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10
11 Attorney for Defendant,
12 **HU PRODUCTS, LLC**

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

15 **TAMAR KALOUSTIAN,**
16
17 **Plaintiff,**

18 **v.**

19 **HU PRODUCTS, LLC**
20 **Defendant.**

Case No.: 22STCV32071

**[PROPOSED] CONSENT JUDGMENT AS
TO HU PRODUCTS, LLC**

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

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 HU
5 PRODUCTS, LLC (hereinafter “HU PRODUCTS”). Collectively Kaloustian and HU
6 PRODUCTS shall be referred to hereafter as the “Parties” and each of them as a “Party.” Kaloustian
7 is an individual residing in California who seeks to promote awareness of exposures to toxic
8 chemicals and improve human health by reducing or eliminating hazardous substances contained in
9 consumer products. For the purposes of this Consent Judgment, the Parties agree that HU
10 PRODUCTS is a person in the course of doing business within the meaning of Proposition 65, Cal.
11 Health & Safety 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, Grain Free Crackers and Grain Free Cookies, which contain lead and expose consumers
15 to this chemical at a level requiring a Proposition 65 warning. Lead is listed under Proposition 65 as a
16 chemical known to the State of California to cause cancer and birth defects or other reproductive
17 harm. Defendant denies the allegations and contends that there is no exposure requiring a warning
18 and no violation under 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: Hu - Grain Free
21 Crackers, including but not limited to: “Hu - Grain Free Crackers - Pizza”; UPC #: 8 50180 00673
22 2” and Hu - Grain-Free Cookies, including but not limited to: “Hu - Grain-Free Cookies -
23 Chocolate Chip; UPC #: 8 50024 26702 2.” All such items shall be referred to herein as the
24 “Covered Products.”

25 **1.4 Notices of Violation/Complaint**

26 1.4.1 On or about November 8, 2021 and January 3, 2022, Kaloustian served HU
27 PRODUCTS and various public enforcement agencies with documents entitled "60-Day Notice of
28 Violation" pursuant to Health and Safety Code §25249.7(d) (the "Notice"), alleging that HU

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PRODUCTS was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notices within sixty days plus service time relative to the provision of the Notices to them by Kaloustian.

1.4.2 On September 30, 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 HU PRODUCTS.

1.5 Effective Date and Application of this Consent Judgment

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 “Compliance Date” shall mean one-hundred and twenty (120) days after the Effective Date.

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. This Consent Judgment may apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application to any Covered Products that HU PRODUCTS distributes or sells exclusively outside the State of California.

2. STIPULATION TO JURISDICTION/NO ADMISSION

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over HU PRODUCTS 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

1 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
2 resolution of all claims which were or could have been raised in the Complaint based on the facts
3 alleged therein and/or in the Notice.

4 Nothing in this Consent Judgment shall be construed as an admission by HU PRODUCTS
5 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
6 constitute or be construed as an admission by HU PRODUCTS of any fact, finding, conclusion, issue
7 of law, or violation of law, such being specifically denied by HU PRODUCTS, including, but not
8 limited to, any admission related to exposure of failure to warn. However, this section shall not
9 diminish or otherwise affect the obligations, responsibilities, and duties of HU PRODUCTS under
10 this Consent Judgment.

11
12 **3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING**

13
14 **3.1** Beginning on the Compliance Date, HU PRODUCTS shall be permanently enjoined
15 from manufacturing for sale in the State of California, "Distributing into the State of California," or
16 directly selling in the State of California, any Covered Product that expose a person to a "Daily Lead
17 Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning
18 requirements under Section 3.2.

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

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26 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
27 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
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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 HU PRODUCTS 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 - <http://www.p65warnings.ca.gov/food>

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

The Warning shall be provided to California consumers in manner that complies with 27 C.C.R. §25602(a). In addition, for any Covered Product sold over the internet by HU PRODUCTS, the Warning shall appear prior to checkout on the primary product page, or as a pop-up when a California zip code is input into the shipping instructions, or 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.

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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."**

HU PRODUCTS 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 HU PRODUCTS is required to provide a warning for a Covered Product pursuant to Section 3.1, HU PRODUCTS 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 HU PRODUCTS in a reasonably prompt manner of its test results, including information sufficient to permit HU PRODUCTS to identify the Covered Products at issue and investigate. HU PRODUCTS shall, within thirty (30) days following such notice, provide Kaloustian

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1 with testing information demonstrating HU PRODUCTS' compliance with the Consent Judgment, or
2 proof that omission of the Warning was due to the Covered Products being sold, manufactured or
3 distributed up to the Compliance Date. The Parties shall first attempt to resolve the matter prior to
4 Kaloustian taking any further legal action.

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

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

13 HU PRODUCTS shall issue two separate checks for the penalty payment: (a) one check
14 made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75%
15 of the total penalty (i.e., \$7,500.00 and (b) one check in an amount representing 25% of the total
16 penalty (i.e., \$2,500.00 made payable directly to Kaloustian. HU PRODUCTS shall mail these
17 payments within ten (10) business days following the Effective Date, at which time such payments
18 shall be mailed to the following addresses respectively:

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

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

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

25 For United States Postal Delivery:

26 Mike Gyurics
27 Senior Accounting Officer -- MS 19-B
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

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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, HU PRODUCTS shall reimburse Kaloustian’s counsel for fees and costs, incurred as a result of investigating, bringing this matter to HU PRODUCTS attention, and negotiating a settlement in the public interest. HU PRODUCTS shall pay Kaloustian’s counsel \$40,000.00 for all attorneys’ fees, expert and investigation fees and related costs associated with this matter and the Notice. HU PRODUCTS 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 HU PRODUCTS, 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 HU PRODUCTS 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 HU PRODUCTS, Releasees or Downstream Releasees to provide

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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 HU
3 PRODUCTS, Releasees or Downstream Releasees in California prior to the Compliance Date.
4 Compliance with the Consent Judgment by HU PRODUCTS or a Releasee shall constitute
5 compliance with Proposition 65 by that HU PRODUCTS, Releasee, or Downstream Releasee with
6 respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all claims in the
7 Complaint are resolved with prejudice by this 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 HU PRODUCTS, 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.

24 **6.2 HU PRODUCTS's Release of Kaloustian**

25 HU PRODUCTS 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.

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.

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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 HU PRODUCTS 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:

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26 For HU PRODUCTS, LLC:
27 Abhishek K. Gurnani
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Amin Talati Wasserman, LLP
100 S. Wacker Dr., Suite 2000
Chicago, IL 60606
Telephone: 312.327.3325
Email: abhishek@amintalati.com and

For 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 HU

1 PRODUCTS 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 HU PRODUCTS 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.

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STIPULATED AND AGREED TO:

Date: 11/30/2022
DocuSigned by:

By: 
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TAMAR KALOUSTIAN

Date: 11/23/2022
DocuSigned by:

By: 
*CC2B03E646F4B5...

Mark Ramadan

[print name]
HU PRODUCTS, LLC

APPROVED AS TO FROM:

Date: 11/30/2022
DocuSigned by:

By: 
D911CE9328E0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: November 23, 2022

By: 

JENNIFER ADAMS, ESQ.
ATTORNEY FOR DEFENDANT,
HU PRODUCTS, LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

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