

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.

QUALITY SUPPLEMENTS & VITAMINS,
INC., a Florida Corporation; and DOES 1
through 100, inclusive,

Defendants.

Civil Action No.: BC720627

**[PROPOSED] STIPULATION RE ENTRY OF
CONSENT JUDGMENT AS TO QUALITY
SUPPLEMENTS & VITAMINS, INC.**

Complaint Filed: September 4, 2018

Department 72
Hon. Ruth Ann Kwan

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 QUALITY SUPPLEMENTS & VITAMINS, INC., (hereinafter "Quality Supplements" or "Defendant"). Collectively Kaloustian and Quality Supplements 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. Plaintiff contends, and Defendant does not dispute plaintiff's contention for purposes of this Consent Judgment only, that 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.* ("Proposition 65").

1.2 Plaintiff's Allegations and Representations

Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in California, FiberImmune Support, which contains lead, 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 "Life Extension - FiberImmune Support." All such items shall be referred to herein as the "Covered Products."

1.4 Notices of Violation/Complaint

1.4.1 On about February 16, 2018, Kaloustian served Quality Supplements 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 Quality Supplements 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 September 4, 2018, Kaloustian, acting in the interest of the general public in the State of California, filed a complaint 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 filed in this matter, that

1 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
2 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
3 claims which were or could have been raised in the Complaint based on the facts alleged therein
4 and/or in the Notice.

5 Defendant denies that it violated Proposition 65, and denies all allegations of wrongdoing
6 alleged by Plaintiff. Thus, nothing in this Consent Judgment shall be construed as an admission by
7 Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
8 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion,
9 issue of law, or violation of law, such being specifically denied by Defendant. However, this section
10 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under
11 this Consent Judgment.

12 **1.6 Effective Date**

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

20
21 **2. INJUNCTIVE RELIEF; WARNINGS AND REFORMULATION**

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

1 2.1 Reformulation Option. The Covered Products shall be deemed to comply with
2 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for
3 lead if the product contains a lead content less than 0.5 micrograms per day.

4 2.2 Warning Alternative. Commencing on the Effective Date, Covered Products that
5 Defendant ships, sells or offers for sale in California that do not meet the warning exemption
6 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3
7 below no later than Ninety (90) days after the Effective Date. The warning requirements set forth in
8 paragraph 2.3 below apply only to Covered Products Defendant manufactures, distributes, markets,
9 sells or ships for distribution Ninety (90) days after the Effective Date for sale or use inside the State
10 of California.

11 2.3 Warnings. Where required under Section 2.2 above, Defendant shall provide either
12 of the Proposition 65 warnings (each a "Warning" and collectively "Warnings") as follows:

13 **OPTION 1**

14 **WARNING:** This product can expose you to chemicals, including lead, which are known to the State
15 of California to cause [cancer and] birth defects or other reproductive harm. For more information go
16 to www.P65Warnings.ca.gov/food.

17 For Option 1, Defendant shall use the phrase "cancer and" in the Warning if Defendant has reason
18 to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead or if Defendant
19 has reason to believe that another Proposition 65 chemical is present which may require a cancer
20 warning.

21 **OPTION 2**

22 Defendant may elect to use the one of the following short form Warnings which is applicable
23 based whether the Warning must be for cancer, reproductive harm or both:

24 **⚠WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

25 **⚠WARNING:** Cancer - www.P65Warnings.ca.gov.

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

27 For Option 2, the entire Warning must be in a type size no smaller than the largest type size used for
28 other consumer information (as defined in 27 Cal. Code Regs. 25600.1 (2019)) on the product. In

1 no case shall the Warning appear in a type size smaller than 6-point type. Further, for Option 2, a
2 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
3 outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the
4 word "WARNING." Where the sign, label or shelf tag for the product is not printed using the color
5 yellow, the symbol may be printed in black and white.

6 2.4 Where utilized as an alternative to meeting the reformulation criteria set forth in
7 Section 2.1, Defendant shall provide the warning language set forth in Section 2.3:

8 (a) With the unit package of the Covered Products or affixed to the Covered Products.
9 Such warning shall be prominently affixed to or printed on each Covered Product's label or package.
10 If printed on the label, the warning shall be contained in the same section that states other safety
11 warnings, if any, concerning the use of the Covered Product; Defendant may continue to utilize, on
12 an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those
13 set forth in Section 2.3 above, but only to the extent such packaging materials have already been
14 printed within one hundred twenty days of the Effective Date.

15 2.5

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

17 With regard to all claims that have been raised or which could be raised with respect to
18 Plaintiff's alleged Proposition 65 violations, including those allegations averring that Defendant failed
19 to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay
20 a civil penalty of \$2,500.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned
21 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
22 State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of
23 the penalty remitted to Kaloustian, as provided by California Health & Safety Code § 25249.12(d)
24 and the instructions directly below.

25 Defendant shall issue two separate checks for the penalty payment: (a) one check made
26 payable to "OEHHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
27 total penalty (i.e., \$ 1,875.00 and (b) one check in an amount representing 25% of the total penalty
28 (i.e., \$625.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten

(10) business days following the Effective Date, to be held in trust by Kaloustian's counsel, until the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

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

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

4. REIMBURSEMENT OF FEES AND COSTS

Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant attention, and negotiating this consent judgment in the public interest. Defendant shall pay Kaloustian's counsel \$22,500.00 for all attorneys' fees, expert and investigation fees and related costs associated with this matter and the Notice. Defendant shall mail a check payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced above within ten (10) business days following the Effective Date. Other than the payment required hereunder, each side is to bear its own attorneys' fees and costs. Further, Defendant shall not be liable for paying any money, or providing any other consideration, other than the payments and consideration expressly set forth in this Consent Judgment. Thus, neither Plaintiff nor Plaintiff's counsel shall demand any money or consideration, other than the payments and consideration expressly set forth in this Consent Judgment.

5. RELEASE OF ALL CLAIMS

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

As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on behalf of herself, and on behalf of the public interest, hereby waives and releases any and all claims against Defendant, its parent companies, corporate affiliates, subsidiaries, divisions, predecessors, successors and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively "Downstream Releasees"), and their respective officers, directors, attorneys, representatives,

1 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,
2 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
3 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or
4 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65
5 and/or under Business and Professions Code §17200, *et seq.* about exposure to lead arising from the
6 sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant,
7 Releasees or Downstream Releasees in California, from the beginning of time up to and including the
8 Effective Date. Compliance with the Consent Judgment by Defendant, Downstream Releasee, or a
9 Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or
10 Downstream Releasee with respect to the presence of lead in the Covered Products. Plaintiff agrees
11 that any and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

12 In addition to the foregoing, Kaloustian, on behalf of herself, her past and current agents,
13 representatives, attorneys, and successors and/or assignees, and not in her representative capacity,
14 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
15 releases any other claims that she could make against Defendant, Releasees or Downstream Releasees
16 arising up to Ninety (90) days after the Effective Date with respect to violations of Proposition 65
17 and/or Business and Professions Code §17200 based upon the Covered Products. With respect to
18 the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically waives any and all
19 rights and benefits which she now has, or in the future may have, conferred by virtue of the provisions
20 of Section 1542 of the California Civil Code, which provides as follows:

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

26 **5.2 Defendant's Release of Kaloustian**

27 Defendant waives any and all claims against Kaloustian, her attorneys and other
28 representatives, for any and all actions taken or statements made (or those that could have been taken
or made) by Kaloustian and her attorneys and other representatives, in the course of investigating
claims or otherwise seeking enforcement of Proposition 65 against them in this matter only, and/or

1 with respect to the Covered Products.

2 **6. SEVERABILITY AND MERGER**

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

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

10 **7. GOVERNING LAW**

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

19 **8. NOTICES**

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

24 For Quality Supplements & Vitamins, Inc.:

25 Ari Rothman, Esq.
26 VENABLE, LLP
27 2049 Century Park East, Suite 2800
28 Los Angeles, CA 90067
Phone: 310-229-9909
Fax: 310-229-9901

1 and

2 For Kaloustian:

3 Caspar Jivalaigna, Esq.
4 KJT LAW GROUP, LLP
5 230 N. Maryland Ave. Suite 306
6 Glendale, CA 91206
7 Phone: 818-507-8528
8 Fax: 818-507-8588

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

11 **9. COUNTERPARTS: EMAIL OR FACSIMILE SIGNATURES**

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

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

16 Kaloustian agrees to comply with, and to be solely responsible for complying with, the
17 requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a
18 Motion for Approval of this Consent Judgment.

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

22 **11. MODIFICATION**

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

25 **12. ATTORNEY'S FEES**

26 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
27 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
28 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

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

IT IS HEREBY SO STIPULATED:

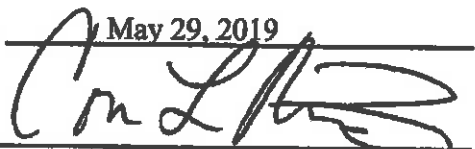
AGREED TO:

AGREED TO:

Date: _____

Date: May 29, 2019


By: TAMAR KALOUSTIAN

By: 
 On Behalf of:
 QUALITY SUPPLEMENTS &
 VITAMINS, INC.

APPROVED AS TO FORM ONLY:

Dated: May 23, 2019

VENABLE, LLP

By: 
 Ari Rothman, Esq.
 Attorneys for Defendant,
 QUALITY SUPPLEMENTS & VITAMINS,
 INC.

1 pursuant to law.

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8 document and certifies that he or she is fully authorized by the Party he or she represents to execute
9 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
10 explicitly provided herein, each Party is to bear its own fees and costs.

11 **IT IS HEREBY SO STIPULATED:**

12 **AGREED TO:**

13 5/23/2019

14 Date: _____

15 Designated by:

16 By:  _____

17 TAMAR KALOUSTIAN

12 **AGREED TO:**

14 Date: _____

16 By: _____

17 On Behalf of:
18 QUALITY SUPPLEMENTS &
19 VITAMINS, INC.

20 **APPROVED AS TO FORM ONLY:**

21 Dated: May 23, 2019

22 VENABLE, LLP

23 By: _____
24 Ari Rothman, Esq.
25 Attorneys for Defendant,
26 QUALITY SUPPLEMENTS & VITAMINS,
27 INC.
28

Dated: May 24 2019

KJT LAW GROUP, LLP

By: 

Caspar Jivagian, Esq.
Attorneys for Plaintiff,
TAMAR KALOUSTIAN

KJT LAW GROUP, LLP
Jivagian / Thompson