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5 Attorneys for Plaintiff,
6 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 Bob's Red Mill Natural Foods, Inc.; and DOES 1
through 100, inclusive,
15 Defendant.
16

Case No.: 22STCV38062

[PROPOSED] CONSENT JUDGMENT AS
TO BOB'S RED MILL NATURAL FOODS,
INC.

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

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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 BOB’S RED MILL NATURAL
5 FOODS, INC. (hereinafter “BRM” or “Defendant”). Collectively Kaloustian and BRM shall be
6 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 Bob’s Red Mill -
22 Gluten Free - Vegan Egg Replacer. All such products shall be referred to herein as the “Covered
23 Product.”
24

25 **1.4 Notices of Violation/Complaint**

26 1.4.1 On or about September 21, 2022, Kaloustian served BRM and various public
27 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
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1 Safety Code §25249.7(d) (the "Notice"), alleging that BRM 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 December 6, 2022, Kalousian, 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 "Compliance Date" shall mean one-
14 hundred-twenty (120) days after the Effective Date.

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

17
18 **2. STIPULATION TO JURISDICTION/NO ADMISSION**

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

25
26 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
27 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
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1 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
2 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
3 admission related to exposure of failure to warn. However, this section shall not diminish or
4 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
5 Judgment.

6
7 **3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING**

8 **3.1** Beginning one hundred and twenty (120) days after the Effective Date (the
9 “Compliance Date”), BRM shall be permanently enjoined from manufacturing for sale in the State of
10 California, "Distributing into the State of California," or directly selling in the State of California, any
11 Covered Product that exposes a person to a “Daily Lead Exposure Level” of more than 0.5
12 micrograms of lead per day unless it meets the warning requirements under Section 3.2. The
13 injunctive relief in Section 3 does not apply to any Covered Product that was packaged, distributed,
14 shipped or sold by BRM prior to the Compliance Date. All claims as to such Covered Product are
15 released in this Consent Judgment.

16
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 BRM knows or has reason to know will sell the Covered
20 Product in California.

21
22 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
23 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per
24 gram of product, multiplied by grams of product per serving of the product (using the largest serving
25 size appearing on the product label), multiplied by servings of the product per day (using the largest
26 number of recommended daily servings appearing on the label), which equals micrograms of lead
27 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 3.2.1 If BRM is required to provide a warning pursuant to Section 3.1, one of the
4 following warnings must be utilized ("Warning"):

5 **Option 1:**

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

9 **Option 2:**

10 **WARNING:** Cancer and Reproductive Harm - <http://www.p65warnings.ca.gov/food>.

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

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

BRM 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 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.

3.2.2 BRM may comply with this Section 3 by providing warnings as specified in the Proposition 65 regulations in effect as of the Effective Date, or as such regulations may be modified or amended in the future.

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

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a civil penalty of \$16,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d) and the instructions directly below.

Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$12,000.00) and (b) one check in an amount representing 25% of the total penalty (i.e., \$4,000.00) made payable directly to Kaloustian. Defendant shall mail these payments within ten

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1 (10) business days following the Effective Date, at which time such payments shall be mailed to the
2 following addresses respectively:

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

4
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 OEHHA at the following
9 addresses:

10 For United States Postal Delivery:

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

14 For Non-United States Postal Service Delivery:

15 Mike Gyurics
16 Fiscal Operations Branch Chief
17 Office of Environmental Health Hazard Assessment
18 1001 I Street
19 Sacramento, CA 95814

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

19 The parties reached an accord on the compensation due to Kaloustian and his counsel under
20 the private attorney general doctrine and principles of contract law. Under these legal principles,
21 Defendant shall reimburse Kaloustian’s counsel for fees and costs, incurred as a result of
22 investigating, bringing this matter to Defendant attention, and negotiating a settlement in the public
23 interest. Defendant shall pay Kalosutian’s counsel \$59,000.00 for all attorneys’ fees, expert and
24 investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a
25 check payable to “KJT Law Group,” via certified mail to the address for Kaloustian’s counsel
26 referenced above.
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1 **6. RELEASE OF ALL CLAIMS**

2 **6.1 Kaloustian’s Release of Defendant, Releasees, and Downstream Releasees**

3 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on
4 behalf of himself, *and on behalf of the public interest*, hereby waives and releases any and all claims
5 against Defendant and its trustees, parent companies, corporate affiliates, subsidiaries, predecessors,
6 successors and assigns (collectively “Releasees”) and each of its distributors, wholesalers, licensors,
7 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively
8 “Downstream Releasees”) and their respective officers, directors, attorneys, representatives,
9 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,
10 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
11 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees, or
12 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65
13 about exposure to lead arising from the sale, distribution, or use of any Covered Product sold,
14 manufactured or distributed by Defendant, Releasees, or Downstream Releasees in California, up
15 through the Compliance Date. Compliance with the Consent Judgment by Defendant, a Releasee, or
16 a Downstream Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee,
17 or Downstream Releasee with respect to the presence of lead in the Covered Product. Plaintiff agrees
18 that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

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

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

8 **6.2 Defendant’s Release of Kaloustian**

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

14 **7. SEVERABILITY AND MERGER**

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

18 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
19 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
20 No representations or terms of agreement other than those contained herein exist or have been made
21 by any Party with respect to the other Party or the subject matter hereof.

22 **8. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within the State of California. Compliance with the terms of this Consent Judgment
25 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
26 alleged exposures to lead arising from the Covered Product. In the event that Proposition 65 is
27 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
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1 Product, then Defendant shall provide written notice to Kaloustian of any asserted change in the law,
2 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
3 extent that, the Covered Product is so affected.

4 **9. NOTICES**

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

10 For Bob’s Red Mill Natural Foods, Inc.:

11 David T. Biderman
12 Jasmine W. Wetherell
13 **Perkins Coie LLP**
14 1888 Century Park East Suite 1700
15 Los Angeles, CA 90067-1721
16 Phone: 310-788-3294
17 Fax: 310-843-1269

18 and

19 For Kaloustian:

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

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

28 **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,

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1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
2 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
3 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
4 preparation and drafting of this Consent Judgment.

5
6 **11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

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

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

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

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

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18 **13. MODIFICATION**

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

21 **14. ATTORNEY'S FEES**

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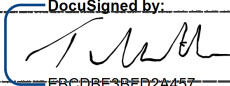
15. RETENTION OF JURISDICTION

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


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:

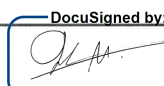
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TAMAR KALOUSTIAN

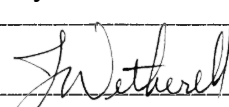
Date: 5.2.23
By: 

Elizabeth Semler
[print name] General Counsel
BOB'S RED MILL NATURAL FOODS, INC.

APPROVED AS TO FROM:

Date: 5/4/2023
By:  DocuSigned by: D911CF9328F0472...

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: May 3, 2023
By: 

JASMINE WETHERELL, ESQ.
ATTORNEY FOR DEFENDANT,
BOB'S RED MILL NATURAL FOODS, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____ Judge of the Superior Court

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