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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.

LIFEHEALTHY USA, INC., a California
Corporation; and **DOES 1 through 100**, inclusive,

Defendants.

Civil Action No.: 19STCV07354

**STIPULATION RE ENTRY OF CONSENT
JUDGMENT AS TO LIFEHEALTHY USA,
INC.**

Complaint Filed: March 04, 2019

Department 78
Hon. Draper, Robert S

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 **LIFEHEALTHY USA, INC.** (hereinafter "**Lifehealthy**" or "**Defendant**"). Collectively **Kaloustian** and **Lifehealthy** 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

1 promote awareness of exposures to toxic chemicals and improve human health by reducing or
2 eliminating hazardous substances contained in consumer products.

3 **1.2 Allegations and Representations**

4 Kaloustian alleges that Defendant has offered for sale in the State of California and has sold in
5 California, Organic Matcha Ceremonial Grade, which contain lead, and that such sales have not been
6 accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known
7 to the State of California to cause cancer and birth defects or other reproductive harm.

8 **1.3 Covered Products Description**

9 The products that are covered by this Consent Judgment are defined as "Organic Matcha
10 Ceremonial Grade All such items shall be referred to herein as the "Covered Products."

11 **1.4 Notices of Violation/Complaint**

12 **1.4.1** On or about November 2, 2018, Kaloustian served Lifehealthy and various public
13 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
14 Safety Code §25249.7(d) (the "Notice"), alleging that Lifehealthy was in violation of Proposition 65 for
15 failing to warn consumers and customers that the Covered Products exposed users in California to
16 lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days
17 plus service time relative to the provision of the Notice to them by Kaloustian.

18 **1.4.2** On March 01, 2019, Kaloustian, acting in the interest of the general public in the State
19 of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
20 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures
21 to lead contained in Covered Products manufactured, distributed, or sold by Defendant.

22 **1.5 Stipulation as to Jurisdiction/No Admission**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter, that
25 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
26 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
27 claims which were or could have been raised in the Complaint based on the facts alleged therein
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1 and/or in the Notice.

2 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any
3 fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
4 constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law,
5 or violation of law, such being specifically denied by Defendant. However, this section shall not
6 diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
7 Consent Judgment.

8 **1.6 Effective Date**

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

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

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

19 Commencing Ninety (90) days after the Effective Date, Defendant shall at no time, as defined
20 in the California Code of Regulations, Title 27, § 25102, ship, sell, or offer to sell in California a
21 Covered Product(s) that is/are manufactured, distributed or sold by Defendant for which the serving
22 size suggested on the label contains more than 0.5 micrograms of lead per day unless the label of the
23 Covered Product contains a Proposition 65 compliant warning as set forth in Section 2.3. Ninety (90)
24 days after the Effective Date in California, Covered Products manufactured, distributed or sold by
25 Defendant shall either be (a) reformulated pursuant to Section 2.1 or (b) include a warning as
26 provided in Section 2.3.

27 **2.1 Reformulation Option.** The Covered Products shall be deemed to comply with
28

1 Proposition 65 with regard to lead and be exempt from any Proposition 65 warning requirements for
2 lead if the product contains a lead content less than 0.5 micrograms per serving, per day.

3 2.2 Warning Alternative. Commencing on the Effective Date, Covered Products that
4 Defendant ships, sells or offers for sale in California that do not meet the warning exemption
5 standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3
6 below no later than Ninety (90) days after the Effective Date. The warning requirements set forth in
7 paragraph 2.3 below, apply only to Covered Products Defendant manufactures, distributes, markets,
8 sells or ships for distribution within the State of California Ninety (90) days after the Effective Date for
9 sale or use inside the State of California.

10 2.3 Warnings. Where required under Section 2.2 above, Defendant shall provide either
11 of the Proposition 65 warnings as follows:

12 **WARNING: This product can expose you to chemicals including lead, which is known to the**
13 **State of California to cause cancer and birth defects or other reproductive harm. For more**
14 **information go to www.P65Warnings.ca.gov.**

15 2.4 Where utilized as an alternative to meeting the reformulation criteria set forth in
16 Section 2.1, Defendant shall provide the warning language set forth in Section 2.3:

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

24 2.5 The requirements for warnings, set forth in Section 2.3 above are imposed pursuant to
25 the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive
26 methods of providing a warning under Proposition 65 and its implementing regulations and that they
27 may or may not be appropriate in other circumstances.
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1 **3. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

2 With regard to all claims that have been raised or which could be raised with respect to failure
3 to warn pursuant to Proposition 65 with regard to lead in the Covered Products, Defendant shall pay
4 a civil penalty of \$ 1,500.00 pursuant to Health and Safety Code section 25249.7(b), to be
5 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
6 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
7 remaining 25% of the penalty remitted to Kaloustian, as provided by California Health & Safety Code
8 § 25249.12(d) and the instructions directly below.

9 Defendant shall issue two separate checks for the penalty payment: (a) one check made
10 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
11 total penalty (i.e., \$1,125.00 and (b) one check in an amount representing 25% of the total penalty
12 (i.e., \$375.00 made payable directly to Kaloustian. Defendant shall mail these payments within ten
13 (10) business days following the Execution Date, to be held in trust by Kaloustian's counsel, until the
14 Effective Date, at which time such payments shall be mailed to the following addresses respectively:

15 Proposition 65 Settlement Coordinator
16 California Department of Justice
17 1515 Clay Street, 20th Floor
18 Oakland, CA 94612-1413

19 Ms. Tamar Kaloustian
20 C/O Vache Thomassian, Esq.
21 KJT LAW GROUP, LLP
22 230 N. Maryland Ave. Suite 306
23 Glendale, CA 91206

24 Counsel for Kaloustian shall provide counsel for Defendant with an email (to: hucg@outlook.com)
25 confirming within three days of the receipt that the funds have been deposited in a trust account.
26 These payments shall be returned to Defendant at the address listed below for counsel for Defendant
27 if the court has not issued an order approving this consent judgment within fifteen days of the
28 scheduled hearing on the motion for approval.

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

2 The parties reached an accord on the compensation due to Kaloustian and her counsel under
3 the private attorney general doctrine and principles of contract law. Under these legal principles,
4 Defendant shall reimburse Kaloustian's counsel for fees and costs, incurred as a result of investigating,
5 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.

6 Defendant shall pay Kaloustian's counsel \$10,500.00 for all attorneys' fees, expert and investigation
7 fees and related costs associated with this matter and the Notice. Defendant shall mail the check,
8 payable to "KJT Law Group," via certified mail to the address for Kaloustian's counsel referenced
9 above, within 10 Business days following the Execution Date. Other than the payment required
10 hereunder, each side is to bear its own attorneys' fees and costs. This Consent Judgment shall not be
11 effective until it is approved and entered by the Court and shall be null and void if, for any reason, it
12 is not approved and entered by the Court within twelve months after it has been fully executed by the
13 Parties. In the event Court approval is not obtained, all payments shall be returned to Defendant.

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15 Vache Thomassian, Esq.
16 KJT LAW GROUP, LLP
17 230 N. Maryland Ave. Suite 306
18 Glendale, CA 91206

19 **5. RELEASE OF ALL CLAIMS**

20 **5.1 Kaloustian's Release of Defendant, Releasees, and Downstream Releasees**

21 As to those matters raised in the Complaint and in the Notice of Violation, Kaloustian, on
22 behalf of herself, and on behalf of the public interest, hereby waives and releases any and all claims
23 against Defendant its parent companies, corporate affiliates, subsidiaries, predecessors, successors
24 and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees,
25 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively
26 "Downstream Releasees") and their respective officers, directors, attorneys, representatives,
27 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,
28 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,

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1 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or
2 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65
3 and/or under Business and Professions Code §17200, *et seq.* about exposure to lead arising from the
4 sale, distribution, or use of any Covered Products sold, manufactured or distributed by Defendant,
5 Releasees or Downstream Releasees in California prior to Ninety (90) days after the Effective Date.
6 Compliance with the Consent Judgment by Defendant or a Releasee shall constitute compliance with
7 Proposition 65 by that Defendant, Releasee, or Downstream Releasee with respect to the presence of
8 lead in the Covered Products. Plaintiff agrees that any and all claims in the Complaint are resolved
9 with prejudice by this Consent Judgment.

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

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

24 **5.2 Defendant's Release of Kaloustian**

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

1 **6. SEVERABILITY AND MERGER**

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

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

9 **7. GOVERNING LAW**

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

18 **8. NOTICES**

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

23 For LIFEHEALTHY USA, INC.:

24 Chenguang Hu, Esq.
25 Law Offices of Ping C. Shen
26 3675 Huntington Drive, Suite 238
Pasadena, CA 91107
Phone: (626) 572-9737

27 and

28 For Kaloustian:

Vache Thomassian, Esq.
KJT LAW GROUP, LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206
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. If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to resolve the dispute in an amicable manner. No action or

1 motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. In
2 the event an action or motion is filed, however, the prevailing party may seek costs and reasonable
3 attorney's fees. As used in the preceding sentence, the term "prevailing party" means a party who is
4 successful in obtaining relief more favorable to it than the relief than the other party was amenable to
5 providing during the Parties' good faith attempt to resolve the dispute that is the subject of such
6 enforcement action. With respect to a claim of a violation of the injunctive relief provisions set forth
7 in Section 2, the party making such claim shall give 30 days notice to the other party prior to bringing
8 such a claim, during which time Defendant may respond with an affidavit establishing that the 10-
9 employee threshold set forth in Section 2 is not satisfied. If a party proceeds with such a claim and
10 fails to establish the 10-employee threshold is satisfied, that shall be deemed to have acted without
11 substantial justification for purposes of this subsection.

12 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **13. RETENTION OF JURISDICTION**

15 13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
16 Judgment.


17 **14. AUTHORIZATION**


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

AGREED TO:

AGREED TO:

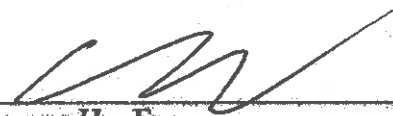
Date: 6/27/2019
By: 
On Behalf of: DocuSigned by: 3BFD2A457...
TAMAR KALOUSTIAN

Date: 6/24/2019
By: 
On Behalf of:
LIFEHEALTHY USA, INC.

APPROVED AS TO FORM:

Dated: June 25, 2019

DILLINGHAM & MURPHY, LLP

By: 
Chenguang Hu, Esq.
Attorneys for Defendant,
LIFEHEALTHY USA, INC.

Dated: June 27, 2019

KJT LAW GROUP, LLP

By: 
Vache Thomassian, Esq.
Attorneys for Plaintiff,
TAMAR KALOUSTIAN

KJT LAW GROUP, LLP
Attorneys for Plaintiff