

**SETTLEMENT AGREEMENT
BETWEEN TAMAR KALOUSTIAN AND VITAMIN SHOPPE, INC.**

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Tamar Kaloustian ("Kaloustian") and Vitamin Shoppe Industries Inc. ("Vitamin Shoppe"). Together, Kaloustian and Vitamin Shoppe are collectively referred to as the "Parties." Kaloustian is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Kaloustian alleges that Vitamin Shoppe is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. ("Proposition 65").

1.2 General Allegations. Kaloustian alleges that Vitamin Shoppe has exposed individuals to the chemical lead from its sales of Psyllium Whole Husk Powder without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 Product Description. The products covered by this Settlement Agreement are Vitamin Shoppe brand Psyllium Whole Husk Powder (the "Products") that have been imported, distributed, offered for sale and/or sold in California by Vitamin Shoppe, that contain lead.

1.4 Notice of Violation. On February 16 2018, Kaloustian served Vitamin Shoppe, and various public enforcement agencies with a document entitled "60-Day Notice of Violations: California Health & Safety Code § 25249.6, et seq." (the "Notice"). The Notice provided Vitamin Shoppe and such others, including public enforcers, with notice that alleged that Vitamin Shoppe was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to lead.

1.5 No Admission. Vitamin Shoppe denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Vitamin Shoppe of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Vitamin Shoppe of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Vitamin Shoppe. However, § 1.5 of this Agreement shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Vitamin Shoppe maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that Vitamin Shoppe directly manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to § 2.3 below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in § 2.3 shall not apply to any Reformulated Product.

2.2 Reformulation Standard. "Reformulated Products" shall mean Products that contain concentrations of lead less than or equal to 0.5 micrograms per serving, per day, when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3051M and EPA6020 or other methodology utilized by federal or state government agencies for the purpose of determining the lead content in food.

2.3 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this § 2.3 must be provided for all Products that Vitamin Shoppe manufactures, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Vitamin Shoppe to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. A Clear and Reasonable Warning is a Warning that complies with Proposition 65 regulations for food in effect as of the Effective Date.

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

In settlement of all the claims referred to in this Settlement Agreement, Vitamin Shoppe shall pay \$1,500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c) (1) and (d), with 75% of the funds remitted to OEHHA and the remaining 25% of the penalty remitted to Kaloustian. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.1 Civil Penalty. Within forty-five (45) days of the Effective Date, Vitamin Shoppe shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,125.00; and to (b) "KJT Law Group, LLP, in Trust for Tamar Kaloustian" in the amount of \$375.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i.) All payments owed to Kaloustian, pursuant to § 3.1 shall be delivered to the following payment address:

Caspar Jivalagian, Esq.
KJT Law Group, LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206

(ii.) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) **Copy of Payments to OEHHHA.** Vitamin Shoppe agrees to provide Kaloustian's counsel with a copy of the checks payable to OEHHHA, simultaneous with its penalty payments to Kaloustian, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHHA.

(c) **Tax Documentation.** Vitamin Shoppe agrees to provide a completed IRS 1099 for its payments to, and Kaloustian agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i.) "Tamar Kaloustian" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii.) "KJT Law Group, LLP" (EIN: 46-5637353) at the address provided in Section 3.2(a)(i); and

(iii.) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Kaloustian and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Kaloustian and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Vitamin Shoppe shall reimburse Kaloustian's counsel for fees and costs incurred as a result of investigating and bringing this matter to Vitamin Shoppe's attention, and negotiating a settlement in the public interest. Within forty-five (45) days of the Effective Date, Vitamin Shoppe shall issue a check payable to "KJT Law Group, LLP" in the amount of \$6,000.00 for delivery to the address identified in § 3.2(a) (i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Vitamin Shoppe, Inc. and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Kaloustian, acting on her own behalf, and Vitamin Shoppe, of any violation of Proposition 65 that was or could have been asserted by Kaloustian or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged exposures to lead contained in the Products, and Releasers hereby release any such claims against Vitamin Shoppe, and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, partners, members, managers, agents, employees, representatives, attorneys, successors and assignees of each of them, and each entity to whom Vitamin Shoppe directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including, but not limited to Vitamin Shoppe, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees, and the shareholders, directors, officers, partners, members, managers, agents, representatives, employees, attorney, successors and assigns of each of them (collectively, the "Releasees"), from all claims for violations

of Proposition 65 through the Effective Date based on their failure to warn about alleged exposure to the chemical lead from use of the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Kaloustian, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to lead in the Products.

5.2 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Kaloustian on behalf of herself only, on one hand, and Vitamin Shoppe, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

Kaloustian acknowledges and understands the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4. Deemed Compliance with Proposition 65. Compliance by Vitamin Shoppe with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead from use of the Products.

5.5. Public Benefit. It is Vitamin Shoppe's understanding that the commitments it has agreed to herein, and actions to be taken by Vitamin Shoppe under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Vitamin Shoppe that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Vitamin Shoppe failure to provide a warning concerning exposure to lead prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Vitamin Shoppe is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products,

Vitamin Shoppe shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

8. NOTICES

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

For Vitamin Shoppe Industries Inc.:

Carlos Lopez, Esq.
300 Harmon Meadow Boulevard, 2nd Floor
Secaucus, NJ 07094

For Tamar Kaloustian:

Caspar Jivalagian, Esq.
KJT Law Group, LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206

Either 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.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Kaloustian agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

5/22/2019

Date: _____

Date: _____

5/31/19

By: _____

DocuSigned by:
Tamar Kalouslian
ECCC8C95-A383-4C3F-A4C8-6E1D6569A006

By: _____

Vitamin Shoppe, Inc.