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8 Environmental Research Center

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

11 ENVIRONMENTAL RESEARCH)
12 CENTER, a California non-profit)
13 corporation,)

14 Plaintiffs,)

15 vs.)

16 DR. McDOUGALL'S RIGHT FOODS,)
17 INC., SAN FRANCISCO SPICE)
18 COMPANY, and DOES 1-25, Inclusive,)

19 Defendants.)

Case No.: 30-2013-00676051-CU-MC-CJC

NOTICE OF ENTRY OF JUDGMENT

20 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

21 NOTICE IS HEREBY GIVEN that the Court has entered Judgment and approved the
22 settlement by Stipulated Consent Judgment in the above-entitled matter. A true and correct copy
23 of the Stipulated Consent Judgment and Order is attached hereto as Exhibit 1.

24 Dated: January 19, 2015

WRAITH LAW

William F. Wraith

By: _____

26 WILLIAM F. WRAITH
27 Attorney for Plaintiff

EXHIBIT 1

ELECTRONICALLY RECEIVED
Superior Court of California,
County of Orange
12/10/2014 at 05:51:46 PM
Clerk of the Superior Court
By Enrique Veloz, Deputy Clerk

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 15 2014

ALAN CARLSON, Clerk of the Court
Alan Carlson
BY N. TURNER-MITANI

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8 Environmental Research Center

9 MATTHEW S. KENEFICK, SBN 227298 (msk@jmmbm.com)
10 ELIZABETH CULLEY, SBN 258250 (eac@jmmbm.com)
11 JEFFER MANGELS BUTLER & MITCHELL LLP
12 Two Embarcadero Center, Fifth Floor
13 San Francisco, California 94111
14 Telephone: (415) 398-8080
15 Facsimile: (415) 398-5584

16 Attorneys for Defendants
17 BRIGHT PEOPLE FOODS, INC. doing business
18 as DR. McDOUGALL'S RIGHT FOODS and
19 SAN FRANCISCO SPICE CO. INC.

20 SUPERIOR COURT OF CALIFORNIA
21 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

22 ENVIRONMENTAL RESEARCH
23 CENTER, a California non-profit
24 corporation,

25 Plaintiff,

26 vs.

27 DR. McDOUGALL'S RIGHT FOODS,
28 INC., SAN FRANCISCO SPICE
COMPANY, and DOES 1-25, Inclusive,

Defendants.

Case No.: 30-2013-00676051-CU-MC-CJC

nm/c26
[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER

[Health & Safety Code § 25249.5, et seq.]

*nm
c26*

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California’s Safe Drinking
3 Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5
4 *et seq.* (also known as and herein after referred to as “Proposition 65”) regarding the following
5 products (hereinafter collectively the “Covered Products” or “Covered Product” to refer to a
6 single product):

- 7 a. Dr. McDougall’s Right Foods Vegan Hot & Sour Ramen
- 8 b. Dr. McDougall’s Right Foods Vegan Miso Ramen
- 9 c. Dr. McDougall’s Right Foods Asian Entrée Spicy Szechuan Noodle
- 10 d. Dr. McDougall’s Right Foods Asian Entrée Thai Peanut Noodle
- 11 e. Dr. McDougall’s Right Foods Asian Entrée Teriyaki Noodle
- 12 f. Dr. McDougall’s Right Foods Asian Entrée Soy Ginger Noodle
- 13 g. Dr. McDougall’s Right Foods Asian Entrée Spicy Kung Pao Noodle
- 14 h. Dr. McDougall’s Right Foods Vegan Chicken Ramen

15 **1.2** Plaintiff Environmental Research Center, Inc. (“ERC”) is a California non-profit
16 corporation acting as a private enforcer of Proposition 65 that is dedicated to, among other
17 causes, helping safeguard the public from health hazards by reducing the use and misuse of
18 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
19 and encouraging corporate responsibility. ERC brings this Action in the public interest pursuant
20 to California Health and Safety Code Section 25249.7.

21 **1.3** BRIGHT PEOPLE FOODS, INC. doing business as DR. McDOUGALL’S
22 RIGHT FOODS and SAN FRANCISCO SPICE CO. INC. (collectively “Defendants”) are each a
23 California Corporation. ERC alleges that at all relevant times for purposes of this Consent
24 Judgment, each employed ten or more persons, and each qualified as a “person in the course of
25 doing business” within the meaning of Proposition 65. Defendants manufacture, distribute
26 and/or sell the Covered Products.

27 **1.4** ERC and Defendants are hereinafter sometimes referred to individually as a
28 “Party” or collectively as the “Parties.”

1 **1.5** On September 17, 2012, pursuant to California Health and Safety Code Section
2 25249.7(d)(1), ERC served a Notice of Violations of Proposition 65 (“Notice of Violations”) on
3 the California Attorney General, other public enforcers, and Defendants. A true and correct copy
4 of the Notice of Violations is attached hereto as Exhibit A.

5 **1.6** After more than sixty (60) days passed since service of the Notice of Violations,
6 and no designated governmental agency filed a complaint against Defendants with regard to the
7 Covered Products or the alleged violations, ERC filed the Complaint in this Action (the
8 “Complaint”) for injunctive relief and civil penalties. The Complaint is based on the allegations
9 in the Notice of Violations.

10 **1.7** The Complaint and the Notice of Violations each allege that Defendants
11 manufactured, distributed, and/or sold in California the Covered Products, which contain lead, a
12 chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and expose
13 consumers at a level requiring a Proposition 65 warning. They further allege that use of the
14 Covered Products exposes persons in California to lead without first providing clear and
15 reasonable warnings, in violation of California Health and Safety Code Section 25249.6.
16 Defendants deny all material allegations of the Notice of Violation and the Complaint, assert
17 numerous affirmative defenses, and specifically deny that the Covered Products require a
18 Proposition 65 warning or otherwise cause harm to any person.

19 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise and
20 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
21 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
22 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
23 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
24 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
25 wrongdoing, or liability, including without limitation, any admission concerning any alleged
26 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent
27 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
28 may have in any other or future legal proceeding unrelated to these proceedings. However,

1 nothing in this Section shall affect the enforceability of this Consent Judgment.

2 **1.9** The “Effective Date” of this Consent Judgment shall be the date this Consent
3 Judgment is entered by the Court.

4 **2. JURISDICTION AND VENUE**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
6 jurisdiction over the subject matter of this Action and personal jurisdiction over the Parties, that
7 venue is proper in this Court, and that this Court has jurisdiction to enter this Consent Judgment
8 pursuant to the terms set forth herein.

9 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

10 **3.1** Beginning on the Effective Date, Defendants shall be permanently enjoined from
11 manufacturing for sale in California, directly selling to a consumer in California or “Distributing
12 into California” any of the Covered Products for which the maximum daily dose recommended
13 on the label contains more than 0.5 micrograms of lead, unless such Covered Product complies
14 with the warning requirements in Section 3.3 or qualifies as a “Reformulated Covered Product”
15 pursuant to Section 3.4. “Distributing into California” and “Distribute into California” mean to
16 directly ship any of the Covered Products into California for sale or to sell any of the Covered
17 Products to a distributor that Defendants know will sell the Covered Product in California.

18 **3.2 Calculation of Lead Levels**

19 As used in this Consent Judgment, lead levels are calculated pursuant to the testing
20 protocol described in Section 3.5. For purposes of measuring the lead, the second highest lead
21 detection result of the six (6) randomly selected samples of the Covered Products will be
22 controlling.

23 **3.3 Clear and Reasonable Warnings.**

24 For those Covered Products that are subject to the warning requirement of Section 3.1,
25 Defendants shall provide the following warning:

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

28 The text in brackets in the warning above is optional, except that the term “cancer” must

1 be included only if the maximum daily dose recommended on the label contains more than 15
2 micrograms of lead.

3 The warning shall be prominently affixed to or printed upon the product's label of the
4 Covered Product so as to be clearly conspicuous, as compared with other statements or designs
5 on the label as to render it likely to be read and understood by an ordinary purchaser or user of
6 the product. If the warning is displayed on the product's label, it shall be at least the same size as
7 the largest of any other health or safety warnings on the product and the word "WARNING"
8 shall be in all capital letters and in bold print.

9 For any products sold via a website, the warning shall appear on the checkout page on the
10 website for California consumers relating to any of the Covered Products being sold.

11 Defendants shall not provide any additional information, statements, or comments
12 regarding Proposition 65 in addition to the Warning.

13 **3.4 Reformulated Covered Products.**

14 A Reformulated Covered Product is one for which the maximum recommended daily
15 serving on the label contains no more than 0.5 micrograms of lead per day.

16 **3.5 Testing and Quality Control Methodology**

17 (a) Beginning within one year of the Effective Date, Defendants shall test six (6)
18 randomly selected samples of the Covered Products prior to shipment (in the form intended for
19 sale to the end-user) for lead content. The testing requirement does not apply to any of the
20 Covered Products for which Defendants have provided the warning specified in Section 3.3.

21 (b) Testing for lead shall be performed using Inductively Coupled Plasma-Mass
22 Spectrometry ("ICP-MS") or any other testing method subsequently agreed to in writing by the
23 Parties.

24 (c) All testing pursuant to this Consent Judgment shall be performed by an
25 independent third party laboratory certified by the California Environmental Laboratory
26 Accreditation Program or a laboratory that is registered with the United States Food & Drug
27 Administration for the analysis of heavy metals.

28 (d) Defendants shall retain all test results and documentation for a period of four (4)

1 years from the date of the test. Defendants shall provide copies of the test results to ERC within
2 10 days of Defendants' receipt of the test results.

3 (e) Defendants shall test each of the Covered Products prior to shipment at least once
4 a year for a minimum of four (4) consecutive years by testing six (6) randomly selected samples
5 of the Covered Products which Defendants intend to sell or are manufacturing for sale in
6 California, directly selling to a consumer in California, or "Distributing into California. If tests
7 conducted pursuant to this Section demonstrate that no warning is required for a Covered
8 Product during each of four (4) consecutive years, then the testing requirements of this Section
9 will no longer be required as to that Covered Product.

10 (f) For purposes of this Consent Judgment, daily lead exposure levels shall be
11 measured in micrograms, and shall be calculated using the following formula: Micrograms of
12 lead per gram of product, multiplied by grams per serving of the product (using the total gram
13 net weight for the product as printed on the front label of the cup), which equals micrograms of
14 lead exposure per day.

15 (g) Should testing results conducted pursuant to paragraphs 3.2 and 3.5(a) indicate
16 that the second highest lead detection result is more than 0.5 micrograms of lead in any of the
17 Covered Products, Defendants shall select three additional randomly selected samples of the
18 Covered Product from the same manufactured lot for testing. The lead detection test results from
19 those three additional samples shall be averaged together (the "Retest Result") and shall be used
20 instead of the previous second highest test result pursuant to Section 3.2. Thus, for purposes of
21 measuring the lead when this Section 3.5(g) is implemented, the second highest lead detection
22 result of the six (6) results [the existing lead detection results of the five randomly selected
23 samples and the Retest Result] will be controlling.

24 **4. SETTLEMENT PAYMENT**

25 4.1 Defendants shall make a total payment of \$65,000.00 within 10 business days of
26 the Effective Date, which shall be in full and final satisfaction of all potential civil penalties,
27 payment in lieu of civil penalties, and attorney's fees and costs. The payment will be sent to
28 counsel for ERC, William F. Wraith, Wraith Law, 16485 Laguna Canyon Road, Suite 250,

1 Irvine, California, 92618. The payment shall be issued as separate checks apportioned as follows:

2 **4.2** \$14,020.00 as civil penalties pursuant to California Health and Safety Code
3 Section 25249.7(b)(1). Of this amount, \$10,515.00 shall be payable to the Office of
4 Environmental Health Hazard Assessment (“OEHHA”), and \$3,505.00 shall be payable to ERC.
5 (Cal. Health & Safety Code § 25249.12(c)(1) & (d)). ERC’s counsel will forward the civil
6 penalty to OEHHA.

7 **4.3** \$18,823.00 payable to ERC as reimbursement to ERC for reasonable costs
8 associated with the enforcement of Proposition 65 and other costs incurred as a result of work in
9 bringing this Action.

10 **4.4** \$17,142.00 payable to ERC in lieu of further civil penalties, for the day-to-day
11 business activities such as (1) continued enforcement of Proposition 65, which includes work,
12 analysis and testing of consumer products that may contain Proposition 65 chemicals, focusing
13 on the same or similar type of ingestible products that are the subject matter of the current action;
14 (2) the continued monitoring of past consent judgments and settlements to ensure companies are
15 complying with Proposition 65; and (3) giving a donation of \$ 857.00 to the Center For
16 Environmental Health to address reducing toxic chemical exposures in California.

17 **4.5** \$15,015.00 payable to William F. Wraith as reimbursement of ERC’s attorney’s
18 fees and attorney’s costs.

19 **5. MODIFICATION OF CONSENT JUDGMENT**

20 This Consent Judgment may be modified only by: (i) Written agreement and stipulation
21 of the Parties and (ii) upon entry of a modified Consent Judgment by the Court. ERC is entitled
22 to reimbursement all reasonable attorneys’ fees and costs regarding any modification requested
23 or initiated by Defendants.

24 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

25 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
26 this Consent Judgment.

27 ///

28 ///

1 **6.2** Any Party may, by motion or application for an order to show cause filed with
2 this Court, enforce the terms and conditions contained in this Consent Judgment. The prevailing
3 party in any such motion or application may request that the Court award its reasonable
4 attorneys' fees and costs associated with such motion or application.

5 **6.3** If ERC alleges that any Covered Product fails to qualify as a Reformulated
6 Covered Product (and for which ERC alleges no warning has been provided), then ERC shall
7 inform Defendants in a reasonably prompt manner of its test results, including information
8 sufficient to permit Defendants to identify the Covered Products at issue. Defendants shall,
9 within thirty (30) days following Defendants' receipt of such notice, provide ERC with testing
10 information demonstrating Defendants' compliance with the Consent Judgment, if warranted.
11 The parties shall first attempt to resolve the matter prior to ERC taking any further legal action
12 pursuant to Section 14.

13 **7. APPLICATION OF CONSENT JUDGMENT**

14 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
15 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
16 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,
17 wholesalers, retailers, predecessors, successors, and assigns.

18 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

19 **8.1** ERC acting on its own behalf and in the public interest releases Defendants and
20 their directors, officers, shareholders and affiliates (including those companies that are under
21 common ownership or common control), customers (excluding private label customers), parent
22 and affiliate companies (including Made Right, LLC) from all claims for violations of
23 Proposition 65 up through the Effective Date based on exposure to lead from the Covered
24 Products as set forth in the Notice of Violations. Compliance with the terms of this Consent
25 Judgment shall be deemed to constitute compliance with respect to exposures to lead from the
26 covered Products as set forth in the Notice of Violations and Complaint.

27 **8.2 Unknown Claims**

28 It is possible that other claims not now known to the Parties arising out of the facts

1 alleged in the Notice of Violations or the Complaint and relating to lead in the Covered Products
2 that were manufactured before the Effective Date will develop or be discovered. ERC, on behalf
3 of itself only, waives California Civil Code Section 1542 as to any such unknown claims.

4 California Civil Code Section 1542 reads as follows:

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

10 **8.3** ERC, on one hand, and Defendants, on the other hand, each release and waive all
11 claims they may have against each other and their respective officers, directors, employees,
12 agents, representatives, and attorneys for any statements or actions made or undertaken by them
13 or their respective officers, directors, employees, agents, representatives, and attorneys in
14 connection with the Notice of Violations or this Action.

15 **9. CONSTRUCTION AND SEVERABILITY**

16 **9.1** The terms and conditions of this Consent Judgment have been reviewed by the
17 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
18 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
19 construction of this Consent Judgment, the terms and conditions shall not be construed against
20 any Party.

21 **9.2** In the event that any of the provisions of this Consent Judgment is held by a court
22 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
23 affected.

24 **9.3** The terms and conditions of this Consent Judgment shall be governed by and
25 construed in accordance with the laws of the State of California.

26 **10. PROVISION OF NOTICE**

27 All notices required to be given to either Party to this Consent Judgment by the other
28 shall be in writing and sent to the following agents listed below by: (a) first-class, registered, (b)

1 certified mail, (b) overnight courier, or (c) personal delivery to the following

2 **For Environmental Research Center**
3 Chris Heptinstall, Executive Director
4 Environmental Research Center
5 3111 Camino del Rio North, Suite 400
6 San Diego, CA 92108

7 William F. Wraith, Esq.
8 Wraith Law
9 16485 Laguna Canyon Road, Suite 250
10 Irvine, CA 92618

11 **For Defendants**

12 William S. Solari, III
13 Matthew S. Kenefick
14 Jeffer Mangels Butler & Mitchell LLP
15 Two Embarcadero Center, Fifth Floor
16 San Francisco, California 94111
17 Telephone: (415) 398-8080
18 Facsimile: (415) 398-5584

19 With a copy to:

20 Michael Vinnicombe
21 San Francisco Spice Co.
22 105 Associated Road
23 South San Francisco, CA 94080

24 **11. COURT APPROVAL**

25 11.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
26 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
27 Consent Judgment.

28 11.2 If the California Attorney General objects to any term in this Consent Judgment,
the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
prior to the hearing on the motion.

11.3 If this Stipulated Consent Judgment is not approved by the Court despite the
Parties' best efforts, it shall be null and void and have no force or effect.

12. EXECUTION AND COUNTERPARTS

This Stipulated Consent Judgment may be executed in counterparts, which taken together

1 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as
2 the original signature.

3 **13. ENTIRE AGREEMENT, AUTHORIZATION**

4 **13.1** This Consent Judgment contains the sole and entire agreement and understanding
5 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
6 negotiations, commitments and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any Party.
8 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to
9 exist or to bind any Party.

10 **13.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
12 provided herein, each Party shall bear its own fees and costs.

13 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

14 **14.1** If a dispute arises with respect to either Party's compliance with the terms of this
15 Consent Judgment entered by the Court, the Parties shall meet in person or by telephone and
16 endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the
17 absence of such a good faith attempt to resolve the dispute beforehand. In the event an action or
18 motion is filed, however, the prevailing party may seek to recover costs and attorney's fees. As
19 used in the preceding sentence, the term "prevailing party" means a party who is successful in
20 obtaining relief more favorable to it than the relief that the other party was amenable to providing
21 in writing and with specificity during the Parties' good faith attempt to resolve the dispute that is
22 the subject of such enforcement action.

23 **15. REQUEST FOR FINDINGS AND FOR APPROVAL**

24 **15.1** This Consent Judgment has come before the Court upon the request of the Parties.
25 The Parties request the Court to fully review this Consent Judgment and, being fully informed
26 regarding the matters which are the subject of this action, to:

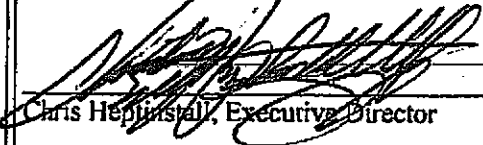
27 (a) Find that the terms and provisions of this Consent Judgment represent a good
28 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been

1 diligently prosecuted, and that the public interest is served by such settlement; and

2 (b) Make the findings pursuant to California Health and Safety Code section
3 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

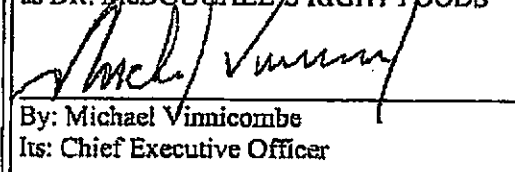
4 **IT IS SO STIPULATED:**

5 **ENVIRONMENTAL RESEARCH CENTER**

6 
7 _____
8 Chris Heplinstall, Executive Director

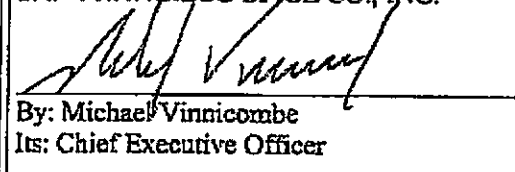
Dated: 7/23/2014

9 **DEFENDANTS**
10 **BRIGHT PEOPLE FOODS, INC. doing business**
11 **as DR. McDOUGALL'S RIGHT FOODS**

11 
12 _____
13 By: Michael Vinnicombe
14 Its: Chief Executive Officer

Dated: 7/23/14

14 **SAN FRANCISCO SPICE CO., INC.**

15 
16 _____
17 By: Michael Vinnicombe
18 Its: Chief Executive Officer

Dated: 7/23/14

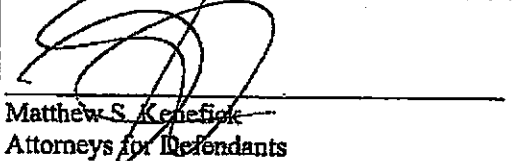
18 **APPROVED AS TO FORM:**

20 **WRAITH LAW**

21 
22 _____
23 William F. Wraith
24 Counsel for Environmental Research Center

Dated: 7/24/2014

25 **JEFFER MANGELS BUTLER & MITCHELL, LLP**

26 
27 _____
28 Matthew S. Kenefick
Attorneys for Defendants

Dated: 7/24/2014

ENVIRONMENTAL RESEARCH
CENTER VS. DR. MCDOUGALL'S
RIGHT FOODS, INC.

30-2013-00676051

ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: DECEMBER 15, 2014

Judge, Superior Court of the State of California
GREGORY H. LEWIS

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EXHIBIT “A”

WRAITH LAW

16485 LAGUNA CANYON ROAD
SUITE 250
IRVINE, CALIFORNIA 92618
Tel (949) 251-9977
Fax (949) 251-9978

September 17, 2012

NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center (“ERC”), 3111 Camino Del Rio North, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

Alleged Violators. The names of the companies covered by this notice that violated Proposition 65 (hereinafter “the Violators”) are:

**Dr. McDougall’s Right Foods, Inc.
San Francisco Spice Co.**

Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

Dr. McDougall’s Right Foods Vegan Hot & Sour Ramen - Lead

Dr. McDougall's Right Foods Vegan Miso Ramen - Lead

Dr. McDougall's Right Foods Asian Entrée Spicy Szechuan Noodle- Lead

Dr. McDougall's Right Foods Asian Entrée Thai Peanut Noodle - Lead

Dr. McDougall's Right Foods Asian Entrée Teriyaki Noodle - Lead

Dr. McDougall's Right Foods Asian Entrée Soy Ginger Noodle - Lead

Dr. McDougall's Right Foods Asian Entrée Spicy Kung Pao Noodle - Lead

Dr. McDougall's Right Foods Vegan Chicken Ramen - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 17, 2009, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

September 17, 2012

Page 3

an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Dr. McDougall's Right Foods, Inc., San Francisco Spice Co., and each Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Dr. McDougall's Right Foods, Inc. and San Francisco Spice Co.

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

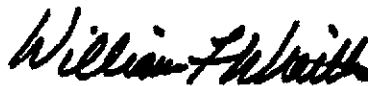
2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 17, 2012



William F. Wraith

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On September 17, 2012, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

President or CEO Dr. McDougall's Right Foods, Inc. 101 Utah Avenue South San Francisco, CA 94080	James Ahrens (Registered Agent for Dr. McDougall's Right Foods, Inc.) 101 Utah Avenue South San Francisco, CA 94080
-----------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------

President or CEO Dr. McDougall's Right Foods, Inc. 105 Associated Road South San Francisco, CA 94080	Michael Vinnicombe (Registered Agent for San Francisco Spice Co.) 105 Associated Road South San Francisco, CA 94080
---------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------

President or CEO
San Francisco Spice Co.
P.O. Box 426
South San Francisco, CA 94083

On September 17 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On September 17, 2012, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

September 17, 2012

Page 6

each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on September 17, 2012, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink, appearing to read "Amber Schaub", written in a cursive style.

Amber Schaub

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

September 17, 2012

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Service List

District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
550 W. Main Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92701

District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1355 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive,
Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Blvd., Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113

PROOF OF SERVICE

1 I, William F. Wraith, am an active member of the State Bar of California and not a party to this
2 action. I am a resident or employed in the county where the mailing took place. My business
3 address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA 92653.

4 On December 10, 2014, I served the foregoing documents described as:

5 **[PROPOSED] STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER**

6 on the following interested parties in this action in the manner identified below:

7 Matthew S. Kenefick, Esq.
8 Jeffer Mangels Butler & Mitchell LLP
9 Two Embarcadero Center, Fifth Floor
10 San Francisco, CA 94111
11 Attorneys for Defendants

12 Proposition 65 Enforcement Reporting
13 Attention: Prop 65 Coordinator
14 1515 Clay Street, Suite 2000
15 Post Office Box 70550
16 Oakland, California 94612-0550

17 **BY MAIL – USPS DEPOSIT:** I deposited the sealed envelope with the United States
18 Postal service with the postage fully prepaid.

19 I declare under penalty of perjury under the laws of the State of California that the above
20 is true and correct. Executed on December 10, 2014, at Laguna Hills, California.

21 

22 _____
23 William Wraith
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WRAITHLAW
24422 Avenida de la Carlota, Suite 400
Laguna Hills, California 92653
(949) 452-1234

PROOF OF SERVICE

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I, William F. Wraith, am an active member of the State Bar of California and not a party to this action. I am a resident or employed in the county where the mailing took place. My business address is 24422 Avenida de la Carlota, Suite 400, Laguna Hills, CA 92653.

On January 19, 2015, I served the foregoing documents described as:

NOTICE OF ENTRY OF JUDGMENT


on the following interested parties in this action in the manner identified below:

Matthew S. Kenefick, Esq.
Jeffer Mangels Butler & Mitchell LLP
Two Embarcadero Center, Fifth Floor
San Francisco, CA 94111
Attorneys for Defendants

Proposition 65 Enforcement Reporting
Attention: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, California 94612-0550

[X] **BY MAIL – COLLECTION:** I placed the envelope for collection and mailing following this business’s ordinary business practices. I am readily familiar with this business’s practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **January 19, 2015** at Laguna Hills, California.



William F. Wraith