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Attorneys for Plaintiff,
TAMAR KALOUSTIAN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

TAMAR KALOUSTIAN, in the public interest,

Civil Action No.: 19STCV03172

Plaintiff,

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

v.

GUARDIAN DRUG COMPANY.; and DOES 1
through 100, inclusive,

Complaint Filed: January 30, 2019

Department 53
Hon. Robert B. Broadbelt

Defendants.

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

1 seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing
2 or eliminating hazardous substances contained in consumer products. Defendant employs ten or
3 more persons and is a person in the course of doing business for purposes of Proposition 65, Cal.
4 Health & Safety Code §§ 25249.6 et seq.

5 **1.2 Allegations and Representations**

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

11 **1.3 Covered Products Description**

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

14 **1.4 Notices of Violation/Complaint**

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

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

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

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

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

16 2.2 Warning Options. Commencing ninety (90) days after the Effective Date, and
17 continuing thereafter, a clear and reasonable exposure warning as set forth in this Section 2.2 must
18 be provided for all Covered Product that is not a Reformulated Product. Based on the Daily
19 Exposure Level of lead present in a Covered Product, as calculated pursuant to Section 2.1,
20 Defendant shall provide either of the Proposition 65 warnings set forth in 2.2.1 and 2.2.2 which the
21 Parties agree shall constitute compliance with Proposition 65, or any other current Proposition 65
22 warning or future warning as may be adopted under Proposition 65. The warning shall be displayed
23 on a label, labelling, sign or electronic device or automatic process, provided that the warning is
24 displayed with such conspicuousness, as compared with other words, statements, or designs as to
25 render it likely to be read and understood by an ordinary individual under customary conditions of
26 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.

OR

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

OR

 **WARNING:** Reproductive Harm - 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, 20th 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 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, but not including claims to enforce this Consent Judgment or unknown claims (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.

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

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

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

1 which, if known, would materially affect her decision to enter into this Consent Judgment,
2 regardless of whether her lack of knowledge is the result of ignorance, oversight, error, negligence,
3 or any other cause.
4

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 matter,
10 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 all
16 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
17 No representations or terms of agreement other than those contained herein exist or have been made
18 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 California
21 and apply within the State of California. Compliance with the terms of this Consent Judgment
22 resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
23 alleged exposures to lead arising from the Covered Products. In the event that Proposition 65 is
24 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
25 Products, then Defendant may provide written notice to Kaloustian of any asserted change in the
26 law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to
27 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 to
3 this Consent Judgment shall be in writing and sent by: (i) First Class Mail, (registered or certified
4 mail) return receipt requested; or (ii) overnight courier, on any party by the other party at the
5 following addresses:

6 For Guardian Drug Company:

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

13 With a copy to:

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

20 and

21 For Kaloustian:

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

28 Any 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.

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

2 This Consent Judgment may be executed in any number of counterparts, each of which may
3 be deemed an original but together will constitute one and the same instrument. This Consent
4 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

KJT LAW GROUP LLP
Jivalagian | Thomassian

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.

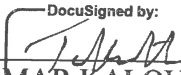
IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 1/15/2021

Date: _____

By: 
TAMAR KALOUSTIAN

By: _____
Name: _____

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

1/15/2021
Dated: January __, 2021

KJT LAW GROUP, LLP

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

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.

IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: _____

Date: 01/15/2021

By: _____
TAMAR KALOUSTIAN

By: Arvind Dhruv
Name: Arvind Dhruv


Digitally signed by Arvind Dhruv
DN: cn=Arvind Dhruv, o=Guardian Drug Company, ou=Legal, email=arvind.dhruv@guardiandrug.com, c=US
Date: 2021.01.15 15:21:42 -0500

On Behalf of GUARDIAN DRUG
COMPANY

APPROVED AS TO FORM:

Dated: January 15, 2021

TROUTMAN PEPPER HAMILTON
SANDERS, LLP

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

Dated: January __, 2021

KJT LAW GROUP, LLP

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