

1 Caspar Jivalagian, Esq., State Bar No.: 282818
2 Vache Thomassian, Esq., State Bar No.: 289053
3 Tro Krikorian, Esq., State Bar No.: 317183
4 **KJT LAW GROUP, LLP**
5 230 N. Maryland Avenue, Suite 306
6 Glendale, California 91206
7 Telephone: 818-507-8525
8 Facsimile: 818-507-8588

9 Attorneys for Plaintiff,
10 **BERJ PARSEGHIAN**

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

13 **BERJ PARSEGHIAN,**

14 Plaintiff,

15 v.

16 Seven Sundays LLC; Whole Foods Market
17 California, Inc., a California Corporation; and
18 **DOES 1 through 100, inclusive,**

19 Defendant.

Case No.: 22STCV12549

**[PROPOSED] CONSENT JUDGMENT AS
TO SEVEN SUNDAYS, LLC**

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

KJT LAWGROUP, LLP
Jivalagian | Thomassian

KJT LAWGROUP LLP
Parseghian | Thomassen

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

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 SEVEN SUNDAYS LLC (hereinafter "SEVEN SUNDAYS" or "Defendant"). Collectively Parseghian and SEVEN SUNDAYS 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 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, products, which contain cadmium, and that such sales have not been accompanied by Proposition 65 warnings. The State of California has listed cadmium as a chemical known to cause cancer, developmental toxicity and 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 Product Description

The product that is covered by this Consent Judgment is identified as Grain Free Cereal including but not limited to: Seven Sundays - Grain Free Cereal - Real Cacao; UPC #: 8 56088 00375 0. All such items shall be referred to herein as the "Covered Product."

1.4 Notices of Violation/Complaint

1.4.1 On or about November 18, 2021, Parseghian served SEVEN SUNDAYS 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 SEVEN SUNDAYS was in violation of

KJT LAW GROUP LLP
Jivrajgani | Throssian

1 Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users
2 in California to cadmium. No public enforcer diligently prosecuted the claims threatened in the
3 Notice within sixty days plus service time relative to the provision of the Notice to them by
4 Parseghian.

5
6 1.4.2 On April 14, 2022, Parseghian, acting in the interest of the general public in the State
7 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
8 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures
9 to cadmium contained in the Covered Product manufactured, distributed, or sold by Defendant.

10 1.5 Effective Date

11 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
12 Consent Judgment is entered as a judgment of the Court and not further appealable.

13 2. STIPULATION TO JURISDICTION/NO ADMISSION

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

20
21 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
22 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
23 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
24 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
25 admission related to exposure of failure to warn. However, this section shall not diminish or
26 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
27
28

KJT LAWGROUP LLP
Jivoliagian | Thomassian

1 Judgment.

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

3 **3.1** Beginning on the Effective Date, SEVEN SUNDAYS shall be permanently enjoined
4 from manufacturing for sale in the State of California, "Distributing into the State of California," or
5 directly selling in the State of California, any Covered Product that expose a person to a "Daily
6 Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day, unless it meets the
7 warning requirements under Section 3.2.

8
9 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
10 shall mean to directly ship a Covered Product into California for sale in California or to sell a
11 Covered Product to a distributor that SEVEN SUNDAYS knows or has reason to know will sell the
12 Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered
13 Product that was manufactured prior to the Effective Date and all claims as to such Covered Product
14 are released in this Consent Judgment.

15
16 **3.1.2** For purposes of this Consent Judgment, the "Daily Cadmium Exposure Level" shall be
17 measured in micrograms, and shall be calculated using the following formula: micrograms of
18 cadmium per gram of product, multiplied by grams of product per serving of the product as stated on
19 the label, multiplied by servings of the product per day stated on the label, which equals micrograms
20 of cadmium exposure per day. If the label contains no recommended daily servings, then the number
21 of recommended daily servings shall be one.

22
23 **3.2 Clear and Reasonable Warnings**

24 If SEVEN SUNDAYS is required to provide a warning pursuant to Section 3.1, one of the
25 following warnings must be utilized ("Warning"):

26
27
28

KJT LAWGROUP LLP
Jivajagan | Thomassian

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

Option 1:

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

Option 2:

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

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

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.

SEVEN SUNDAYS must display 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.

KJT LAW GROUP LLP
Jivoliagian | Thomassian

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

4 SEVEN SUNDAYS may satisfy the warning requirement by providing the required
5 information in compliance with 27 C.C.R. § 25600.2 (2020) to any business that is subject to
6 Proposition 65 to which it is selling or transferring the Covered Product.
7

8 **4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

9 With regard to all claims that have been raised or which could be raised with respect to failure
10 to warn pursuant to Proposition 65 with regard to cadmium in the Covered Product, Defendant shall
11 pay a civil penalty of \$7,000.00 pursuant to Health and Safety Code section 25249.7(b), to be
12 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
13 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
14 remaining 25% of the penalty remitted to Parseghian, as provided by California Health & Safety Code
15 § 25249.12(d) and the instructions directly below.
16

17 Defendant shall issue two separate checks for the penalty payment: (a) one check made
18 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
19 total penalty (i.e., \$5,250.00) and (b) one check in an amount representing 25% of the total penalty
20 (i.e., \$1,750.00) made payable directly to Parseghian. Defendant shall mail these payments within ten
21 (10) days following the Effective Date, at which time such payments shall be mailed to the following
22 addresses respectively:
23

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

25 **KJT LAW GROUP LLP**
26 **230 N. Maryland Avenue, Suite 306**
27 **Glendale, CA 91206**
28

KJT LAW GROUP LLP
Jivajagian | Thomassian

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

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 \$43,000.00 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 in three installments as follows:

- \$10,000.00 within ten (10) days following the Effective Date.
- \$10,000.00 within thirty (30) days following the Effective Date.
- \$10,000.00 within sixty (60) days following the Effective Date.
- \$13,000.00 within ninety (90) days following the Effective Date.

Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs.

KJT LAWGROUP LLP
Jivagan | Thomassian

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

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, including but not limited to Whole Foods Market California Inc. (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 about exposure to cadmium arising from the sale, distribution, or use of any Covered Product sold, manufactured, or distributed by Defendant, Releasees, or Downstream Releasees in California. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of cadmium in the Covered Product, up through the Effective Date. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents, representatives, attorneys, and successors and/or assignees, and not in his representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other Claims that he could make against Defendant, Releasees or Downstream Releasees with respect to violations of Proposition 65 based upon the Covered Product. With respect to the

KJT LAW GROUP LLP
Jivrajagani | Thomassian

1 foregoing waivers and releases in this paragraph, Parseghian hereby specifically waives any and all
2 rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions
3 of Section 1542 of the California Civil Code, which provides as follows:

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

8 **6.2 Defendant's Release of Parseghian**

9 Defendant waives any and all claims against Parseghian, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been taken
11 or made) by Parseghian and his attorneys and other representatives, in the course of investigating
12 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
13 respect to the Covered Product.
14

15 **7. SEVERABILITY AND MERGER**

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

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. Compliance with the terms of this Consent Judgment
26 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
27 alleged exposures to cadmium arising from the Covered Product. In the event that Proposition 65 is
28

KJT LAWGROUP LLP
Jivakagian | Thomassian

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

repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Defendant shall provide written notice to Parseghian of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Product is so affected.

9. NOTICES

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

For SEVEN SUNDAYS LLC:
Vanessa Charlotte Adriance
DLA PIPER LLP
550 South Hope Street, Suite 2400
Los Angeles, California 90071
Phone: 213.330.7700
Fax: 213.330.7701

and

For BERJ PARSEGHIAN:
Tro Krikorian, Esq.
KJT LAW GROUP, LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206
Phone: 818-507-8528
Fax: 818-507-8588

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

10. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and

KJT LAWGROUP LLP
Jivalegian, J. Thomassian

1 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
2 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
3 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
4 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
5 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
6 preparation and drafting of this Consent Judgment.
7

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

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

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

13 Parseghian agrees to comply with the requirements set forth in California Health & Safety
14 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
15 Defendants shall support approval of such Motion.
16

17 This Consent Judgment shall not be effective until it is approved and entered by the Court
18 and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve
19 months after it has been fully executed by the Parties.
20

21 **13. MODIFICATION**

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

24 **14. ATTORNEY'S FEES**

25 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
26 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
27 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
28

KJT LAWGROUP LLC
Jivakagian | Thomassian

1 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
2 Code of Civil Procedure Section 2016, et seq.

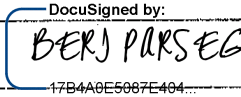
3 **15. RETENTION OF JURISDICTION**

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

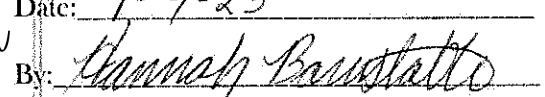
6 **16. AUTHORIZATION**

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

9 **STIPULATED AND AGREED TO:**

10
11 Date: 1/4/2023
12 By: 
13 DocuSigned by:
BERJ PARSEGHIAN
17B4A8E5087E404

14 **BERJ PARSEGHIAN**

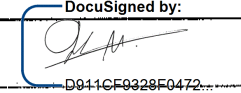
Date: 1-4-23
By: 

Hannah Barnstable

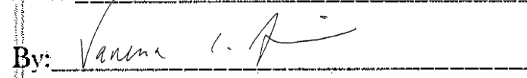
[print name]

SEVEN SUNDAYS LLC

15
16 **APPROVED AS TO FORM:**

17 Date: 1/4/2023
18 By: 
19 DocuSigned by:
D811CF9328F0472

20 **TRO KRIKORIAN, ESQ.**
21 **ATTORNEY FOR PLAINTIFF,**
22 **BERJ PARSEGHIAN**

Date: January 4, 2023
By: 

VANESSA C. ADRIANCE, ESQ.
ATTORNEY FOR DEFENDANT,
SEVEN SUNDAYS LLC

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

24 Dated: _____

Judge of the Superior Court