



FILED
ALAMEDA COUNTY

JUN 25 2020

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

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individually and dba Manitoba Harvest Hemp Foods and Fresh Hemp
Foods Ltd., individually and dba Manitoba Harvest Hemp Foods

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

**ENVIRONMENTAL RESEARCH
CENTER, INC., a California non-profit
corporation**

Plaintiff,

vs.

**MANITOBA HARVEST USA LLC
CORPORATION, individually and dba
MANITOBA HARVEST HEMP FOODS;
FRESH HEMP FOODS LTD., individually
and dba MANITOBA HARVEST HEMP
FOODS and DOES 1-100**

Defendants.

CASE NO. RG19038961

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 15, 2019
Trial Date: None set

1. INTRODUCTION

1.1 On October 15, 2019, Plaintiff Environmental Research Center, Inc. ("ERC"), a

1 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
2 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")
3 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
4 ("Proposition 65"), against Manitoba Harvest USA LLC Corporation, individually and dba
5 Manitoba Harvest Hemp Foods, and Fresh Hemp Foods Ltd., individually and dba Manitoba
6 Harvest Hemp Foods, (collectively "Defendants" or "Manitoba Harvest Hemp Foods") and
7 Does 1-100. In this action, ERC alleges that a number of products manufactured, distributed, or
8 sold by Manitoba Harvest Hemp Foods for sale in California contain lead and/or cadmium,
9 chemicals listed under Proposition 65 as known to the State of California to cause birth defects
10 or other reproductive harm, and expose consumers to these chemicals at a level requiring a
11 Proposition 65 warning. These products (referred to hereinafter individually as a "Covered
12 Product" or collectively as "Covered Products") are: (1) Manitoba Harvest Hemp Foods
13 Organic Hemp Yeah! Plant Protein Blend Chocolate Flavor (lead, cadmium), (2) Manitoba
14 Harvest Hemp Foods Hemp Heart Bites Crunchy Hemp Snacks Original (lead), (3) Manitoba
15 Harvest Hemp Foods Hemp Protein Smoothie Plus Greens Vanilla Chai Flavor (lead), (4)
16 Manitoba Harvest Hemp Foods Hemp Protein Smoothie Plus Greens Mixed Berry Flavor
17 (lead), (5) Manitoba Harvest Hemp Foods Hemp Heart Bites Crunchy Hemp Snacks
18 Cinnamon (lead), and (6) Manitoba Harvest Hemp Foods Organic Hemp Yeah! Max Fiber
19 Hemp Protein Powder Chocolate (cadmium).

20 Manitoba Harvest Hemp Foods discontinued manufacturing, sales, and shipments for
21 sales of Covered Product numbers one through four, above, in the Spring of 2019 and of
22 Covered Product number five, above, in December of 2019. This Consent Judgment will apply
23 to these five discontinued Covered Products if Manitoba Harvest Hemp Foods resumes
24 manufacturing, sales, or shipments for sales in California of these five discontinued Covered
25 Products.

26 ERC and Manitoba Harvest Hemp Foods are hereinafter referred to individually as a
27 "Party" or collectively as the "Parties."

28 1.2 ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other

1 causes, helping safeguard the California public from health hazards by reducing the use and
2 misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and
3 employees, and encouraging corporate responsibility.

4 1.3 The Parties agree that each defendant is a business entity each of which has
5 employed ten or more persons at all times relevant to this action, and for purposes of this Consent
6 Judgment only, qualifies as a "person in the course of doing business" in California within the
7 meaning of Proposition 65 and that Manitoba Harvest Hemp Foods manufactures, distributes,
8 and/or sells the Covered Products.

9 1.4 The Complaint is based on allegations contained in ERC's Notice of Violation
10 dated April 18, 2019 that was served on the California Attorney General, other public
11 enforcers, and Manitoba Harvest Hemp Foods ("Notice"). A true and correct copy of the 60-
12 Day Notice dated April 18, 2019 is attached hereto as **Exhibit A** and incorporated herein by
13 reference. More than 60 days have passed since the Notice was served on the Attorney
14 General, public enforcers, and Manitoba Harvest Hemp Foods and no designated governmental
15 entity has filed a Complaint against Manitoba Harvest Hemp Foods with regard to the Covered
16 Products or the alleged violations.

17 1.5 ERC's Notice and Complaint allege that use of the Covered Products exposes
18 persons in California to lead and/or cadmium without first providing clear and reasonable
19 warnings in violation of California Health and Safety Code section 25249.6.

20 1.6 Manitoba Harvest Hemp Foods denies all material allegations contained in the
21 Notice and Complaint and asserts the following defenses, among other defenses: Pursuant to
22 the methodology approved by the California Court of Appeal in *Environmental Law*
23 *Foundation v. Beech-Nut Nutrition Corp.* (2015) 253 Cal. App. 4th 307, and pursuant to the
24 daily rate of intake calculated pursuant to Title 27, Section 25821 of the California Code of
25 Regulations, the Covered Products are below the 0.5 microgram per day regulatory safe harbor
26 warning threshold for lead or the 4.1 microgram per day regulatory safe harbor threshold for
27 cadmium. Manitoba Harvest Hemp Foods further asserts that lead or cadmium present in the
28 Covered Products, if any, is naturally occurring in the major ingredients used to manufacture

the Covered Products and therefore does not constitute or count towards an "exposure" pursuant to Title 27, Section 25501 of the California Code of Regulations; pursuant to Title 21, Section 110.100 of the Code of Federal Regulations, the levels of lead or cadmium in the Covered Products, if any, have been reduced to their "lowest level currently feasible"; and, therefore, the Covered Products do not require Proposition 65 warnings. ERC disputes these defenses to liability.

1.7 The Parties have entered into this Consent Judgment in order to settle, compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Neither this Consent Judgment nor compliance with this Consent Judgment shall constitute or be construed as an admission of any fact, issues of law or violation of law by the Parties or by any of their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers.

1.8 Neither this Consent Judgment nor compliance with this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any current or future legal proceeding unrelated to this proceeding.

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

2. JURISDICTION AND VENUE

For purposes of this Consent Judgment only and any further court action that may become necessary to enforce this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the Defendants and subject matter as to the allegations in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

3.1 Beginning on the Effective Date, Manitoba Harvest Hemp Foods shall not directly sell or manufacture or distribute for sale in the State of California any Covered Products which expose a person to a "Daily Lead Exposure Level" of more than 0.5

1 micrograms of lead per day and/or "Daily Cadmium Exposure Level" of more than 4.1
2 micrograms of cadmium per day without providing a clear and reasonable warning pursuant to
3 Section 3.2 below.

4 **3.1.1** For purposes of compliance with this Consent Judgment, the "Daily
5 Lead Exposure Level" shall be measured in micrograms and shall be calculated using the
6 following formula: micrograms of lead per gram of product, multiplied by grams of product
7 per serving of the product (using the largest serving size appearing on the product label),
8 multiplied by servings of the product per day (using the largest number of recommended daily
9 servings appearing on the label), and excluding, pursuant to Section 3.1.4, any naturally
10 occurring levels of lead as set forth in **Table 1** below (the "Naturally Occurring Lead
11 Allowance"), which equals micrograms of lead exposure per day. If the label contains no
12 recommended daily servings, then the number of recommended daily servings shall be one.

13 **3.1.2** For purposes of this Consent Judgment, the "Daily Cadmium Exposure
14 Level" shall be measured in micrograms, and shall be calculated using the following formula:
15 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
16 the product (using the largest serving size appearing on the product label), multiplied by
17 servings of the product per day (using the largest number of recommended daily servings
18 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
19 contains no recommended daily servings, then the number of recommended daily servings
20 shall be one.

21 **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,
22 Manitoba Harvest Hemp Foods shall be allowed to deduct the amount of lead which is deemed
23 "naturally occurring" in any ingredient listed in **Table 1** that is contained in that Covered
24 Product under the following conditions: For each year that Manitoba Harvest Hemp Foods
25 claims entitlement to a Naturally Occurring Lead Allowance, Manitoba Harvest Hemp Foods
26 shall provide ERC with the following information: (a) Manitoba Harvest Hemp Foods must
27 produce to ERC a list of each ingredient in the Covered Product for which a Naturally Occurring
28 Lead Allowance is claimed; (b) Manitoba Harvest Hemp Foods must provide ERC with

documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient listed in Table 1 that is contained in the Covered Product and for which Manitoba Harvest Hemp Foods intends to deduct "naturally occurring" lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in Table 1 that is contained in the Covered Product, Manitoba Harvest Hemp Foods shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in Table 1, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in Table 1, Manitoba Harvest Hemp Foods shall not be entitled to a deduction for "naturally occurring" lead in the Covered Product for that ingredient. The information required by Sections 3.1.3 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that Manitoba Harvest Hemp Foods shall claim entitlement to the Naturally Occurring Lead Allowance.

TABLE 1

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Cocoa Powder	Up to 1.0 mcg lead per gram of Cocoa Powder
Chocolate Liquor	Up to 1.0 mcg lead per gram of Chocolate Liquor
Cocoa Butter	Up to 0.1 mcg lead per gram of Cocoa Butter

3.2 Clear and Reasonable Warnings

If Manitoba Harvest Hemp Foods is required to provide a warning pursuant to Section 3.1, the following warning ("Warning") and methods of transmission shall be used pursuant to Title 27, Sections 25607.1-.2 of the California Code of Regulations (effective August 30, 2018):

WARNING: Consuming this product can expose you to [chemicals including] [lead] [cadmium], which is [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.

As identified in brackets, the Warning shall appropriately reflect whether the Covered Product requires a warning based on lead or based on cadmium. If the Warning is being provided

1 based on both chemicals, the phrase "chemicals including" shall be required in the Warning
2 content. If the Warning is being provided based on only one chemical, the words "chemicals
3 including" may be deleted from the Warning content.

4 The Warning shall be securely affixed to or printed upon the container or label of each
5 Covered Product. If the Warning is provided on the Covered Product's label, it must be set off
6 from other surrounding information and enclosed in a box. In addition, for any Covered Product
7 sold over the internet, the Warning shall be prominently displayed on the Covered Product's
8 primary display page, or on the checkout page when a California delivery address is indicated for
9 any purchase of any Covered Product, or in a clearly marked hyperlink on the Covered Product's
10 primary product display page or on the checkout page using the word "WARNING" in all capital
11 and bold letters. In the event the Warning is provided via a hyperlink, the hyperlink must go
12 directly to a page prominently displaying the Warning without content that detracts from the
13 Warning. An asterisk or other identifying method may be utilized to identify which products on
14 the checkout page are subject to the Warning if not all of the products on the checkout page are
15 subject to a Warning.

16 The word "WARNING" in the Warning shall be in all capital letters and in bold print. Such
17 Warning shall be prominently placed in relation to the Covered Product with such
18 conspicuousness, when compared with other words, statements, designs, or designs on the label or
19 container, or on Manitoba Harvest Hemp Foods' website, if applicable, as to render the Warning
20 likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. No statements intended to or likely to have the effect of diminishing the impact
22 of the Warning on the average lay person shall accompany the Warning.

23 3.3 Conforming Covered Products

24 A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure
25 Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium Exposure
26 Level" is no more than 4.1 micrograms of cadmium per day after deducting, pursuant to Section
27 3.1.3, the naturally occurring allowances listed above applicable to a Covered Product and as
28 determined by the quality control methodology described in Section 3.4.

1 **3.4 Testing and Quality Control Methodology**

2 **3.4.1 Beginning within one year of the Effective Date, Manitoba Harvest**
3 Hemp Foods shall arrange for lead and cadmium testing of the Covered Products at least once
4 a year for a minimum of five consecutive years by arranging for testing of the Covered
5 Products, in the form intended for sale to the end-user, which Manitoba Harvest Hemp Foods
6 intends to sell or is manufacturing for sale in California, directly selling to a consumer in
7 California or "Distributing into the State of California." If tests conducted pursuant to this
8 Section demonstrate that no Warning is required for a Covered Product during each of five
9 consecutive years, then the testing requirements of this Section will no longer be required as to
10 that Covered Product. However, if during or after the five-year testing period, Manitoba
11 Harvest Hemp Foods changes ingredient suppliers for any of the Covered Products and/or
12 reformulates any of the Covered Products, Manitoba Harvest Hemp Foods shall test that
13 Covered Product annually for at least four (4) consecutive years after such change is made.

14 **3.4.2 For purposes of compliance with this Consent Judgment, all Covered**
15 Product testing shall be performed using a laboratory method that complies with the
16 performance and quality control factors appropriate for the method used, including limit of
17 detection, qualification, accuracy, and precision that meets the following criteria: Inductively
18 Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less
19 than or equal to 0.010 mg/kg.

20 **3.4.3 All testing pursuant to this Consent Judgment shall be performed by an**
21 independent third party laboratory certified by the California Environmental Laboratory
22 Accreditation Program or an independent third-party laboratory that is registered with the
23 United States Food & Drug Administration.

24 **3.4.4 The testing and sampling methodology set forth in this Section is the**
25 product of negotiation and compromise and has been accepted by the Parties for purposes of
26 settling, compromising and resolving issues disputed in this action, including future
27 compliance by Defendant, and shall not be used for any other purpose, or in any other matter.

28 **3.4.5 Nothing in this Consent Judgment shall limit Manitoba Harvest Hemp**

1 Foods' ability to conduct, or require that others conduct, additional testing of the Covered
2 Products, including the raw materials used in their manufacture.

3 **3.4.6** Manitoba Harvest Hemp Foods shall retain all test results and
4 documentation for a period of five years from the date of each test. Within thirty (30) days of
5 ERC's written request, Manitoba Harvest Hemp Foods shall deliver lab reports obtained
6 pursuant to Section 3.4 to ERC.

7 **4. SETTLEMENT PAYMENT**

8 **4.1** In full satisfaction of all potential civil penalties, additional settlement
9 payments, attorney's fees, and costs, Manitoba Harvest Hemp Foods shall make a total
10 payment of \$65,000.00 ("Total Settlement Amount") to ERC within 10 days of the Effective
11 Date ("Due Date"). Manitoba Harvest Hemp Foods shall make this payment by wire transfer to
12 ERC's account, for which ERC will give Manitoba Harvest Hemp Foods the necessary account
13 information. The Total Settlement Amount shall be apportioned as follows:

14 **4.2** \$34,000.00 shall be considered a civil penalty pursuant to California Health and
15 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$25,500.00) of the civil penalty to
16 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
17 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
18 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,500.00) of the civil penalty.

19 **4.3** \$1,327.36 shall be distributed to ERC as reimbursement to ERC for reasonable
20 costs incurred in bringing this action.

21 **4.4** \$24,780.80 shall be distributed to ERC as an Additional Settlement Payment
22 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
23 and 3204. ERC will utilize the ASP for activities that address the same public harm as
24 allegedly caused by Defendant in this matter. These activities are detailed
25 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
26 chemicals in dietary supplement products in California. ERC's activities have had, and will
27 continue to have, a direct and primary effect within the State of California because California
28 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or

1 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
2 California consumers prior to ingestion of the products.

3 Based on a review of past years' actual budgets, ERC is providing the following list of
4 activities ERC engages in to protect California consumers through Proposition 65 citizen
5 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
6 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
7 supplement products that may contain lead and/or cadmium and are sold to California
8 consumers. This work includes continued monitoring and enforcement of past consent
9 judgments and settlements to ensure companies are in compliance with their obligations
10 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
11 cadmium. This work also includes investigation of new companies that ERC does not obtain
12 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
13 (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products from
14 companies, developing and maintaining a case file, testing products from these companies,
15 providing the test results and supporting documentation to the companies, and offering
16 guidance in warning or implementing a self-testing program for lead and/or cadmium in dietary
17 supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining ERC's "Got
18 Lead?" Program which reduces the numbers of contaminated products that reach California
19 consumers by providing access to free testing for lead in dietary supplement products (Products
20 submitted to the program are screened for ingredients which are suspected to be contaminated,
21 and then may be purchased by ERC, catalogued, sent to a qualified laboratory for testing, and
22 the results shared with the consumer that submitted the product).

23 ERC shall be fully accountable in that it will maintain adequate records to document
24 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
25 are being spent only for the proper, designated purposes described in this Consent Judgment.
26 ERC shall provide the Attorney General, within thirty days of any request, copies of
27 documentation demonstrating how such funds have been spent.

28 4.5 \$4,891.84 shall be distributed to ERC for its in-house legal fees. Except as

1 explicitly provided herein, each Party shall bear its own fees and costs.

2 **4.6** In the event that Manitoba Harvest Hemp Foods fails to remit the Total
3 Settlement Amount owed under Section 4 of this Consent Judgment on or before the Due Date,
4 Manitoba Harvest Hemp Foods shall be deemed to be in material breach of its obligations
5 under this Consent Judgment. ERC shall provide written notice of the delinquency to Manitoba
6 Harvest Hemp Foods via electronic mail. If Manitoba Harvest Hemp Foods fails to deliver the
7 Total Settlement Amount within five (5) days from the written notice, the Total Settlement
8 Amount shall accrue interest at the statutory judgment interest rate provided in the California
9 Code of Civil Procedure section 685.010. Additionally, Manitoba Harvest Hemp Foods agrees
10 to pay ERC's reasonable attorney's fees and costs for any efforts to collect the payment due
11 under this Consent Judgment.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by written
14 stipulation of the Parties and upon entry by the Court of a modified consent judgment or (ii) by
15 motion of either Party pursuant to Section 5.3 and upon entry by the Court of a modified consent
16 judgment.

17 **5.2** If Manitoba Harvest Hemp Foods seeks to modify this Consent Judgment under
18 Section 5.1, then Manitoba Harvest Hemp Foods must provide written notice to ERC of its
19 intent ("Notice of Intent"). If ERC seeks to meet and confer regarding the proposed
20 modification in the Notice of Intent, then ERC must provide written notice to Manitoba Harvest
21 Hemp Foods within thirty (30) days of receiving the Notice of Intent. If ERC notifies Manitoba
22 Harvest Hemp Foods in a timely manner of ERC's intent to meet and confer, then the Parties
23 shall meet and confer in good faith as required in this Section. The Parties shall meet in person
24 or via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
25 Within thirty (30) days of such meeting, if ERC disputes the proposed modification, ERC shall
26 provide to Manitoba Harvest Hemp Foods a written basis for its position. The Parties shall
27 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
28 remaining disputes. Should it become necessary, the Parties may agree in writing to different

1 deadlines for the meet-and-confer period.

2 **5.3** In the event that Manitoba Harvest Hemp Foods initiates or otherwise requests a
3 modification under Section 5.1, and the meet and confer process leads to a joint motion or
4 application for a modification of the Consent Judgment, Manitoba Harvest Hemp Foods shall
5 reimburse ERC its costs and reasonable attorney's fees for the time spent in the meet-and-
6 confer process and filing and arguing the motion or application

7 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
8 **JUDGMENT**

9 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
10 terminate this Consent Judgment.

11 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
12 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
13 inform Manitoba Harvest Hemp Foods in a reasonably prompt manner of its test results,
14 including information sufficient to permit Manitoba Harvest Hemp Foods to identify the
15 Covered Products at issue. Manitoba Harvest Hemp Foods shall, within thirty (30) days
16 following such notice, provide ERC with testing information, from an independent third-party
17 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Manitoba
18 Harvest Hemp Foods' compliance with the Consent Judgment. The Parties shall first attempt to
19 resolve the matter prior to ERC taking any further legal action.

20 **7. APPLICATION OF CONSENT JUDGMENT**

21 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
22 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
23 divisions, franchisees, licensees, customers (excluding private labelers unless it states clearly on
24 the private label that the product was manufactured by Manitoba Harvest Hemp Foods),
25 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment
26 shall have no application to any Covered Product which is distributed and sold exclusively outside
27 the State of California.

28 ///

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and Manitoba Harvest Hemp Foods and their
4 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
5 affiliated companies, divisions, suppliers, franchisees, licensees, customers (not including
6 private label customers of Manitoba Harvest Hemp Foods unless it states clearly on the private
7 label that the product was manufactured by Manitoba Harvest Hemp Foods), distributors,
8 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
9 of any Covered Product, and the predecessors, successors, and assigns of any of them
10 (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest, hereby
11 fully releases and discharges the Released Parties from any and all claims, actions, causes of
12 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that
13 could have been asserted from the handling, use, or consumption of the Covered Products, as
14 to any alleged violation of Proposition 65 or its implementing regulations arising from the
15 failure to provide Proposition 65 warnings on the Covered Products regarding lead and/or
16 cadmium up to and including the Effective Date.

17 **8.2** ERC on its own behalf only, and Manitoba Harvest Hemp Foods on its own
18 behalf only, further waive and release any and all claims they may have against each other for
19 all actions or statements made or undertaken in the course of seeking or opposing enforcement
20 of Proposition 65 in connection with the Notice and Complaint up through and including the
21 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
22 right to seek to enforce the terms of this Consent Judgment.

23 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
24 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
25 discovered. ERC on behalf of itself only, and Manitoba Harvest Hemp Foods on behalf of
26 itself only, acknowledge that this Consent Judgment is expressly intended to cover and include
27 all such claims up through and including the Effective Date, including all rights of action
28 therefore. ERC and Manitoba Harvest Hemp Foods acknowledge that the claims released in

Sections 8.1 and 8.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

ERC on behalf of itself only, and Manitoba Harvest Hemp Foods on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

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

8.5 Nothing in this Consent Judgment is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Manitoba Harvest Hemp Foods' products other than the Covered Products.

9. SEVERABILITY OF UNENFORCEABLE PROVISIONS

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

10. GOVERNING LAW

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

11. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below via first-class mail or via electronic mail where required. Courtesy copies via email may also be sent.

///

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:
Charles W. Poss
Environmental Research Center, Inc.
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Ph: (619) 500-3090
Email: charles.poss@erc501c3.org

**FOR MANITOBA HARVEST USA LLC CORPORATION, individually and dba
MANITOBA HARVEST HEMP FOODS, and FRESH HEMP FOODS LTD., individually
and dba MANITOBA HARVEST HEMP FOODS**

Katy Dickson
President
Manitoba Harvest Hemp Foods
150 S. Fifth Street
Suite 1500
Minneapolis, MN 55402-1204
Ph: (204) 953-0233
KDickson@ManitobaHarvest.com

With a copy to:
Margaret K. Cerrato-Blue
Fox Rothschild LLP
1001 Fourth Avenue, Suite 4500
Seattle, Washington 98154-1192
Ph: (206) 624-3600
Email: mcerrato-blue@foxrothschild.com

12. COURT APPROVAL

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

12.2 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

1 prior to the hearing on the motion.

2 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
3 void and have no force or effect.

4 **13. EXECUTION AND COUNTERPARTS**

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

8 **14. DRAFTING**

9 The terms of this Consent Judgment have been reviewed by the respective counsel for
10 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
11 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
12 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
13 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
14 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
15 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
16 equally in the preparation and drafting of this Consent Judgment.

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

18 If a dispute arises with respect to either Party's compliance with the terms of this Consent
19 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or
20 in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may
21 be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

22 **16. ENFORCEMENT**

23 ERC may, by motion or order to show cause before the Superior Court of Alameda
24 County, enforce the terms and conditions contained in this Consent Judgment.

25 To the extent the failure to comply with the Consent Judgment constitutes a violation of
26 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
27 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
28 provided by law for failure to comply with Proposition 65 or other laws.

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 17.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments, and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

12 This Consent Judgment has come before the Court upon the request of the Parties. The
13 Parties request the Court to fully review this Consent Judgment and, being fully informed
14 regarding the matters which are the subject of this action, to:

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

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

21
22 Dated: 8/14/, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

23
24 By: 

25 Chris Hepinstall, Executive Director

1 Dated: 2/19/, 2020

MANITOBA HARVEST USA LLC
CORPORATION, FRESH HEMP FOODS
LTD., MANITOBA HARVEST HEMP
FOODS

By: Katy Dickson
Katy Dickson, President

9 APPROVED AS TO FORM:

10 Dated: February 14, 2020

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: Charles W. Poss
Charles W. Poss
In-House Counsel

15 Dated: February 20, 2020

FOX ROTHSCHILD LLP

By: Margaret K. Cerrato-Blue
Margaret K. Cerrato-Blue
Attorney for Defendants Manitoba
Harvest USA LLC Corporation,
individually and dba Manitoba Harvest
HempFoods, and Fresh Hemp Foods Ltd.,
individually and dba Manitoba Harvest
Hemp Foods

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: June 24, 2020



Judge of the Superior Court
RICHARD L. SEARCH

Superior Court of California, County of Alameda

Hayward Hall of Justice

Case Number: RG19038961

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage pre-paid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 24405 Amador Street, Hayward, CA. Copies were provided to parties attending hearing.

Executed on: 06/24/2020

Environmental Research Center, Inc.
Attn: Poss, Charles
3111 Camino Del Rio North
Suite 400
San Diego, CA 92108

Fox Rothschild LLP
Attn: Cerrato, Margaret K
1001 Fourth Ave
Ste#4500
Seattle, WA 98154

Chad Finke Executive Officer / Clerk of the Superior Court

By



Deputy Clerk