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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,

Plaintiff,

v.

**LIFELAB HEALTH, LLC**, a Florida Limited  
Liability Company; and **DOES 1 through 100**,  
inclusive,

Defendants.

Civil Action No.: BC720636

**STIPULATION RE ENTRY OF CONSENT  
JUDGMENT AS TO LIFELAB HEALTH, LLC**

Complaint Filed: September 5, 2018

Department 30  
Hon. Barbara Scheper

**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 LIFELAB HEALTH, LLC (hereinafter "LIFELAB" or "Defendant"). Collectively Kaloustian and LIFELAB 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, prunes, which contain 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. Defendant denies the allegations and contends that there is no exposure and no violation under Proposition 65 for an alleged failure to warn.

### 1.3 Covered Products Description

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

### 1.4 Notices of Violation/Complaint

1.4.1 On or about March 19, 2018, Kaloustian served LIFELAB 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 LIFELAB 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 5, 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 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

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 based on the facts alleged therein and/or in the Notice.

Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant, including, but not limited to, any admission related to exposure of failure to warn. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under 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 and warning requirements of Paragraphs 2.1 and 2.2 shall apply to any Covered Product shipped later than 90 days after the Effective Date.

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

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

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

distributed or sold by Defendant shall either be (a) reformulated pursuant to Section 2.1 or (b) include a warning as provided in Section 2.3.

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 product contains a lead content less than 0.5 micrograms per serving, per day.

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

2.3 Warnings. Where required under Section 2.2 above, Defendant shall provide either of the Proposition 65 warnings as follows:

**WARNING: 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)**

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

- (a) With the unit package of the Covered Products or affixed to the Covered Products.
- (b) Such warning shall be prominently affixed to or printed on each Covered Product's label or package. If printed on the label, the warning shall be contained in the same section that states other safety warnings, if any, concerning the use of the Covered Product; Defendant may continue to utilize, on an ongoing basis, unit packaging containing substantively the same Proposition 65 warnings as those set forth in Section 2.3 above, but only to the extent such

packaging materials have already been printed within one hundred twenty days of the Effective Date.

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

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

With regard to all claims that have been raised or which could be raised with respect to failure to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay a civil penalty of \$1,600.00 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.

Defendant shall issue two separate checks for the penalty payment: (a) one check made payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the total penalty (i.e., \$1,200.00 and (b) one check in an amount representing 25% of the total penalty (i.e., \$400.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten (10) business days following the Execution 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, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

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

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

The parties reached an accord on the compensation due to Kaloustian and her 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 \$14,400.00 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 Execution Date. Other than the payment required hereunder, 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

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, 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, shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65 and/or under Business and Professions Code §17200, *et seq.* 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 prior to Ninety (90) days after the Effective Date. Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the Covered Products. Plaintiff agrees that any and all claims in the Complaint 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 and  
4 releases any other Claims that she could make against Defendant, Releasees or Downstream  
5 Releasees arising up to Ninety (90) days after the Effective Date with respect to violations of  
6 Proposition 65 and/or Business and Professions Code §17200 based upon the Covered Products.  
7 With respect to the foregoing waivers and releases in this paragraph, Kaloustian hereby specifically  
8 waives any and all rights and benefits which she now has, or in the future may have, conferred by  
9 virtue of the provisions of Section 1542 of the California Civil Code, which provides as follows:

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

15 **5.2 Defendant's Release of Kaloustian**

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

21 **6. SEVERABILITY AND MERGER**

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

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

1       **7. GOVERNING LAW**

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

10       **8. NOTICES**

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

15           For LifeLab Health, LLC:

16           Elizabeth V. McNulty, Esq.  
17           TAYLOR ANDERSON, LLP  
18           19100 Von Karman Avenue, Suite 820  
19           Irvine, CA 92612  
20           Phone: 949-390-6500  
21           Fax: 949-390-6510

22       and

23           For Kaloustian:

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

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.



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

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

**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 further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

**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.

**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

1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
2 explicitly provided herein each Party is to bear its own fees and costs.

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

5 **AGREED TO:**

6 5/22/2019

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

8 DocuSigned by:

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

10 TAMAR KALOUSTIAN

11 **AGREED TO:**

12 Date: 5/14/19 \_\_\_\_\_

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

14 On Behalf of:  
15 LIFELAB HEALTH, LLC  
16 Louis Machin

17 **APPROVED AS TO FORM:**

18 Dated: May 15, 2019  
19 ~~December 15, 2018~~

20 TAYLOR ANDERSON, LLP

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

22 Elizabeth McNulty, Esq.  
23 Attorneys for Defendant,  
24 LIFELAB HEALTH, LLC

25 Dated: MAY 22, 2018  
26 ~~December 22, 2018~~

27 KJT LAW GROUP, LLP

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

Caspar Jvalagian, Esq.  
Attorneys for Plaintiff,  
TAMAR KALOUSTIAN

KJT LAW GROUP, LLP  
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