

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 TAMAR KALOUSTIAN

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

11 TAMAR KALOUSTIAN,
12 Plaintiff,

13 v.

14 LesserEvil LLC; and DOES 1 through 100,
15 inclusive,
16 Defendant.

Case No.: 22STCV13274

[PROPOSED] CONSENT JUDGMENT AS
TO LESSEREVIL LLC

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

KJT LAWGROUP^{LLP}
Jivalagian | Thomassian

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 LESSEREVIL LLC. (hereinafter
5 “LESSEREVIL” or “Defendant”). Collectively Kaloustian and LESSEREVIL 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 employs ten or more persons and is a person in the course of doing business for purposes of
10 Proposition 65, Cal. Health & Safety Code §§ 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, products, which contain lead, and that such sales have not been accompanied by
14 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 that are covered by this Consent Judgment are identified as Lesser Evil - Lil’
20 Puffs; and Lesser Evil - Paleo Puffs. All such items shall be referred to herein as the “Covered
21 Products.”

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about November 12, 2021, Kaloustian served LESSEREVIL and various
24 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
25 Health & Safety Code §25249.7(d) (the "Notice"), alleging that LESSEREVIL was in violation of
26 Proposition 65 for failing to warn consumers and customers that one of the Covered Products
27 exposed users in California to lead. On or about December 22, 2021, Kaloustian served a second 60-
28 Day Notice of Violation, alleging that LESSERVIL was in violation of Proposition 65 for failing to

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warn consumers and customers that two other Covered Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

1.4.2 On April 21, 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 Covered Products 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 Beginning ninety (90) days after the Effective Date, LESSEREVIL 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 Products that expose a person to a daily lead exposure level of more than 0.5 micrograms of lead per day, unless the label of the Covered Product contains a Proposition 65 compliant warning, as required by any Proposition 65 law or regulation effective on or after the Effective Date, as set forth in 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 LESSEREVIL 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 LESSEREVIL prior to the Effective Date and all claims as to such Covered Products are released in this Consent Judgment.

3.2 Clear and Reasonable Warnings

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

Option 2:

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

LESSEREVIL shall use the phrase "cancer and" in the Warning if LESSEREVIL has reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if

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LESSEREVIL has reason to believe that another Proposition 65 chemical is present which may require a cancer warning.

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. 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."**

LESSEREVIL 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.

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.

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For purposes of this Consent Judgment, when LESSEREVIL is required to provide a warning for a Covered Product pursuant to Section 3.1, LESSEREVIL 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.

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, Defendant shall pay a civil penalty of fifteen thousand dollars (\$15,000.00) 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 Kaloustian, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Defendant 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., \$11,250.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$3,750.00) made payable directly to Kaloustian. Defendant 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

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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 forty thousand dollars (\$40,000.00) 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, LLP" via certified mail to the address for Kaloustian's counsel referenced above within ten (10) business 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, 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 alleged failure of Defendant, Releasees or



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Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale, distribution, or use of any Covered Products 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 lead in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

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

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

6.2 Defendant’s Release of Kaloustian

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

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

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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 LesserEvil LLC:

David Kwasniewski, Esq.
Robert Petraglia, Esq.
BRAUNHAGEY & BORDEN LLP
351 California St 10th floor,
San Francisco, CA 94104
Telephone: 415-599-0210
Email: Petraglia@braunhagey.com

and

For Kaloustian:

Tro Krikorian, Esq.
KJT LAW GROUP, LLP
230 N. Maryland Ave. Suite 306

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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 twelve months after it has been fully executed by the Parties.

13. MODIFICATION

13.1 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

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Party.

13.2 Change in Proposition 65. If (1) Proposition 65 or its implementing regulations (including but not limited to the safe harbor “no significant risk level” and “maximum allowable dose level” for lead or any “alternative risk level” adopted by regulation or California Supreme Court decision) are changed from their terms as they exist on the date of entry of this Consent Judgment in a manner that impacts the “Daily Lead Exposure Level” or (2) after entry of this Consent Judgment, OEHHA takes some other final regulatory action for products similar to the Covered Products and such final regulatory action impacts the “Daily Lead Exposure Level” or (3) after entry of this Consent Judgment, OEHHA adopts a regulation that eliminates the requirement for warnings for lead for the Covered Products, then this consent judgment shall be deemed automatically modified to incorporate the modified “Daily Lead Exposure Level” and/or warning requirements.

13.3 In the event that Proposition 65 is repealed, or otherwise invalidated, by regulation or California or United States Supreme Court case law, and as a result of such repeal or invalidation the Covered Products are no longer subject to Proposition 65, then the Defendants shall have no further obligations as to the injunctive terms pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products are so affected.

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.

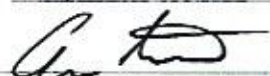
16. AUTHORIZATION

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:

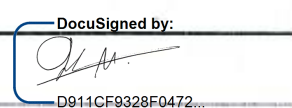
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TAMAR KALOUSTIAN


Date: September 15, 2022
By: 

Andrew Strife, CFO
[print name]
LESSEREVIL LLC

APPROVED AS TO FROM:

Date: 9/19/2022
By:  DocuSigned by: D911CF9328F0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: September 15, 2022
By: 

DAVID KWASNIEWSKI, ESQ.
ATTORNEY FOR DEFENDANT,
LESSEREVIL LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

KJT LAW GROUP LLP
Jivagan, Thammavorn