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16 **SUPERIOR COURT OF CALIFORNIA**  
17 **COUNTY OF LOS ANGELES**

18 TAMAR KALOUSTIAN, in the public interest,

19 Plaintiff,

20 v.

21 ORGANIC INDIA USA, LLC; and DOES 1  
22 through 100, inclusive,

23 Defendants.

Case No. BC698375

24 **STIPULATION RE ENTRY OF**  
25 **CONSENT JUDGMENT AS TO**  
26 **ORGANIC INDIA USA, LLC**

Complaint Filed: March 19, 2018

Department 74  
Hon. Michelle Williams Court

27 **1. INTRODUCTION**

28 **1.1 The Parties**

This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is hereby entered into by and between Tamar Kaloustian, acting on behalf of the public interest (hereinafter "Kaloustian") and ORGANIC INDIA USA, LLC, (hereinafter "ORGANIC INDIA" or "Defendant"). Collectively Kaloustian and ORGANIC INDIA shall be referred to hereafter as the "Parties" and each of them as a "Party." Kaloustian is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Defendant

employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

**1.2 Allegations and Representations**

Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in California, Organic Whole Husk Psyllium, which he alleges contains lead and arsenic, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm and arsenic is listed as a chemical known to the State of California to cause cancer.

**1.3 Covered Product Description**

The product that is covered by this Consent Judgment is defined as "Organic Whole Husk Psyllium." All such items shall be referred to herein as the "Covered Product[s]."

**1.4 Notices of Violation/Complaint**

1.4.1 On or about January 11, 2018, Kaloustian served ORGANIC INDIA and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) ("Notice"), alleging that ORGANIC INDIA was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to lead and arsenic. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Kaloustian.

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

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

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter, that

1 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,  
2 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
3 claims which were or could have been raised in the Complaint based on the facts alleged therein  
4 and/or in the Notice.

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

11 **1.6 Effective Date**

12 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this  
13 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped on  
14 or before the "Effective Date" or within one hundred eighty (180) days thereafter ("Compliance  
15 Date") are deemed to be covered by the waiver and release provisions of Section 5.1 of this  
16 Consent Judgment and shall not be subject to any future enforcement action. The reformulation  
17 and warning requirements of Sections 2 shall apply to any Covered Products shipped later than 180  
18 days after the Effective Date.

19 **2. INJUNCTIVE RELIEF: WARNINGS, TESTING AND REFORMULATION**

20 **2.1 Injunction/Reformulation:** Commencing on or before the Compliance Date,  
21 Defendant shall not directly ship, sell, or offer for sale a Covered Product in California or sell a  
22 Covered Product to a distributor that Defendant knows will sell the Covered Product in California  
23 (collectively, "Distribute[s] in California") unless the Daily Exposure Level (as defined in Section  
24 2.1.1) of the Covered Product is no more than 0.5 micrograms of lead per day and/or 10.0  
25 micrograms of arsenic per day. The Daily Exposure Level shall be calculated pursuant to Section  
26 2.1.1, excluding allowances pursuant to Section 2.2, as validated by the quality control methodology  
27 described in Section 2.3. The prohibition in this section shall not apply to a Covered Product that  
28 contains a Proposition 65 compliant warning as set forth in Section 2.5.

1           **2.1.1** For purposes of this Consent Judgment, the “Daily Exposure Level” shall be  
2 measured in micrograms, and shall be calculated using the following formula: micrograms of lead  
3 or arsenic per gram of product, multiplied by grams of product per serving (using the largest serving  
4 size appearing on the product label), multiplied by servings of the product per day (using the largest  
5 number of servings in any recommended dosage appearing on the product label), which equals  
6 micrograms of lead or arsenic exposure per day.

7           **2.2 Naturally Occurring Allowance:** The Daily Exposure Level shall not include the  
8 amount of a chemical that is a natural constituent of a food, or if it is present in a food solely as a  
9 result of absorption or accumulation of the chemical, the level which is naturally present in the  
10 environment in which the food is raised, or grown, or obtained. In the event that a dispute arises  
11 with respect to compliance with the terms of this Consent Judgment as to any contribution from  
12 naturally occurring lead or arsenic levels under this section, the Parties shall first meet and confer to  
13 attempt to resolve the dispute.

14           **2.3 Quality Control Methodology and Testing**

15           **2.3.1** Beginning on or before the Compliance Date, Defendant shall have the  
16 Covered Product tested for lead and arsenic content at least once a year for a minimum of three  
17 consecutive years by arranging for the testing of three randomly selected samples of each Covered  
18 Product that Defendant intends to Distribute in California. If the testing conducted pursuant to this  
19 section demonstrates that no warning is required for the Covered Product during the three  
20 consecutive years, the testing requirements set forth herein will no longer be required as to the  
21 Covered Product. Defendant shall retain all test results for five years from the date of each test.

22           **2.3.2** Testing shall be performed using Inductively Coupled Plasma-Mass  
23 Spectrometry (“IC-MS”) or any other testing method subsequently agreed to in writing by the  
24 Parties.

25           **2.3.3** All testing pursuant to this Agreement shall be performed by an independent  
26 third-party laboratory certified by the National Accreditation Board for Testing and Calibration  
27 Laboratories (NABL), Department of Science & Technology, India.

28           **2.4 Warning Alternative** Commencing on or before the Compliance Date, Covered

1 Products that Defendant Distributes in California that do not meet the standard set forth in  
2 Sections 2.1 and 2.2 above shall be accompanied by a warning as described in Section 2.5 below.  
3 The warning requirements set forth in Section 2.5 below apply only to Covered Products  
4 Defendant Distributes in California after the Compliance Date.

5       **2.5 Warnings** Where required under Section 2.4 above, Defendant shall provide the  
6 following Proposition 65 warning ("Warning"):

7       **WARNING:** [Cancer and] Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)  
8 Defendant shall use the bracketed phrase in the Warning only if Defendant has reason to believe  
9 that the "Daily Exposure Level" for lead is greater than 15 micrograms of lead, or the "Daily  
10 Exposure Level" for arsenic is more than that permitted in Section 2.1, as determined pursuant to  
11 the quality control methodology set forth in Section 2.3, or if Defendant has reason to believe that  
12 another Proposition 65 chemical is present that may require a cancer warning. A symbol consisting  
13 of a black exclamation point in a yellow equilateral triangle with a bold black outline ("Symbol")  
14 shall be placed immediately to the left of the text of the Warning. If the label is not printed using  
15 the color yellow, the Symbol may be printed in black and white. The Symbol shall be in a size no  
16 smaller than the height of the word "**WARNING**". The Warning shall be securely affixed to or  
17 printed upon the immediate container, box or wrapper of each Covered Product, be set off from  
18 other surrounding information, and enclosed in a box. The entire Warning shall be in a type size  
19 no smaller than the largest type size used for other consumer information on the product and, in no  
20 case, shall the Warning appear in a type size smaller than 6-point type.

21       In addition to the Warning label set forth above, for any Covered Product sold over the  
22 internet by Defendant on its website, the Warning shall appear on the checkout page when a  
23 California delivery address is indicated for any purchase of any Covered Product prior to the  
24 completion of purchase. An asterisk or other identifying method may be utilized to identify which  
25 products on the checkout page are subject to the Warning. Alternatively, the word "**WARNING**"  
26 may be displayed on the product display page with a hyperlink to the Warning.

27       The Warning shall be at least the same size as the largest of any other health or safety  
28 warnings also appearing on Defendant's website or on the label or container of Defendant's

1 product packaging and the word "WARNING" shall be in all capital letters and in bold print. In  
2 no case shall the Warning appear in a type size smaller than 6 point type. No other statements  
3 about Proposition 65 or lead may accompany the warning.

4 Defendant must display the above Warning with such conspicuousness, as compared with  
5 other words, statements, design of the label, container, or on its website, as applicable, to render the  
6 Warning likely to be read and understood by an ordinary individual under customary conditions of  
7 purchase or use of the product. Where a sign or label used to provide a warning includes  
8 consumer information about a product in a language other than English, the warning must also be  
9 provided in that language in addition to English.

10 2.6 The requirements for warnings, set forth in Section 2.5 above are imposed pursuant  
11 to the terms of this Settlement Agreement. The Parties recognize that these are not the  
12 exclusive methods of providing a warning under Proposition 65 and its implementing regulations  
13 and that they may or may not be appropriate in other circumstances.

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

15 With regard to all claims that have been raised or which could be raised with respect to  
16 failure to warn pursuant to Proposition 65 with regard to lead and arsenic in the Covered Product,  
17 Defendant shall pay a civil penalty of \$10,000.00 pursuant to Health and Safety Code section  
18 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with  
19 75% of these funds remitted to the State of California's Office of Environmental Health Hazard  
20 Assessment and the remaining 25% of the penalty remitted to Kaloustian, as provided by California  
21 Health & Safety Code § 25249.12(d) and the instructions directly below.

22 Defendant shall issue two separate checks for the penalty payment: (a) one check made  
23 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of  
24 the total penalty (i.e., \$7,500.00; and (b) one check in an amount representing 25% of the total  
25 penalty (i.e., \$2,500.00 made payable directly to Kaloustian. Defendant shall mail these payments  
26 within ten (10) business days following the Effective Date to the following addresses respectively:  
27  
28

1 Proposition 65 Settlement Coordinator  
2 California Department of Justice  
3 1515 Clay Street, 20<sup>th</sup> Floor  
4 Oakland, CA 94612-1413

5 Ms. Tamar Kaloustian  
6 C/O Vaché Thomassian, Esq., MIA  
7 KJT LAW GROUP, LLP  
8 230 N. Maryland Ave. Suite 306  
9 Glendale, CA 91206

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

11 The parties reached an accord on the compensation due to Kaloustian and his counsel  
12 under the private attorney general doctrine and principles of contract law. Under these legal  
13 principles, Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of  
14 investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public  
15 interest. Defendant shall pay Kaloustian's counsel \$45,000.00 for all attorneys' fees, expert and  
16 investigation fees, and related costs associated with this matter and the Notice. Defendant shall mail  
17 a check payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel  
18 referenced above within ten (10) business days following the Effective Date. Other than the  
19 payment required hereunder, each side is to bear its own attorneys' fees and costs.

20 **5. RELEASE OF ALL CLAIMS**

21 **5.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

22 Kaloustian, on behalf of herself *and on behalf of the public interest*, hereby waives and  
23 releases any and all claims against Defendant its parent companies, corporate affiliates,  
24 subsidiaries, predecessors, successors and assigns, and each of their respective officers, directors,  
25 attorneys, representatives, shareholders, agents, and employees (collectively "Releasees") and each  
26 of the Releasees' distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees,  
27 dealers, customers, owners, purchasers, users (collectively "Downstream Releasees") and the  
28 Downstream Releasees' respective officers, directors, attorneys, representatives, shareholders,  
agents, and employees, and sister and parent entities for injunctive relief or damages, penalties,  
fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or  
any other sum incurred or claimed from the handling, use, or consumption of the Covered

1 Products as to any alleged failure of Defendant, Releasees or Downstream Releasees to provide  
2 clear, accurate and reasonable warnings under Proposition 65 and/or under Business and  
3 Professions Code §17200, *et seq.* about exposure to lead and arsenic arising from the sale,  
4 distribution, or use of any Covered Products sold, manufactured or distributed by Defendant,  
5 Releasees or Downstream Releasees in California prior to the Compliance Date. Compliance with  
6 the Consent Judgment by Defendant shall constitute compliance with Proposition 65 by that  
7 Defendant, the Releasees, or Downstream Releasees with respect to the presence of lead and  
8 arsenic in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are  
9 resolved with prejudice by this Consent Judgment.

10 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,  
11 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
12 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action  
13 and releases any other Claims that she could make against Defendant, Releasees or Downstream  
14 Releasees with respect to the Covered Product, including, but not limited to, violations of  
15 Proposition 65 and/or Business and Professions Code §17200. With respect to the foregoing  
16 waivers and releases in this paragraph, Kaloustian hereby specifically waives any and all rights and  
17 benefits which she now has, or in the future may have, conferred by virtue of the provisions of  
18 Section 1542 of the California Civil Code, which provides as follows:

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

## 24 **5.2 Defendant's Release of Kaloustian**

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



1           **6.     SEVERABILITY AND MERGER**

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

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

9           **7.     GOVERNING LAW**

10          The terms of this Consent Judgment shall be governed by the laws of the State of California  
11 and apply within the State of California. Compliance with the terms of this Consent Judgment  
12 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to  
13 alleged exposures to lead and arsenic arising from the Covered Product. In the event that  
14 Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to  
15 the Covered Product, then Defendant shall provide written notice to Kaloustian of any asserted  
16 change in the law, and shall have no further obligations pursuant to this Consent Judgment with  
17 respect to, and to the extent that, the Covered Products are so affected.

18          **8.     NOTICES**

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

23               For ORGANIC INDIA USA, LLC:

24               Brent E. Johnson  
25               Holland & Hart LLP  
26               222 South Main Street  
27               Suite 2200  
28               Salt Lake City, Utah 84101  
                Phone: (801) 799-5807

and

1 For Kaloustian:

2 Vaché Thomassian, Esq.  
3 KJT LAW GROUP, LLP  
4 230 N. Maryland Ave. Suite 306  
5 Glendale, CA 91206  
6 Phone: (818) 507-8528  
7 Fax: (818) 507-8588

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

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

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

14 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL**

15 Kaloustian agrees to comply with the requirements set forth in California Health & Safety  
16 Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and  
17 Defendants shall support approval of such Motion.

18 This Consent Judgment shall not be effective until it is approved and entered by the Court  
19 and shall be null and void if, for any reason, it is not approved and entered by the Court within  
20 twelve months after it has been fully executed by the Parties.

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only by further stipulation of the Parties and the  
23 approval of the Court or upon the granting of a motion brought to the Court by either Party.

24 **12. ATTORNEY'S FEES**

25 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
26 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless  
27 the unsuccessful party has acted with substantial justification. For purposes of this Consent  
28 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.

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

9/11/2018

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

By:   
TAMAR KALOUSTIAN

**AGREED TO:**

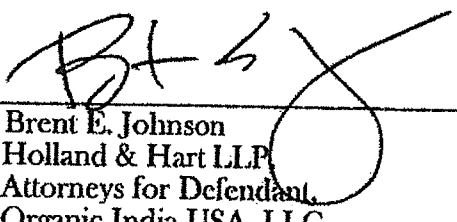
Date: 10 SEPT 2018

By:   
On Behalf of:  
ORGANIC INDIA USA, LLC

**APPROVED AS TO FORM:**

Dated: September 10, 2018

HOLLAND & HART LLP

By:   
Brent E. Johnson  
Holland & Hart LLP  
Attorneys for Defendant,  
Organic India USA, LLC

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Dated: September 11, 2018

KJT LAW GROUP, LLP

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

Vaché Thomassian, Esq.  
Attorneys for Plaintiff,  
Tamar Kaloustian

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