

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Kaloustian and Warnock Food Products, Inc.:

This Settlement Agreement is entered into by and between Tamar Kaloustian (“Kaloustian”), represented by her attorneys KJT Law Group, LLP on the one hand, and Warnock Food Products, Inc. (“Warnock”), on the other hand, with Kaloustian and Warnock collectively referred to as the “Parties.”

#### 1.2. General Allegations

Kaloustian alleges that Warnock manufactured and distributed and offered for sale in the State of California grain free crackers, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

#### 1.3. Product Description

The products covered by this Settlement Agreement are grain free crackers, including but not limited to, “Sprouts – Grain Free – Crackers – Wasabi Ranch”; UPC #: 6 46670 51710 5, that Warnock has sold, offered for sale, manufactured, or distributed in California and that allegedly contain lead. All such items shall be referred to herein as the “Covered Products.”

#### 1.4. Notice of Violation

On March 9, 2022, Kaloustian served Warnock, Sprouts Farmers Market, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled “Sixty-Day Notice of Intent to Sue for

Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986" ("Notice") that provided Warnock, Sprouts Farmers Market, Inc., and such public enforcers with notice that Warnock was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Warnock's compliance with Proposition 65. Specifically, Warnock denies the allegations contained in Kaloustian's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Warnock of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Warnock of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Warnock. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Warnock under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

**2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

2.1 Beginning 30 calendar days after the Effective Date, Warnock 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 it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship Covered Products into California for sale in California or to sell any Covered Products to a distributor that Warnock knows or has reason to know will sell the Covered Products in California. Given the lack of control over unauthorized third-party resellers, a third party that chooses to resell any Covered Products in California without either a) authorization of such resale from Warnock or b) any direct or indirect contractual agreement with Warnock regarding such resale is not deemed a "distributor." The injunctive relief in Section 2 does not apply to any Covered Products that have left the possession, and are no longer under the control of Warnock, or are in possession of Warnock's distributor(s), prior to the Effective Date and all claims as to such Covered Products are released in this Settlement Agreement.

For purposes of this Settlement Agreement, 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.

## 2.2 Clear and Reasonable Warnings

If Warnock is required to provide a warning pursuant to Section 2.1, 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](http://www.P65Warnings.ca.gov/food)

### **Option 2:**

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

Warnock shall use the phrase "cancer and" in the Warning if Warnock has reason to believe that in some batches of the Covered Products, the "Daily Lead Exposure Level" may be greater than 15 micrograms of lead or if Warnock 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 of the Covered Products, and it must be set off from other surrounding information. In addition, for any Covered Products sold over the internet by Warnock or its distributor(s), 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."

Warnock 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 Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to the Covered Products or their immediate containers or wrappers.

For purposes of this Settlement Agreement, Warnock 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 Products.

**3. CONSIDERATION**

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, Warnock shall pay \$27,500 as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Warnock's attention.

**4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, \$5,000 shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Kaloustian.

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of all the claims referred to in this Settlement Agreement, \$25,000 shall be considered reimbursement of Kaloustian's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. 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.

**6. PAYMENT INFORMATION**

Warnock 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 Kaloustian and for attorneys' fees, 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  
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

**7. RELEASE OF ALL CLAIMS**

**7.1. Release of Warnock, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, Kaloustian, on behalf of herself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Products, including, without limitation, all

actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) against Warnock, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Warnock directly or indirectly distributes or sells the Covered Products, including but not limited to, downstream distributors, wholesalers, customers, retailers (which shall expressly include, among all other downstream distributors, Sprouts Farmers Market, Inc.) and their respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to lead in relation to the Covered Products.

Kaloustian, in her individual capacity, expressly waives and relinquishes any and all rights and benefits which she may have under, or which may be conferred on her by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters.

**8. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or specifically as to the Covered Products (such that pursuant to the change the Covered Products, as they exist at the time of the change, could be sold in California without any Proposition 65 warning), then Warnock shall have no further obligations pursuant to this Settlement Agreement. In the event



that Proposition 65 is amended such that the warning content and/or transmission methods set forth in Section 2.2 is/are no longer compliant with Proposition 65 requirements, then warnings that are compliant with Proposition 65 as it is amended may be used.

**9. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement 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 Warnock: Liz Shoemaker  
Law Offices of David A. Makman  
483 Seaport Court, Suite 103  
Redwood City, CA 94063

For Kaloustian: Tro Krikorian, Esq.  
KJT Law Group, LLP  
230 N. Maryland Ave., Suite 306  
Glendale, CA 91206

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. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**13. DRAFTING**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

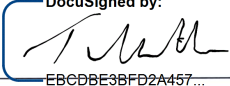
**14. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.**

8/8/2022

Executed this \_\_\_ day of August, 2022, at Los Angeles, California.

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Tamar Kaloustian

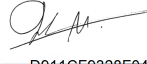
Executed this 5<sup>th</sup> day of August, 2022, at Madera, California.

Warnock Food Products, Inc.  
  
By: Allison Helton  
Its: Secretary

**APPROVED AS TO FORM BY:**

8/8/2022

Executed this \_\_\_ day of August, 2022, at Glendale, California.

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Tro Krikorian, Esq. Attorney for Tamar Kaloustian  
KJT Law Group, LLP

Executed this 5th day of August, 2022, at Newport, Rhode Island.



Liz Shoemaker, Esq. Attorney for Warnock Food Products, Inc.  
Law Offices of David A. Makman