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15 Attorneys for Plaintiff
16 **ERIKA MCCARTNEY**

17 **SUPERIOR COURT OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**

19 ERIKA MCCARTNEY, in the public interest,)

20 Plaintiff,)

21 v.)

22 UNITED NATURAL FOODS, INC.; BLUE)
23 MARBLE BRANDS, LLC; UNITED)
24 NATURAL TRADING, LLC, D/B/A)
25 WOODSTOCK FARMS MANUFACTURING;)
26 THRIVE MARKET, INC. and DOES 1 through)
27 500, inclusive,)

28 Defendants.)

FILED
San Francisco County Superior Court

OCT 24 2019

CLERK OF THE COURT

BY: *Guas Gonzales*
Deputy Clerk

CIVIL ACTION NO. CGC-19-575112

~~[PROPOSED]~~ CONSENT
JUDGMENT

[Cal. Health and Safety Code sec.
25249.6, *et seq.*]

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California’s Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*
4 (also known as and hereinafter referred to as “Proposition 65”) regarding the following product:
5 goji berries (hereinafter the “Covered Product.”) Plaintiff alleges the Covered Product exposes
6 consumers in California to lead (hereinafter the “Listed Chemical.”)

7 **1.2** Plaintiff Erika McCartney (“MCCARTNEY”) is a California resident acting as a
8 private enforcer of Proposition 65. MCCARTNEY brings this Action in the public interest
9 pursuant to California Health and Safety Code Section 25249.6. MCCARTNEY asserts that she
10 is dedicated to, among other causes, helping safeguard the public from health hazards by reducing
11 the use and misuse of hazardous and toxic chemicals and substances, facilitating a safe
12 environment for consumers and employees, and encouraging corporate responsibility.

13 **1.3** Defendants United Natural Foods, Inc.; Blue Marble Brands, LLC; United Natural
14 Trading, LLC, d/b/a Woodstock Farms Manufacturing (“WOODSTOCK”), and Thrive Market,
15 Inc. (“THRIVE”) are herein after collectively referred to as “DEFENDANTS.”

16 **1.4** MCCARTNEY and DEFENDANTS are hereinafter sometimes referred to
17 individually as a “Party” or collectively as the “Parties.”

18 **1.5** On or about May 12, 2016, and December 14, 2016, pursuant to California Health
19 and Safety Code Section 25249.7(d)(1), MCCARTNEY served 60-Day Notices of Violation of
20 Proposition 65 (“Notice of Violation”) on DEFENDANTS, various downstream sellers of the
21 Product, the California Attorney General, other public enforcers. True and correct copies of the
22 Notices of Violation are attached hereto as Exhibits A and B.

23 **1.6** After more than sixty (60) days passed since service of the Notices of Violation,
24 and no designated governmental agency filed a complaint against DEFENDANTS with regard to
25 the Covered Product or the alleged violations, MCCARTNEY filed a complaint (the “Complaint”)
26 for injunctive relief and civil penalties. The Complaint is based on the allegations in the Notices
27 of Violation in connection with the Covered Product.

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1 **1.7** The Notices of Violation and Complaint allege that Defendants manufactured,
2 distributed, and/or sold in California the Covered Product without first providing clear and
3 reasonable warnings of alleged exposures to the Listed Chemical, in violation of California Health
4 and Safety Code Section 25249.6. DEFENDANTS deny all material and factual allegations of the
5 Notices of Violation, and specifically denies that the Plaintiff or California consumers have been
6 harmed or damaged by its conduct. DEFENDANTS further assert that the levels of the Listed
7 Chemical in the Covered Product are naturally occurring as the result of natural geological and
8 plant processes. MCCARTNEY and DEFENDANTS each reserve all rights to allege additional
9 facts, claims, and affirmative defenses if the Court does not approve this Consent Judgment.

10 **1.8** The Parties enter into this Consent Judgment in order to settle, compromise and
11 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
12 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any
13 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
14 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
15 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
16 wrongdoing, or liability, including without limitation, any admission concerning any alleged
17 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
18 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
19 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
20 enforceability of this Consent Judgment.

21 **1.9** The “Effective Date” of this Consent Judgment shall be the date this Consent
22 Judgment is entered as a Judgment.

23 **2. JURISDICTION AND VENUE**

24 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
25 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
26 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.

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

2 **3.1** Beginning on the Effective Date, DEFENDANTS shall be permanently enjoined
3 from manufacturing for sale in California, directly selling to a consumer in California or
4 “Distributing into California” Covered Product which contains greater than 17.64 parts per billion
5 by weight of lead (“Lead Concentration Level”) without a Proposition 65 compliant warning,
6 consistent with Section 3.3 below, unless exempted under Section 3.2 below, without Court
7 modification of this Consent Judgment. “Distributing into California” or “Distribute into
8 California” means to ship any of the Covered Product to California at retail, for resale, or to sell
9 to a distributor that DEFENDANTS know or have reason to know may sell the Covered Product
10 in California.

11 **3.2** All units of the Covered Product that have been or will have been distributed,
12 shipped, or sold, or otherwise placed in the stream of commerce through and including the
13 Effective Date of this Consent Judgment are exempt from the provisions of Sections 3.1 and 3.3
14 and are included within the release in Sections 9.1 through 9.4. To be in compliance with the terms
15 of this Consent Judgment, DEFENDANTS are not required to undertake any efforts or conduct to
16 remove such Covered Product from the stream of commerce.


17 **3.3 Clear and Reasonable Warnings**

18 For Covered Product that do not meet the concentration threshold set forth in Section 3.1,
19 DEFENDANTS shall provide one of the following warnings (“Warning”) as specified below:

20 **3.3.1 Option 1**

21 **WARNING:** Consuming this product can expose you to chemicals
22 including lead, which is known to the State of California to cause
23 cancer and birth defects or other reproductive harm. For more
24 information, go to www.P65Warnings.ca.gov/food.

25 **3.3.2 Option 2**

26  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

27 The Warning (either Option 1 or Option 2) shall be provided to consumers prior to the
28 purchase of each Covered Product, whether it be online or on label. If the Warning is provided

1 on the container or label, it must be set off from other surrounding information and enclosed in a
2 box and must be securely affixed using adhesives or printed upon the container or label. For
3 Covered Product sold over the internet to a California address, the Warning shall appear on the
4 checkout page or product page. If the Warning is provided on the product page, it may be provided
5 by a clearly marked hyperlink using the word "WARNING" and linking to a separate page or pop-
6 out window with the Option 1 or Option 2 Warning language. If provided on a checkout page, the
7 Warning must be clearly linked to the Covered Product by use of an asterisk or other identifying
8 method, and must be provided prior to the consumer's purchase.

9 The Warning shall be displayed with such conspicuousness, as compared with other words,
10 statements designs or devices on the outside packaging or labeling, or on the website, as to render
11 it likely to be read and understood by an ordinary individual prior to use. The Warning shall be
12 displayed in a font size no smaller than the largest of any other health or safety warnings on the
13 website or the container or labeling.

14 DEFENDANTS may alternatively provide any safe harbor warning authorized by Title 27
15 California Code of Regulations, as they may be hereinafter amended.

16 4. NOTICE AND CURE

17 4.1 At any time more than 30 days after the Effective Date of this Consent Judgment,
18 MCCARTNEY may provide DEFENDANTS with a Notice of Violation, alleging that COVERED
19 PRODUCT does not comply with Section 3 of this Consent Judgment. MCCARTNEY shall
20 provide DEFENDANTS with the Notice of Violation and two (2) copies of the documents and
21 laboratory analyses that support the allegations of non-compliance. All testing pursuant to this
22 Section shall be performed using a laboratory method that complies with performance and quality
23 control factors appropriate for the method used, including limit of detection, qualification,
24 accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass
25 Spectrometry ("ICP-MS") achieving a limit of a quantification of less than or equal to 10 parts per
26 billion by weight. All testing pursuant to this Section shall be performed by an independent third-
27 party laboratory, certified by the California Environmental Laboratory Accreditation Program or
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1 an independent third-party laboratory that is registered with the United States Food & Drug
2 Administration.

3 **4.2** Within 30 days of receiving a Notice of Violation, DEFENDANTS shall provide
4 to MCCARTNEY its Notice of Election to contest or to not contest the Notice of Violation. If
5 DEFENDANTS elect to not contest the Notice of Violation, they shall, within ten (10) business
6 days of providing the Notice of Election, cure the violation by labeling all allegedly non-compliant
7 units of the COVERED PRODUCT with a warning and provide MCCARTNEY with written
8 notice confirming such action has been taken. If DEFENDANTS elect to not contest and otherwise
9 complies with this paragraph, it shall be deemed to be in compliance with this Consent Judgment
10 and MCCARTNEY may take no further action related to the alleged non-compliant products,
11 provided, however, that DEFENDANTS shall be afforded only three (3) opportunities to cure any
12 uncontested Notices of Violations under this paragraph.

13 **4.3** In the event DEFENDANTS elect to contest the allegations contained in any Notice
14 of Violation MCCARTNEY sends pursuant to this Section, DEFENDANTS may provide
15 MCCARTNEY along with its Notice of Election any evidence that, in DEFENDANTS' judgment,
16 supports its position. In the event MCCARTNEY agrees with DEFENDANTS' position, it shall,
17 within fifteen (15) days of receiving such Notice of Election and evidence notify DEFENDANTS
18 of their agreement and MCCARTNEY shall take no further action regarding the alleged non-
19 compliant COVERED PRODUCT subject to the Notice and the evidence that DEFENDANTS
20 provided. If MCCARTNEY disagrees with DEFENDANTS' position, MCCARTNEY shall,
21 within 30 days, notify DEFENDANTS of such and shall, in writing, provide DEFENDANTS with
22 the reasons for the same. Thereafter, the Parties shall meet and confer in an attempt to resolve
23 their dispute upon mutually acceptable terms.

24 **4.4** If, within 60 days of receipt of a Notice of Violation, (a) there is no resolution of
25 the meet and confer process required under 4.3; (b) DEFENDANTS fail to provide written Notice
26 of Election to not contest the Notice of Violation; or (c) DEFENDANTS fail to correct any
27 uncontested violations identified in the Notice of Violation within 30 days, MCCARTNEY may,
28 at her election, seek to enforce the terms and conditions contained in this Consent Judgment in the

1 Superior Court of the State of California, or may initiate an enforcement action for new violations
2 pursuant to Health & Safety Code § 25249.7(d). In any such proceeding, MCCARTNEY may
3 seek whatever fines, costs, penalties, or remedies as may be provided for by law of any violation
4 of Proposition 65 or this Consent Judgment.

5 **5. REQUIRED MONETARY PAYMENTS**

6 **5.1** DEFENDANTS shall make the payments set forth below within ten (10) days of
7 the Effective Date, which shall be a full and final satisfaction of any and all civil penalties, payment
8 in lieu of all civil penalties, and attorneys' fees and costs.

9 **5.2** The payment will be in the form of four separate checks sent to counsel for
10 MCCARTNEY, James Wheaton, Environmental Law Foundation, 1222 Preservation Park Way,
11 Suite 200, Oakland, CA 94612. The checks shall be payable to the following parties and the
12 payment shall be apportioned as follows:

13 **5.3** \$37,500 as civil penalties pursuant to California Health and Safety Code Section
14 25249.7(b)(1). Of this amount, (1) \$28,125 shall be made payable to the Office of Environmental
15 Health Hazard Assessment; (2) \$4,000 shall be payable to MCCARTNEY; (2) \$2,875 shall be
16 payable to St. Jude's Children's Hospital; and (3) \$2,500 shall be payable to CancerCare, a
17 qualified 501(c)(3) charitable organization, dedicated to providing financial aid to cancer patients
18 for treatment costs. MCCARTNEY's counsel will forward the civil penalty to OEHHA.

19 **5.4** \$78,500 payable to James Wheaton as reimbursement of MCCARTNEY's
20 attorneys' fees, costs, investigation and litigation expenses ("Attorney's Fees and Costs").

21 **6. MODIFICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment may be modified only by: (i) Written agreement and
23 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
24 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one
25 of the Parties after exhausting the meet and confer process set forth as follows. If either Party
26 requests or initiates a modification of this Consent Judgment, then that Party shall meet and confer
27 with the other Party in good faith before filing a motion with the Court seeking to modify the
28 Consent Judgment. MCCARTNEY is entitled to reimbursement of all reasonable attorneys' fees

1 and costs regarding the Parties' meet and confer efforts for any modification requested or initiated
2 by DEFENDANTS. Similarly, DEFENDANTS are entitled to reimbursement of all reasonable
3 attorney's fees and costs regarding the Parties' meet and confer efforts for any modification
4 requested or initiated by MCCARTNEY. If, despite their meet and confer efforts, the Parties are
5 unable to reach agreement on any proposed modification, the Party seeking the modification may
6 file the appropriate motion and the prevailing Party on such motion shall be entitled recover its
7 reasonable fees and costs associated with such motion. One basis, but not the exclusive basis, for
8 DEFENDANTS to seek a modification of this Consent Judgment is if Proposition 65 is changed,
9 narrowed, limited, or otherwise rendered inapplicable in whole or in part to the Covered Product
10 or either Listed Chemical due to legislative change, a change in the implementing regulations,
11 court decisions, or other legal basis.

12 **7. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

13 **7.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
14 this Consent Judgment.

15 **7.2** Subject to Section 4, any Party may, by motion or application for an order to show
16 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
17 The prevailing party in any such motion or application may request that the Court award its
18 reasonable attorneys' fees and costs associated with such motion or application.

19 **7.3** Before filing a motion or application for an order to show cause, MCCARTNEY
20 shall provide DEFENDANTS with 30 (thirty) days written notice of any alleged violations of the
21 terms and conditions contained in this Consent Judgment. As long as DEFENDANTS cures any
22 such alleged violations within the 30 (thirty) day period (or if any such violation cannot practicably
23 be cured within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon
24 as practicable), then DEFENDANTS shall not be in violation of the Consent Judgment.

25 **8. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment shall apply to and be binding upon the Parties and their respective
27 successors and assigns, and it shall be deemed to inure to the benefit of the Parties and their
28 respective privies, successors, and assigns.

1 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **9.1** This Consent Judgment is a full, final, and binding resolution between
3 MCCARTNEY, on behalf of herself and in the public interest, and DEFENDANTS, and each of
4 their past and present officers, directors, owners, shareholders, employees, agents, attorneys,
5 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers,
6 distributors, wholesalers, private labelers, co-packers, retailers, and all other upstream and
7 downstream entities and persons in the distribution chain of any Covered Product, and the
8 predecessors, successors and assigns of any of them, (collectively, "Released Parties"), of any and
9 all direct or derivative violations (or claimed violations) of Proposition 65 or its implementing
10 regulations for failure to provide Proposition 65 warnings of exposure to the Listed Chemical from
11 the handling, use, or consumption of the Covered Product and fully resolves all claims that have
12 been or could have been asserted in this Action for alleged failure to provide Proposition 65
13 warnings regarding the Listed Chemical for Covered Products manufactured, sold or distributed
14 into California by DEFENDANTS before the Effective Date. Excluded from this release are any
15 third-party downstream internet distributors.

16 MCCARTNEY, on behalf of herself and in the public interest, hereby forever releases and
17 discharges, Released Parties, from any and all claims and causes of action and obligations to pay
18 damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses
19 (including but not limited to expert analysis fees, expert fees, attorney's fees and costs)
20 (collectively, "Claims") arising under, based on, or derivative of Proposition 65 or its
21 implementing regulations or any other statutory or common law claims based on alleged exposure
22 to the Listed Chemical from the Covered Product and/or failure to warn about the Listed Chemical,
23 as set forth in the Notice of Violation and the Complaint.

24 **9.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
25 compliance by any Released Party with Proposition 65 regarding alleged exposures to the Listed
26 Chemical from the Covered Product manufactured, sold or distributed into California by
27 DEFENDANTS on and after the Effective Date.

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1 **9.3** It is possible that other Claims not known to MCCARTNEY arising out of the facts
2 alleged in the Notice of Violation or the Complaint and relating to Covered Product that were
3 manufactured, sold or distributed into California by DEFENDANTS before the Effective Date will
4 develop or be discovered. MCCARTNEY, on behalf of herself only, acknowledges that the Claims
5 released herein include all known and unknown Claims and waives California Civil Code Section
6 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

7 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
8 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
9 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
10 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
11 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
12 **DEBTOR OR RELEASED PARTY.”**

13 MCCARTNEY, on behalf of herself only, acknowledges and understands the significance and
14 consequences of this specific waiver of California Civil Code section 1542.

15 **9.4** MCCARTNEY, on one hand, and DEFENDANTS, on the other hand, each release
16 and waive all Claims they may have against each other for any statements or actions made or
17 undertaken by them in connection with the Notice of Violation or the Complaint. However, this
18 shall not affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

19 **10. CONSTRUCTION AND SEVERABILITY**

20 **10.1** The terms and conditions of this Consent Judgment have been reviewed by the
21 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to
22 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or
23 construction of this Consent Judgment, the terms and conditions shall not be construed against any
24 Party.

25 **10.2** In the event that any of the provisions of this Consent Judgment is held by a court
26 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
27 affected.

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1 **10.3** The terms and conditions of this Consent Judgment shall be governed by and
2 construed in accordance with the laws of the State of California.

3 **11. PROVISION OF NOTICE**

4 All notices required to be given to either Party to this Consent Judgment by the other shall
5 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
6 mail, (b) overnight courier, or (c) personal delivery to the following:

7 **For Erika McCartney:**

8 James Wheaton
9 ENVIRONMENTAL LAW FOUNDATION
10 1222 Preservation Park Way, Suite 200
11 Oakland, California 94612

12 **For Thrive Market, Inc.**

13 Office of General Counsel
14 Attn: Craig M. Abruzzo
15 Thrive Market, Inc.
16 4509 Glencoe Avenue
17 Marina Del Rey, CA 90292

18 **For DEFENDANTS:**

19 Patrick Del Duca, Esq.
20 ZUBER LAWLER & DEL DUCA LLP
21 350 S. Grand Avenue, 32nd Floor
22 Los Angeles, California 90071

23
24 Office of the General Counsel
25 United Natural Foods, Inc.
26 313 Iron Horse Way
27 Providence, Rhode Island 02908

28 **12. COURT APPROVAL**

1 **12.1** Upon execution of this Consent Judgment by the Parties, MCCARTNEY shall
2 prepare and file a Motion for Court Approval. The Parties shall use their reasonable best efforts
3 to support entry of this Consent Judgment.

4 **12.3** If the Court does not approve this Consent Judgment it shall be null and void and
5 have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

7 This Consent Judgment may be executed in counterparts, which taken together shall be
8 deemed one document. A facsimile or .pdf signature shall be construed as valid and as the original
9 signature.

10 **14. ENTIRE AGREEMENT, AUTHORIZATION**

11 **14.1** This Consent Judgment contains the sole and entire agreement and understanding
12 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,
13 negotiations, commitments and understandings related hereto. No representations, oral or
14 otherwise, express or implied, other than those contained herein have been made by any Party. No
15 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
16 or to bind any Party.

17 **14.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
19 provided herein, each Party shall bear its own fees and costs.

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


21 **15.1** This Consent Judgment has come before the Court upon the request of the Parties.
22 The parties request the Court to fully review this Consent Judgment and, being fully informed
23 regarding the matters which are the subject of this action, to:

24 (a) Find that the terms and provisions of this Consent Judgment represent a good faith
25 settlement of all matters raised by the allegations of the Complaint, that the matter has been
26 diligently prosecuted, and that the public interest is served by such settlement; and (b) Make the
27 findings pursuant to California Health and Safety Code Section 25249.7(f)(4), and approve the
28 Settlement, and this Consent Judgment.

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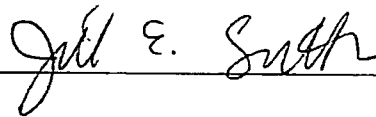
6 **IT IS SO STIPULATED.**

7
8 Dated: 8/13/19


Erika McCartney

10 Dated: 8/22/19

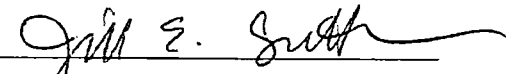
UNITED NATURAL TRADING, LLC,
D/B/A WOODSTOCK FARMS
MANUFACTURING

Name: 

Its: President + Secretary

18 Dated: 8/22/19

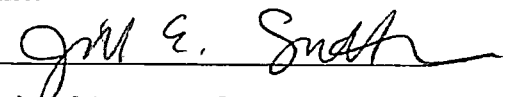
BLUE MARBLE BRANDS, LLC

Name: 

Its: President + Secretary

23 Dated: 8/22/19

UNITED NATURAL FOODS, INC.

Name: 

Its: Chief legal Officer, General
Counsel + Corporate Secretary

28 Dated: _____

THRIVE MARKET, INC., D/B/A THRIVE
MARKET TECHNOLOGIES

1 Dated: August 22, 2019
2

THRIVE MARKET, INC., D/B/A THRIVE
MARKET TECHNOLOGIES

3 Name: CRAIG M. ABRUZZO

4 
5

Its: GENERAL COUNSEL
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7
8 APPROVED AS TO FORM:

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10 Dated: _____

ENVIRONMENTAL LAW FOUNDATION
APRIL M. STRAUSS, A PC

13 By: _____
14 April M. Strauss
15 Attorneys for Plaintiff

16 Dated: _____

ZUBER LAWLER & DEL DUCA, LLP

17 By: _____
18 Patrick Del Duca
19 Attorney for Defendants
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Name: _____

Its: _____

APPROVED AS TO FORM:

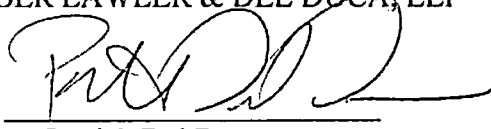
Dated: 8/13/19

ENVIRONMENTAL LAW FOUNDATION
APRIL M. STRAUSS, A PC

By: 
April M. Strauss
Attorneys for Plaintiff

Dated: August 15, 2019

ZUBER LAWLER & DEL DUCA, LLP

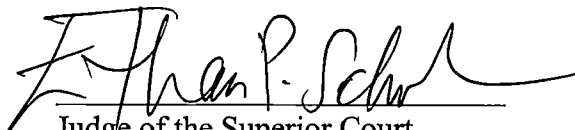
By: 
Patrick Del Duca
Attorney for Defendants

1 **JUDGMENT**

2 Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent
3 Judgment is approved and judgment is hereby entered according to its terms.
4

5 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

6 Dated: Oct. 29, 2019

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9 Judge of the Superior Court

10 **ETHAN P. SCHULMAN**

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Exhibit A

Melvin B. Pearlston
Senior Counsel



Of Counsel
Robert B. Hancock

May 12, 2016

**60-DAY 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 Erika McCartney in this matter. Ms. McCartney 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 the identified 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, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is 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 name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violator") are:

**Woodstock Farms Mfg.
United Natural Foods, Inc.
Blue Marble Brands, LLC
United Natural Trading, LLC**

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

Woodstock Farms Organic Goji Berries – 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 Ms. McCartney 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, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

May 12, 2016

Page 2

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 12, 2015, 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 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, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) 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 (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58th Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **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,



Robert B. Hancock

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

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

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-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 exposures to the listed chemicals that are the subject of the action.

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: May 12, 2016



Robert B. Hancock

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 action.

On May 12, 2016, 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:

Current CEO or President
United Natural Foods, Inc.
313 Iron Horse Way
Providence, RI 02908

Current Manager or Managing Member
United Natural Trading, LLC
96 Executive Avenue
Edison, NJ 08817

Current Manager or Managing Member
Blue Marble Brands LLC
313 Iron Horse Way
Providence, RI 02908

Current CEO, President, Manager or
Managing Member
United Natural Brands
96 Executive Avenue
Edison, NJ 08817

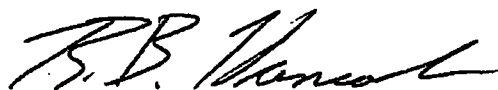
Current CEO, President, Manager or
Managing Member
Woodstock Farms Mfg.
96 Executive Avenue
Edison, NJ 08817

On May 12, 2016, 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 uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550
<https://oag.ca.gov/prop65/add-60-day-notice>

On May 12, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, I effected service 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. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on May 12, 2016.



Robert B. Hancock

Service List

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San Bernardino, CA 92415

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San Luis Obispo, CA 93408

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Yuba City, CA 95991

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City Hall East
200 N. Main St., Rm. 800
Los Angeles, CA 90012

Office of the City Attorney
City of Sacramento
915 I St., 4th Fl.
Sacramento, CA 95814

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

San Francisco City Attorney's
Office
City Hall, Rm. 234
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 E. Santa Clara St.,
16th Fl.
San Jose, CA 95113

Exhibit B



December 14, 2016

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney 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 Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is 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 Violator identified below.

Alleged Violator. The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

Thrive Market, Inc., d/b/a Thrive Market Technologies, Inc.

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

Thrive Market Goji Berries

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 Ms. McCartney 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, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least December 14, 2015, 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 Violator violated Proposition 65 because it failed to provide persons 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, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) 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 (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58th Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **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,



Robert B. Hancock
rbh@lawyer.com

Attachments

Certificate of Merit
Certificate of Service
OEHHA Summary (to Violators only)
Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-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 exposures to the listed chemicals that are the subject of the action.

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 Violator 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: December 14, 2016



Robert B. Hancock

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 action.

On December 14, 2016, 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:


Current President or CEO
Thrive Market, Inc.
d/b/a Thrive Market Technologies, Inc.
4509 Glencoe Avenue
Marina del Rey, CA 90292

On December 14, 2016, 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)(I)** on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550
<https://oag.ca.gov/prop65/add-60-day-notice>

On December 14, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, I effected service 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. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on December 14, 2016.



Robert B. Hancock

Service List

District Attorney,
Alameda County
1225 Fallon St., Rm. 900
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