

1 Vaché Thomassian, Esq. (SBN: 289053)  
KJT LAW GROUP, LLP  
2 230 N. Maryland Ave. Suite 306  
Glendale, CA 91206  
3 P: 818.507.8525 / F: 818.507.8588

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5 Attorneys for Plaintiff, TAMAR KALOUSTIAN

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 TAMAR KALOUSTIAN,  
11 Plaintiff,  
12 vs.  
13 ZB IMPORTING, INC.; AND  
14 DOES,  
15 Defendants.

Case No. BC649678

**STIPULATION RE ENTRY OF  
CONSENT JUDGMENT AS TO ZB  
IMPORTING, INC.**

Complaint Filed: February 7, 2017

Department 14  
Hon. Terry A. Green

16  
17 **1. INTRODUCTION**

18 **1.1 The Parties**

19 This Stipulation and [Proposed] Order Re Consent Judgment (“Consent Judgment”) is  
20 hereby entered into by and between Tamar Kaloustian, acting on behalf of the public interest  
21 (hereinafter “Kaloustian”) and ZB Importing, Inc., (hereinafter “ZB” or “Defendant”).

22 Collectively Kaloustian and ZB shall be referred to hereafter as the “Parties” and each of them as  
23 a “Party.” Kaloustian is an individual residing in California who seeks to promote awareness of  
24 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous  
25 substances contained in consumer products. Defendant employs ten or more persons and is a  
26 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code  
27 §§ 25249.6 et seq.  
28

1           **1.2 Allegations and Representations**

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

6           **1.3 Covered Products Description**

7           The products that are covered by this Consent Judgment are defined as "prunes." All such  
8 items shall be referred to herein as the "Covered Products."

9           **1.4 Notices of Violation/Complaint**

10          1.4.1 On or about August 24, 2016, Kaloustian served ZB and various public  
11 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health  
12 & Safety Code §25249.7(d) (the "Notice"), alleging that ZB was in violation of Proposition 65 for  
13 failing to warn consumers and customers that the Covered Products exposed users in California to  
14 lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty  
15 days plus service time relative to the provision of the Notice to them by Kaloustian.

16          1.4.2 On February 7, 2017, Kaloustian, acting in the interest of the general public in the  
17 State of California, filed a complaint in the Superior Court of Los Angeles County alleging  
18 violations of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to  
19 warn of exposures to lead contained in Covered Products manufactured, distributed, or sold by  
20 Defendant.

21          **1.5 Stipulation as to Jurisdiction/No Admission**

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

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

7           **1.6    Effective Date**

8           For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
9 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped  
10 on or before the "Effective Date" or within 90 days thereafter are deemed to be covered by the  
11 waiver and release provisions of Paragraph 5.1 of this Consent Judgment and shall not be subject  
12 to any future enforcement action by Kaloustian hereunder. The reformulation and warning  
13 requirements of Paragraphs 2.1 and 2.2 shall apply to any Covered Product shipped later than 90  
14 days after the Effective Date.

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

17           **2.    INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION**

18           Commencing Ninety (90) days after the Effective Date, Defendant shall not ship, sell, or  
19 offer to sell in California a Covered Product(s) that is/are manufactured, distributed or sold by  
20 Defendant for which the serving size suggested on the label contains more than 0.5 micrograms  
21 of lead per day unless the label of the Covered Product contains a Proposition 65 compliant  
22 warning as set forth in Section 2.3. Ninety (90) days after the Effective Date in California,  
23 Covered Products manufactured, distributed or sold by Defendant shall either be (a) reformulated  
24 pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

25           2.1    Reformulation Option. The Covered Products shall be deemed to comply with  
26 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements  
27 for lead if the product contains a lead content less than 0.5 micrograms per serving, per day.

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1           2.2     Warning Alternative. Commencing on the Effective Date, Covered Products that  
2 Defendant ships, sells or offers for sale in California that do not meet the warning exemption  
3 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section  
4 2.3 below no later than Ninety (90) days after the Effective Date. The warning requirements set  
5 forth in paragraph 2.3 below, apply only to Covered Products Defendant manufactures,  
6 distributes, markets, sells or ships for distribution Ninety (90) days after the Effective Date for  
7 sale or use inside the State of California.

8           2.3     Warnings. Where required under Section 2.2 above, Defendant shall provide either  
9 of the Proposition 65 warnings as follows:

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

13           OR

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

16           2.4     Where utilized as an alternative to meeting the reformulation criteria set forth in  
17 Section 2.1, Defendant shall provide the warning language set forth in Section 2.3:

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

26           2.5     The requirements for warnings, set forth in Section 2.3 above are imposed  
27 pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the

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1 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
2 and that they may or may not be appropriate in other circumstances.

3 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE**

4 **§25249.7(b)**

5 With regard to all claims that have been raised or which could be raised with respect to  
6 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant  
7 shall pay a civil penalty of \$6,000.00 pursuant to Health and Safety Code section 25249.7(b), to  
8 be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these  
9 funds remitted to the State of California's Office of Environmental Health Hazard Assessment  
10 and the remaining 25% of the penalty remitted to Kaloustian, as provided by California Health &  
11 Safety Code § 25249.12(d) and the instructions directly below.

12 Defendant shall issue two separate checks for the penalty payment: (a) one check made  
13 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
14 the total penalty (i.e., \$4,500.00 and (b) one check in an amount representing 25% of the total  
15 penalty (i.e., \$1,500.00 made payable directly to Kaloustian. Defendant shall mail these  
16 payments within ten (10) business days following the Execution Date, to be held in trust by  
17 Kaloustian's counsel, until the Effective Date, at which time such payments shall be mailed to the  
18 following addresses respectively:

19 Proposition 65 Settlement Coordinator  
20 California Department of Justice  
21 1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

22 Ms. Tamar Kaloustian  
23 C/O Vaché Thomassian, Esq., MIA  
KJT LAW GROUP, LLP  
24 230 N. Maryland Ave. Suite 306  
Glendale, CA 91206

25 **4. REIMBURSEMENT OF FEES AND COSTS**

26 The parties reached an accord on the compensation due to Kaloustian and his counsel  
27 under the private attorney general doctrine and principles of contract law. Under these legal  
28 principles, Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result

1 of investigating, bringing this matter to Defendant attention, and negotiating a settlement in the  
2 public interest. Defendant shall pay Kaloustian's counsel \$39,000.00 for all attorneys' fees,  
3 expert and investigation fees, and related costs associated with this matter and the Notice.  
4 Defendant shall mail a check payable to "KJT Law Group," via certified mail to the address for  
5 Kaloustian's counsel referenced above within ten (10) business days following the Execution  
6 Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and  
7 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  
12 claims against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors,  
13 successors and assigns (collectively "Releasees") and each of its distributors, wholesalers,  
14 licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers,  
15 users (collectively "Downstream Releasees") and their respective officers, directors, attorneys,  
16 representatives, shareholders, agents, and employees, and sister and parent entities for injunctive  
17 relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts,  
18 and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of  
19 Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable  
20 warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* about  
21 exposure to lead arising from the sale, distribution, or use of any Covered Products sold,  
22 manufactured or distributed by Defendant, Releasees or Downstream Releasees in California  
23 prior to Ninety (90) days after the Effective Date. Compliance with the Consent Judgment by  
24 Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant,  
25 Releasee, or Downstream Releasee with respect to the presence of lead in the Covered Products.  
26 Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice by this  
27 Consent Judgment.

1 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,  
2 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
4 action and releases any other Claims that she could make against Defendant, Releasees or  
5 Downstream Releasees arising up to Ninety (90) days after the Effective Date with respect to  
6 violations of Proposition 65 and/or Business and Professions Code §17200 based upon the  
7 Covered Products. With respect to the foregoing waivers and releases in this paragraph,  
8 Kaloustian hereby specifically waives any and all rights and benefits which she now has, or in the  
9 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil  
10 Code, which provides as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
12 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
13 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
14 HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
15 SETTLEMENT WITH THE DEBTOR.

14 **5.2 Defendant's Release of Kaloustian**

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

20 **6. SEVERABILITY AND MERGER**

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

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

1           7.       GOVERNING LAW

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

10           8.       NOTICES

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

15           For ZB Importing, Inc.:  
16           Brenda K. Radmacher  
17           Sonia J. Taylor  
18           GORDON REES SCULLY MANSUKHANI, LLP  
19           633 West Fifth St 52nd Floor  
20           Los Angeles, CA 90071  
21           Phone: (818) 576-5000  
22           Fax: (213) 680-4470

23           and

24           For Kaloustian:  
25           Vaché Thomassian, Esq., MIA  
26           KJT LAW GROUP, LLP  
27           230 N. Maryland Ave. Suite 306  
28           Glendale, CA 91206  
              Phone: (818) 507-8528  
              Fax: (818) 507-8588

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

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2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 document and certifies that he or she is fully authorized by the Party he or she represents to  
5 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.  
6 Except as explicitly provided herein each Party is to bear its own fees and costs.  
7

8 **IT IS HEREBY SO STIPULATED:**

9 **AGREED TO:**

**AGREED TO:**

10  
11 Date: August 10, 2017  
12 By:   
13 TAMAR KALOUSTIAN

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
On Behalf of:  
ZB IMPORTING, INC.

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16 **APPROVED AS TO FORM:**

17  
18 Dated: June \_\_\_\_\_, 2017

**GORDON REES SCULLY MANSUKHANI,  
LLP**

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20  
21 By: \_\_\_\_\_  
22 Brenda K. Radmacher, Esq.  
23 Sonia J. Taylor, Esq.  
24 Attorneys for Defendant,  
25 ZB IMPORTING, INC.  
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**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.

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

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

Date: 8-15-17

By: \_\_\_\_\_

By: 

TAMAR KALOUSTIAN

On Behalf of:  
ZB IMPORTING, INC.

**APPROVED AS TO FORM:**

Dated: August 11, 2017

GORDON REES SCULLY MANSUKHANI, LLP

By: 

Brenda K. Radmacher, Esq.  
Sonia J. Taylor, Esq.  
Attorneys for Defendant,  
ZB IMPORTING, INC.


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**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

Date: August 10, 2017  
By:   
TAMAR KALOUSTIAN

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
On Behalf of:  
ZB IMPORTING, INC.

**APPROVED AS TO FORM:**

Dated: June \_\_\_\_\_, 2017


GORDON REES SCULLY MANSUKHANI,  
LLP

By: \_\_\_\_\_  
Brenda K. Radmacher, Esq.  
Sonia J. Taylor, Esq.  
Attorneys for Defendant,  
ZB IMPORTING, INC.

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*Agreed*  
Dated: June 11, 2017

KJT LAW GROUP, LLP



By: \_\_\_\_\_  
Vahe Thomassian, Esq., MIA  
Attorneys for Defendant,  
ZB IMPORTING, INC.