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5 Attorneys for Plaintiff,  
6 **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)

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**1. INTRODUCTION**

**1.1 The Parties**

This [Proposed] Consent Judgment is hereby entered into by and between Berj Parseghian, acting on behalf of the public interest (hereinafter “Parseghian”) and D’VASH ORGANICS, LLC (hereinafter “D’VASH” or “Defendant”). Collectively Parseghian and D’VASH shall be referred to hereafter as the “Parties” and each of them as a “Party.” Parseghian is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Defendant is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

**1.2 Allegations and Representations**

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

**1.3 Covered Product Description**

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

**1.4 Notices of Violation/Complaint**

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

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  
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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, unless it meets the warning  
9 requirements under Section 3.2. If OEHHA enacts a regulation modifying the Maximum Allowable  
10 Dose Level for Lead (“MADLL”) set out in California Code of Regulations, title 27, section 25805,  
11 subdivision (b), or the MADLL is modified by amendment or repeal of Proposition 65, D’VASH  
12 shall be entitled to comply with this modified level, to the extent it applies to the Covered Product.  
13

14 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"  
15 shall mean to directly ship a Covered Product into California for sale in California or to sell a  
16 Covered Product to a distributor that D’VASH knows or has reason to know will sell the Covered  
17 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that  
18 has left the possession, and is no longer under the control of D’VASH prior to the Effective Date and  
19 all claims as to such Covered Product are released in this Consent Judgment.  
20

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

2 **3.2 Clear and Reasonable Warnings**

3 If D’VASH is required to provide a warning pursuant to Section 3.1, one of the following  
4 warnings must be utilized ("Warning"):

5 **Option 1:**



7 **WARNING:** Consuming this product can expose you to chemicals including lead,  
8 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).

10 **Option 2:**



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

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

15 The Warning shall be securely affixed to or printed upon the label of each Covered Product  
16 and it must be set off from other surrounding information. In addition, for any Covered Product sold  
17 over the internet, the Warning shall appear on the checkout page in full text or through a clearly  
18 marked hyperlink using the word "**WARNING**" in all capital and bold letters when a California  
19 delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the  
20 hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the  
21 Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying  
22 method must be utilized to identify which products on the checkout page are subject to the Warning.

23 The Warning shall be at least the same size as the largest of any other health or safety  
24 warnings also appearing on the website or on the label and the word "**WARNING**" shall be in all  
25 capital letters and in bold print. No statements intended to or likely to have the effect of diminishing  
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1 the impact of the Warning on the average lay person shall accompany the Warning. Further, no  
 2 statements may accompany the Warning that state or imply that the source of the listed chemical has  
 3 an impact on or results in a less harmful effect of the listed chemical. For the Option 2 Warning, a  
 4 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black  
 5 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the  
 6 word "**WARNING.**"  
 7

8 D’VASH must display the above Warning with such conspicuousness, as compared with  
 9 other words, statements or designs on the label, or on its website, if applicable, to render the Warning  
 10 likely to be read and understood by an ordinary individual under customary conditions of purchase  
 11 or use of the product. For purposes of this Consent Judgment, the term "label" means a display of  
 12 written, printed or graphic material that is printed on or affixed to a Covered Product or its  
 13 immediate container or wrapper. The Warning must be set off from other surrounding information,  
 14 enclosed in a box and comply with the content requirements specified in Section 25607.2. If  
 15 consumer information on the package is in a foreign language, the warning must also be provided in  
 16 the foreign language. The Warning shall comply with the relevant safe harbor provisions under  
 17 California law, applicable to the Covered Product and chemical at issue, as those regulations may be  
 18 amended from time to time.  
 19

20 For purposes of this Consent Judgment, D’VASH may satisfy the warning requirement by  
 21 complying with the requirements of 27 CCR section 25600.2 as it applies to any business that is  
 22 subject to Proposition 65 to which it is selling or transferring the Covered Product.  
 23

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

25 With regard to all claims that have been raised or which could be raised with respect to failure  
 26 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a  
 27 civil penalty of \$5,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned  
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1 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the  
2 State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of  
3 the penalty remitted to Parseghian, as provided by California Health & Safety Code § 25249.12(d)  
4 and the instructions directly below.

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

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

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

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

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

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**5. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Parseghian and his counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Parseghian’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 Parseghian’s counsel \$35,000.00 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,” via certified mail to the address for Parseghian’s counsel referenced above according to the following schedule:

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

**6. RELEASE OF ALL CLAIMS**

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

As to those matters raised in the Complaint and in the Notice of Violation, Parseghian, on behalf of himself, 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, including but not limited to; Whole Foods Market California, Inc. (collectively “Downstream Releasees”) and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and



1 sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees  
 2 (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or  
 3 claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear,  
 4 accurate and reasonable warnings under Proposition 65 about exposure to lead arising from the sale,  
 5 distribution, or use of any Covered Product sold, manufactured or distributed by Defendant,  
 6 Releasees or Downstream Releasees in California, up through the Effective Date. Compliance with  
 7 the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by  
 8 that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the  
 9 Covered Product. The release provisions shall not extend to third-party websites and internet sellers  
 10 who fail to provide clear and reasonable warnings pursuant to Section 3.2 or to any business that is  
 11 subject to Proposition 65 to which D’Vash provided notice pursuant to 27 CCR section 25600.2.  
 12 Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent  
 13 Judgment.  
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16 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,  
 17 representatives, attorneys, and successors and/or assignees, and not in his representative capacity,  
 18 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
 19 releases any other Claims that she could make against Defendant, Releasees or Downstream  
 20 Releasees with respect to violations of Proposition 65 based upon the Covered Product. With  
 21 respect to the foregoing waivers and releases in this paragraph, Parseghian hereby specifically waives  
 22 any and all rights and benefits which she now has, or in the future may have, conferred by virtue of  
 23 the provisions of Section 1542 of the California Civil Code, which provides as follows:  
 24

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

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**6.2 Defendant’s Release of Parseghian**

Defendant waives any and all claims against Parseghian, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Parseghian and his 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 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

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1 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
2 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
3 other party at the following addresses:

4 For D’vash Organics, LLC:

5 300 South Wacker  
6 Suite 1500  
7 Chicago, Illinois 60606  
8 Attn: Brian Finkel and David Czinn

9 With copy to:

10 David C. Bolstad  
11 **Safarian Choi & Bolstad LLP**  
12 555 S. Flower Street, Suite 650  
13 Los Angeles, CA 90071  
14 Phone: 213.481.6565

15 and

16 For Parseghian:

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

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

25 **10. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
27 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
28 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

1 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the  
2 preparation and drafting of this Consent Judgment.

3 **11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by email or facsimile, each of  
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and the  
6 same document.  
7

8 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL**

9 Parseghian agrees to comply with the requirements set forth in California Health & Safety  
10 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and  
11 Defendants shall support approval of such Motion.

12 This Consent Judgment shall not be effective until it is approved and entered by the Court  
13 and shall be null and void if, for any reason, it is not approved and entered by the Court within twelve  
14 months after it has been fully executed by the Parties.  
15

16 **13. MODIFICATION**

17 This Consent Judgment may be modified only by further stipulation of the Parties and the  
18 approval of the Court or upon the granting of a motion brought to the Court by either Party.

19 **14. ATTORNEY'S FEES**

20 Except as set forth herein, each of the Parties shall bear its own attorneys' fees and costs. A  
21 party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be  
22 required to pay the prevailing party's reasonable attorney's fees and costs unless the unsuccessful  
23 party has acted with substantial justification. For purposes of this Consent Judgment, the term  
24 substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code  
25 of Civil Procedure Section 2016, et seq.  
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27 **15. RETENTION OF JURISDICTION**

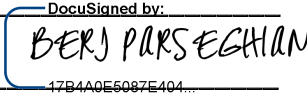
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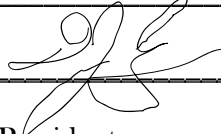
1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
2 Judgment.

3 **16. AUTHORIZATION**

4 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party  
5 he or she represents to stipulate to this Consent Judgment.  
6

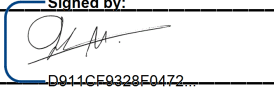
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8 **STIPULATED AND AGREED TO:**

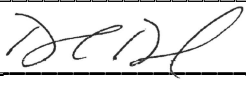
9 Date: 8/28/2024  
10 By:   
11 **BERJ PARSEGHIAN**

Date: 08/28/2024  
By:   
Its: **President**

**D'VASH ORGANICS, LLC**

12  
13  
14 **APPROVED AS TO FORM:**

15 Date: 8/28/2024  
16 By:   
17 **TRO KRIKORIAN, ESQ.**  
18 **ATTORNEY FOR PLAINTIFF,**  
19 **BERJ PARSEGHIAN**

Date: 8/28/2024  
By:   
**DAVID C. BOLSTAD, ESQ.**  
**ATTORNEY FOR DEFENDANT,**  
**D'VASH ORGANICS, LLC**

20  
21 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

22  
23 Dated: \_\_\_\_\_  
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28 \_\_\_\_\_  
Judge of the Superior Court

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