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**FILED**  
**ALAMEDA COUNTY**

**JUL 27 2015**

**CLERK OF THE SUPERIOR COURT**

By *[Signature]* Deputy

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18 MONAVIE LLC

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
20 COUNTY OF ALAMEDA

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

24 Plaintiff,

25 v.

26 MONAVIE LLC, a Utah Limited Liability  
27 Company

28 Defendant.

CASE NO. RG15765917

STIPULATED CONSENT JUDGMENT;  
ORDER

Health & Safety Code § 25249.5 *et seq.*

Assigned for all Purposes to:

Hon. Wynne Carvill, SJ

Dept. 21

Action Filed: April 10, 2015

Trial Date: None set

**1. INTRODUCTION**

1.1 Concurrently with the filing of this Stipulated Consent Judgment, Plaintiff Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against MONAVIE LLC

1 (“MONAVIE”). In this action, ERC alleges that a number of products manufactured,  
2 distributed or sold by MONAVIE contain lead, a chemical listed under Proposition 65 as a  
3 carcinogen and reproductive toxin, and expose consumers to this chemical at a level requiring a  
4 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered  
5 Product” or collectively as “Covered Products”) are: (1) MonaVie LLC RVL Premier Weight  
6 Solution Nutrition Shake Mix Chocolate Berry and (2) MonaVie LLC RVL Premier Weight  
7 Solution Nutrition Shake Mix Vanilla Cream.

8 **1.2** ERC and MONAVIE are hereinafter referred to individually as a “Party” or  
9 collectively as the “Parties.”

10 **1.3** ERC is a California non-profit corporation dedicated to, among other causes,  
11 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
12 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
13 encouraging corporate responsibility.

14 **1.4** For purposes of this Consent Judgment, the Parties agree that MONAVIE is a  
15 Delaware Limited Liability Company that has employed ten or more persons at all times relevant  
16 to this action, and qualifies as a “person in the course of business” within the meaning of  
17 Proposition 65. MONAVIE manufactures, distributes and sells the Covered Products.

18 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation  
19 dated May 23, 2014, that was served on the California Attorney General, other public  
20 enforcers, and MONAVIE (“Notice”). A true and correct copy of the Notice is attached as  
21 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the  
22 Notice was mailed and uploaded to the Attorney General’s website, and no designated  
23 governmental entity has filed a complaint against MONAVIE with regard to the Covered  
24 Products or the alleged violations.

25 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes  
26 persons in California to lead without first providing clear and reasonable warnings in violation  
27 of California Health and Safety Code section 25249.6. MONAVIE denies all material  
28 allegations contained in the Notice and Complaint.

1           **1.7**    The Parties have entered into this Consent Judgment in order to settle,  
2 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
3 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
4 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
5 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,  
6 distributors, wholesalers, or retailers. Except for the representations made above, nothing in  
7 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of  
8 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an  
9 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any  
10 purpose.

11           **1.8**    Except as expressly set forth herein, nothing in this Consent Judgment shall  
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
13 other or future legal proceeding unrelated to these proceedings.

14           **1.9**    The Effective Date of this Consent Judgment is the date on which it is entered as  
15 a Judgment by this Court.

16           **1.10**   As a result of ERC's NOV of May 23, 2014, MONAVIE represents that it  
17 commenced placement of compliant clear and reasonable warnings on the Covered Products on  
18 or around June 24, 2014.

19           **2. JURISDICTION AND VENUE**

20           For purposes of this Consent Judgment and any further court action that may become  
21 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
22 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
23 over MONAVIE as to the acts alleged in the Complaint, that venue is proper in Alameda County,  
24 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of  
25 all claims up through and including the Effective Date which were or could have been asserted in  
26 this action based on the facts alleged in the Notice and Complaint.

27 ///

28 ///

1 **3. INJUNCTIVE RELIEF AND WARNINGS**

2 **3.1** Beginning on the Effective Date, MONAVIE shall be permanently enjoined  
3 from manufacturing for sale in the State of California, “Distributing into the State of  
4 California”, or directly selling in the State of California, any Covered Product which exposes a  
5 person to a “Daily Exposure Level” of more than 0.5 micrograms per day when the maximum  
6 suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning  
7 requirements under Section 3.2.

8 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
9 of California” shall mean to directly ship a Covered Product into California for sale in  
10 California or to sell a Covered Product to a distributor that MONAVIE knows will sell the  
11 Covered Product in California.

12 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
13 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
14 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
15 product (using the largest serving size appearing on the product label), multiplied by servings  
16 of the product per day (using the largest number of servings in a recommended dosage  
17 appearing on the product label), which equals micrograms of lead exposure per day.

18 **3.2 Clear and Reasonable Warnings**

19 If MONAVIE is required to provide a warning pursuant to Section 3.1, the following  
20 warning must be utilized:

21 **WARNING: This product contains lead, a chemical known to the State of California**  
22 **to cause birth defects or other reproductive harm.**

23 MONAVIE shall use the phrase “cancer and” in the warning only if the maximum daily dose  
24 recommended on the label contains more than 15 micrograms of lead per day.

25 MONAVIE shall provide the warning on the following on the label or container of  
26 MONAVIE’s product packaging for each Covered Product distributed into the State of California  
27 as defined in Section 3.1.1.

28 The warning shall be at least the same size as the largest of any other health or safety

1 warnings also appearing on its website or on the label or container of MONAVIE's product  
2 packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No other  
3 statements about Proposition 65 or lead may accompany the warning.

4 MONAVIE must display the above warnings with such conspicuousness, as compared  
5 with other words, statements, or design of the label or container, as applicable, to render the  
6 warning likely to be read and understood by an ordinary individual under customary conditions of  
7 purchase or use of the product.

#### 8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
10 penalties, attorney's fees, and costs, MONAVIE shall make a total payment of \$120,000.00  
11 ("Total Settlement Amount") to ERC within 15 days of the Effective Date. MONAVIE shall  
12 make this payment by wire transfer to ERC's escrow account, for which ERC will give  
13 MONAVIE the necessary account information. The Total Settlement Amount shall be  
14 apportioned as follows:

15 **4.2** \$43,288.00 shall be considered a civil penalty pursuant to California Health and  
16 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$32,466.00) of the civil penalty to the  
17 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe  
18 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety  
19 Code §25249.12(c). ERC will retain the remaining 25% (\$10,822.00) of the civil penalty.

20 **4.3** \$627.07 shall be distributed to Environmental Research Center as  
21 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$43,284.59  
22 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the  
23 day-to-day business activities such as (1) continued enforcement of Proposition 65, which  
24 includes work, analyzing, researching and testing consumer products that may contain  
25 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are  
26 the subject matter of the current action; (2) the continued monitoring of past consent judgments  
27 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a  
28

1 donation of \$2,164.00 to the Natural Resources Defense Council to address reducing toxic  
2 chemical exposures in California.

3       **4.4**     \$22,276.00 shall be distributed to Lozeau|Drury LLP as reimbursement of  
4 ERC's attorney's fees, while \$10,524.34 shall be distributed to ERC for its in-house legal fees.

5       **5.     MODIFICATION OF CONSENT JUDGMENT**

6       **5.1**     This Consent Judgment may be modified only (i) by written stipulation of the  
7 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
8 judgment.

9       **5.2**     If MONAVIE seeks to modify this Consent Judgment under Section 5.1, then  
10 MONAVIE must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks  
11 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
12 provide written notice to MONAVIE within thirty days of receiving the Notice of Intent. If  
13 ERC notifies MONAVIE in a timely manner of ERC's intent to meet and confer, then the  
14 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in  
15 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and  
16 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC  
17 shall provide to MONAVIE a written basis for its position. The Parties shall continue to meet  
18 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.  
19 Should it become necessary, the Parties may agree in writing to different deadlines for the  
20 meet-and-confer period.

21       **5.3**     In the event that MONAVIE initiates or otherwise requests a modification under  
22 Section 5.1, and the meet and confer process leads to a joint motion or application of the  
23 Consent Judgment, MONAVIE shall reimburse ERC its costs and reasonable attorney's fees  
24 for the time spent in the meet-and-confer process and filing and arguing the motion or  
25 application.

26       **5.4**     Where the meet-and-confer process does not lead to a joint motion or  
27 application in support of a modification of the Consent Judgment, then either Party may seek  
28 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and

1 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
2 means a party who is successful in obtaining relief more favorable to it than the relief that the  
3 other party was amenable to providing during the Parties' good faith attempt to resolve the  
4 dispute that is the subject of the modification.

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

7 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
8 this Consent Judgment.

9 **6.2** If ERC alleges that any Covered Product fails to comply with this Consent  
10 Judgment, then ERC shall inform MONAVIE in a reasonably prompt manner of its test results  
11 and/or other information sufficient to permit MONAVIE to identify the Covered Products at  
12 issue. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal  
13 action.

14 **7. APPLICATION OF CONSENT JUDGMENT**

15 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
16 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
17 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
18 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
19 application to Covered Products which are distributed or sold exclusively outside the State of  
20 California and which are not used by California consumers.

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

22 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on  
23 behalf of itself and in the public interest, and MONAVIE, of any alleged violation of  
24 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of  
25 exposure to lead from the handling, use, or consumption of the Covered Products and fully  
26 resolves all claims that have been or could have been asserted in this action up to and including  
27 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.  
28 ERC, on behalf of itself and in the public interest, hereby discharges MONAVIE and its

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
2 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
3 customers of MONAVIE), distributors, wholesalers, retailers, and all other upstream and  
4 downstream entities in the distribution chain of any Covered Product, and the predecessors,  
5 successors and assigns of any of them (collectively, "Released Parties"), from any and all  
6 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs and  
7 expenses asserted, or that could have been asserted, as to any alleged violation of Proposition  
8 65 arising from the failure to provide Proposition 65 warnings on the Covered Products  
9 regarding lead.

10 **8.2** ERC on its own behalf only, on one hand, and MONAVIE on its own behalf  
11 only, on the other, further waive and release any and all claims they may have against each  
12 other for all actions or statements made or undertaken in the course of seeking or opposing  
13 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
14 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
15 any Party's right to seek to enforce the terms of this Consent Judgment.

16 **8.3** It is possible that other claims not known to the Parties arising out of the facts  
17 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be  
18 discovered. ERC on behalf of itself only, on one hand, and MONAVIE, on the other hand,  
19 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
20 claims up through the Effective Date, including all rights of action therefore. ERC and  
21 MONAVIE acknowledge that the claims released in Sections 8.1 and 8.2 above may include  
22 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such  
23 unknown claims. California Civil Code section 1542 reads as follows:

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



1 ERC on behalf of itself only, on the one hand, and MONAVIE, on the other hand, acknowledge  
2 and understand the significance and consequences of this specific waiver of California Civil  
3 Code section 1542.

4 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead  
6 in the Covered Products as set forth in the Notice and the Complaint.

7 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
8 environmental exposures arising under Proposition 65, nor shall it apply to any of MONAVIE's  
9 products other than the Covered Products.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

11 In the event that any of the provisions of this Consent Judgment are held by a court to be  
12 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

13 **10. GOVERNING LAW**

14 The terms and conditions of this Consent Judgment shall be governed by and construed in  
15 accordance with the laws of the State of California.

16 **11. PROVISION OF NOTICE**

17 All notices required to be given to either Party to this Consent Judgment by the other shall  
18 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified  
19 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

20 **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

21 Chris Heptinstall, Executive Director, Environmental Research Center  
22 3111 Camino Del Rio North, Suite 400  
23 San Diego, CA 92108  
24 Tel: (619) 500-3090  
25 Email: chris\_erc501c3@yahoo.com

26 With a copy to:

27 RICHARD T. DRURY  
28 LOZEAU | DRURY LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
Ph: 510-836-4200

1 Fax: 510-836-4205  
2 Email: richard@lozeaudrury.com

3 **MONAVIE LLC**

4 MonaVie LLC  
5 Attn: Legal Department  
6 10855 River Front Parkway  
7 South Jordan Utah 84095

8 With a copy to:

9 **GARTH WARD**  
10 **LEWIS BRISBOIS BISGAARD & SMITH LLP**  
11 701 B Street, Suite 1900  
12 San Diego, CA 92101  
13 Ph: 619-233-1006  
14 Fax: 619-233-8627  
15 Email: gward@lbbslaw.com

16 **12. COURT APPROVAL**

17 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
19 Consent Judgment.

20 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
22 prior to the hearing on the motion.

23 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
24 void and have no force or effect.

25 **13. EXECUTION AND COUNTERPARTS**

26 This Consent Judgment may be executed in counterparts, which taken together shall be  
27 deemed to constitute one document. A facsimile or .pdf signature shall be construed as valid as  
28 the original signature.

**14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for each  
Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
3 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
4 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
5 equally in the preparation and drafting of this Consent Judgment.

6 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

16 **16. ENTIRE AGREEMENT, AUTHORIZATION**

17 **16.1** This Consent Judgment contains the sole and entire agreement and  
18 understanding of the Parties with respect to the entire subject matter herein, and any and all  
19 prior discussions, negotiations, commitments and understandings related hereto. No  
20 representations, oral or otherwise, express or implied, other than those contained herein have  
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
22 herein, shall be deemed to exist or to bind any Party.

23 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
24 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
25 explicitly provided herein, each Party shall bear its own fees and costs.

26 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
27 **CONSENT JUDGMENT**

28 This Consent Judgment has come before the Court upon the request of the Parties. The

1 Parties request the Court to fully review this Consent Judgment and, being fully informed  
2 regarding the matters which are the subject of this action, to:

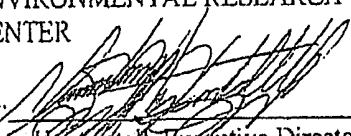
3 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
4 equitable settlement of all matters raised by the allegations of the Complaint, that the matter has  
5 been diligently prosecuted, and that the public interest is served by such settlement; and

6 (2) Make the findings pursuant to California Health and Safety Code section  
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8 **IT IS SO STIPULATED:**

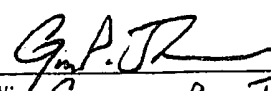
9 Dated: 4/27/, 2015

ENVIRONMENTAL RESEARCH  
CENTER

10 By:   
11 Chris Hepburn, Executive Director

12 Dated: 4/29, 2015

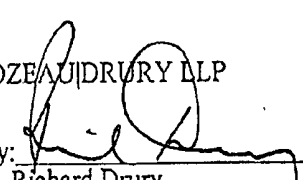
MONAVIE LLC

13   
14 By: Gordon P. Jacobson  
15 Its: General Counsel

16  
17 **APPROVED AS TO FORM:**

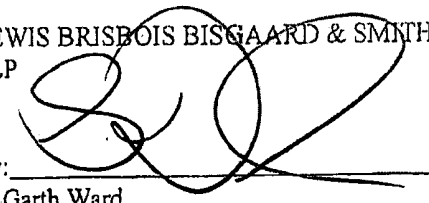
18 Dated: April 27, 2015

LOZEAU DRURY LLP

19 By:   
20 Richard Drury  
21 Attorney for Plaintiff Environmental  
22 Research Center

23 Dated: 5/4, 2015

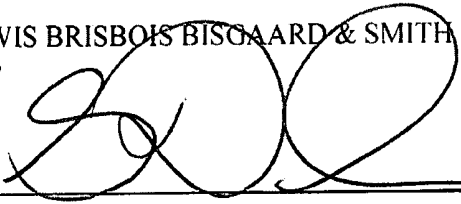
LEWIS BRISBOIS BISGAARD & SMITH  
LLP

24   
25 By: Garth Ward  
26 Garth Ward  
27 Attorney for Defendant Mona Vie LLC  
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Dated: 7/8, 2015

LEWIS BRISBOIS BISGAARD & SMITH  
LLP

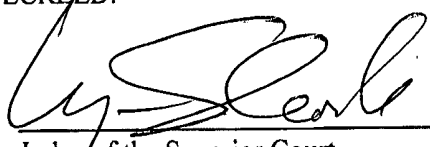
By:   
Garth Ward  
Attorney for Defendant MonaVie LLC

**ORDER AND JUDGMENT**

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: July 27, 2015

  
Judge of the Superior Court