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 \$120,000.00 for all attorneys' fees, expert and

1 investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a
2 check payable to “KJT Law Group,” in the amount of \$120,000.00 via certified mail within thirty (30)
3 business days following the Effective Date, to the following address:

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

7 **6. RELEASE OF ALL CLAIMS**

8 **6.1 Parseghian’s Release of Defendant, Releasees, and Downstream Releasees**

9 This Consent Judgment is a full, final, and binding resolution between Parseghian, on behalf
10 of himself and in the public interest, and Defendant, Releasees, Upstream and Downstream
11 Releasees, (as those terms are define below), of any violation of Proposition 65 that was or could have
12 been asserted by Parseghian or on behalf of his past and current agents, representatives, attorneys,
13 predecessors, successors, and or assigns (collectively “Realeasors”) for failure to provide Proposition
14 65 Warnings for alleged exposures to Cadmium from the Covered Product. Realeasors, on behalf of
15 himself, *and on behalf of the public interest*, hereby waives and releases any and all claims against
16 Defendant and its parent companies, shareholders, members, directors, officers, principles,
17 managers, employees, representatives, agents, attorneys, insurers divisions, subdivisions, partners,
18 corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively “Releasees”) and
19 each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,
20 customers, sellers, suppliers, wholesalers, distributors, distributees, owners, purchasers, users,
21 including but not limited to Trader Joe’s Company (collectively “Downstream and /or Upstream
22 Releasees”) and their respective owners, officers, directors, attorneys, representatives, shareholders,
23 agents, employees, sister and parent entities, predecessors, successors and assigns, for injunctive relief
24 or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and
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1 others), costs, expenses, or any other sum incurred or claimed, whether based on tort, contract,
 2 statute, ordinance and regulation, or any other theory of recovery in law or equity, whether for
 3 compensatory, punitive or civil damages, equitable relief or otherwise, for the alleged failure of
 4 Defendant, Defendant's Downstream and/or Upstream Releasees to warn under Proposition 65
 5 about exposure to cadmium arising from the sale, distribution, or use of any Covered Product sold,
 6 manufactured or distributed by Defendant, Defendant's Downstream and/or Upstream Releasees in
 7 California, up through the Effective Date. Plaintiff agrees that any and all claims in the Complaint are
 8 resolved with prejudice by this Consent Judgment.
 9

10 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,
 11 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
 12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
 13 releases any other Claims that he could make against Defendant, Defendant's Downstream and/or
 14 Upstream Releasees with respect to violations of Proposition 65 based upon the Covered Product.
 15 With respect to this action, Parseghian hereby specifically waives any and all rights and benefits which
 16 he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
 17 California Civil Code, which provides as follows:
 18

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
 20 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR
 21 HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF
 22 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR
 23 HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

24 Plaintiff shall file a dismissal with prejudice of this entire action within five (5) business days
 25 following the satisfaction of the payment terms provided in Sections 4 and 5, *infra*.

26 6.2 Defendant's Release of Parseghian

27 Defendant waives any and all claims against Parseghian, his attorneys and other
 28 representatives, for any and all actions taken or statements made (or those that could have been taken

1 or made) by Parseghian and his attorneys and other representatives, in the course of investigating
2 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
3 respect to the Covered Product.

4
5 **7. SEVERABILITY AND MERGER**

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

9 This Consent Judgment contains the sole and entire agreement of the Parties respecting this
10 action and any and all prior negotiations and understandings related hereto shall be deemed to have
11 been merged within it. No representations or terms of agreement other than those contained herein
12 exist or have been made by any Party with respect to the other Party or the subject matter hereof,
13 respecting solely this action.

14
15 **8. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California
17 and apply within the State of California. Compliance with the terms of this Consent Judgment
18 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
19 alleged exposures to cadmium arising from the Covered Product, respecting solely this action. In the
20 event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally,
21 or as to the Covered Product, then Defendant shall provide written notice to Parseghian of any
22 asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment
23 with respect to, and to the extent that, the Covered Product is so affected.

24
25 **9. NOTICES**

26 Unless specified herein, all correspondence and notices required to be provided pursuant to
27 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,

1 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
2 other party at the following addresses:

3
4 For Enjoy Life Natural Brands, LLC:

5 Richard J. McNeil, Esq.
6 **Crowell & Moring LLP**
7 3 Park Plaza, Suite 2000
Irvine, CA 92614
Phone: 949-798-1381

8 and

9 For Parseghian:

10 Tro Krikorian, Esq.
11 **KJT LAW GROUP, LLP**
12 230 N. Maryland Ave. Suite 306
Glendale, CA 91206
Phone: 818-507-8528
Fax: 818-507-8588

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

15
16 **10. DRAFTING**

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

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

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

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

4 Parseghian agrees to comply with the requirements set forth in California Health & Safety
5 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment embodying
6 the terms of this Agreement and Defendants shall support approval of such Motion.
7

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

11 **13. MODIFICATION**

12 This Consent Judgment, respecting solely this action, may be modified only by further
13 stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to
14 the Court by either Party.
15

16 **14. ATTORNEY'S FEES**

17 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
18 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
19 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
20 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
21 Code of Civil Procedure Section 2016, et seq.
22

23 **15. RETENTION OF JURISDICTION**

24 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this
25 Consent Judgment under Code of Civil Procedure § 664.6. This Court shall retain such jurisdiction
26 even when a dismissal with prejudice is filed by the Plaintiff.
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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:

Date: 2/6/2024 DocuSigned by: _____ Date: 02/05/2024

By: BERJ PARSEGHIAN By: [Signature]
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BERJ PARSEGHIAN

Ben Walker, CFO

[print name]

ENJOY LIFE NATURAL BRANDS, LLC

APPROVED AS TO FROM:

Date: 2/6/2024 DocuSigned by: _____ Date: 02/05/2024

By: [Signature] By: [Signature]
D911CF9328F0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
BERJ PARSEGHIAN

RICHARD J. MCNEAL, ESQ.
ATTORNEY FOR DEFENDANT,
ENJOY LIFE NATURAL BRANDS, LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____ Judge of the Superior Court

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