

Caspar Jivalagian, Esq., State Bar No.: 282818  
Vache Thomassian, Esq., State Bar No.: 289053  
**KJT LAW GROUP, LLP**  
230 N. Maryland Avenue, Suite 306  
Glendale, California 91206  
Telephone: 1-818-507-8525  
Facsimile: 1-818-507-8588

Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

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

TAMAR KALOUSTIAN, in the public interest,

Plaintiff,

v.

GUARDIAN DRUG COMPANY, INC., a New  
Jersey Corporation.; and DOES 1 through 100,  
inclusive,

Defendants.

Civil Action No.: 19STCV03172

**STIPULATION RE ENTRY OF CONSENT  
JUDGMENT AS TO GUARDIAN DRUG  
COMPANY**

Complaint Filed: January 30, 2019

Department 53  
Hon. Robert B. Broadbelt

**1. INTRODUCTION**  
**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 Guardian Drug Company, (hereinafter “Guardian Drug” or “Defendant”). Collectively Kaloustian and Guardian Drug 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, Natural Psyllium Fiber, which contains lead exceeding the Proposition 65 safe harbor level, 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.

**1.3 Covered Products Description**

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

**1.4 Notices of Violation/Complaint**

A. 1.4.1 On or about February 16, 2018, Kaloustian served Guardian Drug and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Guardian Drug was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to lead. 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 January 30, 2019, Kaloustian, acting in the interest of the general public in the State of California, filed a complaint against Defendant 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 contained in Covered Products 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, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter, and oversee

1 the enforcement of this Consent Judgment as a full and final binding resolution of all claims  
2 which were or could have been raised in the Complaint and of all claims which could have been  
3 raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged  
4 therein and/or in the Notice, or arising therefrom or related thereto.

5 This Consent Judgment resolves claims that are denied and disputed. The Parties enter  
6 into this Consent Judgment pursuant to a full and final settlement of any and all claims between  
7 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment,  
8 nor compliance with its terms, shall constitute or be construed as an admission of any fact,  
9 finding, issue of law, or violation of law, or of fault, wrongdoing, or liability by Guardian Drug,  
10 its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or  
11 admitted as evidence in any administrative or judicial proceeding or litigation in any court,  
12 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or  
13 impair any right, remedy, argument, or defense the Parties may have in any other or future legal  
14 proceeding, except as expressly provided in this Consent Judgment.

15 **1.6 Effective Date**

16 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this  
17 Consent Judgment is entered as a judgment of the Court. All Covered Products already shipped  
18 on or before the “Effective Date” or within 90 days thereafter are deemed to be covered by the  
19 waiver and release provisions of Paragraph 5.1 of this Consent Judgment and shall not be subject  
20 to any future enforcement action by Kaloustian hereunder. The reformulation or warning  
21 requirements of Paragraphs 2.1 and 2.2 shall apply to any Covered Product shipped later than 90  
22 days after the Effective Date.

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

24 Commencing ninety (90) days after the Effective Date, Defendant shall not sell, offer for  
25 sale in California, or ship for sale in California a Covered Product unless such Covered Product:  
26 (a) is reformulated pursuant to Section 2.1; or (b) Defendant provides one of the Proposition 65  
27 compliant warning as set forth in Section 2.2 or any such warning as may be adopted in the future  
28 under Proposition 65.

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 Daily Exposure Level (as defined herein) for the Covered Product contains a lead content that is no more than 0.5 micrograms per day (hereinafter referred to as “Reformulated Product”). The “Daily Exposure Level” shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving (using the largest serving size appearing on the product label), multiplied by the servings of the product per day (using the largest number of servings in any recommended dosage appearing on the product label), which equals micrograms of lead exposure per day. The Daily Exposure Level, however, shall not include the amount of lead that can be proven to be a natural constituent of a food, or can be proven is present in the food solely as a result of absorption or accumulation of lead which is naturally present in the environment in which the food is raised, or grown, or obtained

2.2 Warning Options. Commencing ninety (90) days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this Section 2.2 must be provided for all Covered Product that is not a Reformulated Product. Based on the Daily Exposure Level of lead present in a Covered Product, as calculated pursuant to Section 2.1, Defendant shall provide either of the Proposition 65 warnings set forth in 2.2.1 and 2.2.2 which the Parties agree shall constitute compliance with Proposition 65, or any other current Proposition 65 warning or future warning as may be adopted under Proposition 65. The warning shall be displayed on a label, labelling, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2.2.1 Daily Exposure Level Greater Than 15 ug/day: If the lead Daily Exposure Level of a Covered Product, as determined pursuant to the requirements set forth in Section 2.2, is greater than 15 ug/day, then the either of the following Proposition 65 warnings shall be provided:

**WARNING:** Consuming 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:** Cancer and Reproductive Harm -

[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

2.2.2 Daily Exposure Level Less Than 15 ug/day but Greater Than 0.5 ug/day:

If the lead Daily Exposure Level of a Covered Product, as determined pursuant to the requirements set forth in Section 2.2, is less than 15 ug/day but greater than 0.5 ug/day, then either of the following Proposition 65 warnings shall be provided:

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

OR



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

### 3. SETTLEMENT PAYMENT

Within fifteen (15) business days following the Effective Date, Defendant shall pay a total of ninety-five thousand dollars and zero cents (\$95,000) in full and complete settlement of any and all claims for civil penalties, damages, attorney's fees, expert fees or any other claim for costs, expenses or monetary relief of any kind for claims that were or could have been asserted in the Notice or Complaint. The payment shall be made as follows:

3.1 Payments Pursuant to Health & Safety Code §25249.7(b).

Defendant shall issue two separate checks totaling \$13,500 for alleged civil penalties 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.

(a) One check made payable to "OEHHA" (tax identification number: 68-0284486) in an

1 amount representing 75% of the total penalty (i.e., \$10,125.00). This check shall be mailed to:

2  
3 Proposition 65 Settlement Coordinator  
4 California Department of Justice  
5 1515 Clay Street, 20<sup>th</sup> Floor  
6 Oakland, CA 94612-1413

7 (b) One check in an amount representing 25% of the total penalty (i.e., \$3,375.00) made  
8 payable directly to Kaloustian. This check shall be mailed to:

9 Ms. Tamar Kaloustian  
10 C/O Caspar Jivalagian, Esq.  
11 KJT LAW GROUP, LLP  
12 230 N. Maryland Avenue, Suite 306  
13 Glendale, CA 91206

14 (c) Separate 1099s shall be issued for each of the above payments. Defendant shall issue a  
15 1099 to OEHHA, PO Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
16 \$10,125.00. Defendant also will issue a 1099 to Ms. Tamar Kaloustian in the amount of  
17 \$3,375.00 and deliver it to Ms. Tamar Kaloustian c/o KJT Law Group at the address listed above.

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

19 The Parties reached an agreement and accord on the compensation due to Kaloustian's  
20 counsel under the private attorney general doctrine and principles of contract law. Under these  
21 legal principles, Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a  
22 result of investigating, bringing this matter to Defendant attention, and negotiating a settlement in  
23 the public interest. Defendant shall pay Kaloustian's counsel \$81,500.00 as complete  
24 reimbursement for any and all attorneys' fees, expert and investigation fees and related costs, and  
25 any and all other costs and expenses associated with this matter, and the Notice including  
26 litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval  
27 of this Consent Judgment. Defendant shall mail a check payable to "KJT Law Group," to the  
28 address provided above within fifteen (15) business days following the Effective Date. Other  
than the payment required by this Section 4 and as contemplated by Section 12, each side is to  
bear its own attorneys' fees and costs.

1     **5.     RELEASE OF ALL CLAIMS**

2             **5.1     Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

3             This Consent Judgment is a full, final, and binding resolution of all claims arising out of  
4     the Covered Products, between Kaloustian, on behalf of herself, *and on behalf of the public*  
5     *interest*, and Defendant and its officers, directors, insurers, employees, parent companies,  
6     shareholders, partners, divisions, subdivisions, corporate affiliates, subsidiaries, agents,  
7     predecessors, and their successors and assigns (collectively "Releasees"), and each of their  
8     distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers,  
9     customers, owners, purchasers, and users, and each of their respective officers, directors,  
10    attorneys, representatives, shareholders, agents, and employees, and sister and parent entities  
11    (collectively "Downstream Releasees") for all claims that have been or could have been asserted  
12    for alleged or actual violations of Proposition 65 or its implementing regulations for alleged  
13    exposures to lead in Covered Products prior to ninety (90) days after the Effective Date.  
14    Defendant, Releasees and Downstream Releasees are hereby collectively referred to as the  
15    "Released Parties." Kaloustian, on behalf of herself and in the public interest, hereby discharges  
16    and releases Released Parties from any and all claims, including, without limitation, all actions,  
17    and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs,  
18    fines, penalties, losses, or expenses (including, but not limited to, fees of attorneys, experts, and  
19    others) of any nature whatsoever, whether known or unknown, fixed or contingent, asserted, or  
20    that could have been asserted, for alleged exposures to lead from Covered Products sold,  
21    manufactured or distributed by Defendant, Releasees or Downstream Releasees in California, or  
22    the failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and  
23    reasonable warnings under Proposition 65, Business and Professions Code §17200, *et seq.*, or any  
24    other applicable law about exposure to lead arising from the sale, distribution, or use of any  
25    Covered Products sold, manufactured or distributed by Defendant, Releasees or Downstream  
26    Releasees in California (collectively "Claims"). Compliance with the Consent Judgment by any  
27    Released Party shall constitute compliance with Proposition 65 by all Released Parties with  
28    respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all Claims

1 are resolved with prejudice by this Consent Judgment.

2 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,  
3 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,  
4 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal  
5 action, and discharges and releases the Released Parties from any and all Claims arising up to  
6 ninety (90) days after the Effective Date with respect to any actual or alleged violation of  
7 Proposition 65, and any other statutory or common law claim, including but not limited to the  
8 Business and Professions Code §17200, based upon the Covered Products. With respect to the  
9 foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives any and  
10 all rights and benefits which she now has, or in the future may have, conferred by virtue of the  
11 provisions of Section 1542 of the California Civil Code, which provides as follows:

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

18 Kaloustian understands and acknowledges that the significance and consequence of this waiver of  
19 California Civil Code section 1542 is that even if Kaloustian suffers future damages arising out of  
20 or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
21 violation of Proposition 65 or any other statutory or common law regarding the Covered Products  
22 manufactured, distributed or sold by the Released Parties arising up to ninety (90) days after the  
23 Effective Date regarding the failure to warn about actual or alleged exposure to lead from the  
24 Covered Products, Kaloustian will not be able to make any claim for those damages, penalties or  
25 other relief against the Released Parties. Furthermore, Kaloustian acknowledges that she intends  
26 these consequences for any such Claims arising from any violation of Proposition 65 or any other  
27 statutory or common law regarding the failure to warn about exposure to lead from the Covered  
28



1 Products as may exist as of the date of this release but which Kaloustian does not know exist, and  
2 which, if known, would materially affect her decision to enter into this Consent Judgment,  
3 regardless of whether her lack of knowledge is the result of ignorance, oversight, error,  
4 negligence, or any other cause.

## 5 **5.2 Defendant's Release of Kaloustian**

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

## 11 **6. SEVERABILITY AND MERGER**

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

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

## 19 **7. GOVERNING LAW**

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

1     **8.     NOTICES**

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

6             For Guardian Drug Company:

7  
8             Jeffrey M. Goldman, Esq.  
9             PEPPER HAMILTON LLP  
10            4 Park Plaza Suite 1200  
              Irvine, California 92614  
              Phone: (949)567-3547  
              Fax: (866)728-3537

11  
12            With a copy to:

13            AnnMarie Sanford, Esq.  
14            PEPPER HAMILTON, LLP  
15            4000 Town Center, Suite 1800  
              Southfield, MI 48075  
              Phone: (248)359-7359  
              Fax: (248)359-7700

16     and

17            For Kaloustian:

18            Caspar Jivalagian, Esq.  
19            KJT LAW GROUP, LLP  
20            230 N. Maryland Avenue, Suite 306  
              Glendale, CA 91206  
              Phone: (818) 507-8528  
              Fax: (818) 507-8588

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

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

24            This Consent Judgment may be executed in any number of counterparts, each of which  
25     may be deemed an original but together will constitute one and the same instrument. This  
26     Consent Judgment may be transmitted between the Parties electronically or digitally. The Parties  
27     intend and agree that electronically or digitally transmitted signatures constitute original  
28     signatures and are binding on the Parties.

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

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

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

9     **11. MODIFICATION**

10            This Consent Judgment may be modified only by written agreement of the Parties and  
11    upon entry of such modified Consent Judgment by the Court or upon motion brought to the Court  
12    by either Party as provided by law and upon entry of such modified Consent Judgment by the  
13    Court.

14    **12. ATTORNEY'S FEES**

15            12.1    A party who unsuccessfully brings or contests an action arising out of this Consent  
16    Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
17    unless the unsuccessful party has acted with substantial justification. For purposes of this  
18    Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
19    Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

20            12.2    Nothing in this Section shall preclude a Party from seeking an award of sanctions  
21    pursuant to law.

22    **13. RETENTION OF JURISDICTION**

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

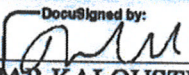
25    **14. AUTHORIZATION**

26            Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
27    Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the  
28    Party represented and legally to bind that party.

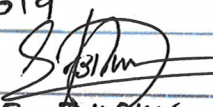
Party represented and legally to bind that party.

**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

Date: 4/29/2019  
By:   
TAMAR KALOUSTIAN

**AGREED TO:**

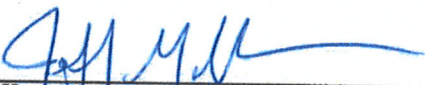
Date: 05/07/2019  
By:   
Name: ARVIND B. DHRUV

On Behalf of GUARDIAN DRUG  
COMPANY

**APPROVED AS TO FORM:**

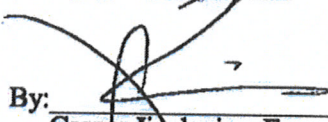
Dated: May 5, 2019

PEPPER HAMILTON, LLP

By:   
Jeffrey M. Goldman  
Attorneys for Defendant,  
GUARDIAN DRUG COMPANY

Dated: Apr: 12, 2019

KJT LAW GROUP, LLP

By:   
Caspar Jivalagian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN