

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,
BERJ PARSEGHIAN

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

10
11 BERJ PARSEGHIAN,
12 Plaintiff,

13 v.

14 D'vash Organics, LLC; Whole Foods Market
California, Inc., a California Corporation; and
15 DOES 1 through 100, inclusive,
16 Defendant.

Case No.: 23STCV11036

[PROPOSED] CONSENT JUDGMENT AS
TO D'VASH ORGANICS, LLC

(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

KJT LAW GROUP LLP
Jhvalagian | Thomasian

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between Berj Parseghian,
4 acting on behalf of the public interest (hereinafter "Parseghian") and D'VASH ORGANICS, LLC
5 (hereinafter "D'VASH" or "Defendant"). Collectively Parseghian and D'VASH shall be referred to
6 hereafter as the "Parties" and each of them as a "Party." Parseghian 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 Parseghian 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 Product Description**

19 The product that is covered by this Consent Judgment are identified as D'VASH - Hazelnut
20 Superfood Bites; UPC #: 8 50019 54207 3. All such items shall be referred to herein as the "Covered
21 Product."

22 **1.4 Notices of Violation/Complaint**

23 1.4.1 On or about May 19, 2022, Parseghian served D'VASH and various public
24 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
25

KJT LAWGROUP LLP
Jivabegian | Thomasian

1 Safety Code §25249.7(d) (the "Notice"), alleging that D’VASH 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 Parseghian.

5
6 1.4.2 On May 16, 2023, Parseghian, acting in the interest of the general public in the State
7 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
8 Health & Safety Code §25249.6 (the “Complaint”) based on the alleged failure to warn of exposures
9 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 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
25 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
26 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
27 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
28

KJT LAW GROUP LLP
Jivajagian | Thomassian

1 admission related to exposure or failure to warn. However, this section shall not diminish or
2 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
3 Judgment.

4 3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING

5 3.1 Beginning on the Effective Date, D’VASH shall be permanently enjoined from
6 manufacturing for sale in the State of California, "Distributing into the State of California," or directly
7 selling in the State of California, any Covered Product that expose a person to a "Daily Lead
8 Exposure Level" of more than 0.5 micrograms of lead per day, or a level permissible by Proposition
9 65 regulation in effect on or after the Effective Date, unless it meets the warning requirements under
10 Section 3.2.

11 3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California"
12 shall mean to directly ship a Covered Product into California for sale in California or to sell a
13 Covered Product to a distributor that D’VASH knows or has reason to know will sell the Covered
14 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that
15 has left the possession, and is no longer under the control of D’VASH prior to the Effective Date and
16 all claims as to such Covered Product are released in this Consent Judgment.

17 3.1.2 For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
18 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
19 gram of product, multiplied by grams of product per serving of the product (using the largest serving
20 size appearing on the product label), multiplied by servings of the product per day (using the largest
21 number of recommended daily servings appearing on the label), which equals micrograms of lead
22 exposure per day. If the label contains no recommended daily servings, then the number of
23 recommended daily servings shall be one.

24 ///

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

3.2 Clear and Reasonable Warnings

If D’VASH 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
--	--

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

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

1 statements may accompany the Warning that state or imply that the source of the listed chemical has
2 an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a
3 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
4 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
5 word "WARNING."

6
7 D'VASH must display the above Warning with such conspicuousness, as compared with
8 other words, statements or designs on the label, or on its website, if applicable, to render the Warning
9 likely to be read and understood by an ordinary individual under customary conditions of purchase
10 or use of the product. For purposes of this Consent Judgment, the term "label" means a display of
11 written, printed or graphic material that is printed on or affixed to a Covered Product or its
12 immediate container or wrapper. The Warning must be set off from other surrounding information,
13 enclosed in a box and comply with the content requirements specified in Section 25607.2. If
14 consumer information on the package is in a foreign language, the warning must also be provided in
15 the foreign language. The Warning shall comply with the relevant safe harbor provisions under
16 California law, applicable to the Covered Product and chemical at issue, as those regulations may be
17 amended from time to time.

18
19 For purposes of this Consent Judgment, D'VASH may satisfy the warning requirement by
20 providing the required information in compliance with 27 C.C.R. § 25600.2 (2020) to any business
21 that is subject to Proposition 65 to which it is selling or transferring the Covered Product.

22
23 **4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

24 With regard to all claims that have been raised or which could be raised with respect to failure
25 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a
26 civil penalty of \$5,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned
27 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
28

KJT LAWGROUP LLP
Jivajagian | Thomasian

1 State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of
2 the penalty remitted to Parseghian, as provided by California Health & Safety Code § 25249.12(d)
3 and the instructions directly below.

4 Defendant shall issue two separate checks for the penalty payment: (a) one check made
5 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of the
6 total penalty (i.e., \$3,750.00 and (b) one check in an amount representing 25% of the total penalty
7 (i.e., \$1,250.00 made payable directly to Parseghian. Defendant shall mail these payments within ten
8 days following the Effective Date, at which time such payments shall be mailed to the following
9 addresses respectively:
10

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

12 **KJT LAW GROUP LLP**
13 **230 N. Maryland Avenue, Suite 306**
14 **Glendale, CA 91206**

15 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
16 addresses:
17

18 For United States Postal Delivery:

19 Mike Gyurics
20 Senior Accounting Officer – MS 19-B
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA. 95812-0410

24 For Non-United States Postal Service Delivery:

25 Mike Gyurics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814

5. **REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Parseghian and his counsel under

KJT LAWGROUP LLP
Jivalagian | Thomassian

1 the private attorney general doctrine and principles of contract law. Under these legal principles,
2 Defendant shall reimburse Parseghian’s counsel for fees and costs, incurred as a result of
3 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the public
4 interest. Defendant shall pay Parseghian’s counsel \$35,000.00 for all attorneys’ fees, expert and
5 investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a
6 check payable to “KJT Law Group,” via certified mail to the address for Parseghian’s counsel
7 referenced above according to the following schedule:

- 9 (1) \$15,000 to be paid within 10 days following the Effective Date;
- 10 (2) The remaining \$20,000 of the Settlement Payment shall be paid in three installments as
11 follows:
 - 12 a. \$7,000.00 due within 30 days following the Effective Date;
 - 13 b. \$7,000.00 due within 60 days following the Effective Date; and
 - 14 c. \$6,000.00 due within 90 days following the Effective Date.

16 **6. RELEASE OF ALL CLAIMS**

17 **6.1 Parseghian’s Release of Defendant, Releasees, and Downstream Releasees**

18 As to those matters raised in the Complaint and in the Notice of Violation, Parseghian, on
19 behalf of himself, and on behalf of the public interest, hereby waives and releases any and all claims
20 against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors
21 and assigns (collectively “Releasees”) and each of its distributors, wholesalers, licensors, licensees,
22 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, including but not
23 limited to; Whole Foods Market California, Inc. (collectively “Downstream Releasees”) and their
24 respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and
25 sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees
26 (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or
27
28

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

11 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,
12 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,
13 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
14 releases any other Claims that she could make against Defendant, Releasees or Downstream
15 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With
16 respect to the foregoing waivers and releases in this paragraph, Parseghian hereby specifically waives
17 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of
18 the provisions of Section 1542 of the California Civil Code, which provides as follows:
19

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

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

25 Defendant waives any and all claims against Parseghian, his 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 Parseghian and his attorneys and other representatives, in the course of investigating
28

KJT LAWGROUP LLP
Jivalagan | 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

claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Product.

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 Product. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Defendant shall provide written notice to Parseghian 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 Product is 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:

///

KJT LAWGROUP LLP
Jivlagian | Thomossian

1 For D'vash Organics, LLC.:
2 300 South Wacker
3 Suite 1500
4 Chicago, Illinois 60606
5 Attn: Brian Finkel and David Czim

6 With copy to:

7 David C. Bolstad
8 **Safarian Choi & Bolstad LLP**
9 555 S. Flower Street, Suite 650
10 Los Angeles, CA 90071
11 Phone: 213.481.6565

12 and

13 For Parseghian:
14 Tro Krikorian, Esq.
15 **KJT LAW GROUP, LLP**
16 230 N. Maryland Ave. Suite 306
17 Glendale, CA 91206
18 Phone: 818-507-8528
19 Fax: 818-507-8588

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

22 **10. DRAFTING**

23 The terms of this Consent Judgment have been reviewed by the respective counsel for each
24 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
25 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
26 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
27 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
28 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

KJT LAWGROUP LLP
Jivajagian | 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

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

Parseghian 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

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

Except as set forth herein, each of the Parties shall bear its own attorneys' fees and costs. 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.

///
///



KJT LAWGROUP LLP
J. Krikorian | 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



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: 6/11/2024	DocuSigned by:	Date: 6/11/2024
By: _____		By: 
	17B4A0E5087E404...	
BERJ PARSEGHIAN	Its: CEO	
		D'VASH ORGANICS, LLC

APPROVED AS TO FROM:

Date: 6/11/2024	DocuSigned by:	Date: 6/11/24
By: _____		By: 
	D911CE9328E0472	
TRO KRIKORIAN, ESQ. ATTORNEY FOR PLAINTIFF, BERJ PARSEGHIAN		DAVID C. BOLSTAD, ESQ. ATTORNEY FOR DEFENDANT, D'VASH ORGANICS, LLC

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____ Judge of the Superior Court