

ORIGINAL

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**FILED**  
Superior Court of California  
County of Los Angeles

**DEC 14 2020**

Sherri R. Carigi, ~~Assistant~~ Clerk/Clerk  
By Alfredo Morales deputy  
ALFREDO MORALES

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10 STEPHEN TURNBAUGH, in the public  
11 interest,

12 Plaintiff,

13 v.

14 WAL-MART STORES, INC., et al.,

15 Defendants.

Case No. BC671491

*Hon. Amy D. Hogue*  
*Spring Street Courthouse – Dept. 7*

**CONSENT JUDGEMENT [PROPOSED]**

SAC filed: February 2, 2018  
Trial Date: May 5, 2020

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26 **RECEIVED**

27 DEC 11 2020

28 **FILING WINDOW**

1       **1.     INTRODUCTION**

2           1.1.     This Consent Judgment is entered into by and between Plaintiff, STEPHEN  
3     TURNBAUGH (referred to as “TURNBAUGH”) acting on behalf of himself and in the interest  
4     of the public, and Defendant, GUARDIAN DRUG COMPANY (“GUARDIAN”), each a Party to  
5     the action and collectively referred to as the “Parties.” Defendants in this litigation also include  
6     WALMART STORES, INC., ALBERTSON’S LLC., SAVE MART SUPERMARKETS,  
7     STATER BROS MARKETS, SAFEWAY, INC., THE VONS COMPANIES, INC., RITE AID  
8     CORP., CVS PHARMACY, INC., and COSTCO WHOLESALE CORPORATION.

9           1.2.     GUARDIAN and Products

10           1.2.1.   GUARDIAN is a New Jersey Corporation which employs ten or more  
11     persons. GUARDIAN manufactures, causes to be manufactured, distributes, and sells Antacid  
12     Tablets and Bismuth Subsalicylate Tablets, including but not limited to the following,  
13     (collectively referred to as “Antacid Tablets”):

14	CVS Health, Extra Strength Antacid Tablets, 750 mg, 96 count, Assorted Berries
15	CVS Health, Extra Strength Antacid Tablets, 750 mg, 96 count, Assorted Fruit
16	CVS Health, Extra Strength Antacid Tablets, 750mg, 24 count, Assorted Fruit
17	CVS Health, Extra Strength Antacid Tablets, 750mg, 250 count, Assorted Berries
18	CVS Health, Extra Strength Antacid Tablets, 750mg, 250 count, Assorted Fruit
19	CVS Health, Extra Strength Antacid Tablets, 750mg, 96 count, Wintergreen
20	CVS Health, Original Stomach Relief, Bismuth Subsalicylate 262 mg, 48 count
21	CVS Health, Original Stomach Relief, Bismuth Subsalicylate 262 mg, 30 count, Cherry
22	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 160 count, Assorted Berries
23	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 160 count, Assorted Fruit
24	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 160 count, Tropical Fruit
25	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 72 count, Assorted Berries
26	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 72 count, Assorted Fruit
27	CVS Health, Ultra Strength Antacid Tablets, 1000mg, 72 count, Peppermint
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CVS Health, Ultra Strength Antacid Tablets, 1000mg, 72 count, Tropical Fruit
CVS Pharmacy, Antacid Tablets, 1000mg, Maximum Strength, 160 count, Assorted Fruit
CVS Pharmacy, Antacid Tablets, 1000mg, Maximum Strength, 72 count, Peppermint
CVS Pharmacy, Smooth Antacid Tablets Extra Strength, 60 count, Assorted Fruit
Equate, Stomach Relief, Pink Bismuth Subsalicylate 262mg, 30 count
Kirkland Signature, Ultra Strength Antacid, 1000mg, 265 count, Assorted Berry
Rite Aid, Extra Strength Antacid Tablets, 750 mg, 96 count, Tropical Fruit
Rite Aid, Extra Strength Antacid Tablets, 750mg, 250 count, Tropical Fruit
Rite Aid, Extra Strength Antacid Tablets, 750mg, 96 count, Assorted Berry
Rite Aid, Extra Strength Antacid Tablets, 750mg, 96 count, Assorted Fruit
Rite Aid, Extra Strength Antacid Tablets, 750mg, 96 count, Wintergreen
Rite Aid, Regular Strength Antacid Tablets, 500mg, 150 count, Assorted Fruit
Rite Aid, Stomach Relief Tablets, Bismuth Subsalicylate 262 mg, 30 count
Rite Aid, Ultra Strength Antacid Tablets, 1000 mg, 160 count, Assorted Fruit
Rite Aid, Ultra Strength Antacid Tablets, 1000mg, 72 count, Assorted Fruit
Rite Aid, Ultra Strength Antacid Tablets, 1000mg, 72 count, Peppermint
Safeway, Extra Strength Antacid Tablets, 750mg, 200 count, Assorted Berry
Safeway, Extra Strength Antacid Tablets, 750mg, 96 count, Assorted Berry
Safeway, Extra Strength Antacid Tablets, 750mg, 96 count, Assorted Fruit
Safeway, Extra Strength Antacid Tablets, 750mg, 96 count, Wintergreen
Safeway, Extra Strength Antacid Tablets, 750mg, 160 count, Wintergreen
Safeway, Regular Strength Antacid Tablets, 500mg, 150 count; Peppermint
Safeway, Ultra Strength Antacid Tablets, 1000mg, 160 count, Assorted Berry
Safeway, Ultra Strength Antacid Tablets, 1000mg, 160 count, Assorted Fruit
Safeway, Ultra Strength Antacid Tablets, 1000mg, 72 count, Assorted Berry
Safeway, Ultra Strength Antacid Tablets, 1000mg, 72 count, Assorted Fruit
Signature Care, Ultra Strength Antacid Relief Tablets, 1000mg, 72 count, Assorted Fruit

1	Signature Care, Extra Strength Antacid Relief Tablets, 750 mg, 96 count, Assorted Fruit
2	Signature Care, Extra Strength Antacid Relief Tablets, 750mg, 200 count, Assorted Berry
3	Signature Care, Extra Strength Antacid Relief Tablets, 750mg, 96 count, Wintergreen
4	Signature Care, Extra Strength Smooth Antacid Relief Tablets, 750mg, 96 count, Wintergreen
5	Signature Care, Extra Strength Antacid Relief Tablets, 750mg, 96 count, Tropical Fruit
6	Signature Care, Extra Strength Smooth Antacid Relief Tablets, 750mg, 96 count, Tropical Fruit
7	Signature Care, Extra Strength Antacid Relief Tablets, 750mg, 96 count, Assorted Berry
8	Signature Care, Extra Strength Smooth Antacid Relief Tablets, 750mg, 60 count, Peppermint
9	Signature Care, Regular Strength Antacid Relief Tablets, 500 mg, 150 count, Peppermint
10	Signature Care, Ultra Strength Antacid Relief Tablets, 1000mg, 160 count, Assorted Fruit
11	Signature Care, Ultra Strength Antacid Relief Tablets, 1000mg, 160 count, Assorted Berry
12	Signature Care, Ultra Strength Antacid Relief Tablets, 1000mg, 72 count, Assorted Berry
13	Signature Care, Upset Stomach Relief, Bismuth Subsalicylate 262 mg, 30 count
14	TopCare, Extra Strength Antacid Calcium, 750mg, 96 count, Assorted Tropical Fruit
15	TopCare, Extra Strength Antacid Calcium, 750mg, 96 count, Assorted Berries
16	TopCare, Extra Strength Antacid Calcium, 750mg, 96 count, Assorted Fruit
17	TopCare, Regular Strength Antacid Calcium, 500mg, 150 count, Assorted Fruit
18	TopCare, Extra Strength Antacid Calcium, 500mg, 150 count, Assorted Fruit
19	TopCare, Regular Strength Antacid Calcium, 500mg, 150 count, Peppermint
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21 1.2.2. For purposes of this Consent Judgment, GUARDIAN is deemed a person  
22 in the course of doing business in California and is subject to the provisions of the Safe Drinking  
23 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
24 (“Proposition 65”).

25 1.3. Chemicals of Concern

26 1.3.1. Cadmium and Cadmium Compounds (hereinafter “Cadmium”) are known  
27 to the State of California to cause cancer and/or birth defects or other reproductive harm.  
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1 1.4. Notices of Violation

2 1.4.1. On or about August 16, 2016, TURNBAUGH served Walmart Stores, Inc.  
3 and various public enforcement agencies with a document entitled "Notice of Violation" with  
4 California Attorney General number 2016-00857 ("AG2016-00857 Notice") that provided the  
5 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
6 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
7 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
8 allegations set forth in the AG2016-00857 Notice.

9 1.4.2. On or about August 9, 2016, TURNBAUGH served Albertson's LLC., and  
10 various public enforcement agencies with a document entitled "Notice of Violation" with  
11 California Attorney General number 2016-00821 ("AG2016-00821 Notice") that provided the  
12 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
13 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
14 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
15 allegations set forth in the AG2016-00821 Notice.

16 1.4.3. On or about August 9, 2016, TURNBAUGH served Save Mart  
17 Supermarkets, and various public enforcement agencies with a document entitled "Notice of  
18 Violation" with California Attorney General number 2016-00822 ("AG2016-00822 Notice") that  
19 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
20 failing to warn individuals in California of exposures to Cadmium contained in certain Antacid  
21 Tablets supplied by GUARDIAN. No other public enforcer has commenced or diligently  
22 prosecuted the allegations set forth in the AG2016-00822 Notice.

23 1.4.4. On or about August 10, 2016, TURNBAUGH served Save Mart  
24 Supermarkets and various public enforcement agencies with a document entitled "Notice of  
25 Violation" with California Attorney General number 2016-00834 ("AG2016-00834 Notice") that  
26 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
27 failing to warn individuals in California of exposures to Cadmium contained in certain Antacid  
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1 Tablets supplied by GUARDIAN. No other public enforcer has commenced or diligently  
2 prosecuted the allegations set forth in the AG2016-00834 Notice.

3 1.4.5. On or about August 15, 2016, TURNBAUGH served Stater Bros Markets  
4 and various public enforcement agencies with a document entitled "Notice of Violation" with  
5 California Attorney General number 2016-00853 ("AG2016-00853 Notice") that provided the  
6 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
7 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
8 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
9 allegations set forth in the AG2016-00853 Notice.

10 1.4.6. On or about August 16, 2016, TURNBAUGH served Stater Bros Markets  
11 and various public enforcement agencies with a document entitled "Notice of Violation" with  
12 California Attorney General number 2016-00855 ("AG2016-00855 Notice") that provided the  
13 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
14 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
15 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
16 allegations set forth in the AG2016-00855 Notice.

17 1.4.7. On or about August 9, 2016, TURNBAUGH served Safeway, Inc., and  
18 various public enforcement agencies with a document entitled "Notice of Violation" with  
19 California Attorney General number 2016-00824 ("AG2016-00824 Notice") that provided the  
20 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
21 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
22 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
23 allegations set forth in the AG2016-00824 Notice.

24 1.4.8. On or about August 10, 2016, TURNBAUGH served The Vons  
25 Companies, Inc. and various public enforcement agencies with a document entitled "Notice of  
26 Violation" with California Attorney General number 2016-00833 ("AG2016-00833 Notice") that  
27 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
28 failing to warn individuals in California of exposures to Cadmium contained in certain Antacid

1 Tablets supplied by GUARDIAN. No other public enforcer has commenced or diligently  
2 prosecuted the allegations set forth in the AG2016-00833 Notice.

3 1.4.9. On or about August 15, 2016, TURNBAUGH served Rite Aid Corp., and  
4 various public enforcement agencies with a document entitled "Notice of Violation" with  
5 California Attorney General number 2016-00851 ("AG2016-00851 Notice") that provided the  
6 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
7 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
8 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
9 allegations set forth in the AG2016-00851 Notice.

10 1.4.10. On or about August 15, 2016, TURNBAUGH served CVS Pharmacy, Inc.,  
11 and various public enforcement agencies with a document entitled "Notice of Violation" with  
12 California Attorney General number 2016-00852 ("AG2016-00852 Notice") that provided the  
13 recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
14 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
15 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
16 allegations set forth in the AG2016-00852 Notice.

17 1.4.11. On or about August 16, 2016, TURNBAUGH served Costco Wholesale  
18 Corporation and various public enforcement agencies with a document entitled "Notice of  
19 Violation" with California Attorney General number 2016-00858 ("AG2016-00858 Notice") that  
20 provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for  
21 failing to warn individuals in California of exposures to Cadmium contained in certain Antacid  
22 Tablets supplied by GUARDIAN. No other public enforcer has commenced or diligently  
23 prosecuted the allegations set forth in the AG2016-00858 Notice.

24 1.4.12. On or about September 27, 2017, TURNBAUGH served Guardian Drug  
25 Company, Inc., Rite Aid Corp, Albertson's LLC, Safeway, Inc., The Vons Companies, Inc.,  
26 Walmart Stores, Inc., CVS Pharmacy, Inc., Costco Wholesale Corporation, and various public  
27 enforcement agencies with a document entitled "60-Day Notice of Violation" with California  
28 Attorney General number 2017-02195 ("AG2017-02195 Notice") that provided the recipients

1 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
2 individuals in California of exposures to Cadmium contained in certain Antacid Tablets supplied  
3 by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
4 allegations set forth in the AG2017-02195 Notice.

5 1.4.13. On or about September 27, 2017, TURNBAUGH served Rite Aid Corp.,  
6 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”  
7 with California Attorney General number 2017-02196 (“AG2017-02196 Notice”) that provided  
8 the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to  
9 warn individuals in California of exposures to Cadmium contained in certain Antacid Tablets  
10 supplied by GUARDIAN. No other public enforcer has commenced or diligently prosecuted the  
11 allegations set forth in the AG2017-02196 Notice.

12 1.4.14. On or about September 27, 2017, TURNBAUGH served Save Mart  
13 Supermarkets, Rite Aid Corp., Stater Bros. Markets and various public enforcement agencies with  
14 a document entitled “60-Day Notice of Violation” with California Attorney General number  
15 2017-02197 (“AG2017-02197 Notice”) that provided the recipients with notice of alleged  
16 violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of  
17 exposures to Cadmium contained in Antacid Tablets supplied by GUARDIAN. No other public  
18 enforcer has commenced or diligently prosecuted the allegations set forth in the AG2017-02197  
19 Notice.

20 1.5. Complaints

21 1.5.1. On August 8, 2017, TURNBAUGH filed a Complaint for civil penalties  
22 and injunctive relief in Los Angeles Superior Court, Case No. BC671491. The initial complaint  
23 alleges, among other things, that the defendants violated Proposition 65 by failing to give clear  
24 and reasonable warnings of exposure to Cadmium from Covered Products (as defined herein).

25 1.5.2. On August 9, 2017, a First Amended Complaint, was filed by  
26 TURNBAUGH.  
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1                   1.5.3. On February 2, 2018, the operative Second Amended Complaint  
2 (“Complaint”)<sup>1</sup>, was filed by TURNBAUGH. Upon entry of this Consent Judgment, the  
3 Complaint shall be deemed amended *nunc pro tunc* to include GUARDIAN as a defendant to the  
4 third and fifth causes of action.

5                   1.6. Consent to Jurisdiction

6                   1.6.1. For purposes of this Consent Judgment only, the Parties stipulate that this  
7 Court has jurisdiction over the allegations of violations contained in the Complaint and personal  
8 jurisdiction over GUARDIAN as to the acts alleged in the Complaint, that venue is proper in the  
9 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a  
10 full settlement and resolution of the allegations contained in the Complaint and of all claims  
11 which were or could have been raised by any person or entity based in whole or in part, directly  
12 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

13                  1.7. No Admission

14                  1.7.1. This Consent Judgment resolves claims that are denied and disputed. The  
15 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all  
16 claims between the Parties existing as of the Effective Date for the purpose of avoiding prolonged  
17 litigation. Nothing in this Consent Judgment shall be construed as an admission by any of the  
18 Parties of any allegation in the Complaint (each and every allegation of which GUARDIAN  
19 denies), any fact, conclusion of law, issue of law or violation of law, including without limitation,  
20 any admission concerning any violation of Proposition 65 or any other statutory, regulatory,  
21 common law, or equitable doctrine, or the meaning of the terms “knowingly and intentionally  
22 expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6.  
23 Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed  
24 as an admission by any of the Parties of any fact, conclusion of law, issue of law, or violation of  
25 law, or of fault, wrongdoing, or liability by GUARDIAN, or any of its officers, directors,  
26 employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence

27 \_\_\_\_\_  
28 <sup>1</sup>For the sake of clarity, the Second Amended Complaint supersedes all previously filed complaints in this  
action.

1 in any administrative or judicial proceeding or litigation in any court, agency, or forum.

2 Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair any right,  
3 remedy, argument, or defense any of the Parties may have in any other or future legal proceeding,  
4 except as expressly provided in this Consent Judgment.

5 **2. DEFINITIONS**

6 2.1. "Covered Products" means any and all Antacid Tablets, including private label  
7 Antacid Tablets, manufactured, sold or supplied by GUARDIAN only.

8 2.2. "Effective Date" means the date that this Consent Judgment is approved by the  
9 Court.

10 2.3. "Cadmium" means Cadmium and Cadmium Compounds.

11 2.4. "Notices" means the AG2016-00857, AG2016-00821, AG2016-00822, AG2016-  
12 00834, AG2016-00853, AG2016-00855, AG2016-00824, AG2016-00833, AG2016-00851,  
13 AG2016-00852, AG2016-00858, AG2017-02195, AG2017-02196, AG2017-02197 Notices.


14 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**  
15 **WARNINGS.**

16 3.1. Except as provided in Section 3.3, after the Effective Date, GUARDIAN shall not  
17 sell in California, offer for sale in California, or ship for sale in California any Antacid Tablets  
18 unless the level of Cadmium does not exceed 300 parts per billion ("ppb") (the "Reformulation  
19 Standard"), or unless Guardian provides the on package warning set forth in Section 3.2. To  
20 determine whether a Covered Product complies with the Cadmium level set forth in this Section,  
21 AOAC Method 993.14 shall be used to test such Covered Product.

22 3.2. For any Antacid Tablets that exceeds 300 ppb Cadmium that are sold in California  
23 after the Effective Date, GUARDIAN must provide a Proposition 65 compliant warning for the  
24 Covered Products as set forth below. Any warning provided pursuant to this Section 3 shall be  
25 affixed to the packaging of, or directly on, the Covered Products, and be prominently placed with  
26 such conspicuousness as compared with other words, statements, designs, or devices as to render  
27 it likely to be read and understood by an ordinary individual under customary conditions before  
28 purchase or use. A symbol consisting of a black exclamation point in a yellow equilateral triangle



1 with a bold black outline shall be placed to the left of the text of the warning, in a size no smaller  
2 than the height of the word "WARNING". The Parties agree that the following warning language  
3 shall constitute compliance with Proposition 65 with respect to the alleged Cadmium in the  
4 Covered Products distributed and/or sold by GUARDIAN after the Effective Date:

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

9 3.3. The requirements set forth in Section 3, including any requirement to reformulate  
10 or provide clear and reasonable warnings, apply only to Covered Products manufactured by  
11 GUARDIAN after the Effective Date. Any Covered Products that have been manufactured,  
12 distributed, shipped or sold by GUARDIAN on or prior to the Effective Date shall not be subject  
13 to the Proposition 65 warning requirements of this Section 3 regardless of the concentration of  
14 Cadmium that may be present in any such Covered Products.

#### 15 4. SETTLEMENT PAYMENT

16 4.1. **Payment and Due Date:** Within ten (10) business days of the Effective Date,  
17 GUARDIAN shall pay a total of four hundred and forty thousand dollars and zero cents  
18 (\$440,000.00) in full and complete settlement of all monetary claims by TURNBAUGH related to  
19 the Notices, as follows:

20 4.1.1. **Civil Penalty:** GUARDIAN shall issue separate checks totaling twenty  
21 thousand dollars (\$20,000.00) as penalties pursuant to Health & Safety Code § 25249.12:

22 (a) GUARDIAN will issue a check made payable to the State of  
23 California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of  
24 fifteen thousand dollars (\$15,000.00) representing 75% of the total penalty and GUARDIAN will  
25 issue a separate check to TURNBAUGH in the amount of five thousand dollars (\$5,000.00)  
26 representing 25% of the total penalty; and  
27  
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1 (b) Separate 1099s shall be issued for each of the above payments:  
2 GUARDIAN will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-  
3 0284486). GUARDIAN will also issue a 1099 to TURNBAUGH c/o Yeroushalmi &  
4 Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

5 4.1.2. **Reimbursement of Attorney's Fees and Costs:** GUARDIAN shall pay  
6 four hundred and twenty thousand dollars (\$420,000.00) to Yeroushalmi & Yeroushalmi, with a  
7 tax identification number of (EIN: 95-4732514), as complete reimbursement for any and all  
8 reasonable investigation fees and costs, attorneys' fees, consultant fees, and any other costs and  
9 expenses associated with this matter or incurred as a result of investigating, bringing this matter  
10 to GUARDIAN's attention, litigating, and negotiating a settlement in the public interest.

11 4.2. Other than the payment to OEHHA described above, all payments referenced in  
12 paragraphs 4.1.1 and 4.1.2 above, shall be delivered to: Reuben Yeroushalmi, Yeroushalmi &  
13 Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The payment to  
14 OEHHA shall be delivered to Office of Environmental Health Hazard Assessment, Attn: Mike  
15 Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently with  
16 payment to OEHHA, GUARDIAN shall provide TURNBAUGH with written confirmation that  
17 the payment to OEHHA was delivered.

18 **5. MATTERS COVERED AND RELEASED BY THIS CONSENT JUDGMENT**

19 5.1. This Consent Judgment is a full, final, and binding resolution between  
20 TURNBAUGH on behalf of himself and in the public interest and GUARDIAN, of any alleged  
21 violation of Proposition 65 that was or could have been asserted by TURNBAUGH against  
22 GUARDIAN, its parents, subsidiaries, affiliated entities, manufacturers, suppliers, directors,  
23 officers, employees, agents, shareholders, partners, attorneys, and each of their predecessors,  
24 successors, and assigns (collectively "Releasees"), and each entity to whom any Releasee directly  
25 or indirectly exports, distributes or sells the Covered Products, including, without limitation,  
26 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,  
27 dealers, and licensees, and each of their owners, purchasers, officers, directors, attorneys,  
28 representatives, shareholders, agents, employees, and sister and parent entities, including but not

1 limited to Wal-Mart Stores, Inc., Walmar, Inc., Albertson's LLC, Save Mart Supermarkets,  
2 Stater Bros. Markets, Safeway, Inc., The Von's Companies, Inc., Rite Aid Corp., Walgreen Co.,  
3 CVS Pharmacy, Inc., Topco Associates, LLC and Costco Wholesale Corporation (collectively  
4 "Downstream Releasees"), for all claims that have been asserted for, could have been asserted  
5 for, or that arise out of alleged or actual violations of Proposition 65 or its implementing  
6 regulations for alleged exposures to Cadmium in Covered Products prior to and including up to  
7 the Effective Date. GUARDIAN Releasees and Downstream Releasees are hereby collectively  
8 referred to as the "Released Parties." TURNBAUGH, <sup>on</sup> behalf of himself and in the public interest,  
9 hereby discharges and releases Released Parties from any and all claims to enforce Proposition 65  
10 arising from Guardian's manufacture, sale, or distribution of the Covered Products to and through  
11 the Effective Date and included in the Second Amended Complaint, (including, without  
12 limitation, any such actions, and causes of action, in law or in equity, suits, liabilities, demands,  
13 obligations, damages, costs, fines, penalties, losses, or expenses -including, but not limited to,  
14 fees of attorneys, experts, and others- of any nature whatsoever, whether fixed or contingent,  
15 asserted for, that could have been asserted for, that arise out of alleged exposures to Cadmium  
16 from Covered Products sold, manufactured or distributed by any Released Party in California up  
17 to the Effective Date, or the failure of any Released Party to provide clear, accurate and  
18 reasonable warnings under Proposition 65, Business and Professions Code §17200, et seq., or any  
19 other applicable law about exposure to Cadmium predicated or based on a violation of  
20 Proposition 65, arising from the sale, distribution, or use of any Covered Products sold,  
21 manufactured or distributed by any Released Party in California up to the Effective Date), but not  
22 including claims to enforce this Consent Judgment or unknown claims (collectively "Claims").  
23 Compliance with the Consent Judgment by any Released Party shall constitute compliance with  
24 Proposition 65 by all Released Parties with respect to the presence of Cadmium in the Covered  
25 Products on and after the Effective Date. TURNBAUGH agrees that any and all Claims are  
26 resolved with prejudice by this Consent Judgment. The release in this Section 5.1 applies to all  
27 Covered Products that GUARDIAN manufactured, distributed, or sold prior to the Effective Date.  
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1 regardless of the date any other Released Party may distribute or sell the Covered Products that  
2 GUARDIAN manufactured, distributed, or sold prior to the Effective Date.

3 5.2. TURNBAUGH on behalf of himself, his past and current agents, representatives,  
4 attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in,  
5 directly or indirectly, any form of legal action and discharges and releases the Released Parties  
6 from any and all Claims arising under Proposition 65 for unwarned exposures to Cadmium from  
7 Covered Products manufactured, sold, or distributed for sale by prior to the Effective Date. The  
8 releases in Section 5.2 are provided in TURNBAUGH's individual capacity and are not releases  
9 on behalf of the public. It is possible that other claims not known to the Parties arising out of the  
10 facts contained in the Notices, or alleged in the Complaint, relating to the Covered Products, will  
11 hereafter be discovered or developed. TURNBAUGH, on behalf of himself only, acknowledges  
12 that this Consent Judgment is expressly intended to cover and include all such claims through and  
13 including up to the Effective Date, including all rights of action therefor. TURNBAUGH  
14 acknowledges that the claims released in Section 5.2 may include unknown claims arising under  
15 Proposition 65 for unwarned exposures to Cadmium from the Covered Products up to the  
16 Effective Date, and nevertheless TURNBAUGH intends to release such claims, and in doing so  
17 waives California Civil Code § 1542 (and any other state, federal, or international law of similar  
18 import), which reads as follows:

19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
22 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
23 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
24 DEBTOR OR RELEASED PARTY.

25 TURNBAUGH understands and acknowledges that the significance and consequence of  
26 this waiver of California Civil Code section 1542 is that even if TURNBAUGH suffers future  
27 damages arising out of or resulting from, or related directly or indirectly to, in whole or in part,  
28 Claims arising from any violation of Proposition 65 or any other statutory or common law  
regarding the failure to warn about exposure to Cadmium from the Covered Products, including  
but not limited to any exposure to, or failure to warn with respect to exposure to Cadmium from

1 the Covered Products, TURNBAUGH will not be able to make any claim for those damages  
2 against Released Parties. Furthermore, TURNBAUGH acknowledges that he intends these  
3 consequences for any such Claims arising from any violation of Proposition 65 or any other  
4 statutory or common law regarding the failure to warn about exposure to Cadmium from Covered  
5 Products as may exist as of the date of this release but which TURNBAUGH does not know exist,  
6 and which, if known, would materially affect his decision to enter into this Consent Judgment,  
7 regardless of whether his lack of knowledge is the result of ignorance, oversight, error,  
8 negligence, or any other cause.

9 **6. ENTRY OF CONSENT JUDGMENT**

10 6.1. TURNBAUGH shall file a motion seeking approval of this Consent Judgment  
11 pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment,  
12 TURNBAUGH and GUARDIAN waive their respective rights to a hearing or trial on the  
13 allegations of the Complaint.

14 6.2. The Parties shall make all reasonable efforts possible to have the Consent  
15 Judgment approved by the Court.

16 6.3. If this Consent Judgment is not approved in full by the Court, (a) this Consent  
17 Judgment and any and all prior agreements between the Parties merged herein shall terminate and  
18 become null and void, and the actions shall revert to the status that existed prior to the execution  
19 date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of  
20 the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall  
21 have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
22 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine  
23 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

24 **7. MODIFICATION OF JUDGMENT**

25 7.1. This Consent Judgment may be modified only upon written agreement of the  
26 Parties and upon entry of a modified Consent Judgment by the Court thereon.

1       **8.     RETENTION OF JURISDICTION**

2           8.1.   This Court shall retain jurisdiction of this matter to implement and enforce the  
3 terms of this Consent Judgment under Code of Civil Procedure § 664.6.

4           8.2.   In any proceeding brought by either Party to enforce this Consent Judgment, the  
5 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

6       **9.     DUTIES LIMITED TO CALIFORNIA**

7           9.1.   This Consent Judgment shall have no effect on Covered Products sold by  
8 GUARDIAN or any Released Parties outside the State of California.

9       **10.    SERVICE ON THE ATTORNEY GENERAL**

10          10.1.   TURNBAUGH shall serve a copy of this Consent Judgment, signed by the Parties,  
11 on the California Attorney General so that the Attorney General may review this Consent  
12 Judgment prior to its approval by the Court. No sooner than forty-five (45) days after the  
13 Attorney General has received the aforementioned copy of this Consent Judgment, and in the  
14 absence of any written objection by the Attorney General to the terms of this Consent Judgment,  
15 may the Court approve this Consent Judgment.

16       **11.    ATTORNEY FEES**

17          11.1.   Except as specifically provided in Section 4.1.2 and 8.2, each Party shall bear its  
18 own costs and attorney fees in connection with this action.

19       **12.    GOVERNING LAW**

20          12.1.   The validity, construction and performance of this Consent Judgment shall be  
21 governed by the laws of the State of California, without reference to any conflicts of law  
22 provisions of California law.

23          12.2.   The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
25 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
26 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
27 rendered inapplicable by reason of law generally as to the Covered Products, then GUARDIAN  
28 may provide written notice to TURNBAUGH of any asserted change in the law, and shall have



1 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,  
2 the Covered Products are so affected. Nothing in this Consent Judgment shall be interpreted to  
3 relieve GUARDIAN from any obligation to comply with any pertinent state or federal law or  
4 regulation.

5 12.3. The Parties, including their counsel, have participated in the preparation of this  
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
7 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
8 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or  
9 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result  
10 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment  
11 agrees that any statute or rule of construction providing that ambiguities are to be resolved against  
12 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in  
13 this regard, the Parties hereby waive California Civil Code § 1654.

#### 14 13. EXECUTION AND COUNTERPARTS

15 13.1. This Consent Judgment may be executed in counterparts and by means of  
16 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
17 one document and have the same force and effect as original signatures.

#### 18 14. NOTICES

19 14.1. Any notices under this Consent Judgment shall be by First-Class Mail or E-mail.

20 If to TURNBAUGH:  
21 Reuben Yeroushalmi  
22 YEROUSHALMI & YEROUSHALMI  
23 9100 Wilshire Boulevard, Suite 240W  
24 Beverly Hills, CA 90212  
25 (310) 623-1926  
26 Email: lawfirm@yeroshalmi.com  
27  
28

1 If to GUARDIAN.:  
2 Jeffrey Michael Goldman  
3 PEPPER HAMILTON LLP  
4 Two California Plaza  
5 350 South Grand Avenue  
6 Suite 3400  
7 Los Angeles, CA 90071-3427  
8 T: (213) 928-9800  
9 Email: [goldmani@pepperlaw.com](mailto:goldmani@pepperlaw.com)

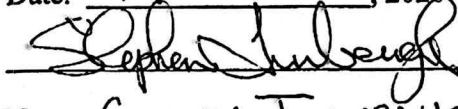
7 AnnMarie Sanford  
8 PEPPER HAMILTON LLP  
9 4000 Town Center, Suite 1800  
10 Southfield, MI 48075  
11 T: (248) 359-7359  
12 Email: [sanforda@pepperlaw.com](mailto:sanforda@pepperlaw.com)

11 **15. AUTHORITY TO STIPULATE**

12 15.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
13 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of  
14 the party represented and legally to bind that party.

1 **AGREED TO:**

2 Date: 11/25/20, 2020

3 

4 Name: STEPHEN TURNBAUGH

5 Title: MR.

6 **STEPHEN TURNBAUGH**

**AGREED TO:**

Date: \_\_\_\_\_, 2020

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**GUARDIAN DRUG COMPANY, INC.**

7  
8 **IT IS SO ORDERED.**

9  
10  
11 Date: \_\_\_\_\_

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12 HON. AMY D. HOGUE  
13 JUDGE OF THE SUPERIOR COURT  
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**AGREED TO:**

Date: \_\_\_\_\_, 2020

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STEPHEN TURNBAUGH

**AGREED TO:**

Date: November 25,, 2020


Name: \_\_\_\_\_

Title: PRESIDENT & CEO

GUARDIAN DRUG COMPANY, INC.

**IT IS SO ORDERED.**

Date: 12/14/2020

  
HON. AMY D. HOGUE  
JUDGE OF THE SUPERIOR COURT