

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 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 Kehe Distributors, LLC; Whole Foods Market
California, Inc., a California Corporation; and
15 DOES 1 through 100, inclusive,

16 Defendant.

Case No.: 22STCV33850

[PROPOSED] CONSENT JUDGMENT AS
TO KETO BUNS, LTD.

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

KJT LAWGROUP LLP
Jivalagian | 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

1. INTRODUCTION

1.1 The Parties

This [Proposed] Consent Judgment is hereby entered into by and between Tamar Kaloustian, acting on behalf of the public interest (hereinafter “Kaloustian”) and KETO BUNS, LTD. (hereinafter “KETO” or “Defendant”). Collectively Kaloustian and KETO shall be referred to hereafter as the “Parties” and each of them as a “Party.” Kaloustian 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 employs ten or more persons and 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

Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in California, products, which contain cadmium, and that such sales have not been accompanied by Proposition 65 warnings. Cadmium 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 is identified as Unbagels - Unbun - Everything; UPC #: 6 28250 17907 1. All such items shall be referred to herein as the “Covered Product.”

1.4 Notices of Violation/Complaint

1.4.1 On or about December 20, 2021, Kaloustian served KETO 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 KETO was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to cadmium.

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

An amended Notice was filed on September 26, 2023. 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 Kaloustian.

1.4.2 On October 18, 2022, Kaloustian, acting in the interest of the general public in the State of California, filed a complaint against KeHE Distributors, LLC (“KeHE”) and Whole Foods Market California, Inc. (“Whole Foods”) 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 cadmium contained in the Covered Product manufactured, distributed, or sold by Defendant.

1.4.3 After learning the identity of KETO as the manufacturer of the Covered Product, on June 3, 2024, Plaintiff filed a DOE amendment under Code of Civil Procedure section 474 adding KETO as a Defendant to this action.

1.5 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is entered as a judgment of the Court.

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 and/or in the Notice.

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

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. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING

3.1 Beginning sixty (60) days after the Effective Date, KETO shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose a person to a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day, unless it meets the warning requirements under Section 3.2.


3.1.1 As used in this Consent Judgment, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that KETO knows or has reason to know will sell the Covered Product in California. The injunctive relief requirements in Section 3 do not apply to any Covered Product that has left the possession, and is no longer under the control of KETO as of the Effective Date and all claims as to such Covered Product are expressly released in this Consent Judgment pursuant to Section 5.

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

3.2 Clear and Reasonable Warnings

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

Option 1:

	<p>WARNING: Consuming this product can expose you to chemicals including cadmium, 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.</p>
---	---

Option 2:

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

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

KEETO 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. The Warning must be set off from other surrounding information, enclosed in a box and comply with the content requirements specified in Section 25607.2. If consumer information on the

KJT LAWGROUP LLP
Jivalagian | 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

package is in a foreign language, the warning must also be provided in the foreign language. The Warning shall comply with the relevant safe harbor provisions under California law, applicable to the Covered Product and chemical at issue, as those regulations may be amended from time to time.

4. SETTLEMENT PAYMENTS

In full and final settlement of this matter, KETO shall pay a total settlement amount of \$90,000 (the “Settlement Payment”) in exchange for a full release pursuant to Section 5 of this Consent Judgment. The Settlement Payment shall be paid according to the following schedule: (1) \$40,000 to be paid within ten business days of the Effective Date (\$10,000 of this amount shall be allocated to civil penalties as set forth in Section 4.1 below and \$30,000 of this amount shall be allocated to Plaintiffs’ reasonable attorneys’ fees and costs as set forth in Section 4.2 below); (2) the remaining \$50,000 of the Settlement Payment shall be allocated to Plaintiffs’ reasonable attorneys’ fees and costs as set forth in Section 4.2 below and paid in three installments as follows: (a) \$16,666.67 due 30 days after the Effective Date; (b) \$16,666.67 due 60 days after the Effective Date; and (c) \$16,666.66 due 90 days after the Effective Date.

4.1 Payments Pursuant to Health & Safety Code Section 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 cadmium in the Covered Product, Defendant shall pay a civil penalty of \$10,000.00 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., \$7,500.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$2,500.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten (10)

KJTLAWGROUP_{LLP}
Jivalagian | Thomassian

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

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

4 **KJT LAW GROUP LLP**
5 **230 N. Maryland Avenue, Suite 306**
6 **Glendale, CA 91206**

7 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
8 addresses:

9 For United States Postal Delivery:

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

15 For Non-United States Postal Service Delivery:

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

21 **4.2. Reimbursement of Fees and Costs**

22 The parties reached an accord on the compensation due to Kaloustian and her counsel under
23 the private attorney general doctrine and principles of contract law. Under these legal principles,
24 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,
25 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.
26 Defendant shall pay Kaloustian's counsel \$80,000.00 for all attorneys' fees, expert and investigation fees
27 and related costs associated with this matter and the Notice. Pursuant to the schedule set forth in
28 Section 4 above, Defendant shall mail checks payable to "KJT Law Group," via certified mail to the
address for Kaloustian's counsel referenced above.

5. RELEASE OF ALL CLAIMS

5.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees

As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on

KJT LAWGROUP LLP
Jivalagian | 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

behalf of herself, *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 KeHE, Whole Foods, and United Natural Foods, Inc. (“UNFI”) (collectively “Downstream Releasees”) and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 about exposure to cadmium arising from the sale, distribution, or use of any Covered Product sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California, up through the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of cadmium in the Covered Product. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF

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

KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5.2 Defendant’s Release of Kaloustian

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

6. 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.

7. 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 cadmium 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 Kaloustian 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.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to



KJTLAWGROUP^{LLP}
Jivalagian | Thomassian

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

4 For Keto Buns Ltd.:
5 Lynn R. Fiorentino, Esq.
6 **ARENTFOX SCHIFF LLP**
7 44 Montgomery Street, 38th Floor
8 San Francisco, CA 94104 U
9 Phone: 415.757.5500
10 Fax: 415.757.5501
11 lynn.fiorentino@afslaw.com

12 and

13 For Kaloustian:
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 tro@kjtlawgroup.com

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

23 **9. DRAFTING**

24 The terms of this Consent Judgment have been reviewed by the respective counsel for each
25 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions
26 with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this
27 Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this
28 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 of the Consent Judgment.
It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of
this Consent Judgment.

10. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES

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

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

same document.

11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

Kaloustian 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 Defendant 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 after it has been fully executed by the Parties.

12. 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.

13. ATTORNEY'S FEES

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.*

14. RETENTION OF JURISDICTION

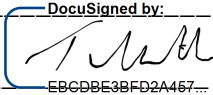
This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

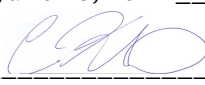
15. AUTHORIZATION

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.

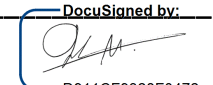
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

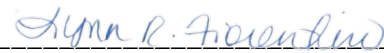
STIPULATED AND AGREED TO:

Date: 6/20/2024
By: 
TAMAR KALOUSTIAN

Date: June 18, 2024
By: 
Gus Klemos
KETO BUNS, LTD.

APPROVED AS TO FORM:

Date: 6/20/2024
By: 
TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
TAMAR KALOUSTIAN

Date: 6/20/2024
By: 
LYNN R. FIORENTINO, ESQ.
ATTORNEY FOR DEFENDANT,
KETO BUNS, LTD.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____
Judge of the Superior Court

KJT LAWGROUP LLP
Jivalagian | Thomassian