

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
6 Attorneys for Plaintiff,
TAMAR KALOUSTIAN

7 Jennifer Adams, State Bar No.: 319347
Amin Talati Wasserman LLP
8 100 S Wacker Dr, Ste 2000
Chicago, IL 60606
9 Tel: (312) 327-3383
Email: jennifer@amintalati.com

10
11 Attorney for Defendant,
JOVIAL FOODS, INC.

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF LOS ANGELES**

KJT LAW GROUP LLP
Jivalagian | Thomassian

15 TAMAR KALOUSTIAN,
16 Plaintiff,

17 v.

18 JOVIAL FOODS, INC.
19 Defendant.
20
21
22
23
24
25
26
27
28

Case No.: 22STCV01433

[PROPOSED] CONSENT JUDGMENT AS TO JOVIAL FOODS, INC.

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

KJT LAWGROUP LLP
JovialSign | Thomson

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between TAMAR
4 KALOUSTIAN, acting on behalf of the public interest (hereinafter "KALOUSTIAN") and JOVIAL
5 FOODS, INC. (hereinafter "JOVIAL FOODS"). Collectively Kaloustian and JOVIAL FOODS
6 shall be referred to hereafter as the "Parties" and each of them as a "Party." Kaloustian is an
7 individual residing in California who seeks to promote awareness of exposures to toxic chemicals and
8 improve human health by reducing or eliminating hazardous substances contained in consumer
9 products. For the purposes of this Consent Judgment, the Parties agree that JOVIAL FOODS is a
10 person in the course of doing business within the meaning of Proposition 65, Cal. Health & Safety
11 Code §§ 25249.6 et seq.

12 **1.2 Allegations and Representations**

13 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in
14 California, Cassava Fusilli, which contain lead and expose consumers to this chemical at a level
15 requiring a Proposition 65 warning. Lead is listed under Proposition 65 as a chemical known to the
16 State of California to cause cancer and birth defects or other reproductive harm. Defendant denies
17 the allegations and contends that there is no exposure requiring a warning and no violation under
18 Proposition 65 for an alleged failure to warn.

19 **1.3 Covered Products Description**

20 The products that are covered by this Consent Judgment are defined as "Jovial-Grain Free
21 Cassava Fusilli" All such items shall be referred to herein as the "Covered Products."

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about October 11, 2021, Kaloustian served JOVIAL FOODS and various
24 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
25 Health and Safety Code §25249.7(d) (the "Notice"), alleging that JOVIAL FOODS was in violation of
26 Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users
27 in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice
28 within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

KJT LAWGROUP LLP
Tamar Kaloustian

1 1.4.2 On January 13, 2022, Kaloustian, acting in the interest of the general public in the
2 State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations
3 of Health & Safety Code §25249.6 (the “Complaint”) based on the alleged failure to warn of
4 exposures to lead contained in Covered Products manufactured, distributed, or sold by JOVIAL
5 FOODS.
6

7 **1.5 Effective Date and Application of this Consent Judgment**

8 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
9 Consent Judgment is entered as a judgment of the Court. For purposes of this Consent Judgment, the
10 term “Compliance Date” shall mean one-hundred and twenty (120) days after the Effective Date.

11 For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this
12 Consent Judgment is signed by all parties in Clause 16 below. This Consent Judgment may apply to,
13 be binding upon, and benefit the Parties and their respective officers, directors, shareholders,
14 employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers,
15 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall
16 have no application to any Covered Products that Jovial Foods distributes or sells exclusively outside
17 the State of California.
18

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

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

27 Nothing in this Consent Judgment shall be construed as an admission by JOVIAL FOODS
28

KJT LAWGROUP LLP
JovialSign | The Way to Go

1 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
2 constitute or be construed as an admission by JOVIAL FOODS of any fact, finding, conclusion, issue
3 of law, or violation of law, such being specifically denied by JOVIAL FOODS, including, but not
4 limited to, any admission related to exposure of failure to warn. However, this section shall not
5 diminish or otherwise affect the obligations, responsibilities, and duties of JOVIAL FOODS under
6 this Consent Judgment.
7

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

9 **3.1** Beginning one hundred and twenty (120) days from the Effective Date ("Compliance
10 Date"), Jovial Foods shall be permanently enjoined from manufacturing for sale in the State of
11 California, "Distributing into the State of California," or directly selling in the State of California, any
12 Covered Product that expose a person to a "Daily Lead Exposure Level" of more than 0.5
13 micrograms of lead per day, unless it meets the warning requirements under Section 3.2.
14

15 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
16 shall mean to directly ship a Covered Product into California for sale in California or to sell a
17 Covered Product to a distributor that Jovial Foods knows or has reason to know will sell the Covered
18 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that
19 was packaged, distributed, shipped or sold by Jovial Foods prior to the Compliance Date. All claims
20 as to such Covered Product are released in this Consent Judgment.
21

22 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
23 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
24 gram of product, multiplied by grams of product per serving of the product (using the largest serving
25 size appearing on the product label), multiplied by servings of the product per day (using the largest
26 number of recommended daily servings appearing on the label), which equals micrograms of lead
27 exposure per day. If the label contains no recommended daily servings, then the number of
28

KJT LAWGROUP LLP
Thompson | Thompson

1 recommended daily servings shall be one.

2 **3.2 Clear and Reasonable Warnings**

3 If JOVIAL FOODS is required to provide a warning pursuant to Section 3.1, one of the
4 following warnings must be utilized ("Warning"):

5 **Option 1:**

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

9 **Option 2:**

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

11
12 JOVIAL FOODS shall use the phrase "cancer and" in the Warning if JOVIAL FOODS has
13 reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if
14 JOVIAL FOODS has reason to believe that another Proposition 65 chemical is present which may
15 require a cancer warning.

16 The Warning shall be provided to California consumers in manner that complies with 27
17 C.C.R. §25602(a). In addition, for any Covered Product sold over the internet, the Warning shall
18 appear prior to checkout on the primary product page, or as a pop-up when a California zip code is
19 input into the shipping instructions, or on the checkout page in full text or through a clearly marked
20 hyperlink using the word "**WARNING**" in all capital and bold letters when a California delivery
21 address is indicated for any purchase of any Covered Product. If a hyperlink is used, the hyperlink
22 must go directly to a page prominently displaying either the Option 1 Warning or the Option 2
23 Warning without content that detracts from the Warning. An asterisk or other identifying method
24 must be utilized to identify which products on the checkout page are subject to the Warning. Given
25 Jovial Foods' lack of control over third-party websites, the online warning requirements expressed in
26 this Section apply only to Covered Products sold through Jovial Foods' website, provided that Jovial
27 Foods complies with the notice requirements set forth in 27 C.C.R.25600.2.

KJT LAW GROUP LLP
Attorneys at Law

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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 JOVIAL FOODS is required to provide a warning for a Covered Product pursuant to Section 3.1, JOVIAL FOODS 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. If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning, the Parties agree that the new safe harbor warning may be utilized in place of the warnings set forth in this Section.

If Kaloustian alleges that any Covered Products fail to adhere to this Consent Judgment, then Kaloustian shall inform Jovial Foods in a reasonably prompt manner of its test results, including information sufficient to permit Jovial Foods to identify the Covered Products at issue and investigate. Jovial Foods shall, within thirty (30) days following such notice, provide Kaloustian with testing

KJT LAWGROUP LLP
INTEGRITY THROUGHOUT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

information demonstrating Jovial Foods’ compliance with the Consent Judgment, or proof that omission of the Warning was due to the Covered Products being sold, manufactured or distributed up to the Compliance Date. The Parties shall first attempt to resolve the matter prior to Kaloustian taking any further legal action.

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 Products, JOVIAL FOODS shall pay a civil penalty of (\$7000.00) 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.

JOVIAL FOODS 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., \$5,250.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,750.00 made payable directly to Kaloustian. JOVIAL FOODS 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:

KJT LAW GROUP LLP
Tamar Kaloustian

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, JOVIAL FOODS shall reimburse Kaloustian’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to JOVIAL FOODS attention, and negotiating a settlement in the public interest. JOVIAL FOODS shall pay Kaloustian’s counsel (\$43,000.00) for all attorneys’ fees, expert and investigation fees and related costs associated with this matter and the Notice. JOVIAL FOODS shall mail a check payable to “KJT Law Group,” via certified mail to the address for Kaloustian’s counsel referenced above within ten (10) business days following the Execution 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 Kaloustian's Release of JOVIAL FOODS, Releasees, and Downstream Releasees

As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on behalf of herself, *and on behalf of the public interest*, hereby waives and releases any and all claims against JOVIAL FOODS its parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively “Releasees”) and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, including but not limited to Nowhere Partners Corp, 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 JOVIAL FOODS, Releasees or Downstream Releasees to provide

KJT LAWGROUP LLP
Kaloustian | Thernstrom

1 clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the
2 sale, distribution, or use of any Covered Products sold, manufactured or distributed by JOVIAL
3 FOODS, Releasees or Downstream Releasees in California. Compliance with the Consent Judgment
4 by JOVIAL FOODS or a Releasee shall constitute compliance with Proposition 65 by that JOVIAL
5 FOODS, Releasee, or Downstream Releasee with respect to the presence of lead in the Covered
6 Products. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this
7 Consent Judgment.
8

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

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

22 **6.2 JOVIAL FOODS's Release of Kaloustian**

23 JOVIAL FOODS waives any and all claims against Kaloustian, her attorneys and other
24 representatives, for any and all actions taken or statements made (or those that could have been taken
25 or made) by Kaloustian and her attorneys and other representatives, in the course of investigating
26 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
27 respect to the Covered Products.
28

KJT LAWGROUP LLP
Jonathan Thomson

1 **7. SEVERABILITY AND MERGER**

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

5 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
6 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
7 No representations or terms of agreement other than those contained herein exist or have been made
8 by any Party with respect to the other Party or the subject matter hereof.
9

10 **8. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of California
12 and apply within the State of California. Compliance with the terms of this Consent Judgment
13 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
14 alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is
15 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
16 Products, then JOVIAL FOODS shall provide written notice to Kaloustian of any asserted change in
17 the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and
18 to the extent that, the Covered Products are so affected.
19

20 **9. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant to
22 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
23 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
24 other party at the following addresses:
25

26 For JOVIAL FOODS, INC.:
27 Abhishek K. Gurnani
28

KJT LAW GROUP LLP
Jovial Foods, Inc. Attorneys

1 **Amin Talati Wasserman, LLP**
2 100 S. Wacker Dr., Suite 2000
3 Chicago, IL 60606
4 Telephone: 312.327.3325
5 Email: abhishek@amintalati.com and

6 For Kaloustian:

7 Tro Krikorian, Esq.
8 **KJT LAW GROUP, LLP**
9 230 N. Maryland Ave. Suite 306
10 Glendale, CA 91206
11 Phone: 818-507-8528
12 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 **10. DRAFTING**

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

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

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

28 **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

KJT LAWGROUP LLP
Judges | Attorneys

1 JOVIAL FOODS shall not oppose approval of such Motion.

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

5 **13. MODIFICATION**

6 This Consent Judgment may be modified only by further stipulation of the Parties and the
7 approval of the Court or upon the granting of a motion brought to the Court by either Party. In the
8 event that Proposition 65 is repealed or preempted as to food products, then JOVIAL FOODS shall
9 have no further obligation pursuant to this Consent Judgment with respect to, and to the extent that
10 the Covered Products are so affected.

11 **14. ATTORNEY'S FEES**

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

17 **15. RETENTION OF JURISDICTION**

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

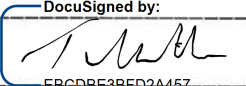
20 **16. AUTHORIZATION**

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


23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STIPULATED AND AGREED TO:

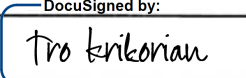
Date: 4/8/2022
By: 
EBCDBE3BFD2A467...

TAMAR KALOUSTIAN


Date: 4/8/2022
By: 

Francis J. Bergin III
[print name]
JOVIAL FOODS, INC.

APPROVED AS TO FROM:

Date: 4/8/2022
By: 
D914CF9328F0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: 4/8/2022
By: 

JENNIFER ADAMS, ESQ.
ATTORNEY FOR DEFENDANT,
JOVIAL FOODS, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____
Judge of the Superior Court

KJT LAWGROUP III
J. Krikorian | T. Krikorian