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7 WHITNEY R. LEEMAN, PH.D.

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

15 ADAMS EXTRACT & SPICE, LLC and
16 DOES 1-150, inclusive,

17 Defendants.

Case No. CGC-13-529493

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Adams Extract & Spice, LLC**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D. (“Dr.
4 Leeman” or “Plaintiff”) and Adams Extract & Spice, LLC (“Adams” or “Defendant”), with Dr.
5 Leeman and Adams collectively referred to as the “Parties,” and each individually referred to as a
6 “Party.”

7 **1.2 Dr. Whitney R. Leeman**

8 As alleged in the Complaint, Dr. Leeman is an individual residing in California who seeks
9 to promote awareness of exposures to toxic chemicals and to improve human health by reducing
10 or eliminating hazardous substances contained in consumer and commercial products.

11 **1.3 Adams Extract & Spice, LLC**

12 Adams employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 Dr. Leeman alleges that Adams has, directly or indirectly, sold food extracts, flavors
17 and/or colorings containing 4-methylimidazole (“4-MEI”) in the State of California without the
18 requisite Proposition 65 health hazard warning. Pursuant to Proposition 65, on January 7, 2011,
19 California identified and listed 4-MEI as a chemical known to cause cancer. 4-MEI became
20 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
21 January 7, 2012. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8,
22 25249.10(b).

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are food extracts, flavors and/or colorings
25 containing 4-MEI sold or offered for sale in California by Adams (“Products” or “Product”).”

26 **1.6 Notice of Violation**

27 On or about December 3, 2012, Dr. Leeman served Adams and the requisite public
28 prosecutors with a “60-Day Notice of Violation” (“Notice”), identifying the Product and alleging

1 that Adams was in violation of Proposition 65 for failing to warn its customers and consumers
2 that food extracts, flavors and/or colorings containing 4-MEI sold by Adams expose consumers in
3 California to 4-MEI. To the best of the Parties' knowledge, no public enforcer has commenced
4 and is diligently prosecuting the allegations set forth in the Notice.

5 **1.7 Complaint**

6 On March 13, 2013, Dr. Leeman filed a complaint (the "Complaint") in San Francisco
7 County Superior Court against Adams and Does 1 through 150, in an action styled *Leeman v.*
8 *Adams Extract & Spice, LLC, et al.*, Case No. CGC-13-529493 (the "Action"), alleging violations
9 of Proposition 65, based on the alleged exposures of California consumers to 4-MEI contained in
10 the food extracts, flavors and/or colorings sold by Adams.

11 **1.8 No Admission**

12 Adams denies the material factual and legal allegations contained in the Notice and
13 maintains that all of the products it has sold, including the Products, have been, and are, in
14 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission
15 by Adams of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall
16 compliance with this Consent Judgment constitute or be construed as an admission by Adams of
17 any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically
18 denied by Adams. This section shall not, however, diminish or otherwise affect Adams's
19 obligations, responsibilities, and/or duties under this Consent Judgment.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Adams as to the allegations contained in the Complaint, that venue of the action
23 in San Francisco County is proper, and that this Court has jurisdiction to enter and enforce the
24 provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a full
25 and binding resolution of all claims that were or could have been raised in the Complaint against
26 Adams based on the facts alleged therein and in the Notice.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date the
3 this Consent Judgment is approved by the Court.

4 **2. INJUNCTIVE RELIEF: REFORMULATION: WARNINGS**

5 **2.1 Reformulation Commitment**

6 As of the Effective Date, Adams shall only manufacture, sell, or distribute for sale the
7 “Reformulated Product.” For purposes of this Consent Judgment, a Reformulated Product is
8 defined as a Product that contains “low levels” of 4-MEI (“Low 4-MEI”). “Low 4-MEI” is
9 defined as a Product containing less than or equal to 30 parts per million (“ppm”) 4-MEI when
10 analyzed pursuant to U.S. Environmental Protection Agency testing methodology 8321A
11 (LC/MS).

12 **2.2 Product Warnings**

13 Commencing on the Effective Date, for every sale and/or shipment by Adams in
14 California of any Product other than the Reformulated Product, Adams shall provide clear and
15 reasonable warnings as set forth in subsections 2.2(a) and (b) below. Each warning shall be
16 prominently placed with such conspicuousness as compared with other words, statements,
17 designs, or devices as to render it likely to be read and understood by an ordinary individual under
18 customary conditions before purchase or use. Each warning shall be provided in a manner such
19 that the consumer or user understands to which *specific* Product the warning applies, so as to
20 minimize the risk of consumer confusion.

21 **(a) Retail Store Sales.**

22 **(i) Product Labeling.** Adams shall affix a warning to the packaging
23 and/or labeling of each Product, or directly on each Product, sold in retail outlets in California by
24 Adams or any person selling the Product, which, as required under Section 25249.6 of the Act,
25 contains a written warning stating as follows:
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27
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1 **WARNING:** This product contains 4-MEI, a chemical known to the
2 State of California to cause cancer.

3 If this product is added as an ingredient to another product, the new
4 product may contain sufficiently high levels of 4-MEI so as to require
5 a warning under California law. Unless you can establish that the
6 new product falls within one of the exceptions to Proposition 65's
7 warning requirements, you must include a clear and reasonable
8 warning on the new product. Accordingly, any product to which you
9 add this product as an ingredient should be tested to ensure that the
10 new product's levels of 4-MEI do not exceed the safe harbor set forth
11 by the State of California.

12 (ii) **Point-of-Sale Warnings.** Alternatively, in lieu of the Product
13 Labeling detailed above, Adams may, by certified mail, return receipt requested, instruct and/or
14 direct its customers in California to post a warning in close proximity to the point of display of
15 the Product stating as follows:

16 **WARNING:** This product contains 4-MEI, a chemical known to the
17 State of California to cause cancer.

18 If this product is added as an ingredient to another product, the new
19 product may contain sufficiently high levels of 4-MEI so as to require
20 a warning under California law. Unless you can establish that the
21 new product falls within one of the exceptions to Proposition 65's
22 warning requirements, you must include a clear and reasonable
23 warning on the new product. Accordingly, any product to which you
24 add this product as an ingredient should be tested to ensure that the
25 new product's levels of 4-MEI do not exceed the safe harbor set forth
26 by the State of California.

27 Where more than one Product is sold in proximity to other like items or to those that do
28 not require a warning (*e.g.*, Reformulated Product as defined in Section 2.1), the following
statement shall be used:¹

WARNING: This product contains 4-MEI, a chemical known to the
 State of California to cause cancer.

 [*list products for which warning is required*]

 If this product is added as an ingredient to another product, the new
product may contain sufficiently high levels of 4-MEI so as to require
a warning under California law. Unless you can establish that the
new product falls within one of the exceptions to Proposition 65's

¹ For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 warning requirements, you must include a clear and reasonable
2 warning on the new product. Accordingly, any product to which you
3 add this product as an ingredient should be tested to ensure that the
4 new product's levels of 4-MEI do not exceed the safe harbor set forth
5 by the State of California.

6 (b) **Mail Order Catalog and Internet Sales.** In the event Adams, after the
7 Effective Date, sells Product other than Reformulated Product via mail order catalog and/or the
8 internet to customers located in California, Adams shall provide warnings for any such Product
9 sold via mail order catalog or the internet to California residents. Warnings given in the mail
10 order catalog or on the internet shall identify the *specific* Product to which the warning applies as
11 further specified in Sections 2.2(b)(i) and (ii).

12 (i) **Mail Order Catalog Warning.** Any warning provided in a mail
13 order catalog shall be in the same type size or larger than the Product description text within the
14 catalog. The following warning shall be provided on the same page and in the same location as
15 the display and/or description of the Product:

16 **WARNING:** This product contains 4-MEI, a chemical known to the
17 State of California to cause cancer.

18 If this product is added as an ingredient to another product, the new
19 product may contain sufficiently high levels of 4-MEI so as to require
20 a warning under California law. Unless you can establish that the
21 new product falls within one of the exceptions to Proposition 65's
22 warning requirements, you must include a clear and reasonable
23 warning on the new product. Accordingly, any product to which you
24 add this product as an ingredient should be tested to ensure that the
25 new product's levels of 4-MEI do not exceed the safe harbor set forth
26 by the State of California.

27 Where it is impracticable to provide the warning on the same page and in the same
28 location as the display and/or description of the Product, Adams may utilize a designated symbol
to cross reference the applicable warning and shall define the term "designated symbol" with the
following language on the inside of the front cover of the catalog or on the same page as any
order form for the Product:

WARNING: Certain products identified with this
symbol ▼ and offered for sale in this
catalog contain 4-MEI, a chemical known
to the State of California to cause cancer.

1 The designated symbol must appear on the same page and in close proximity to the
2 display and/or description of the Product. On each page where the designated symbol appears,
3 Adams must provide a header or footer directing the consumer to the warning language and
4 definition of the designated symbol.

5 (ii) **Internet Website Warning.** A warning shall be given in
6 conjunction with the sale of the Product via the internet, which warning shall appear either: (a)
7 on the same web page on which a Product is displayed; (b) on the same web page as the order
8 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web
9 pages displayed to a purchaser during the checkout process. The following warning statement
10 shall be used and shall appear in any of the above instances adjacent to or immediately following
11 the display, description, or price of the Product for which it is given in the same type size or larger
12 than the Product description text:

13 **WARNING:** This product contains 4-MEI, a chemical known to the
14 State of California to cause cancer.

15 If this product is added as an ingredient to another product, the new
16 product may contain sufficiently high levels of 4-MEI so as to require
17 a warning under California law. Unless you can establish that the
18 new product falls within one of the exceptions to Proposition 65's
19 warning requirements, you must include a clear and reasonable
20 warning on the new product. Accordingly, any product to which you
21 add this product as an ingredient should be tested to ensure that the
22 new product's levels of 4-MEI do not exceed the safe harbor set forth
23 by the State of California.

24 Alternatively, the designated symbol may appear adjacent to or immediately following the
25 display, description, or price of the Product for which a warning is being given, provided that the
26 following warning statement also appears elsewhere on the same web page, as follows:

27 **WARNING:** Products identified on this page with the
28 following symbol ▼ contain 4-MEI, a
chemical known to the State of California
to cause cancer.

(c) **Sales to Distributors.** In the event that, after the Effective Date, Adams
sells Product that is not Reformulated Product to a distributor located in California or to a
customer that Adams reasonably believes will sell the Product to customers in California, Adams

1 with Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the
2 California Office of Environmental Health Hazard Assessment (“OEHHA”), in the form of a
3 check made payable to “OEHHA,” and the remaining 25% of the penalty remitted to Dr. Leeman,
4 in the form of a check made payable to “The Chanler Group in Trust for Whitney R. Leeman.”

5 **3.2 Initial Civil Penalty**

6 On or before the Effective Date, Adams shall pay an initial civil penalty of \$10,000.00.

7 **3.3 Final Civil Penalty**

8 On or before December 31 2014, Adams shall pay a final civil penalty of 10,000.00. The
9 final civil penalty shall be waived in its entirety, however, if an Officer of Adams provides Dr.
10 Leeman with written certification that, as of January 1, 2015 and continuing into the future,
11 ninety-five percent (95%) of sales by volume of the Product manufactured, imported, distributed,
12 sold and offered for sale in California by Adams will contain no detectable 4-MEI. “No
13 detectable” is defined as containing less than or equal to 1 ppm of 4-MEI when analyzed pursuant
14 to U.S. Environmental Protection Agency testing methodology 8321A (LC/MS). Leeman must
15 receive any such certification on or before December 31, 2014, and time is of the essence.

16 **3.4 Reimbursement of Dr. Leeman’s Fees and Cost**

17 The parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
19 this fee issue to be resolved after the material terms of the agreement had been settled. Dr.
20 Leeman expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
21 had been finalized. The parties then attempted to (and did) reach an accord on the compensation
22 due to Dr. Leeman and her counsel under general contract principles and the private attorney
23 general doctrine, codified at Code of Civil Procedure section 1021.5, for all work performed
24 through the mutual execution of this agreement. Adams shall, on or before the Effective Date,
25 pay \$72,500.00 for fees and costs, including without limitation, all attorneys’ fees, costs and
26 expenses incurred as a result of investigating, bringing this matter to Adams’s attention, and
27 negotiating a settlement in the public interest.

28

1 **3.5 Sales Data**

2 Adams understands that the sales data it provided to Dr. Leeman on January 14, 2014 was
3 a material factor upon which Dr. Leeman has relied to determine the amount of civil penalties
4 assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. To the best of
5 Adams’s knowledge, the sales data provided by Adams to Dr. Leeman is full and complete, and is
6 a true and accurate reflection of any and all sales of the Product by Adams during the relevant
7 period.

8 If, within nine months of the Effective Date, Dr. Leeman discovers and presents to Adams
9 evidence that prior to execution of this Consent Judgment the Product has been distributed by
10 Adams in sales volumes materially different than those identified by Adams prior to execution of
11 this Consent Judgment, then Adams may be liable for an additional penalty amount as well as
12 additional attorney fees expended by Dr. Leeman in the public interest. In the event Dr. Leeman
13 has evidence that the Product has been distributed by Adams in sales volumes materially different
14 than those identified by Adams, Dr. Leeman shall provide Adams with a written demand for
15 additional penalties and attorney’s fees under this section. After service of such demand, Adams
16 shall have 30 days to meet and confer regarding the demand and submit such payment to Dr.
17 Leeman in accordance with the method of payment of penalties and attorney’s fees identified in
18 this Section 3. Should this 30 day period pass without any such resolution between the Parties
19 regarding payment of such additional penalties and fees, Dr. Leeman shall be entitled to enforce
20 or otherwise address the violation through mediation and, if unsuccessful, through binding
21 arbitration.

22 **3.6 Payment Procedures**

23 **3.6.1 Issuance of Payments**

24 (a) All payments owed to Dr. Leeman and her attorneys, pursuant to Sections
25 3.1 through 3.4, shall be delivered to the following address:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710

1 (b) All payments owed to OEHHA pursuant to Sections 3.1 through 3.3, shall
2 be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following
3 addresses, as appropriate:

4 For United States Postal Service:

5 Mike Gyurics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

8 For delivery by other than the United States Postal Service:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 1001 I Street
13 Sacramento, CA 95814

12 **3.6.2 Proof of Payment**

13 A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to
14 The Chanler Group at the address set forth above in Section 3.6.1(a), as proof of payment to
15 OEHHA.

16 **3.6.3 Tax Documentation**

17 Upon making each payment required by this Section 3.6, Adams shall issue separate 1099
18 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of
19 Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
20 0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to "Whitney R.
21 Leeman," whose address and tax identification number shall be furnished upon request after this
22 consent judgment is fully executed by the Parties; for each payment in reimbursement of fees and
23 costs, Adams shall issue a separate 1099 form to "The Chanler Group" (EIN: 94-3171522).

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Dr. Leeman's Release of Proposition 65 Claims**

26 Dr. Leeman, acting on her own behalf and in the public interest, and on behalf of each of
27 her predecessors, successors, partners, partnerships, agents, representatives, insurers, attorneys,
28 heirs, assignors and assignees, accountants and all persons and entities acting or claiming by,

1 through, under or in concert with any of them, hereby irrevocably releases and forever discharges
2 Adams, its parents, subsidiaries, affiliated entities under common ownership, directors, officers,
3 employees, insurers, attorneys, and each entity to whom Adams directly or indirectly distributes
4 or sells the Product, including, without limitation, its downstream distributors, wholesalers,
5 customers, retailers, franchisees, cooperative members, and licensees (“Releasees”) from all
6 claims, demands, suits, liabilities, causes of action or actions, now or in the future, for violations
7 of Proposition 65 based on alleged exposures to 4- MEI from the Product (the “Claims”). The
8 Parties understand and agree that this Section 4.1 release shall be for the benefit only of Adams,
9 and shall not extend upstream to any entities, including, but not limited to Sethness Products
10 Company, that provided Adams with any of the Products or any ingredients contained in the
11 Products. Compliance with the terms of this Consent Judgment constitutes compliance with
12 Proposition 65 with respect to exposures to 4- MEI from the Product.

13 **4.2 Dr. Leeman’s Individual Release of the Claim**

14 In addition, Dr. Leeman, in her individual capacity only and *not* in her representative
15 capacity, provides a release herein which shall be effective as a full and final accord and
16 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
17 damages, losses, claims, liabilities and demands of Dr. Leeman of any nature, character or kind,
18 whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or
19 actual exposures to 4-MEI in the Product sold by Adams.

20 **4.3 Adams’s Release of Dr. Leeman**

21 Adams, on behalf of itself, its past and current agents, representatives, insurers, attorneys,
22 successors, and/or assignees, hereby waives any and all claims against Dr. Leeman and her
23 attorneys and other representatives, for any and all actions taken or statements made (or those that
24 could have been taken or made) by Dr. Leeman and her attorneys and other representatives,
25 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
26 against it in this matter with respect to the Product.

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1 **5. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one
4 year after it has been fully executed by the Parties, in which event any monies that have been paid
5 to Dr. Leeman or her counsel pursuant to Section 3 above shall be refunded within fifteen days of
6 Dr. Leeman’s receipt of written notice from Adams that the one-year period has expired.

7 **6. SEVERABILITY**

8 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
9 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
10 provisions remaining shall not be adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California.

14 **8. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant
16 to this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,
17 registered or certified mail, return receipt requested, or (iii) overnight courier on any party by the
18 other party at the following addresses:

19

20 For Adams:

21 Brian M. Ledger, State Bar No. 156942
22 GORDON & REES LLP
23 101 W. Broadway, Suite 2000
24 San Diego, CA 92101
25 Attorneys for:
26 Adams Extract & Spice, LLC

For Dr. Leeman:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565
Attorneys for Dr. Whitney R. Leeman

25 Any party, from time to time, may specify in writing to the other party a change of address
26 to which all notices and other communications shall be sent.
27
28

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or PDF
3 signature, each of which shall be deemed an original, and all of which, when taken together, shall
4 constitute one and the same document.

5 **10. POST EXECUTION ACTIVITIES**

6 Dr. Leeman agrees to comply with the reporting form requirements referenced in Health
7 and Safety Code section 25249.7(f). In addition, the Parties acknowledge that, pursuant to Health
8 and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
9 Consent Judgment. Dr. Leeman shall prepare and file such motion to approve this Consent
10 Judgment, and Adams shall not oppose such motion. In furtherance of obtaining such approval,
11 Dr. Leeman and Adams and their respective counsel agree to mutually employ their best efforts to
12 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
13 Judgment by the Court in a timely manner.

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by written agreement of the Parties.

16 **12. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties, and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.

20 **AGREED TO:**

AGREED TO:

21

22 By: Whitney Leeman
23 WHITNEY R. LEEMAN, PH.D.

By: _____
Name: _____
Title: _____
ADAMS EXTRACT & SPICE, LLC

24

25

26 Date: 2/5/14

Date: _____

27

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8 and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
9 Consent Judgment. Dr. Leeman shall prepare and file such motion to approve this Consent
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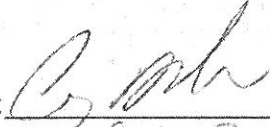
16 **12. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties, and have read, understood, and agree to all of the terms and conditions of this
19 Consent Judgment.

20 **AGREED TO:**

AGREED TO:

21
22
23 By: _____
24 WHITNEY R. LEEMAN, PH.D.

By:  _____
Name: CLAY D. RUPLE
Title: PRESIDENT / CFO
ADAMS EXTRACT & SPICE, LLC

25
26 Date: _____

Date: FEBRUARY 5, 2014