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Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

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

09/16/2020

Sherril R. Carter, Executive Officer / Clerk of Court

By: E. Garcia Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES**

TAMAR KALOUSTIAN, in the public interest,

Plaintiff,

v.

BOB'S RED MILL NATURAL FOODS, INC.,  
an Oregon Corporation; and DOES 1 through  
100, inclusive,

Defendants.

Civil Action No.: BC717941

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

Complaint Filed: August 16, 2018

Department 38  
Hon. Maureen Duffy-Lewis

**1. INTRODUCTION**

**1.1 The Parties**

This Stipulated Consent Judgment [Proposed] is hereby entered into by and between TAMAR KALOUSTIAN, acting on behalf of the public interest (hereinafter "Kaloustian") and BOB'S RED MILL NATURAL FOODS, INC., (hereinafter "Bob's Red Mill" or "Defendant"). Collectively Kaloustian and Bob's Red Mill 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

1 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§  
2 25249.6 et seq.

3 **1.2 Allegations and Representations**

4 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in  
5 California, psyllium husk powder, which contains lead, and that such sales have not been  
6 accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known  
7 to the State of California to cause cancer and birth defects or other reproductive harm.

8 **1.3 Covered Products Description**

9 The products that are covered by this Consent Judgment are defined as "Premium Quality  
10 Psyllium Fiber Powder." All such items shall be referred to herein as the "Covered Products."

11 **1.4 Notices of Violation/Complaint**

12 **1.4.1** On or about March 19, 2018, Kaloustian served Bob's Red Mill and various public  
13 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &  
14 Safety Code §25249.7(d) (the "Notice"), alleging that Bob's Red Mill was in violation of Proposition  
15 65 for failing to warn consumers and customers that the Covered Products exposed users in  
16 California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice  
17 within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

18 **1.4.2** On August 16, 2018, Kaloustian, acting in the interest of the general public in the State  
19 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of  
20 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures  
21 to lead contained in Covered Products manufactured, distributed, or sold by Defendant.

22 **1.5 Stipulation as to Jurisdiction/No Admission**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
25 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,  
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
27 claims which were or could have been raised in the Complaint based on the facts alleged therein  
28 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. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any other pending or future legal proceedings. This Consent Judgment is the product of negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this action. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

#### 1.6 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. All Covered Products already purchased, manufactured, distributed, shipped or sold on or before the "Effective Date" or within 120 days thereafter are deemed to be covered by the waiver and release provisions of Paragraph 5.1 of this Consent Judgment and shall not be subject to any future enforcement action by Kaloustian hereunder. The reformulation and warning requirements of Paragraphs 2.1 and 2.2 shall only apply to Covered Products manufactured later than 120 days after the Effective Date.

For purposes of this Consent Judgment, the term "Execution Date" shall mean the date this Consent Judgment is signed by all parties in Clause 14 below.

## 2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

Commencing One hundred and twenty (120) days after the Effective Date, Defendant shall not ship, sell, or offer to sell in California a Covered Product(s) that is/are manufactured, distributed or sold by Defendant for which the serving size suggested on the label contains more than 0.5 micrograms of lead per day unless the label of the Covered Product contains a Proposition 65 compliant warning as set forth in Section 2.3. One hundred and twenty (120) days after the Effective Date in California, Covered Products manufactured, distributed or sold by Defendant shall either be (a) reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

2.1 Reformulation Option. The Covered Products shall be deemed to comply with

Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the product contains a lead content equal to or less than 0.5 micrograms per serving, per day, such concentration to be determined by use of a test performed by an accredited laboratory using inductively coupled plasma mass spectrometry (ICP-MS) equipment that meets standard laboratory QA/QC requirements, or another testing method agreed upon by the Parties..

2.2 Warning Alternative. Commencing 120 days after the Effective Date, Covered Products that Defendant ships, sells or offers for sale in California that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. The warning requirements set forth in paragraph 2.3 below, apply only to Covered Products Defendant manufactures, distributes, markets, sells or ships for distribution 120 days after the Effective Date for sale or use inside the State of California.

2.3 Warnings. Where required under Section 2.2 above, Defendant shall provide one of the following of the Proposition 65 warnings:

**WARNING: This product can expose you to chemicals including lead, 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](http://www.P65Warnings.ca.gov/food).**

OR

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

OR

**WARNING: Cancer and Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).**

2.4 Where utilized as an alternative to meeting the reformulation criteria set forth in Section 2.1, Defendant shall provide the warning language set forth in Section 2.3:

(a) With the unit package of the Covered Products or affixed to the Covered Products. Such warning shall be prominently affixed to or printed on each Covered Product's label or package. If printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product; Defendant may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such packaging materials have already been

printed within one hundred twenty days of the Effective Date.

2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations and that they may or may not be appropriate in other circumstances.

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

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay a civil penalty of \$5,000.00 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., \$3,750.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$1,250.00 made payable directly to Kaloustian. Defendant shall mail these payments within thirty (30) business days following the Effective Date, to the following addresses respectively:

Proposition 65 Settlement Coordinator  
California Department of Justice  
1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

Ms. Tamar Kaloustian  
C/O Vache Thomassian, Esq.  
KJT LAW GROUP, LLP  
230 N. Maryland Ave. Suite 306  
Glendale, CA 91206

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties reached an accord on the compensation due to Kaloustian and her counsel under the private attorney general doctrine and principles of contract law. Under these legal principles,

1 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,  
2 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.

3 Defendant shall pay Kaloustian's counsel \$33,000.00 for all attorneys' fees, expert and investigation  
4 fees and related costs associated with this matter and the Notice. Defendant shall mail a check  
5 payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced  
6 above within thirty (30) business days following the Effective Date. Other than the payment required  
7 hereunder, each side is to bear its own attorneys' fees and costs.

8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

10 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on  
11 behalf of herself, and on behalf of the public interest, hereby waives and releases any and all claims  
12 against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors  
13 and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees,  
14 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively  
15 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,  
16 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,  
17 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,  
18 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or  
19 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65  
20 and/or under Business and Professions Code §17200, *et seq.* about exposure to lead arising from the  
21 sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant,  
22 Releasees or Downstream Releasees in California prior to One hundred and twenty (120) days after  
23 the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall  
24 constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee  
25 with respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all claims  
26 in the Complaint are resolved with prejudice by this Consent Judgment.

27 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,  
28 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,

1 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
2 releases any other Claims that she could make against Defendant, Releasees or Downstream  
3 Releasees arising up to One hundred and twenty (120) days after the Effective Date with respect to  
4 violations of Proposition 65 and/or Business and Professions Code §17200 based upon the Covered  
5 Products. With respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby  
6 specifically waives any and all rights and benefits which she now has, or in the future may have,  
7 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as  
8 follows:

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

15 **5.2 Defendant's Release of Kaloustian**

16 Defendant waives any and all claims against Kaloustian, her attorneys and other  
17 representatives, for any and all actions taken or statements made (or those that could have been taken  
18 or made) by Kaloustian and her attorneys and other representatives, in the course of investigating  
19 claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with  
20 respect to the Covered Products.

21 **6. SEVERABILITY AND MERGER**

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

25 This Consent Judgment contains the sole and entire agreement of the Parties and any and all  
26 prior negotiations and understandings related hereto shall be deemed to have been merged within it.  
27 No representations or terms of agreement other than those contained herein exist or have been made  
28 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

1 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to  
2 alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is  
3 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
4 Products, then Defendant shall provide written notice to Kaloustian of any asserted change in the law,  
5 and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
6 extent that, the Covered Products are so affected.

7 **8. NOTICES**

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

12 For BOB'S RED MILL NATURAL FOODS, INC.:

13 Kristine Kruger, Esq.  
14 Jasmine W. Wetherell, Esq.  
15 PERKINS COIE, LLP  
16 1888 Century Park East, Suite 1700  
17 Los Angeles, CA 90067  
Phone: (310) 788-9900  
Fax: (310) 788-3399

18 and

For TAMAR KALOUSTIAN:

19 Vache Thomassian, Esq.  
20 KJT LAW GROUP, LLP  
21 230 N. Maryland Ave. Suite 306  
22 Glendale, CA 91206  
Phone: 818-507-8528  
Fax: 818-507-8588

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

25 **9. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

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



**10. 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 Defendants 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 within twelve months after it has been fully executed by the Parties.

**11. 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.

**12. ATTORNEY'S FEES**

12.1 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.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**13. RETENTION OF JURISDICTION**

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

**14. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

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IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 6/30/2020

By: \_\_\_\_\_  
TAMAR KALOUSTIAN

By: [Signature]  
On Behalf of:  
BOB'S RED MILL NATURAL  
FOODS, INC.

APPROVED AS TO FORM:

DATED: July 30, 2020

PERKINS COIE, LLP

By: [Signature]  
~~Kristine Kruger, Esq.~~  
Jasmine W. Wetherell, Esq.  
Attorneys for Defendant,  
BOB'S RED MILL NATURAL FOODS, INC.

DATED: August \_\_, 2020

KJT LAW GROUP, LLP

By: \_\_\_\_\_  
Vache Thomassian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

KJT LAW GROUP, LLP  
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IT IS HEREBY SO STIPULATED:

AGREED TO:

7/1/2020

Date: \_\_\_\_\_

By:   
DocuSigned by:  
TAMAR KALOUSTIAN

AGREED TO:

Date: \_\_\_\_\_

By: \_\_\_\_\_  
One Behalf of:  
BOB'S RED MILL NATURAL  
FOODS, INC.

APPROVED AS TO FORM:

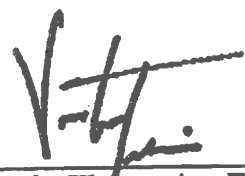
DATED: August \_\_, 2020

PERKINS COIE, LLP

By: \_\_\_\_\_  
Kristine Kruger, Esq.  
Jasmine W. Wetherell, Esq.  
Attorneys for Defendant,  
BOB'S RED MILL NATURAL FOODS, INC.

DATED: 07/30/2020

KJT LAW GROUP, LLP

By:   
Vache Thomassian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

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**ORDER**

The parties having stipulated hereto, and good cause appearing therefore, the foregoing  
Stipulated Judgment is approved in its entirety and it IS SO ORDERED:

Dated: 09/16/2020



**Maureen Duffy-Lewis**

JUDGE OF THE SUPERIOR COURT  
Maureen Duffy-Lewis / Judge