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5 Attorneys for Plaintiff,
6 TAMAR KALOUSTIAN

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

10 TAMAR KALOUSTIAN,
11 Plaintiff,

12 v.

13 TH FOODS, INC.,
14 Defendant.

Case No.: 22STCV12535

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

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

KJT LAWGROUP LLP
Jivalagian | Thomassian

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

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

11 **1.2 Allegations and Representations**

12 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in
13 California, Grain Free Crackers, which contain lead, and that such sales have not been accompanied
14 by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of
15 California to cause cancer and birth defects or other reproductive harm. Defendant denies the
16 allegations and contends that there is no exposure and no violation under Proposition 65 for an
17 alleged failure to warn.

18 **1.3 Covered Products Description**

19 The products covered by this Consent Judgment are Grain Free Crackers including but not
20 limited to: “Crunchmaster - Grain Free - Lightly Salted”; UPC #: 8 79890 00213 1. All such items
21 shall be referred to herein as the “Covered Product.”

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about December 22, 2021, Kaloustian served alleged violators TH FOODS
24 and SPROUTS FARMERS MARKET, INC., (“Sprouts Farmers Market”) and various public
25 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
26 Safety Code §25249.7(d) (the "Notice"), alleging that TH FOODS and Sprouts Farmers Market were
27 in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product
28 exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in

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the Notice within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

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

1.5 Effective Date

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

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

2. STIPULATION TO JURISDICTION/NO ADMISSION

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

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.

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

3.1 Commencing sixty (60) days after the Effective Date, TH FOODS shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product for which the serving size suggested on the label results in an intake of a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless the label of the Covered Product meets the warning requirements under Section 3.2.

3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that TH FOODS knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that has left the possession, and is no longer under the control of TH FOODS prior to sixty (60) days after the Effective Date and all claims as to such Covered Products are released in this Consent Judgment.

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

3.2 **Clear and Reasonable Warnings**

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

Option 1:

WARNING: Consuming this product can expose you to chemicals including lead, which is known to the State of California to cause [cancer and], birth defects or other

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

2 **Option 2:**

3 **WARNING:** [Cancer and] Reproductive Harm - www.P65Warnings.ca.gov/food

4
5 TH FOODS shall use the phrase "cancer and" in the Warning if TH FOODS has reason to
6 believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if TH FOODS
7 has reason to believe that another Proposition 65 chemical is present which may require a cancer
8 warning.

9 The Warning shall be securely affixed to or printed upon the label of each Covered Product
10 and it must be set off from other surrounding information. In addition, for any Covered Product sold
11 over the internet, the Warning shall appear on the checkout page in full text or through a clearly
12 marked hyperlink using the word "**WARNING**" in all capital and bold letters when a California
13 delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the
14 hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the
15 Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying
16 method must be utilized to identify which products on the checkout page are subject to the Warning.
17 Given TH FOODS' lack of control over third-party websites, the online warning requirements
18 expressed in this Section apply only to Covered Products sold directly by TH FOODS, provided that
19 TH FOODS complies with the notice requirements set forth in 27 C.C.R.25600.2.

20 The Warning shall be at least the same size as the largest of any other health or safety
21 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all
22 capital letters and in bold print. No statements intended to or likely to have the effect of diminishing
23 the impact of the Warning on the average lay person shall accompany the Warning. Further, no
24 statements may accompany the Warning that state or imply that the source of the listed chemical has
25 an impact on or results in a less harmful effect of the listed chemical.

26 TH FOODS must display the above Warning with such conspicuousness, as compared with
27 other words, statements or designs on the label, or on its website, if applicable, to render the Warning
28

1 likely to be read and understood by an ordinary individual under customary conditions of purchase
2 or use of the product.

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

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

7 With regard to all claims that have been raised or which could be raised with respect to failure
8 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a
9 civil penalty of (\$7,500.00) pursuant to Health and Safety Code section 25249.7(b), to be apportioned
10 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
11 State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of
12 the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d)
13 and the instructions directly below.

14 Defendant shall issue two separate checks for the penalty payment: (a) one check made
15 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of the
16 total penalty (i.e., \$5,625.00) and (b) one check in an amount representing 25% of the total penalty
17 (i.e., \$1,875.00) made payable directly to Kaloustian. Defendant shall mail these payments within ten
18 (10) days following the Effective Date, at which time such payments shall be mailed to the following
19 addresses respectively:

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

21 **KJT LAW GROUP LLP**
22 **230 N. Maryland Avenue, Suite 306**
23 **Glendale, CA 91206**

24 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
25 addresses:

26 For United States Postal Delivery:
27 Mike Gyurics
28 Senior Accounting Officer -- MS 19-B

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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 Kaloustian and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Kaloustian’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 Kaloustian’s counsel (\$55,000.00) 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 Kaloustian's counsel referenced above within ten (10) days following the Effective 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 Defendant, 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 Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively “Releasees”) and each of its distributors (including but not limited to, Sprouts Farmers Market), wholesalers, licensors, licensees, auctioneers, retailers, 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

1 alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and
 2 reasonable warnings under Proposition 65 about exposure to lead arising from the sale, distribution,
 3 or use of any Covered Products sold, manufactured or distributed by Defendant, Releasees or
 4 Downstream Releasees in California prior to the Effective Date. Compliance with the Consent
 5 Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that
 6 Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the Covered
 7 Products. The release provisions shall not extend to third-party websites and internet sellers who fail
 8 to provide clear and reasonable warnings pursuant to Section 3.2. Plaintiff agrees that any and all
 9 claims in the Complaint are resolved with prejudice by this Consent Judgment.

10 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
 11 representatives, attorneys, and successors and/or assignees, and not in her 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 she could make against Defendant, Releasees or Downstream
 14 Releasees arising after the Effective Date with respect to violations of Proposition 65 based upon the
 15 Covered Products. With respect to the foregoing waivers and releases in this paragraph, Kaloustian
 16 hereby specifically waives any and all rights and benefits which she now has, or in the future may
 17 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
 18 provides as follows:

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.**

24 **6.2 Defendant's Release of Kaloustian**

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

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7. SEVERABILITY AND MERGER

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

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

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. Compliance with the terms of this Consent Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant shall provide written notice to Kaloustian 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 Products are 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 TH FOODS, INC.:

Ed Underhill
MASUDA, FUNAI, EIFERT & MITCHELL, LTD.
203 N. LaSalle Street, Suite 2500
Chicago, IL 60601-1262
P: 312.245.7533

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E. EUnderhill@masudafunai.com

and

For TAMAR KALOUSTIAN:

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

11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES

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

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 Defendants shall support approval of such Motion.

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

KJT LAW GROUP LLP
Jivakigian, Thomasian

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13. MODIFICATION

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

14. ATTORNEY'S FEES

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

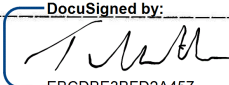
15. RETENTION OF JURISDICTION

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

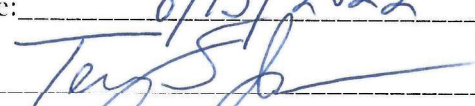
16. AUTHORIZATION

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.

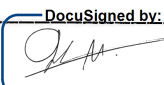
STIPULATED AND AGREED TO:

Date: 8/16/2022
By: 
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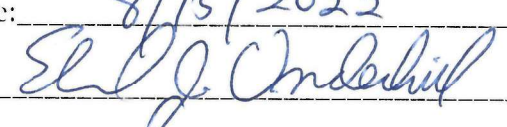
TAMAR KALOUSTIAN

Date: 8/15/2022
By: 
Terry S. Jessen, Attorney
[print name]
TH FOODS, INC.

APPROVED AS TO FROM:

Date: 8/16/2022
By: 
D941CF9328F0472

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: 8/15/2022
By: 
ASA MARKEL, ESQ.
ED UNDERHILL, ESQ.
ATTORNEYS FOR DEFENDANT,
TH FOODS, INC.

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IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

KJT LAWGROUP LLP
Jwalagan | Thomassian