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9 Attorneys for Plaintiff  
10 **ERIKA MCCARTNEY**

**F I L E D**

Superior Court of California  
County of San Francisco

JAN 04 2019

CLERK OF THE COURT

BY: *Annelle H. Koppel*  
Deputy Clerk

11  
12 **SUPERIOR COURT OF CALIFORNIA**

13  
14 **COUNTY OF SAN FRANCISCO**

15 ERIKA MCCARTNEY, in the public interest,	)	CIVIL ACTION NO. CGC-18-570587
	)	
16 Plaintiff,	)	<del>PROPOSED</del> <sup>SM</sup> CONSENT
	)	JUDGMENT
17 v.	)	
	)	[Cal. Health & Safety Code
18 CHAMPLAIN CHOCOLATE COMPANY	)	Sec. 25249.6, <i>et seq.</i> ]
19 a Vermont corporation; and Does 1 through 500	)	
20 inclusive,	)	
	)	
21 Defendants.	)	
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1. INTRODUCTION

1.1 This action arises out of the alleged violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, *et seq.* (also known as and hereinafter referred to as "Proposition 65") regarding the following products (hereinafter, the "Covered Product"): Lake Champlain Organic Cocoa Powder; Lake Champlain 80% Dark Organic Chocolates; Lake Champlain 72% Dark Organic Chocolates; Lake Champlain 57% Dark Organic Chocolates; and Lake Champlain 54% Dark Organic Chocolates. Cadmium and lead are subject to Proposition 65 warning requirements because they are listed as known to the State of California to cause reproductive harm.

1.2 Plaintiff Erika McCartney ("MCCARTNEY") is a California resident acting as a private enforcer of Proposition 65. MCCARTNEY has brought this enforcement action in the public interest against Champlain Chocolate Company, d/b/a Lake Champlain Chocolates ("CHAMPLAIN CHOCOLATE COMPANY" or "Defendant") concerning cadmium and lead in the Covered Products pursuant to California Health and Safety Code Section 25249.7(d). MCCARTNEY contends she is dedicated to, among other causes, helping safeguard the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibilities.

1.3. CHAMPLAIN CHOCOLATE COMPANY has sold the Covered Products in California during the relevant period.

1.4 MCCARTNEY and CHAMPLAIN CHOCOLATE COMPANY are hereinafter sometimes referred to individually as "Party" or collectively as the "Parties."

1.5 On or about August 9, 2017, pursuant to California Health and Safety Code Section 25249.7(d)(1), MCCARTNEY served a 60-Day Notice of Violations of Proposition 65 ("Notice of Violations") on the California Attorney General, other public enforcers, and CHAMPLAIN CHOCOLATE COMPANY alleging violations of California Health and Safety Code Section 25249.6 with respect to unwarned exposures of cadmium arising from the sale and use of the Covered Product in California. Defendant acknowledges it received the Notice of Violations.

1           1.6    After more than sixty (60) days passed since service of the Notice of Violations,  
2 and with no designated governmental agency having filed a complaint against CHAMPLAIN  
3 CHOCOLATE COMPANY with regard to the Covered Product or the Alleged Violations,  
4 MCCARTNEY filed the complaint in this matter ("Complaint") in this Court.

5           1.7    CHAMPLAIN CHOCOLATE COMPANY generally denies all material and  
6 factual allegations contained in or arising from MCCARTNEY's Notice of Violations and the  
7 Complaint and asserts that it has various affirmative defenses to the claims asserted therein.  
8 CHAMPLAIN CHOCOLATE CO. further specifically denies that the Plaintiff or California  
9 consumers have been harmed or damaged by its conduct or the products it has sold or sells,  
10 including the Covered Product.

11           1.8    The Parties enter into this Consent Judgment ("Consent Judgment") in order to  
12 settle, compromise, and resolve disputed claims and avoid prolonged and costly litigation. For  
13 purposes of the approval and entry of this Consent Judgment only, the Parties stipulate that this  
14 Court has jurisdiction over the subject matter of this Action and personal jurisdiction over the  
15 Parties, that venue is proper in this Court, and that this Court has jurisdiction to enter this Consent  
16 Judgment pursuant to the terms set forth herein.

17           1.9    Nothing in this Consent Judgment, nor compliance with its terms, shall constitute  
18 or be construed as an admission by any of the Parties (or by any of CHAMPLAIN CHOCOLATE  
19 COMPANY's officers, directors, shareholders, employees, agents, subsidiaries, divisions,  
20 affiliates, suppliers, or licensees) of any fact, conclusion of law, issue of law, violation of law,  
21 fault, wrongdoing, or liability, including without limitation, any admission concerning any alleged  
22 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment  
23 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties have or may  
24 have in any other or future legal proceeding.

25           1.10   The "Effective Date" of this Consent Judgment shall be the date upon which this  
26 Consent Judgment, after having been fully executed by all of the Parties, has been approved and  
27 entered by the Court.  
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2. INJUNCTIVE RELIEF: WARNINGS

2.1 As of the Compliance Date (defined below) and except as otherwise provided herein, CHAMPLAIN CHOCOLATE COMPANY shall be permanently enjoined from Distributing into California any Covered Product without a warning as set forth in Paragraph 2.2 below. "Distributing into California" or "Distribute into California" means to ship any of the Covered Product to California for sale or to sell any of the Covered Product to a distributor that CHAMPLAIN CHOCOLATE COMPANY knows will redistribute or sell the Covered Product in or into California.

2.2 Clear and Reasonable Proposition 65 Warnings. For a Covered Product that is subject to Proposition 65 warning requirement based on section 2.1 above, the following warning ("Warning") shall be provided as specified below.

**WARNING:** Consuming this product can expose you to chemicals including cadmium and lead, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

In lieu of the preceding warning, CHAMPLAIN CHOCOLATE COMPANY may use any warning language that complies with Title 27, California Code of Regulations, section 25600 *et seq.*, as amended August 30, 2018, and subsequently thereafter.

The warning shall either be affixed to or printed on (at the point of manufacture, prior to the shipment to California, or prior to Distribution within California) the outside packaging or container of each unit of the Covered Product or provided at the point of display of the Covered Product wherever it is offered for sale in California. The Warning shall be displayed with such conspicuousness, as compared with other words, statements, designs or devices on the outside packaging or at the point of display in California, as to render it likely to be read and understood by any ordinary individual prior to purchase or use. If the Warning is displayed on the product container or labeling, the Warning shall be at least the same size as the largest of any other health or safety warnings on the product container or labeling, and the word "WARNING" shall be in capital letters and in bold print. If presented at the point of display, the Warning shall be presented

1 on a sign or shelf label in a font no smaller than the largest type size used for other information on  
2 the sign or a shelf label for similar products.

3 The Parties agree that should the OEHHA warning regulations change, that CHAMPLAIN  
4 CHOCOLATE COMPANY may either conform with the OEHHA regulations or conform with  
5 the terms provided in this Consent Judgment, and in so doing, will be in compliance with this  
6 Consent Judgment.

7 The Parties agree that any units of the Covered Product containing cadmium or lead  
8 concentration levels below the corresponding effective levels set forth in certain Consent Judgment  
9 entered February 15, 2018, by the San Francisco Superior Court in *As You Sow v. Trader Joe's*  
10 *Company, et al.*, Case No. CGC-15-548791, ("*As You Sow*") shall be exempt from the  
11 requirements of this section 2, including the injunction in subsection 2.1. Unless otherwise  
12 specified herein, the Parties further agree that the dates of performance for all obligations for any  
13 Settling Defendant (as defined) in the *As You Sow* consent judgment shall apply to the instant  
14 Consent Judgment, including, without limitation, that the "Compliance Date" herein shall be  
15 February 15, 2019.

16 **3. REQUIRED MONETARY PAYMENTS**

17 3.1 CHAMPLAIN CHOCOLATE COMPANY shall issue the following payments and  
18 send them to counsel for MCCARTNEY, Robert B. Hancock, Pacific Justice Center, 50 California  
19 Street, Suite 1500, San Francisco, California 94111. The checks shall be payable to the following  
20 parties and the payment shall be apportioned as follows:

21 3.2 \$11,500 as civil penalties pursuant to California Health and Safety Code Section  
22 25249.7(b)(1) to be paid ten (10) business days after entry of the Consent Judgment. Of this  
23 amount, \$8,625 shall be payable to OEHHA, \$2,136 shall be payable to MCCARTNEY, and \$739  
24 shall be payable to CancerCare, a qualified 501(c)(3) charitable organization, dedicated to  
25 providing financial aid to cancer patients for treatment costs. MCCARTNEY hereby waives any  
26 statutory entitlement to penalties in excess of \$2,136. MCCARTNEY's counsel shall promptly  
27 forward all checks to the payees indicated.

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1 downstream entities and persons in the distribution chain of the Covered Product, including, but  
2 not limited to Amazon.com, Inc. and Lucky Vitamin Corporation, and the predecessors, successors  
3 and assigns of any of them (collectively, "Released Parties"), on the other hand, of any and all  
4 direct or derivative violations (or claimed violations) of Proposition 65 or its implementing  
5 regulations for failure to provide Proposition 65 warnings of exposure to cadmium and lead from  
6 the handling, use, or consumption of the Covered Product, and it fully resolves all claims that have  
7 been or could have been asserted up to and including the Effective Date for the alleged failure to  
8 provide Proposition 65 warnings for the Covered Product regarding cadmium and lead.

9       7.2   MCCARTNEY on her own behalf (and not in her role as a representative of the  
10 public interest) further hereby releases and discharges CHAMPLAIN CHOCOLATE COMPANY  
11 and the Released Parties, from any and all claims and causes of action and obligations to pay  
12 damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses  
13 (including but not limited to expert analysis fees, expert fees, attorneys' fees and costs)  
14 (collectively, "Claims") based on exposure to cadmium and lead from the Covered Product and/or  
15 failure to warn about cadmium and lead in the Covered Product to the extent that the Covered  
16 Product was sold by CHAMPLAIN CHOCOLATE COMPANY prior to the Effective Date.

17       7.3   Unless modified pursuant to Section 4 above, compliance with the terms of Section  
18 2.1 and 2.2 of this Consent Judgment shall be deemed to constitute compliance with Proposition 65  
19 regarding the Covered Product.

20       7.4   It is possible that other Claims not known to MCCARTNEY arising out of the facts  
21 alleged in the Notices of Violations, the Complaint or the First Amended Complaint will develop  
22 or be discovered. MCCARTNEY acknowledges on behalf of herself (and not in the role as  
23 representative of the public interest) that the Claims released herein include all known and  
24 unknown Claims and waives California Civil Code Section 1542 as to any such unknown Claims.  
25 California Civil Code Section 1542 reads as follows:

26       **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**  
27       **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
28       **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**

1           **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**  
2           **SETTLEMENT WITH THE DEBTOR.”**

3           MCCARTNEY acknowledges and understands the significance and consequences of this specific  
4           waiver of the California Civil Code Section 1542.

5           7.5    MCCARTNEY, on the one hand, and CHAMPLAIN CHOCOLATE COMAPNY,  
6           on the other hand, each release and waive all Claims they may have against each other for any  
7           statements or actions made or undertaken by them in connection with the Notice of Violation, the  
8           Complaint, or the allegations contained therein. However, this shall not affect or limit any party's  
9           right to seek to enforce the terms of this Consent Judgment. In addition, going forward, the Parties  
10          shall not cause any aspect of the Action, the Notice of Violations, the Complaint, or the terms of  
11          this Consent Judgment not otherwise available in the public record to be reported to the public or  
12          any media or news reporting outlet. Any statement to the public or any media or news reporting  
13          outlet shall be limited to what is available in the public record and documents publicly filed.  
14          Regardless of the form or formality of a communication or statement to the media or other person  
15          or entity, neither any Party nor their counsel shall disparage the other. Notwithstanding these  
16          obligations, the Parties may make such disclosure regarding the Action and terms of this Consent  
17          Judgment as necessary to auditors or as otherwise required by state or federal law.

18                               **8.    CONSTRUCTION AND SEVERABILITY**

19          8.1    The terms and conditions of this Consent Judgment have been reviewed by the  
20          respective counsel for the parties prior to its signing, and each party has had an opportunity to fully  
21          discuss the terms and conditions with its counsel. In any subsequent interpretation or construction  
22          of this Consent Judgment, the terms and conditions shall not be construed against any Party.

23          8.2    In the event that any of the provisions of this Consent Judgment is held by a court  
24          to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
25          affected.

26          8.3    The terms and conditions of this Consent Judgment shall be governed by and  
27          construed in accordance with the laws of the State of California.

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1                                   **11.    EXECUTION AND COUNTERPARTS**

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

5                                   **12.    ENTIRE AGREEMENT, AUTHORIZATION**

6           12.1   This Consent Judgment contains the sole and entire agreement and understanding  
7 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
8 negotiations, commitments, and understandings related hereto. No representations, oral or  
9 otherwise, express or implied, other than those contained herein have been made by any party.

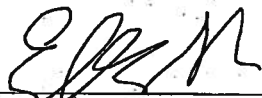
10          12.2   Each signatory to this Consent Judgment certifies that he or she is fully authorized  
11 by the party he or she represents to enter into this Consent Judgment. Except as explicitly provided  
12 herein, each party shall bear its own fees and costs.

13                               **13.    REQUEST FOR FINDINGS AND APPROVAL**

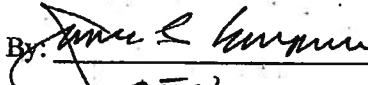
14          13.1   This Consent Judgment has come before the Court upon the request of the Parties.  
15 The Parties request the Court fully review this Consent Judgment and, being fully informed  
16 regarding the matters which are the subject to this action, to make the findings pursuant to  
17 California Health and Safety Code Section 25249.7(f)(4) and approve the settlement and enter this  
18 Consent Judgment.

19           **IT IS SO STIPULATED: AND ORDERED.**

20  
21 Dated:        11/12/2018

  
\_\_\_\_\_  
Erika McCartney

22  
23 Dated:        10-25-18

CHAMPLAIN CHOCOLATE COMPANY  
d/b/a LAKE CHAMPLAIN CHOCOLATES  
By:   
\_\_\_\_\_  
Its: CEO

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APPROVED AS TO FORM:

PACIFIC JUSTICE CENTER

Dated: 11/14/18

By: *RB Hancock*  
Robert B. Hancock  
Attorneys for Plaintiff

Dated: 11/7/18

LYNN, LYNN, BLACKMAN &  
MANITSKY, P.C.  
By: *[Signature]*  
Andrew D. Manitsky  
Attorneys for Defendant

1/4/19  
DATED

*Richard B. Ulmer*

JUDGE OF THE SUPERIOR COURT

RICHARD B. ULMER