

KJTLAWGROUP^{LLP}
Jivalagian | Thomassian

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 Attorneys for Plaintiff,
6 **BERJ PARSEGHIAN**

7 John A. Conkle (SB# 117849)
j.conkle@conklelaw.com
8 Jacob P. Wilson (SB# 331448)
j.wilson@conklelaw.com

9 **CONKLE, KREMER & ENGEL**
Professional Law Corporation
10 3130 Wilshire Boulevard, Suite 500
Santa Monica, California 90403-2351
11 Phone: (310) 998-9100 • Fax: (310) 998-9109

12 Attorneys for Defendant,
13 **MYCOLOGICAL NATURAL PRODUCTS LTD.**

14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF LOS ANGELES**

17 **BERJ PARSEGHIAN,**
18
19 **Plaintiff,**

20 v.

21 Mycological Natural Products Ltd.; Whole Foods
Market California, Inc., a California Corporation;
22 and DOES 1 through 100, inclusive,
23 **Defendant.**

Case No.: 23STCV11192

**[PROPOSED] CONSENT JUDGMENT AS
TO MYCOLOGICAL NATURAL
PRODUCTS LTD.**

(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 Mycological Natural Products Ltd. (hereinafter “Mycological” or “Defendant”). Collectively Parseghian and Mycological 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. For the purposes of this Consent Judgment, 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 cadmium, 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. The State of California has also listed cadmium as a chemical known to cause cancer, developmental toxicity and reproductive harm. Defendant denies the allegations and contends that there is no exposure to lead or cadmium 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 Porcini Mushrooms include but are not limited to: MycoLogical Wild Gourmet Mushrooms – Oregon Porcini Mushrooms”; UPC #: 7 00360 00306 1. All such items shall be referred to herein as the “Covered Product.”

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1.4 Notices of Violation/Complaint

1.4.1 On or about October 11, 2022, Parseghian served Mycological and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Mycological was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to lead and cadmium. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Parseghian.

1.4.2 On May 18, 2023, Parseghian, acting in the interest of the general public in the State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures to lead and cadmium contained in the Covered Product manufactured, distributed, or sold by Defendant.

1.5 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on which Notice of this Consent Judgment is served on Mycological after it is entered as a judgment of the Court.

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

2. STIPULATION TO JURISDICTION/NO ADMISSION

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

1 and/or in the Notice.

2 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
3 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
4 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
5 or violation of law, such being specifically denied by Defendant, including, but not limited to, any
6 admission related to exposure of failure to warn. However, this section shall not diminish or
7 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
8 Judgment.
9

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

11 **3.1** Beginning on the Effective Date, Mycological shall be permanently enjoined from
12 manufacturing for sale in the State of California, "Distributing into the State of California," or directly
13 selling in the State of California, any Covered Product that expose a person to a "Daily Lead
14 Exposure Level" of more than 0.5 micrograms of lead per day or to a "Daily Cadmium Exposure
15 Level" of more than 4.1 micrograms of cadmium per day, unless it meets the warning requirements
16 under Section 3.2.
17

18 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
19 shall mean to directly ship a Covered Product into California for sale in California or to sell a
20 Covered Product to a distributor that Mycological knows will sell the Covered Product in California.
21 The injunctive relief in Section 3 does not apply to any Covered Product that has left the possession,
22 and is no longer under the control of Mycological prior to the Effective Date and all claims as to such
23 Covered Product are released in this Consent Judgment.
24

25 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" and the
26 "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be calculated using the
27 following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of
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1 product per serving of the product as stated on the label, multiplied by servings of the product per day
2 stated on the label, which equals micrograms of lead or cadmium exposure per day. If the label
3 contains no recommended daily servings, then the number of recommended daily servings shall be
4 one.

5 **3.2 Clear and Reasonable Warnings**

6 If Mycological is required to provide a warning pursuant to Section 3.1, one of the following
7 warnings must be utilized ("Warning"):
8

9 **Option 1:**

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

13 **Option 2:**

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

15 Mycological shall use the phrase "cancer and" in the Warning if Mycological has reason to
16 believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead. As identified in
17 the brackets, the warning shall appropriately reflect whether there is lead, cadmium, or both
18 chemicals present in the Covered Product.

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

Mycological must display the above Warning with such conspicuousness, as compared with other consumer information (warnings, directions for use, ingredient lists, and nutritional information) 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. If consumer information on the package is in a foreign language, the warning must also be provided in the foreign language.

If Parseghian alleges that any Covered Product fails to adhere to this Consent Judgment, then Parseghian shall inform Mycological in writing in a reasonably prompt manner of its test results, including information sufficient to permit Mycological to identify the Covered Product(s) at issue. Mycological shall, within thirty (30) days following such notice, provide Parseghian with testing information demonstrating Mycological's compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter prior to Parseghian taking any further legal action.

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 and cadmium in the Covered Product,

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1 Defendant shall pay a civil penalty of \$7,500.00 pursuant to Health and Safety Code section
2 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75%
3 of these funds remitted to the State of California’s Office of Environmental Health Hazard
4 Assessment and the remaining 25% of the penalty remitted to Parseghian, as provided by California
5 Health & Safety Code § 25249.12(d) and the instructions directly below.

6
7 Defendant shall issue two separate checks for the penalty payment: (a) one check made
8 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of the
9 total penalty (i.e., \$5,625.00) and (b) one check in an amount representing 25% of the total penalty
10 (i.e., \$1,875.00) made payable directly to Parseghian. Defendant shall mail these payments within ten
11 (10) days following the Effective Date, at which time such payments shall be mailed to the following
12 addresses respectively:

13 All payments owed to Plaintiff or Plaintiff’s counsel shall be delivered to the following
14 payment address:

15
16 **KJT LAW GROUP LLP**
17 **230 N. Maryland Avenue, Suite 306**
18 **Glendale, CA 91206**

19 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
20 addresses:

21 For United States Postal Delivery:
22 Mike Gyurics
23 Senior Accounting Officer -- MS 19-B
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA. 95812-0410

27 For Non-United States Postal Service Delivery:

28 Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
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 \$45,000.00 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 in three installments as follows:

- \$12,500.00 within thirty (30) calendar days following the Effective Date.
- \$12,500.00 within sixty (60) calendar days following the Effective Date.
- \$20,000.00 within ninety (90) calendar days following the Effective Date.

Other than the payment required hereunder, each side is to bear its own attorneys’ fees and costs.

Plaintiff and its counsel will provide completed IRS W-9 forms as required on or before the Effective Date.

6. RELEASE OF ALL CLAIMS

6.1 Parseghian’s Release of Defendant, Releasees, and Upstream 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*, and his past and current agents, representatives, attorneys, successors and/or assignees (the “Releasers), hereby waives and releases any and all claims against Defendant and its directors, managers, members, officers, trustees, parent companies, corporate affiliates, subsidiaries, attorneys, representatives, agents, employees,

1 predecessors, successors and assigns (collectively “Releasees”) and each entity or party from or to
 2 whom Defendant directly or indirectly obtains or distributes or sells the Covered Product including
 3 without limitation, distributors, manufacturers, suppliers, wholesalers, licensors, licensees,
 4 auctioneers, retailers, including but not limited to Whole Foods Market California, Inc., franchisees,
 5 dealers, customers, owners, purchasers, users (collectively “Upstream and Downstream Releasees”),
 6 and their respective officers, directors, managers, members, partners, attorneys, representatives,
 7 shareholders, agents, and employees, and sister and parent entities, subsidiaries, and affiliates for
 8 injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys,
 9 experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of
 10 Defendant, Releasees, or Upstream and Downstream Releasees to provide clear, accurate and
 11 reasonable warnings under Proposition 65 about exposure to lead and cadmium arising from the sale,
 12 distribution, or use of any Covered Product sold, manufactured or distributed by Defendant,
 13 Releasees, and by Upstream and Downstream Releasees in California, up through the Effective Date.
 14 Compliance with the Consent Judgment by Defendant, a Releasee, or a Upstream and Downstream
 15 Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Upstream
 16 and Downstream Releasee with respect to the presence of lead and cadmium in the Covered Product.
 17 Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent
 18 Judgment.

6.2 Mutual Release of Known and Unknown Claims

22 In addition to the foregoing, Parseghian, on behalf of himself, his past and current agents,
 23 representatives, attorneys, and successors and/or assignees, and *not* in his representative capacity, and
 24 Mycological, hereby waive all rights to institute or participate in, directly or indirectly, any form of
 25 legal action and releases any other Claims that they could make against Defendant, Releasees or
 26 Upstream and Downstream Releasees with respect to violations of Proposition 65 based upon the
 27
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1 Covered Product. With respect to the foregoing waivers and releases in this paragraph, Parseghian
 2 and Mycological hereby specifically waive any and all rights and benefits which they now have, or in
 3 the future may have, conferred by virtue of the provisions of Section 1542 of the California Civil
 4 Code, which provides as follows:

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

11
 12 **6.2 Defendant's Release of Parseghian**

13 Defendant waives any and all claims against Parseghian, his 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 Parseghian 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 **6.3 Public Benefit**

20 It is Mycological's understanding that the commitments it has agreed to herein, and actions to be taken
 21 by Mycological under this Consent Judgment confer a significant benefit to the general public, as set
 22 forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the
 23 intent of Mycological that to the extent any other private party serves a notice and/or initiates an action
 24 alleging a violation of Proposition 65 with respect to Mycological's alleged failure to provide a warning
 25 concerning actual or alleged exposure to lead or cadmium from the Covered Products it has distributed,
 26 sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, such private
 27 party action would not confer a significant benefit on the general public as to those Covered Products
 28 addressed in this Consent Judgment, provided that Mycological is in material compliance with this
 Consent Judgment.

7. SEVERABILITY AND MERGER

If, subsequent to the execution of this Consent Judgment, any of the provisions of this

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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.

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:

For MYCOLOGICAL NATURAL PRODUCTS LTD.:

Jacob P. Wilson, Esq.
Conkle, Kremer & Engel, PLC
3130 Wilshire Boulevard, Suite 500
Santa Monica, California 90403
Phone: 310-998-9100
Fax: 310-998-9109

and

For PARSEGHIAN:

Tro Krikorian, Esq.
KJT LAW GROUP, LLP

1 230 N. Maryland Ave. Suite 306
2 Glendale, CA 91206
3 Phone: 818-507-8528
4 Fax: 818-507-8588

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

7 **10. DRAFTING**

8 The terms of this Consent Judgment have been reviewed by the respective counsel for each
9 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
10 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
11 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
12 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
13 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
14 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
15 preparation and drafting of this Consent Judgment.

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

17 This Consent Judgment may be executed in counterparts and by email or facsimile, each of
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
19 same document.
20

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

22 Parseghian agrees to comply with the requirements set forth in California Health & Safety
23 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
24 Defendants shall support approval of such Motion.
25

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

2 **13. MODIFICATION**

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

5 **14. ATTORNEY'S FEES**

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

11 **15. RETENTION OF JURISDICTION**

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

14 **16. AUTHORIZATION**

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

17 **STIPULATED AND AGREED TO:**

18 Date: 1/19/2024

19 By: _____

20 BERJ PARSEGHIAN

DocuSigned by:
BERJ PARSEGHIAN
17B4A0E5087E404...

21 Date: 1/19/2024

22 By: _____

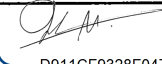
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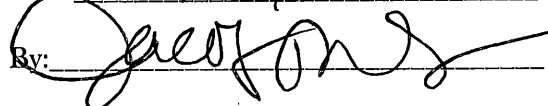
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By: _____

TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
BERJ PARSEGHIAN

Date: 1/19/24

By: 

JACOB P. WILSON, ESQ.
ATTORNEY FOR DEFENDANT,
MYCOLOGICAL NATURAL PRODUCTS
LTD.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court

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