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1. INTRODUCTION

1.1 Introduction

Plaintiff People of the State of California and Defendant The Daily Wellness Company ("Daily Wellness," or "Defendant") have stipulated to the entry of this Consent Judgment. Plaintiff and Defendant are collectively referred to as the "parties," and individually as a "party," in this Consent Judgment.

1.2 Plaintiff

Plaintiff is the People of the State of California. The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq. ("Proposition 65"), at section 25249.7, subdivision (c), provides that actions to enforce Proposition 65 may be brought by the Attorney General in the name of the People of the State of California or by any district attorney. California Business and Professions Code sections 17200 et seq. also provide that actions to prohibit unfair and unlawful business practices may be brought in the name of the People of the State of California by the Attorney General or by any district attorney.

1.3 Defendant

The settling defendant is The Daily Wellness Company, a California corporation, with its principal place of business at 1946 Young Street, Suite 360; Honolulu, HI 96826.

1.4 General Allegation

The People's Complaint alleges that, through the manufacture, distribution, and/or sale of vitamin supplements to consumers in California, Daily Wellness violated the provisions of Proposition 65 and Business and Professions Code section 17200 et seq. by knowingly exposing persons to lead, a chemical known to cause cancer and reproductive toxicity, without providing a clear and reasonable warning to such individuals.

1.5 Covered Products

The term "Covered Products" means products sold for human ingestion for the primary purpose of supplementing the intake of essential vitamins and minerals that (1) are identified on the label as "vitamin," "vitamin-mineral," "multivitamin," or "multivitamin-multi-mineral," or (2)

1 contain as an intended constituent or additive, and for which the presence of the ingredient(s) is
2 stated on the label, one or more of the following: calcium, copper, chlorine, chloride, iodine,
3 iodide, iodate, iron, magnesium, manganese, molybdenum, phosphorus, potassium, selenium,
4 zinc, Vitamin A, beta carotene, retinol, Vitamin D, Vitamin E, Vitamin K, Vitamin B-1, thiamin,
5 Vitamin B-2, riboflavin, Vitamin B-6, pyridoxine, Vitamin B-12, cyanocobalamin, Vitamin C,
6 ascorbic acid, biotin, choline, folic acid, folate (Vitamin B9), niacin, Vitamin B-3, and/or
7 pantothenic acid (Vitamin B-5). Covered Products do not include (1) "fortified foods," i.e., foods
8 to which additional vitamins and minerals have been added, including but not limited to cereal or
9 pasta with vitamins and minerals added, or iodized salt, unless labeled "dietary supplement"; (2)
10 beverages that otherwise would fall within the definition, unless they are labeled "dietary
11 supplement"; or (3) meal replacement products, i.e., products that are intended to provide calories
12 sufficient to replace a meal, unless labeled "dietary supplement." The presence of substances
13 such as herbs, herbal extracts, or amino acids does not preclude a product from falling within the
14 definition of Covered Products if it otherwise falls within the terms set forth.

15 **1.6 Released Products**

16 The term "Released Products" means those products manufactured, distributed, or sold by
17 Defendant that are set forth in Exhibit A.

18 **1.7 Complaint**

19 On December 23, 2008, the People filed a complaint in the Superior Court in and for the
20 County of Alameda against Daily Wellness and certain other vitamin supplement manufacturers,
21 distributors, and sellers, alleging violations of Proposition 65 and Business and Professions Code
22 section 17200 based on the alleged exposures to lead contained in the vitamin supplements. On
23 March 27, 2009, the People filed a First Amended Complaint ("Complaint" or "Action"). Daily
24 Wellness filed an answer to the Complaint on June 30, 2009.

25 **1.8 Complaint Deemed Amended**

26 The Complaint is hereby amended by this Consent Judgment so that all allegations in the
27 Complaint regarding "vitamin supplements" sold, manufactured, or distributed by Daily Wellness
28 are replaced by allegations regarding the Released Products.

1 **1.9 No Admissions or Findings**

2 Daily Wellness denies the material, factual and legal allegations contained in Plaintiff's
3 Complaint and maintains that all Covered Products that it sold and distributed in California have
4 been and are in compliance with all laws, including Proposition 65. The parties enter into this
5 Consent Judgment pursuant to a settlement of certain disputed claims between the parties as
6 alleged in the Complaint for the purpose of avoiding prolonged and costly litigation between the
7 parties hereto. By execution of this Consent Judgment, Daily Wellness does not admit any facts
8 or conclusions of law suggesting or demonstrating any violations of Proposition 65, the Unfair
9 Competition Act, or any other statutory, common law or equitable requirements relating to the
10 Covered Products. Nothing in this Consent Judgment shall be construed as an admission by
11 Daily Wellness of any fact, issue of law, or violation of law. Except as expressly set forth herein,
12 nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense
13 Daily Wellness may have in this or any other or future legal proceedings. However, this
14 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of
15 Daily Wellness under this Consent Judgment. By execution of this Consent Judgment, the People
16 do not admit any facts or conclusions of law concerning any violations of Proposition 65, the
17 Unfair Competition Act, or any other statutory, common law or equitable requirements relating to
18 the Covered Products. Nothing in this Consent Judgment shall be construed as an admission by
19 the People of any fact or issue of law, nor shall entering into the Consent Judgment constitute or
20 be construed as an admission by the People of any fact or issue of law. Except as expressly set
21 forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any right,
22 remedy, or argument the People may have in this or any other or future legal proceedings.

23 **1.10 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper
26 in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
27 of this Consent Judgment.
28

1 **1.11 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
3 Consent Judgment is entered by the Court.

4 **2. INJUNCTIVE RELIEF/ PERMANENT INJUNCTION**

5 **2.1.** On and after the Effective Date of this Consent Judgment, Daily Wellness shall not
6 manufacture for sale in the State of California, distribute into the State of California, or directly
7 sell in the State of California any Covered Product for which the maximum dose recommended
8 on the label contains more than 0.5 micrograms of lead. Daily Wellness shall not reduce the
9 recommended dose (by size, number of tablets, volume, weight, or frequency) of a Covered
10 Product in order to bring a Covered Product into compliance with this Consent Judgment.

11 **2.2.** For Covered Products that cause exposures in excess of that permitted by Paragraph
12 2.1, unless Daily Wellness can prove that the excess exposure is caused solely by "naturally
13 occurring" lead at the "lowest level currently feasible," as set forth in California Code of
14 Regulations, title 27, section 25501, subdivision (a), Daily Wellness shall, at the point of
15 manufacture, prior to shipment to California, or prior to distribution within California, (1) affix to
16 or print on the Covered Product container, cap, label, or unit package, or (2) display at the point
17 of sale of the Covered Products the following warning (the language in brackets in the warning
18 below is optional):

19 **WARNING:** This product contains [lead,] a chemical known [to
20 the State of California] to cause cancer, birth defects, or other
 reproductive harm.

21 **2.3** The warning required by paragraph 2.2 above shall be prominently affixed to,
22 printed on, or displayed proximately to the point of sale of each Covered Product with such
23 conspicuousness, as compared with other words, statements, designs, or devices on the labeling as
24 to render it likely to be read and understood by an ordinary individual under customary conditions
25 of purchase or use. If the warning is displayed on the product container or labeling, the warning
26 shall be at least the same size as the largest of any other health or safety warnings on the product
27 container or labeling, and the word "warning" shall be in all capital letters and in bold print. If
28 printed on the labeling itself, the warning shall be contained in the same section of the labeling

1 that states other safety warnings concerning the use of the product. The requirement for product
2 labeling set forth herein is imposed pursuant to the terms of this Consent Judgment and is
3 recognized by the parties as not being the exclusive method of providing a warning for the
4 Covered Products under Proposition 65 and its implementing regulations.

5 2.4. Once a year, on or before the anniversary of the entry of the Consent Judgment,
6 Daily Wellness shall test randomly-selected samples of each Covered Product for lead content, as
7 described in Exhibit B. Daily Wellness shall do such testing using Inductively Coupled Plasma-
8 Mass Spectrometry (ICP-MS), as used by the U.S. Food and Drug Administration for its study of
9 multivitamin supplements in 2008,¹ and using the principles and objectives set forth in Exhibit B.
10 Daily Wellness shall provide any test results and documentation within ten working days of any
11 written request from the People, and shall retain all test results and documentation for a period of
12 four years from the date of the test.

13 2.5. The requirements of paragraphs 2.1, 2.2, 2.3, and 2.4, above, will only be in effect
14 during any time in which Daily Wellness is a "person in the course of doing business," as that
15 term is defined in California Health and Safety Code section 25249.11, subdivision (b). Daily
16 Wellness represents that at the time it stipulated to entry of this Consent Judgment it was not a
17 "person in the course of doing business" because it had fewer than 10 employees. Daily Wellness
18 represents that it understands that even if Daily Wellness is not a "person in the course of doing
19 business" under Proposition 65, other companies in its chain of distribution (such as
20 manufacturers, retailers, or distributors) that have 10 or more employees are not exempt from
21 Proposition 65 and could violate Proposition 65 by knowingly and intentionally exposing
22 individuals to chemicals contained in Daily Wellness products without first giving a clear and
23 reasonable warning.

24 2.6. If at any time in the future Daily Wellness employs 10 or more employees, it will
25 notify the People of this fact within 30 days. If the People send a written request to Daily
26 Wellness for proof of the number of employees of Daily Wellness, within 45 days Daily Wellness

27 ¹ See Mindak, W.R., Cheng, J., Canas, B.J., & Bolger, P.M. Lead in Women's and
28 Children's Vitamins, J. Agric. Food Chem. 2008, 56, 6892-96.

1 will provide all appropriate documentation to the People showing the number of employees it has
2 employed in the previous 24 months.

3 **3. APPLICATION OF TESTING STANDARD AND PROTOCOLS**

4 The testing standard and protocols set forth in Exhibit B attached to this Consent
5 Judgment are based on determinations concerning the nature of the laboratory test used and its
6 relationship to actual and specific conditions of Covered Product use. This Consent Judgment,
7 including, but not limited to, the standards and protocols, is the product of negotiation and
8 compromise and is accepted by the parties for purposes of settling, compromising, and resolving
9 issues disputed in this action, including future compliance by Daily Wellness with Section 2 of
10 this Consent Judgment, and shall not be used for any other purpose, or in any other matter and,
11 except for the purpose of determining future compliance with this Consent Judgment, shall not
12 constitute an adoption or employment of a method of analysis for a listed chemical in a specific
13 medium as set forth in California Code of Regulations, title 27, section 25900, subdivision (g).

14 **4. SETTLEMENT PAYMENTS**

15 **4.1 Settlement Amount and Allocation**

16 The total settlement amount to be paid by Daily Wellness shall be \$3,800.00, allocated
17 more specifically as follows:

18 (1) \$1,267.00 of the total settlement amount shall be paid as a civil penalty pursuant
19 to California Health & Safety Code section 25249.12;

20 (2) \$633.00 of the total settlement amount shall be paid as a civil penalty pursuant to
21 California Business and Professions Code section 17206; and

22 (3) \$1,583.00 of the total settlement amount shall reimburse the People for the costs
23 and expenses incurred in investigating, bringing, and resolving this action; of this amount,
24 \$633.00 will be applied by the Attorney General to the enforcement of Proposition 65
25 ("Enforcement Fund Payment").

26 (4) \$317.00 of the total settlement amount shall be applied by the Attorney General to
27 the enforcement of Proposition 65 ("Enforcement Fund Payment").
28

1 **4.2 Enforcement Fund Payment**

2 Money designated above in paragraphs 4.1(3) and 4.1(4) as "Enforcement Fund Payment"
3 shall be placed in an interest-bearing Special Deposit Fund established by the Attorney General.
4 These funds, including any interest, shall be used by the Attorney General, until all funds are
5 exhausted, for the costs and expenses associated with the enforcement and implementation of
6 Proposition 65, including investigations, enforcement actions, other litigation or activities as
7 determined by the Attorney General to be reasonably necessary to carry out his duties and
8 authority under Proposition 65. Such funding may be used for the costs of the Attorney General's
9 investigation, filing fees and other court costs, payment to expert witnesses and technical
10 consultants, purchase of equipment, travel, purchase of written materials, laboratory testing,
11 sample collection, or any other cost associated with the Attorney General's duties or authority
12 under Proposition 65. Funding placed in the Special Deposit Fund pursuant to this paragraph, and
13 any interest derived therefrom, shall solely and exclusively augment the budget of the Attorney
14 General's Office and in no manner shall supplant or cause any reduction of any portion of the
15 Attorney General's budget.

16 **4.3 Payment Instructions**

17 Daily Wellness shall pay the entire settlement amount within thirty (30) days following the
18 Effective Date. The payments required by this Consent Judgment shall be made through the
19 delivery of a single check made payable to "California Department of Justice," sent by certified
20 or express mail to the attention of Laura J. Zuckerman, Deputy Attorney General, California
21 Department of Justice, Attorney General's Office, 1515 Clay Street, 20th Floor, Oakland, CA
22 94612-0550. The California Department of Justice will thereafter disburse the settlement
23 payment received to the other public agencies representing the People according to a separate

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1 agreement. A copy of the check shall be sent to:

2 Robert Thomas
3 Legal Analyst
4 California Department of Justice
5 Office of the Attorney General
6 1515 Clay St., 20th Floor
7 P.O. Box 70550
8 Oakland, California 94612-0550

9 **5. ENFORCEMENT OF CONSENT JUDGMENT**

10 The People may, by motion or order to show cause before the Superior Court of Alameda
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action
12 brought by the People to enforce this Consent Judgment, the People may seek whatever fines,
13 costs, penalties, or remedies as provided by law for failure to comply with the Consent Judgment.
14 Where said failure to comply constitutes future violations of Proposition 65, Business and
15 Professions Code section 17200, or other laws, the People are not limited to enforcement of this
16 Consent Judgment, but may seek in another action whatever fines, costs, penalties, or remedies
17 are provided by law for failure to comply with Proposition 65, Business and Professions Code
18 section 17200 et seq., or other laws. The rights of Daily Wellness to defend itself and its actions
19 in law or equity shall not be abrogated or reduced in any fashion by the terms of this paragraph.

20 **6. COVERED CLAIMS**

21 This Consent Judgment is a full, final, and binding resolution between the People and
22 Daily Wellness, its parents, shareholders, divisions, subdivision, subsidiaries, sister companies,
23 affiliates, cooperative members, licensors, licensees, retailers, distributors, wholesalers, agents
24 and representatives, and the officers, directors, employees, attorneys, agents, representatives,
25 predecessors, successors, and assigns of any of them, of any violation of Proposition 65 or its
26 implementing regulations, Business and Professions Code sections 17200 et seq., or any other
27 statutory or common law claims that have been or could have been asserted in the Action for
28 failure to provide clear and reasonable warnings required by Proposition 65 of exposure to lead
from use of the Released Products, or any other claim based on the facts or conduct alleged in the

1 Complaint as to such Released Products. Daily Wellness waives any claims against the People
2 based on the filing or prosecution of the Action.

3 **7. COURT APPROVAL**

4 The People shall submit this Consent Judgment to the Court for its approval and entry in
5 the Action.

6 **8. RETENTION OF JURISDICTION**

7 This Court shall retain jurisdiction of this matter to implement the Consent Judgment, and
8 to enable the People to apply to the Court upon noticed motion for additional civil penalties,
9 within three years after entry of judgment, in the event there are any material misrepresentations
10 in Daily Wellness's Responses to Plaintiff's First Set of Special Interrogatories, served February
11 22, 2010, and Daily Wellness's Responses to Requests for Admissions, Set One, served October
12 1, 2009, which were submitted to the People and on which the People relied in stipulating to the
13 entry of this Consent Judgment.

14 **9. MODIFICATION**

15 9.1 This Consent Judgment may be modified from time to time by express written
16 agreement of the parties, with the approval of the Court or by an order of this Court. Grounds for
17 considering modification shall include any that are permitted by law, including but not limited to
18 the grounds set forth below.

19 9.2 If the Attorney General subsequently agrees in a settlement or judicially-entered
20 injunction or consent judgment that vitamin supplements do not require a warning under
21 Proposition 65, or that a modified warning for vitamin supplements is appropriate that differs
22 from that imposed in this Consent Judgment, or establishes allowances for naturally-occurring
23 lead; or a court of competent jurisdiction renders a final judgment in a case brought by the
24 Attorney General that eliminates the warning requirement for vitamin supplements or that
25 modifies the warning requirement for vitamin supplements, either by establishing allowances for
26 naturally-occurring lead or otherwise, then Defendant shall be entitled to seek to modify the terms
27 of this Consent Judgment to make it consistent with the Attorney General agreement or court
28 judgment described herein.

1 **10. SEVERABILITY**

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

5 **11. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made by any party
10 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
11 deemed to exist or to bind any of the parties.

12 **12. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California.

15 **13. NOTICES**

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

- 20 To Daily Wellness:
- 21 Gene J. Stonebarger
22 Stonebarger Law
23 A Professional Corporation
24 75 Iron Point Circle, Suite 145
25 Folsom, California 95630
- 26 Denny Kwock
27 The Daily Wellness Company
28 1946 Young Street, Suite 360
Honolulu, HI 96826

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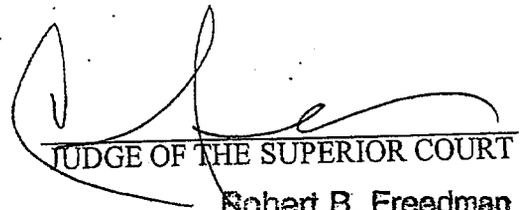
To the Office of the Attorney General:

Laura J. Zuckerman, Esq.
Timothy E. Sullivan, Esq.
California Department of Justice
P.O. Box 70550
1515 Clay Street, Suite 2000
Oakland, CA 94612

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

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: July 20, 2010



JUDGE OF THE SUPERIOR COURT
Robert B. Freedman

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EXHIBIT A

Daily Wellness Mother's Blend

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- 1 • The difference between duplicate results of the analysis of any composite shall not
2 vary more than $\pm 30\%$, when the product results are <0.050 but >0.010 mg/kg
3 (ppm).
4 • All composites exceeding these values shall be reanalyzed.

5 Product variability:

- 6 • If any average value for any duplicate analysis of a composite exceeds $\pm 20\%$ of
7 the overall average value for that product, the product will be declared to lack
8 satisfactory uniformity and therefore subject to recollection and reanalysis, unless
9 the product contains less than 0.050 mg/kg (ppm).

10 Sample Preparation (after Compositing and Grinding):

- 11 • Digestion conditions: Closed vessel, high temperature-pressure, microwave
12 assisted digestion, employing high purity reagents (e.g. double distilled HNO₃).
13 • Typical analytical portion: $0.5-1.0$ g for ICP-MS depending on the caloric density
14 of the product or ingredient

15 Analyte Determination:

- 16 • ICP-MS-based determination

17 Features of an ICP-MS Based Method:

- 18 • Modern ICP-MS instrument with the capabilities of an Agilent 7500 CE/X, or
19 equivalent.
20 • Conduct method verification procedures and determine figures of merit, ASDL,
21 ASQL, LOD, LOQ, LDR for the conditions and requirements of the
22 determinations
23 • Laboratory meets criteria established for chemistry labs by A2LA
24 • Affirm instrument performance is within manufacturers specifications and settings
25 form Pb
26 • Determine total content Pb-206, -207, -208
27 • IS: Bi-209, Pb-204 or another equivalent isotope.
28 • Operate within a relatively low and narrow range, i.e., $0.5 - 10$ ng/ml Pb in order
 to allow maximum dilution and therefore minimal matrix effects.
 • Regression coefficient for the standardization, $r^2 \geq 0.995$

- Typical final dilution 200ml, total dissolved solids <2% in 2% HNO₃
- Performance requirements:
 - ASDL: ≤0.1ng/ml
 - ASQL: ≤0.3 ng/ml
 - LOQ: ≤0.06 mg/kg for a 1g sample, at specified dilution

QC features: RM/CRM recovery of 0.1-1.0 mg/kg Pb: 80-120% ; (mid-range, second origin check solution) ICV and CCV : 95-105%; MBk: ideally < ASDL, if not, subtract blank reading if analyte level in sample is < 10x the MBk reading; replicate values ≤ 15 % RPD; FAP at 1-2X 80-120%; FAS (90-110%); acceptable Bi-209 IS correction limits 60-140% ; 20% replicate, 20% MBk

Abbreviations and Terms:

Digestion (or mineralization): A process where the objective is to destroy the organic components of a sample

HNO₃: Nitric acid

ICP-MS: Coupled Plasma Mass Spectrometry

Agilent 7500 CE/X: Models of ICP-MS manufactured by Agilent Technologies

ASDL: Analytical Solution Detection Limit

ASQL: Analytical Solution Quantitation Limit

LOD: Limit of Detection

LOQ: Limit of Quantitation or Quantification

LDR: Linear Dynamic Range

A2LA: The American Association for Laboratory Accreditation

Pb-206, -207, -208, -204: Lead isotopes, atomic masses 206, 207, 208, 204

IS: Internal Standard

Bi-209: Bismuth isotope, atomic mass 209

QC: Quality Control

RM/CRM: Reference Materials/Certified Reference Materials

1 ng: Nanogram

2 ICV: Initial Calibration Verification

3 CCV: Continuing Calibration Verification

4 MBk: Method blanks, a QC process control to evaluate the total analyte contributed by reagents
5 and other processing steps

6 RPD: Relative Percent Difference, a measure of precision

7 FAP: Sample spike or Fortified Analytical Portion

8 FAS: Sample digest solution spike or Fortified Analytical Solution

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