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

13 TAMAR KALOUSTIAN, in the public interest,
14 Plaintiff,

15 v.

16 RITE-AID CORPORATION, a Pennsylvania
17 Corporation; and DOES 1 through 100, inclusive,
18 Defendants,

Case No.: BC720294

**STIPULATION RE ENTRY OF CONSENT
JUDGMENT AS TO RITE-AID
CORPORATION**

Complaint Filed: August 31, 2018

Department 12
Hon. Barbara A. Meiers

19 **1. INTRODUCTION**

20 **1.1 The Parties**

21 This Stipulation and [Proposed] Order Re Consent Judgment ("Consent Judgment") is
22 hereby entered into by and between Tamar Kaloustian, acting on behalf of the public interest
23 (hereinafter "Kaloustian") and Rite-Aid Corporation and its supplier Raritan Pharmaceuticals,
24 (hereinafter "Rite-Aid" or "Defendant"). Collectively Kaloustian and Rite-Aid shall be referred to
25 hereafter as the "Parties" and each of them as a "Party." Kaloustian is an individual residing in
26 California who seeks to promote awareness of exposures to toxic chemicals and improve human
27 health by reducing or eliminating hazardous substances contained in consumer products. Defendant
28 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 **1.2 Allegations and Representations**

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

7 **1.3 Covered Products Description**

8 The products that are covered by this Consent Judgment are defined as "products containing
9 psyllium husk powder." All such items shall be referred to herein as the "Covered Products."

10 **1.4 Notices of Violation/Complaint**

11 1.4.1 On or about February 16, 2018, Kaloustian served Rite-Aid and various public
12 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
13 Safety Code §25249.7(d) (the "Notice"), alleging that Rite-Aid was in violation of Proposition 65 for
14 failing to warn consumers and customers that the Covered Products exposed users in California to
15 lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days
16 plus service time relative to the provision of the Notice to them by Kaloustian.

17 1.4.2 On August 31, 2018, Kaloustian, acting in the interest of the general public in the
18 State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations
19 of Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of
20 exposures to lead contained in Covered Products manufactured, distributed, or sold by 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, that
24 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

28 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any

1 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
2 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
3 or violation of law, such being specifically denied by Defendant. However, this section shall not
4 diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
5 Consent Judgment.

6 **1.6 Effective Date**

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

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

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

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

24 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with
25 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for
26 lead if the product contains a lead content less than 0.5 micrograms per serving, per day.

27 **2.2 Warning Alternative.** Commencing on the Effective Date, Covered Products that
28 Defendant ships, sells or offers for sale in California that do not meet the warning exemption

1 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3
2 below no later than Ninety (90) days after the Effective Date. The warning requirements set forth in
3 paragraph 2.3 below, apply only to Covered Products Defendant manufactures, distributes, markets,
4 sells or ships for distribution Ninety (90) days after the Effective Date for sale or use inside the State
5 of California.

6 2.3 Warnings. Where required under Section 2.2 above, Defendant shall provide one of
7 the following Proposition 65 warnings:

8 **WARNING: This product can expose you to chemicals including lead, which is known to the**
9 **State of California to cause cancer and birth defects or other reproductive harm. For more**
10 **information go to www.P65Warnings.ca.gov.**

11 OR

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

14 OR

15 **WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.**

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

25 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant
26 to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive
27 methods of providing a warning under Proposition 65 and its implementing regulations and that they
28 may or may not be appropriate in other circumstances.

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

2 With regard to all claims that have been raised or which could be raised with respect to failure
3 to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay
4 a civil penalty of \$7,800.00 pursuant to Health and Safety Code section 25249.7(b), to be
5 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
6 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
7 remaining 25% of the penalty remitted to Kaloustian, as provided by California Health & Safety Code
8 § 25249.12(d) and the instructions directly below.

9 Defendant shall issue two separate checks for the penalty payment: (a) one check made
10 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
11 total penalty (i.e., \$5,850.00 and (b) one check in an amount representing 25% of the total penalty
12 (i.e., \$1,950.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten
13 (10) business days following the Execution Date, to be held in trust by Kaloustian's counsel, until the
14 Effective Date, at which time such payments shall be mailed to the following addresses respectively:

15 Proposition 65 Settlement Coordinator
16 California Department of Justice
17 1515 Clay Street, 20th Floor
 Oakland, CA 94612-1413

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

21 4. REIMBURSEMENT OF FEES AND COSTS

22 The parties reached an accord on the compensation due to Kaloustian and his counsel under
23 the private attorney general doctrine and principles of contract law. Under these legal principles,
24 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,
25 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.
26 Defendant shall pay Kaloustian's counsel \$44,700.00 for all attorneys' fees, expert and investigation
27 fees, and related costs associated with this matter and the Notice. Defendant shall mail a check
28 payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced
above within ten (10) business days following the Execution Date. Other than the payment required

1 hereunder, each side is to bear its own attorneys' fees and costs.

2 5. RELEASE OF ALL CLAIMS

3 5.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees

4 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on
5 behalf of herself and on behalf of the public interest, hereby waives and releases any and all claims
6 against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors
7 and assigns (collectively "Releasees") and each of its distributors, wholesalers, suppliers, licensors,
8 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, including
9 Raritan Pharmaceuticals (collectively "Downstream Releasees") and their respective officers,
10 directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent
11 entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of
12 attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged
13 failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable
14 warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* about
15 exposure to lead arising from the sale, distribution, or use of any Covered Products sold,
16 manufactured or distributed by Defendant, Releasees or Downstream Releasees in California prior to
17 Ninety (90) days after the Effective Date. Compliance with the Consent Judgment by Defendant or a
18 Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or
19 Downstream Releasee with respect to the presence of lead in the Covered Products. Plaintiff agrees
20 that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.
21 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
22 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
23 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
24 releases any other Claims that she could make against Defendant, Releasees or Downstream
25 Releasees, including Raritan Pharmaceuticals, arising up to Ninety (90) days after the Effective Date
26 with respect to violations of Proposition 65 and/or Business and Professions Code §17200 based
27 upon the Covered Products. With respect to the foregoing waivers and releases in this paragraph,
28 Kaloustian hereby specifically waives any and all rights and benefits which she now has, or in the

1 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
2 which provides as follows:

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

8 **5.2 Defendant's Release of Kaloustian**

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

14 **6. SEVERABILITY AND MERGER**

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

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

22 **7. GOVERNING LAW**

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

1 **8. NOTICES**

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

6 For Rite-Aid Corporation and Raritan Pharmaceuticals:

7 Elizabeth V. McNulty
8 TAYLOR ANDERSON, LLP
9 2 Park Plaza, Suite 200
 Irvine, California 92614
 Phone: (949) 390-6500
 Fax: (949) 390-6510

10 and

11 For Kaloustian:

12 Caspar Jivalagian, Esq.
13 KJT LAW GROUP, LLP
 230 N. Maryland Avenue, Suite 306
 Glendale, CA 91206
14 Phone: (818) 507-8528
 Fax: (818) 507-8588

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

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

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

21 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(l)/COURT**
22 **APPROVAL**

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

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

1 **11. MODIFICATION**

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

4 **12. ATTORNEY'S FEES**

5 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
7 the unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment,
8 the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of
9 1986, Code of Civil Procedure Section 2016, et seq.

10 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
11 pursuant to law.

12 **13. RETENTION OF JURISDICTION**

13 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
14 Judgment.

15 **14. AUTHORIZATION**

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

21
22 **IT IS HEREBY SO STIPULATED:**

23 **AGREED TO:**

24 9/23/2019
25 Date: _____

26 By: _____
27 DocuSigned by:
28 TAMAR KALOUSTIAN
 EBCDBE3BF02A457...

AGREED TO:

 Date: Emily H. Edwards
 By: Emily H. Edwards
 On Behalf of:
 RITE-AID CORPORATION

1 APPROVED AS TO FORM:
2

3 Dated: Sept. 18, 2019

TAYLOR ANDERSON, LLP

4
5 By: Elizabeth V. McNulty
6 Elizabeth V. McNulty, Esq.
7 Attorneys for Defendant,
8 RITE-AID CORPORATION

9 Dated: Sept 19, 2019

KIT LAW GROUP, LLP

10
11 By: Casper Hvalagian
12 Casper Hvalagian, Esq.
13 Attorneys for Plaintiff,
14 TAMAR KALOUSTIAN