

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

5
6 Attorneys for Plaintiff,
TAMAR KALOUSTIAN

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10
11 TAMAR KALOUSTIAN,
12 Plaintiff,

13 v.

14 Baker's Breakfast Cookies, Inc.; Sprouts Farmers
Market, Inc.; and DOES 1 through 100, inclusive,
15 Defendant.
16

Case No.: 22STCV36183

[PROPOSED] CONSENT JUDGMENT AS
TO BAKER'S BREAKFAST COOKIES, INC.

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

KJT LAWGROUP LLP
Jivalagian | Thomassian

17
18
19
20
21
22
23
24
25
26
27
28

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 BAKER'S BREAKFAST
5 COOKIES, INC. (hereinafter "Baker's" or "Defendant"). Collectively Kaloustian and Baker's shall
6 be referred to hereafter as the "Parties" and each of them as a "Party." Kaloustian is an individual
7 residing in California who seeks to promote awareness of exposures to toxic chemicals and improve
8 human health by reducing or eliminating hazardous substances contained in consumer products.
9 Defendant is a person in the course of doing business for purposes of Proposition 65, Cal. Health &
10 Safety Code §§ 25249.6 et seq.
11

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, products, which contain lead, and that such sales have not been accompanied by
15 Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of
16 California to cause cancer and birth defects or other reproductive harm. Defendant denies the
17 allegations and contends that there is no exposure and no violation under Proposition 65 for an
18 alleged failure to warn.
19

20 **1.3 Covered Product Description**

21 The products that are covered by this Consent Judgment are identified as: "Erin Baker's -
22 Grain-Free Better Cookie - Salted Chocolate Cashew; UPC 7 08875 00601 0." All such products
23 shall be referred to herein as the "Covered Product."
24

25 **1.4 Notices of Violation/Complaint**

26 1.4.1 On or about January 3, 2022, Kaloustian served Baker's and various public
27 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
28

KJT LAWGROUP LLP
Jhwalagan | Thomassian

1 Safety Code §25249.7(d) (the "Notice"), alleging that Baker's was in violation of Proposition 65 for
2 failing to warn consumers and customers that the Covered Product exposed users in California to
3 lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days
4 plus service time relative to the provision of the Notice to them by Kaloustian.

5
6 1.4.2 On November 16, 2022, Kaloustian, acting in the interest of the general public in the
7 State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations
8 of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of
9 exposures to lead 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.

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

15
16 **2. STIPULATION TO JURISDICTION/NO ADMISSION**

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

23
24 Defendant denies the material, factual and legal allegations contained in Plaintiff's Notice and
25 Complaint, and maintains that all products, including but not limited to the Covered Product, that
26 they have sold and distributed in California have been and are in compliance with all applicable laws,
27 and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed
28

KJT LAW GROUP LLP
Jivalegian | Thomassian

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

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

9 **3.1** By the Effective Date, Baker's agrees to discontinu "Distributing into the State of
10 California" or manufacturing the Covered Product. The injunctive relief in Section 3 does not apply
11 to any Covered Product that was manufactured, distributed, or sold prior to the Effective Date and all
12 claims as to such Covered Product is released in this Consent Judgment.

13 In the event Baker's decides to manufacture or sell the Covered Product again in the future, any
14 Covered Product sold in the State of California shall not expose a person to a "Daily Lead Exposure
15 Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under
16 Section 3.2.

17 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
18 shall mean to directly ship a Covered Product into California for sale in California or to sell a
19 Covered Product to a distributor that Baker's knows or has reason to know will sell the Covered
20 Product in California.


21 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
22 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
23 gram of product, multiplied by grams of product per serving of the product (using the largest serving
24 size appearing on the product label), multiplied by servings of the product per day (using the largest
25 number of recommended daily servings appearing on the label), which equals micrograms of lead
26
27
28

1 exposure per day. If the label contains no recommended daily servings, then the number of
2 recommended daily servings shall be one.


3 **3.2 Clear and Reasonable Warnings**

4 3.2.1 If Baker's is required to provide a warning pursuant to Section 3.1, one of the
5 following warnings must be utilized pursuant to California Code of Regulations ("CCR") title 27,
6 sections 25603 and 25607.2 ("Warning"):
7

8 Option 1:

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

12 Option 2:

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

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

16 The Warning shall be securely affixed to or printed upon the label of each Covered Product
17 and it must be set off from other surrounding information. In addition, for any Covered Product sold
18 over the internet, the Warning shall appear on the checkout page, or prominently displayed to the
19 purchaser prior to completing the purchase, in full text or through a clearly marked hyperlink using
20 the word "**WARNING**" in all capital and bold letters when a California delivery address is indicated
21 for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a
22 page prominently displaying the Warning without content that detracts from the Warning.
23
24
25
26
27
28

1 California Code of Regulations title 27, section 25603(a) specifies the Warning elements,
2 unless otherwise specified in Section 25607.1 et seq. (Food Exposure Warnings). Thus, the Warning
3 shall contain the following elements:

4 (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a
5 bold black outline. Where the sign, label or shelf tag for the product is not printed using the color
6 yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the
7 text of the warning, in a size no smaller than the height of the word "WARNING".
8

9 (2) The word "WARNING" in all capital letters and bold print, and:

10 (A) For exposures to listed carcinogens, the words, "Consuming this product can
11 expose you to chemicals including [name of one or more chemicals], which is [are] known to
12 the State of California to cause cancer. For more information go to
13 www.P65Warnings.ca.gov/food."
14

15 (B) For exposures to listed reproductive toxicants, the words, "Consuming this
16 product can expose you to chemicals including [name of one or more chemicals], which is
17 [are] known to the State of California to cause birth defects or other reproductive harm. For
18 more information go to www.P65Warnings.ca.gov/food."
19

20 (C) For exposures to both listed carcinogens and reproductive toxicants, the words,
21 "Consuming this product can expose you to chemicals including [name of one or more
22 chemicals], which is [are] known to the State of California to cause cancer and [name of one
23 or more chemicals], which is [are] known to the State of California to cause birth defects or
24 other reproductive harm. For more information go to www.P65Warnings.ca.gov/food."
25

26 (D) For exposures to a chemical that is listed as both a carcinogen and a reproductive
27 toxicant, the words, "Consuming this product can expose you to chemicals including [name of
28 one or more chemicals], which is [are] known to the State of California to cause cancer and

KJT LAW GROUP LLP
Jivallagian | 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

birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.”

(E) Where a warning is being provided for an exposure to a single chemical the words “chemicals including” may be deleted from the warning content set out in subsections (A), (B), (C) and (D).

Pursuant to California Code of Regulations title 27, section 25603(b), A short-form warning may be provided on the product label using all the following elements:

- (1) The symbol required in subsection (a)(1).
- (2) The word “WARNING:” in all capital letters, in bold print.

(A) For exposures to listed carcinogens, the words, “Cancer - www.P65Warnings.ca.gov/food.”

(B) For exposures to listed reproductive toxicants, the words, “Reproductive Harm - www.P65Warnings.ca.gov/food.”

(C) For exposures to both listed carcinogens and reproductive toxicants, the words, “Cancer and Reproductive Harm - www.P65Warnings.ca.gov/food.”

Pursuant to 27 CCR § 25603(c), if providing a short-form warning on the product label pursuant to 27 CCR § 25603(b), it is not required to include within the text of the warning the name or names of a listed chemical.

The Warning shall be at least the same size as the largest of any other health or safety warnings. 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.

KJT LAWGROUP LLP
Jhvalajjan | Thomassian

1 Baker's must display the above Warning with such conspicuousness, as compared with other
2 words, statements or designs on the label, or on its website, if applicable, to render the Warning likely
3 to be read and understood by an ordinary individual under customary conditions of purchase or use
4 of the product. For purposes of this Consent Judgment, the term "label" means a display of written,
5 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
6 container or wrapper. The Warning must be set off from other surrounding information, enclosed in
7 a box and comply with the content requirements specified in Section 25607.2. If consumer
8 information on the package is in a foreign language, the warning must also be provided in the foreign
9 language.
10

11 Notwithstanding the foregoing, Defendant may comply with this Section 3 by providing
12 warnings as specified in the Proposition 65 regulations applicable to the Covered Product and
13 chemical at issue, in effect as of the Effective Date, or as such regulations may be modified or
14 amended in the future.
15

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

17 With regard to all claims that have been raised or which could be raised with respect to failure
18 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a
19 civil penalty of (\$7,000.00) pursuant to Health and Safety Code section 25249.7(b), to be apportioned
20 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
21 State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of
22 the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d)
23 and the instructions directly below.
24

25 Defendant shall issue two separate checks for the penalty payment: (a) one check made
26 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
27 total penalty (i.e., \$5,250.00) and (b) one check in an amount representing 25% of the total penalty
28

KJTLAWGROUP LLP
Jvalagian | Thomassian

1 (i.e., \$1,750.00) made payable directly to Kaloustian. Defendant shall mail these payments within ten
2 (10) days following the Effective Date, at which time such payments shall be mailed to the following
3 addresses respectively:

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

5 **KJT LAW GROUP LLP**
6 **230 N. Maryland Avenue, Suite 306**
7 **Glendale, CA 91206**

8 All payments owed to OEHHA shall be delivered directly to OEIHA at the following
9 addresses:
10

11 For United States Postal Delivery:

12 Mike Gyurics
13 Senior Accounting Officer – MS 19-B
14 Office of Environmental Health Hazard Assessment
15 P.O. Box 4010
16 Sacramento, CA. 95812-0410

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 1001 I Street
22 Sacramento, CA 95814

23 **5. REIMBURSEMENT OF FEES AND COSTS**

24 The parties reached an accord on the compensation due to Kaloustian and her counsel under
25 the private attorney general doctrine and principles of contract law. Under these legal principles,
26 Defendant shall reimburse Kaloustian’s counsel for fees and costs, incurred as a result of
27 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the public
28 interest. Defendant shall pay Kaloustian’s counsel \$55,500.00 for all attorneys’ fees, expert and
investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a

1 check payable to “KJT Law Group,” via certified mail to the address for Kaloustian's counsel
 2 referenced above within ten (10) days following the Effective Date. Other than the payment required
 3 hereunder, each side is to bear its own attorneys’ fees and costs.

4 **6. RELEASE OF ALL CLAIMS**

5 **6.1 Kaloustian’s Release of Defendant, Releasees, and Downstream Releasees**

6 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on
 7 behalf of herself, and on behalf of the public interest, and her past and current agents, representatives,
 8 attorneys, successors and/or assignees (the “Releasors), hereby waives and releases any and all claims
 9 against Defendant and its trustees, parent companies, corporate affiliates, subsidiaries, predecessors,
 10 successors and assigns (collectively “Releasees”) and each entity or party to whom Defendant directly
 11 or indirectly distributes or sells the Covered Product including without limitation, distributors,
 12 wholesalers, licensors, licensees, auctioneers, retailers, including but not limited to Sprouts Farmers
 13 Market, franchisees, dealers, customers, owners, purchasers, users (collectively “Downstream
 14 Releasees”), and their respective officers, directors, attorneys, representatives, shareholders, agents,
 15 and employees, and sister and parent entities for injunctive relief or damages, penalties, fines,
 16 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any
 17 other sum incurred or claimed, for the alleged failure of Defendant, Releasees, or Downstream
 18 Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to
 19 lead arising from the sale, distribution, or use of any Covered Product sold, manufactured or
 20 distributed by Defendant, Releasees, or Downstream Releasees in California, up through the Effective
 21 Date. Compliance with the Consent Judgment by Defendant, a Releasee, or a Downstream Releasee
 22 shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream
 23 Releasee with respect to the presence of lead in the Covered Product. Plaintiff agrees that any and all
 24 claims in the Complaint are resolved with prejudice by this Consent Judgment.
 25
 26
 27
 28

KJT LAWGROUP LLP
Jhvalagjan | Thomassian

1 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
2 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
4 releases any other Claims that she could make against Defendant, Releasees or Downstream
5 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With
6 respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives
7 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of
8 the provisions of Section 1542 of the California Civil Code, which provides as follows:
9

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

12 **6.2 Defendant's Release of Kaloustian**

13 Defendant waives any and all claims against Kaloustian, her attorneys and other
14 representatives, for any and all actions taken or statements made (or those that could have been taken
15 or made) by Kaloustian and his attorneys and other representatives, in the course of investigating
16 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with
17 respect to the Covered Product.
18
19

20 **7. SEVERABILITY AND MERGER**

21 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
22 document are held by a court to be unenforceable, the validity of the enforceable provisions
23 remaining shall not be adversely affected.
24

25 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
26 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
27 No representations or terms of agreement other than those contained herein exist or have been made
28

KJTLAWGROUP LLP
Jhvaligian | Thomasian

1 by any Party with respect to the other Party or the subject matter hereof.

2
3 **8. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California.

6 **9. NOTICES**

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

12 For Bakers Breakfast Cookies, Inc.:

13 Matthew C. Bures, Esq.
14 **Wolfe & Wyman LLP**
15 2212 Dupont Drive
16 Irvine, CA 92612
Phone: 949-475-9200
Fax: 949-475-9203

17 and

18 For Kaloustian:

19 Tro Krikorian, Esq.
20 **KJT LAW GROUP, LLP**
21 230 N. Maryland Ave. Suite 306
Glendale, CA 91206
Phone: 818-507-8528
Fax: 818-507-8588

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

24 **10. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for each
26 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
27

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 Kaloustian 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

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**

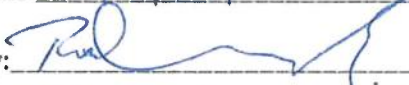
7 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party
8 he or she represents to stipulate to this Consent Judgment.
9

10 **STIPULATED AND AGREED TO:**

11 Date: 5/27/2024

12 Date: _____ DocuSigned by: _____
13 By: _____  _____
14 EBCDBE3BFD2A457...

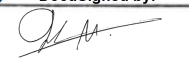
15 TAMAR KALOUSTIAN

12 Date: 5/21/2024
13 By:  _____

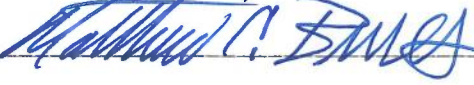
14 ROBERT McCormack
15 [print name]
16 BAKER'S BREAKFAST COOKIES, INC.

17 **APPROVED AS TO FORM:**

18 Date: 5/28/2024

19 Date: _____ DocuSigned by: _____
20 By: _____  _____
21 B4A4D94498264E2...

22 TRO KRIKORIAN, ESQ.
23 ATTORNEY FOR PLAINTIFF,
24 TAMAR KALOUSTIAN

18 Date: 5/21/2024
19 By:  _____

20 MATTHEW C. BURES, ESQ.
21 ATTORNEY FOR DEFENDANT,
22 BAKER'S BREAKFAST COOKIES, INC.

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

24 Dated: _____

25 _____
26 Judge of the Superior Court