

**KJT**LAWGROUP<sub>LLP</sub>  
jvalagian | Thomassian

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.; and DOES 1  
through 100, inclusive,

Defendants.

Civil Action No.:

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

Complaint Filed:

Department  
Hon.

**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

1 or eliminating hazardous substances contained in consumer products. Defendant employs ten or  
2 more persons and is a person in the course of doing business for purposes of Proposition 65, Cal.  
3 Health & Safety Code §§ 25249.6 et seq.

4 **1.2 Allegations and Representations**

5 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold  
6 in California, Natural Psyllium Fiber, which contains lead exceeding the Proposition 65 safe harbor  
7 level, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed  
8 under Proposition 65 as a chemical known to the State of California to cause cancer and birth  
9 defects or other reproductive harm.

10 **1.3 Covered Products Description**

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

13 **1.4 Notices of Violation/Complaint**

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

21 1.4.2 On February 16, 2019, Kaloustian, acting in the interest of the general public in the  
22 State of California, filed a complaint against Defendant in the Superior Court of Los Angeles  
23 County alleging violations of Health & Safety Code §25249.6 (the "Complaint") based on the  
24 alleged failure to warn of exposures to lead contained in Covered Products manufactured,  
25 distributed, or sold by Defendant.

26 **1.5 Stipulation as to Jurisdiction/No Admission**

27 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
28

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

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

#### **1.6 Effective Date**

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

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

Commencing ninety (90) days after the Effective Date, Defendant shall not sell, offer for sale in California, or ship for sale in California a Covered Product unless such Covered Product: (a)

1 is reformulated pursuant to Section 2.1; or (b) Defendant provides one of the Proposition 65  
2 compliant warning as set forth in Section 2.2 or any such warning as may be adopted in the future  
3 under Proposition 65.


4       2.1     Reformulation Option. The Covered Products shall be deemed to comply with  
5 Proposition 65 with regard to lead, and be exempt from any Proposition 65 warning requirements  
6 for lead, if the Daily Exposure Level (as defined herein) for the Covered Product contains a lead  
7 content that is no more than 0.5 micrograms per day (hereinafter referred to as “Reformulated  
8 Product”). The “Daily Exposure Level” shall be calculated using the following formula:  
9 micrograms of lead per gram of product, multiplied by grams of product per serving (using the  
10 largest serving size appearing on the product label), multiplied by the servings of the product per  
11 day (using the largest number of servings in any recommended dosage appearing on the product  
12 label), which equals micrograms of lead exposure per day.

13       2.2     Warning Options. Commencing ninety (90) days after the Effective Date, and  
14 continuing thereafter, a clear and reasonable exposure warning as set forth in this Section 2.2 must  
15 be provided for all Covered Product that is not a Reformulated Product. Based on the Daily  
16 Exposure Level of lead present in a Covered Product, as calculated pursuant to Section 2.1,  
17 Defendant shall provide either of the Proposition 65 warnings set forth in 2.2.1 and 2.2.2 which the  
18 Parties agree shall constitute compliance with Proposition 65, or any other current Proposition 65  
19 warning or future warning as may be adopted under Proposition 65. The warning shall be displayed  
20 on a label, labelling, sign or electronic device or automatic process, provided that the warning is  
21 displayed with such conspicuousness, as compared with other words, statements, or designs as to  
22 render it likely to be read and understood by an ordinary individual under customary conditions of  
23 purchase or use.

24       2.2.1   Daily Exposure Level Greater Than 15 ug/day: If the lead Daily Exposure  
25 Level of a Covered Product, as determined pursuant to the requirements set forth in Section 2.2, is  
26 greater than 15 ug/day, then the either of the following Proposition 65 warnings shall be provided:  
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**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](http://www.P65Warnings.ca.gov).

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

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

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

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

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

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

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

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

The Parties reached an agreement and accord on the compensation due to Kaloustian's counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant attention, and negotiating a settlement in the public interest. Defendant shall pay Kaloustian's counsel \$81,500.00 as complete reimbursement for any and all attorneys' fees, expert and investigation fees and related costs, and any and all other costs and expenses associated with this matter, and the Notice including litigating, negotiating a settlement in the public interest, and seeking and obtaining court approval of this Consent Judgment. Defendant shall mail a check payable to "KJT Law Group," to the 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.

#### **5. RELEASE OF ALL CLAIMS**

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

This Consent Judgment is a full, final, and binding resolution of all claims arising out of the Covered Products, between Kaloustian, on behalf of herself, and on behalf of the public interest, and Defendant and its officers, directors, insurers, employees, parent companies, shareholders, partners, divisions, subdivisions, corporate affiliates, subsidiaries, agents, predecessors, and their successors and assigns (collectively “Releasees”), and each of their distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, and users, and each of their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively “Downstream Releasees”) for all claims that have been or could have been asserted for alleged or actual violations of Proposition 65 or its implementing regulations for alleged exposures to lead in Covered Products prior to ninety (90) days after the Effective Date. Defendant, Releasees and Downstream Releasees are hereby collectively referred to as the “Released Parties.” Kaloustian, on behalf of herself and in the public interest, hereby discharges and releases Released Parties from any and all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, fees of attorneys, experts, and others) of any nature whatsoever, whether known or unknown, fixed or contingent, asserted, or that could have been asserted, for alleged exposures to lead from Covered Products sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California, or the failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65, Business and Professions Code §17200, *et seq.*, or any other applicable law about exposure to lead arising from the sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant, Releasees or Downstream Releasees in California (collectively “Claims”). Compliance with the Consent Judgment by any Released Party shall constitute compliance with Proposition 65 by all Released Parties with respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all Claims are resolved with prejudice by this 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 action,  
4 and discharges and releases the Released Parties from any and all Claims arising up to ninety (90)  
5 days after the Effective Date with respect to any actual or alleged violation of Proposition 65, and  
6 any other statutory or common law claim, including but not limited to the Business and Professions  
7 Code §17200, based upon the Covered Products. With respect to the foregoing waivers and  
8 releases in this paragraph, Kaloustian hereby specifically waives any and all rights and benefits  
9 which she now has, or in the future may have, conferred by virtue of the provisions of Section 1542  
10 of the California Civil Code, which provides as follows:

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

15 Kaloustian understands and acknowledges that the significance and consequence of this waiver of  
16 California Civil Code section 1542 is that even if Kaloustian suffers future damages arising out of  
17 or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
18 violation of Proposition 65 or any other statutory or common law regarding the Covered Products  
19 manufactured, distributed or sold by the Released Parties arising up to ninety (90) days after the  
20 Effective Date regarding the failure to warn about actual or alleged exposure to lead from the  
21 Covered Products, Kaloustian will not be able to make any claim for those damages, penalties or  
22 other relief against the Released Parties. Furthermore, Kaloustian acknowledges that she intends  
23 these consequences for any such Claims arising from any violation of Proposition 65 or any other  
24 statutory or common law regarding the failure to warn about exposure to lead from the Covered  
25 Products as may exist as of the date of this release but which Kaloustian does not know exist, and  
26 which, if known, would materially affect her decision to enter into this Consent Judgment,  
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1 regardless of whether her lack of knowledge is the result of ignorance, oversight, error, negligence,  
2 or any other cause.

3  
4 **5.2 Defendant's Release of Kaloustian**

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

10 **6. SEVERABILITY AND MERGER**

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

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

18 **7. GOVERNING LAW**

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

27 **8. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant to

1 this Consent Judgment shall be in writing and sent by: (i) First Class Mail, (registered or certified  
2 mail) return receipt requested; or (ii) overnight courier, on any party by the other party at the  
3 following addresses:

4 For Guardian Drug Company:

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

11 With a copy to:

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

18 and

19 For Kaloustian:

20 Caspar Jivalagian, Esq.  
21 KJT LAW GROUP, LLP  
22 230 N. Maryland Avenue, Suite 306  
23 Glendale, CA 91206  
24 Phone: (818) 507-8528  
25 Fax: (818) 507-8588

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

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

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

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

**APPROVAL**

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

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

**11. MODIFICATION**

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

**12. ATTORNEY'S FEES**

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

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

**14. AUTHORIZATION**

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

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2  
3 **IT IS HEREBY SO STIPULATED:**

4 **AGREED TO:**

12/30/2020

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

DocuSigned by:

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

TAMAR KALOUSTIAN

**AGREED TO:**

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

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

Name: \_\_\_\_\_

On Behalf of GUARDIAN DRUG  
COMPANY

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9  
10 **APPROVED AS TO FORM:**

11  
12 Dated: January 5 2021

TROUTMAN PEPPER HAMILTON  
SANDERS, LLP

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

Jeffrey M. Goldman  
Attorneys for Defendant,  
GUARDIAN DRUG COMPANY

12/30/2020

16  
17 Dated: January \_\_, 2021

KJT LAW GROUP, LLP

DocuSigned by:

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

Caspar Jivalagian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

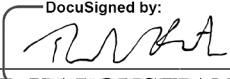
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**IT IS HEREBY SO STIPULATED:**

**AGREED TO:**

**AGREED TO:**

Date: 12/30/2020  
By:   
TAMAR KALOUSTIAN

Date: 01/04/2021  
By: **Arvind Dhruv**  
Name: **Arvind Dhruv**

Digitally signed by Arvind Dhruv  
DN: cn=Arvind Dhruv, o=Guardian Drug Company, ou,  
email=adhruv@guardiandrug.com, c=US  
Date: 2021.01.04 15:26:12 -05'00'

On Behalf of GUARDIAN DRUG  
COMPANY

**APPROVED AS TO FORM:**


Dated: January \_\_, 2021

TROUTMAN PEPPER HAMILTON  
SANDERS, LLP

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

12/30/2020  
Dated: January \_\_, 2021

KJT LAW GROUP, LLP

By:   
7BEE0EBD52304B4...  
Caspar Jivalagian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

**KJT**LAWGROUP LLP  
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