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16 Attorneys for Defendant
 17 NAVITAS LLC

FILED
 Superior Court of California
 County of San Francisco

APR 05 2017

CLERK OF THE COURT
 BY: [Signature]
 Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN FRANCISCO**

18 TAMAR KALOUSTIAN, in the public interest,)
 19 Plaintiff,)
 20 v.)
 21 NAVITAS LLC, a Delaware limited liability)
 22 company; and DOES 1 through 100, inclusive,)
 23 Defendants.)

CIVIL ACTION NO. CGC-16-553700
 [PROPOSED] STIPULATED CONSENT
 JUDGMENT; [PROPOSED] ORDER
 [Cal. Health and Safety Code
 Sec. 25249.6, et seq.]

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1 **1. INTRODUCTION**

2 1.1 This Action arises out of the alleged violations of California's Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
4 (also known as and hereinafter referred to as "Proposition 65") regarding the following product
5 (hereinafter collectively the "Covered Product"): Navitas Naturals Organic Mulberry Berries.
6

7 1.2 Plaintiff TAMAR KALOUSTIAN ("KALOUSTIAN") is a California resident
8 acting as a private enforcer of Proposition 65. KALOUSTIAN brings this Action in the public
9 interest pursuant to California Health and Safety Code Section 25249. KALOUSTIAN asserts that
10 she is dedicated to, among other causes, helping safeguard the public from health hazards by
11 reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for
12 consumers and employees, and encouraging corporate responsibility.
13

14 1.3 Defendant Navitas, LLC is a Delaware limited liability company, and is referred to
15 hereinafter as "NAVITAS."

16 1.4 NAVITAS distributes and sells the Covered Product.

17 1.5 KALOUSTIAN and NAVITAS are hereinafter sometimes referred to individually as
18 a "Party" or collectively as the "Parties."

19 1.6 On or about May 24, 2016, pursuant to California Health and Safety Code Section
20 25249.7(d)(1), KALOUSTIAN served a 60-Day Notice of Violations of Proposition 65 ("Notice of
21 Violations") on the California Attorney General, other public enforcers, and NAVITAS. A true
22 and correct copy of the Notice of Violations is attached hereto as Exhibit A.
23

24 1.7 After more than sixty (60) days passed since service of the Notice of Violations, and
25 no designated governmental agency filed a complaint against NAVITAS with regard to the
26

1 Covered Product or the alleged violations, KALOUSTIAN filed a complaint (the "Complaint") for
2 injunctive relief and civil penalties. The Complaint is based on the allegations in the Notice of
3 Violations.

4 1.8 The Complaint and the Notice of Violations each allege that NAVITAS
5 manufactured, distributed, and/or sold in California the Covered Product, which contains lead, a
6 chemical listed under Proposition 65 as a carcinogen and a reproductive or developmental toxin,
7 and exposed consumers at a level requiring a Proposition 65 warning. Further, the Complaint and
8 Notice of Violations allege that use of the Covered Product exposes persons in California to lead
9 without first providing clear and reasonable warnings, in violation of California Health and Safety
10 Code Section 25249.6. NAVITAS generally denies all material and factual allegations of the
11 Notice of Violation and the Complaint, filed an answer asserting various affirmative defenses, and
12 specifically denies that the Plaintiff or California consumers have been harmed or damaged by its
13 conduct. NAVITAS and KALOUSTIAN each reserve all rights to allege additional facts, claims,
14 and affirmative defenses if the Court does not approve this Consent Judgment.
15

16 1.9 The Parties enter into this Consent Judgment in order to settle, compromise and
17 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
18 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
19 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
20 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
21 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
22 wrongdoing, or liability, including without limitation, any admission concerning any alleged
23 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
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1 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
2 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
3 enforceability of this Consent Judgment.

4
5 1.10 The "Effective Date" of this Consent Judgment shall be the date this Consent
6 Judgment is entered as a Judgment.

7 **2. JURISDICTION AND VENUE**

8 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
9 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
10 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.

11 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

12
13 3.1 Beginning on the Effective Date, NAVITAS shall be permanently enjoined from
14 offering for sale to a consumer in California, directly selling to a consumer in California, or
15 "Distributing into California" any of the Covered Product for which the serving size suggested on
16 the label contains more than 0.5 micrograms of lead per day unless the label of the Covered
17 Product contains a Proposition 65 compliant warning, consistent with Section 3.4, below.
18 "Distributing into California" means to ship any of the Covered Product to California for sale or to
19 sell any of the Covered Product to a distributor that NAVITAS knows or has reason to know will
20 sell the Covered Product in California. Provided, however, that NAVITAS may manufacture or
21 package and sell Covered Product for which the maximum daily serving recommended on the label
22 contains more than 0.5 micrograms of lead per day without providing a Proposition 65 compliant
23 warning so long as such products are only for sale to consumers located outside of California and
24 NAVITAS does not distribute them into California.
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1 3.2 All Covered Product that have been or will have been distributed, shipped, or sold,
2 or otherwise placed in the stream of commerce through and including the Effective Date of this
3 Consent Judgment are exempt from the provisions of Sections 3.1, and 3.3 through 3.4 and are
4 included within the release in Sections 8.1 through 8.4. On the Effective Date, NAVITAS shall
5 provide Plaintiff with the last lot number and expiration date for the Covered Product in the stream
6 of commerce through the Effective Date.

7
8 3.3 For a period of three (3) years from the Effective Date, any batch or lot number of
9 the Covered Product offered for sale to any consumer in California without a Proposition 65-
10 compliant warning as provided in Section 3.4 shall be tested for lead contamination utilizing
11 inductively coupled plasma-mass spectrometry. All tests shall be conducted at the expense of
12 NAVITAS. NAVITAS shall provide the verified results of all tests to counsel for KALOUSTIAN,
13 via regular U.S. Mail, within five (5) days of receipt of such results by NAVITAS. All test results
14 shall be provided to counsel for KALOUSTIAN prior to the Covered Product being offered for sale
15 to any consumer in California. For purposes of this Consent Judgment, daily lead exposure levels
16 shall be measured in micrograms and shall be calculated using the following formula: Micrograms
17 of lead per gram of product, multiplied by grams per serving of the product, multiplied by servings
18 of the product per day (if no number of servings per day is provided, then one serving per day will
19 be assumed), which equals micrograms of lead exposure per day. NAVITAS will determine grams
20 per serving of the product based on the largest serving size appearing on the product label;
21 provided, however, that, if the serving size is reduced to less than 28 grams, exposure will be based
22 on a 28 gram serving size, unless NAVITAS first seeks Court modification of this Consent
23 Judgment.
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~~PROPOSED~~ STIPULATED CONSENT JUDGMENT; ~~PROPOSED~~ ORDER
Kaloustian v. Navitas, LLC, Case No. CGC-14-541738

1 **3.4. Clear and Reasonable Warnings**

2 For the Covered Product that is subject to the warning requirement of Section 3.1,
3 NAVITAS shall provide the following warning ("Warning") as specified below:

4 **[California Proposition 65] WARNING:** This product contains [lead,] a chemical
5 known to the State of California to cause birth defects or other reproductive harm.

6 The text in brackets in the warnings above is optional.

7 The Warning shall be permanently affixed to or printed on (at the point of manufacture,
8 prior to shipment to California, or prior to distribution within California) the outside packaging or
9 container of each unit of the Covered Product. The Warning shall be displayed with such
10 conspicuousness, as compared with other words, statements designs or devices on the outside
11 packaging or labeling, as to render it likely to be read and understood by an ordinary individual
12 prior to use. The word "WARNING" shall be in all capital letters and in bold print. If printed on
13 the labeling itself, the Warning shall be contained in the same section of the labeling that states
14 other safety warnings concerning the use of the Covered Product, if any.

15 Providing any of the forms of Warning that are attached as Exhibit B hereto on the outside
16 packaging or container of each unit of the Covered Product is deemed to be a clear and reasonable
17 warning under, and to fully comply with, Health & Safety Section 25249.6 and the implementing
18 regulations at Title 27 California Code of Regulations Sections 25601 through 25605.2. NAVITAS
19 may comply with this Section 3.4 by either using a Warning that is in Exhibit B or another form of
20 Warning that complies with the requirements of this Section 3.4.

21 **4. SETTLEMENT PAYMENT**

22 **4.1** NAVITAS shall make a total payment of \$60,000 within ten days of the Effective
23 Date, which shall be in full and final satisfaction of any and all civil penalties, payment in lieu of
24 civil penalties, and attorneys' fees and costs.

1 4.2 The payment will be in the form of separate checks sent to counsel for
2 KALOUSTIAN, Vache Thomassian, KJT LAW GROUP, LLP, 230 No. Maryland Ave., Ste. 306,
3 Glendale, California 92106. The checks shall be payable to the following parties and the payment
4 shall be apportioned as follows:

5 4.3 \$7,500 (seven thousand five hundred dollars) as civil penalties pursuant to
6 California Health and Safety Code Section 25249.7(b)(1). Of this amount, \$5,625 (five thousand
7 six hundred twenty-five dollars) shall be payable to the Office of Environmental Health Hazard
8 Assessment ("OEHHA"), and \$1,875 (one thousand eight hundred seventy-five dollars) shall be
9 payable to KALOUSTIAN. (Cal. Health & Safety Code § 25249.12(c)(1) & (d)).
10 KALOUSTIAN's counsel will forward the civil penalty to OEHHA.
11

12 4.4 \$52,500 (fifty-two thousand five hundred dollars) payable to KJT LAW GROUP,
13 LLP, as reimbursement of KALOUSTIAN's attorneys' fees, costs, investigation and litigation
14 expenses ("Attorney's Fees and Costs").
15

16 4.5 Any failure by NAVITAS to remit payment on or before its due date shall be
17 deemed a material breach of this Agreement.

18 **5. MODIFICATION OF CONSENT JUDGMENT**

19 5.1 This Consent Judgment may be modified only by: (i) Written agreement and
20 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
21 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one
22 of the Parties after exhausting the meet and confer process set forth as follows: If either Party
23 requests or initiates a modification, then it shall meet and confer with the other Party in good faith
24 before filing a motion with the Court seeking to modify it. KALOUSTIAN is entitled to
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1 reimbursement of all reasonable attorneys' fees and costs regarding the Parties' meet and confer
2 efforts for any modification requested or initiated by NAVITAS. Similarly, NAVITAS is entitled
3 to reimbursement of all reasonable attorney's fees and costs regarding the Parties' meet and confer
4 efforts for any modification requested or initiated by KALOUSTIAN. If, despite their meet and
5 confer efforts, the Parties are unable to reach agreement on any proposed modification the party
6 seeking the modification may file the appropriate motion and the prevailing party on such motion
7 shall be entitled recover its reasonable fees and costs associated with such motion. One basis, but
8 not the exclusive basis, for NAVITAS to seek a modification of this Consent Judgment is if
9 Proposition 65 is changed, narrowed, limited, or otherwise rendered inapplicable in whole or in part
10 to the Covered Product or lead due to legislative change, a change in the implementing regulations,
11 court decisions, or other legal basis.
12

13
14 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

15 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
16 Consent Judgment.

17 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
18 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
19 The prevailing party in any such motion or application may request that the Court award its
20 reasonable attorneys' fees and costs associated with such motion or application.
21

22 **6.3** Before filing a motion or application for an order to show cause, KALOUSTIAN
23 shall provide NAVITAS with 30 (thirty) days written notice of any alleged violations of the terms
24 and conditions contained in this Consent Judgment. As long as NAVITAS cures any such alleged
25 violations within the 30 (thirty) day period (or if any such violation cannot practicably be cured
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1 within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon as
2 practicable) and NAVITAS provides proof to Kaloustian that the alleged violation(s) was the result
3 of good faith mistake or accident, then NAVITAS shall not be in violation of the Consent
4 Judgment. NAVITAS shall have the ability to avail itself of the benefits of this Section two (2)
5 times per three year period following the Effective Date.
6

7 **7. APPLICATION OF CONSENT JUDGMENT**

8 This Consent Judgment shall apply to and be binding upon the Parties and their respective
9 officers, directors, successors and assigns, and it shall benefit the Parties and their respective
10 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
11 affiliates, franchisees, licensees, customers (including "Co-Brand" customers; excluding only
12 "Private Labeler" customers), distributors, wholesalers, retailers, predecessors, successors, and
13 assigns. "Private Labelers" excluded from the benefits of this Consent Judgment are companies
14 who rebrand and offer NAVITAS manufactured or distributed products under their own brand, not
15 under the NAVITAS brand. "Co-Brand" customers who shall benefit from this Consent Judgment
16 are companies who offer NAVITAS manufactured or distributed products with their own brand and
17 the NAVITAS brand both displayed on the product packaging.
18

19 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

20
21 8.1 This Consent Judgment is a full, final, and binding resolution between
22 KALOUSTIAN, on behalf of herself and in the public interest, and NAVITAS, of any and all direct
23 or derivative violations (or claimed violations) of Proposition 65 or its implementing regulations
24 for failure to provide Proposition 65 warnings of exposure to lead from the handling, use, or
25 consumption of the Covered Product and fully resolves all claims that have been or could have
26

1 been asserted in this Action up to and including the Effective Date for failure to provide
2 Proposition 65 warnings for the Covered Product regarding lead. KALOUSTIAN, on behalf of
3 herself and in the public interest, hereby forever releases and discharges, NAVITAS and its past
4 and present officers, directors, owners, shareholders, employees, agents, attorneys, parent
5 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (including
6 "Co-Brand" customers; excluding only "Private Labeler" customers), distributors, wholesalers,
7 retailers, and all other upstream and downstream entities and persons in the distribution chain of
8 any Covered Product, and the predecessors, successors and assigns of any of them (collectively,
9 "Released Parties"); from any and all claims and causes of action and obligations to pay damages,
10 restitution, fines, civil penalties, payment in lieu of civil penalties and expenses (including but not
11 limited to expert analysis fees, expert fees, attorney's fees and costs) (collectively, "Claims")
12 arising under, based on, or derivative of Proposition 65 or its implementing regulations up through
13 the Effective Date based on exposure to lead from the Covered Product and/or failure to warn about
14 lead, as set forth in the Notice of Violations and the Complaint.
15

17 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
18 compliance by any Released Party with Proposition 65 regarding alleged exposures to lead from
19 the Covered Product as set forth in the Notice of Violations and the Complaint.
20

21 **8.3** It is possible that other Claims not known to KALOUSTIAN arising out of the facts
22 alleged in the Notice of Violations or the Complaint and relating to lead in the Covered Product
23 that were manufactured, sold or Distributed into California before the Effective Date will develop
24 or be discovered. KALOUSTIAN, on behalf of herself only, acknowledges that the Claims
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1 released herein include all known and unknown Claims and waives California Civil Code Section
2 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

3 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
4 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
5 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
6 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS**
7 **OR HER SETTLEMENT WITH THE DEBTOR."**

8 KALOUSTIAN, on behalf of herself only, acknowledges and understands the significance and
9 consequences of this specific waiver of California Civil Code section 1542.

10 8.4 KALOUSTIAN, on one hand, and NAVITAS, on the other hand, each release and
11 waive all Claims they may have against each other for any statements or actions made or
12 undertaken by them in connection with the Notice of Violations or the Complaint. However, this
13 shall not affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

14 9. CONSTRUCTION AND SEVERABILITY

15 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
16 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
17 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
18 of this Consent Judgment, the terms and conditions shall not be construed against any Party.

19 9.2 In the event that any of the provisions of this Consent Judgment is held by a court to
20 be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
21 affected.

22 9.3 The terms and conditions of this Consent Judgment shall be governed by and
23 construed in accordance with the laws of the State of California.

24 10. PROVISION OF NOTICE

1 All notices required to be given to either Party to this Consent Judgment by the other shall
2 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
3 mail, (b) overnight courier, or (c) personal delivery to the following:

4 **For Tamar Kaloustian:**

5 Caspar Jivalagian
6 Vache Thomassian
7 KJT LAW GROUP, LLP
8 230 No. Maryland Ave., Ste. 306
9 Glendale, California 92106

10 **For Navitas, LLC:**

11 Howard Slavit
12 Coblenz Patch Duffy & Bass LLP
13 One Montgomery Street, Suite 3000
14 San Francisco, CA 94104

15 **11. COURT APPROVAL**

16 **11.1** Upon execution of this Consent Judgment by the Parties, KALOUSTIAN shall
17 notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
18 Consent Judgment.

19 **11.2** If the California Attorney General objects to any term in this Consent Judgment, the
20 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
21 the hearing on the motion.

22 **11.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated
23 Consent Judgment, it shall be null and void and have no force or effect.

24 **12. EXECUTION AND COUNTERPARTS**

1 This Stipulated Consent Judgment may be executed in counterparts, which taken together
2 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the
3 original signature.

4 **13. ENTIRE AGREEMENT, AUTHORIZATION**

5
6 **13.1** This Consent Judgment contains the sole and entire agreement and understanding of
7 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
8 negotiations, commitments and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any Party. No
10 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
11 or to bind any Party.

12 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
13 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
14 provided herein, each Party shall bear its own fees and costs.

15
16 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

17 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
18 The parties request the Court to fully review this Consent Judgment and, being fully informed
19 regarding the matters which are the subject of this action, to:

20
21 (a) Find that the terms and provisions of this Consent Judgment represent a good
22 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
23 diligently prosecuted, and that the public interest is served by such settlement; and

24 (b) Make the findings pursuant to California Health and Safety Code Section
25 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

1 **IT IS SO STIPULATED.**

2
3 Dated: _____

4 Tamar Kaloustian

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6 Dated: November 30, 2016

Navitas LLC

7 Name: *[Signature]*

8 Title: Chief Operating Officer

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11
12
13 **APPROVED AS TO FORM:**

14
15 Dated: November , 2016

KJT LAW GROUP, LLP

16
17 By: _____

18 Vache Thomassian
Attorneys for Plaintiff
19 **TAMAR KALOUSTIAN**

20 Dated: November 30, 2016

COBLENTZ, PATCH, DUFFY & BASS, LLP

21
22 By: *[Signature]*

23 Howard Slavitt
Attorneys for Defendant
24 **NAVITAS, LLC**

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26 1493.004 35882472

[PROPOSED] STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER
Kaloustian v. Navitas, LLC; Case No. CGC-14-541239

1 IT IS SO STIPULATED.

2
3 Dated: 11-30-16


Tamar Kaloustian

4
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6 Dated: _____

Navitas LLC

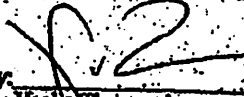
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Title: _____

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13 APPROVED AS TO FORM:

14
15 Dated: November 30, 2016

KIT LAW GROUP, LLP

16
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18 By: 
Vache Thomassian
Attorneys for Plaintiff
TAMAR KALOUSTIAN

19
20 Dated: November __, 2016

COBLENTZ, PATCH, DUFFY & BASS, LLP

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23 By: _____
Howard Slavitt
Attorneys for Defendant
NAVITAS, LLC

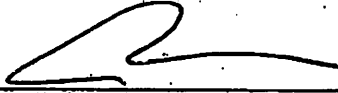
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ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 4/5/17



Judge of the Superior Court

HAROLD KAHN