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10 Attorney for Defendant
11 MONAVIE LLC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14 ENVIRONMENTAL RESEARCH
15 CENTER, a California non-profit
16 corporation,

17 Plaintiff,

18 v.

19 MONAVIE LLC, a Utah Limited Liability
Company

20 Defendant.

CASE NO. RG15765917

STIPULATED CONSENT JUDGMENT;
[PROPOSED] ORDER

Health & Safety Code § 25249.5 *et seq.*

Assigned for all Purposes to:

Hon. Wynne Carvill, SJ

Dept. 21

Action Filed: April 10, 2015

Trial Date: None set

23 **1. INTRODUCTION**

24 **1.1** Concurrently with the filing of this Stipulated Consent Judgment, Plaintiff
25 Environmental Research Center (“ERC”), a non-profit corporation, as a private enforcer, and in
26 the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory
27 Relief and Civil Penalties (the “Complaint”) pursuant to the provisions of California Health and
28 Safety Code section 25249.5 *et seq.* (“Proposition 65”), against MONAVIE LLC

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

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

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

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

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

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

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

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

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

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

19 **2. JURISDICTION AND VENUE**

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

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF AND WARNINGS**

2 **2.1** Beginning on the Effective Date, MONAVIE shall be permanently enjoined
3 from manufacturing for sale in the State of California, “Distributing into the State of
4 California”, or directly selling in the State of California, any Covered Product which exposes a
5 person to a “Daily Exposure Level” of more than 0.5 micrograms per day when the maximum
6 suggested dose is taken as directed on the Covered Product’s label, unless it meets the warning
7 requirements under Section 3.2.

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

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

18 **2.2 Clear and Reasonable Warnings**

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

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

23 MONAVIE shall use the phrase “cancer and” in the warning only if the maximum daily dose
24 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
25 the quality control methodology set forth in Section 3.4.

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

1 The warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on its website or on the label or container of MONAVIE's product
3 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
4 statements about Proposition 65 or lead may accompany the warning.

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

9 3. SETTLEMENT PAYMENT

10 3.1 In full satisfaction of all potential civil penalties, payment in lieu of civil
11 penalties, attorney's fees, and costs, MONAVIE shall make a total payment of \$120,000.00
12 ("Total Settlement Amount") to ERC within 15 days of the Effective Date. MONAVIE shall
13 make this payment by wire transfer to ERC's escrow account, for which ERC will give
14 MONAVIE the necessary account information. The Total Settlement Amount shall be
15 apportioned as follows:

16 3.2 \$43,288.00 shall be considered a civil penalty pursuant to California Health and
17 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$32,466.00) of the civil penalty to the
18 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
19 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
20 Code §25249.12(c). ERC will retain the remaining 25% (\$10,822.00) of the civil penalty.

21 3.3 \$627.07 shall be distributed to Environmental Research Center as
22 reimbursement to ERC for reasonable costs incurred in bringing this action; and \$43,284.59
23 shall be distributed to Environmental Research Center in lieu of further civil penalties, for the
24 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
25 includes work, analyzing, researching and testing consumer products that may contain
26 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
27 the subject matter of the current action; (2) the continued monitoring of past consent judgments
28 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a

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

3 **3.4** \$22,276.00 shall be distributed to Lozeau|Drury LLP as reimbursement of
4 ERC's attorney's fees, while \$10,524.34 shall be distributed to ERC for its in-house legal fees.

5 **4. MODIFICATION OF CONSENT JUDGMENT**

6 **4.1** This Consent Judgment may be modified only (i) by written stipulation of the
7 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
8 judgment.

9 **4.2** If MONAVIE seeks to modify this Consent Judgment under Section 5.1, then
10 MONAVIE must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
11 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
12 provide written notice to MONAVIE within thirty days of receiving the Notice of Intent. If
13 ERC notifies MONAVIE in a timely manner of ERC's intent to meet and confer, then the
14 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
15 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
16 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC
17 shall provide to MONAVIE a written basis for its position. The Parties shall continue to meet
18 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
19 Should it become necessary, the Parties may agree in writing to different deadlines for the
20 meet-and-confer period.

21 **4.3** In the event that MONAVIE initiates or otherwise requests a modification under
22 Section 5.1, and the meet and confer process leads to a joint motion or application of the
23 Consent Judgment, MONAVIE shall reimburse ERC its costs and reasonable attorney's fees
24 for the time spent in the meet-and-confer process and filing and arguing the motion or
25 application.

26 **4.4** Where the meet-and-confer process does not lead to a joint motion or
27 application in support of a modification of the Consent Judgment, then either Party may seek
28 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and

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

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

7 **5.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate
8 this Consent Judgment.

9 **5.2** If ERC alleges that any Covered Product fails to comply with this Consent
10 Judgment, then ERC shall inform MONAVIE in a reasonably prompt manner of its test results
11 and/or other information sufficient to permit MONAVIE to identify the Covered Products at
12 issue. The Parties shall first attempt to resolve the matter prior to ERC taking any further legal
13 action.

14 **6. APPLICATION OF CONSENT JUDGMENT**

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

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

22 **7.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
23 behalf of itself and in the public interest, and MONAVIE, of any alleged violation of
24 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
25 exposure to lead from the handling, use, or consumption of the Covered Products and fully
26 resolves all claims that have been or could have been asserted in this action up to and including
27 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products.
28 ERC, on behalf of itself and in the public interest, hereby discharges MONAVIE and its

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

10 **7.2** ERC on its own behalf only, on one hand, and MONAVIE on its own behalf
11 only, on the other, further waive and release any and all claims they may have against each
12 other for all actions or statements made or undertaken in the course of seeking or opposing
13 enforcement of Proposition 65 in connection with the Notice or Complaint up through and
14 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit
15 any Party's right to seek to enforce the terms of this Consent Judgment.

16 **7.3** It is possible that other claims not known to the Parties arising out of the facts
17 alleged in the Notice or the Complaint and relating to the Covered Products will develop or be
18 discovered. ERC on behalf of itself only, on one hand, and MONAVIE, on the other hand,
19 acknowledge that this Consent Judgment is expressly intended to cover and include all such
20 claims up through the Effective Date, including all rights of action therefore. ERC and
21 MONAVIE acknowledge that the claims released in Sections 8.1 and 8.2 above may include
22 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such
23 unknown claims. California Civil Code section 1542 reads as follows:

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

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

4 **7.4** Compliance with the terms of this Consent Judgment shall be deemed to
5 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
6 in the Covered Products as set forth in the Notice and the Complaint.

7 **7.5** Nothing in this Consent Judgment is intended to apply to any occupational or
8 environmental exposures arising under Proposition 65, nor shall it apply to any of MONAVIE's
9 products other than the Covered Products.

10 **8. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

13 **9. GOVERNING LAW**

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

16 **10. PROVISION OF NOTICE**

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

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

21 Chris Heptinstall, Executive Director, Environmental Research Center
22 3111 Camino Del Rio North, Suite 400
23 San Diego, CA 92108
24 Tel: (619) 500-3090
25 Email: chris_erc501c3@yahoo.com

26 With a copy to:

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

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

3 **MONAVIE LLC**

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

8 With a copy to:

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

16 **11. COURT APPROVAL**

17 **11.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
18 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
19 Consent Judgment.

20 **11.2** If the California Attorney General objects to any term in this Consent Judgment,
21 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
22 prior to the hearing on the motion.

23 **11.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
24 void and have no force or effect.

25 **12. EXECUTION AND COUNTERPARTS**

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

13. DRAFTING

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

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

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

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

16 **15. ENTIRE AGREEMENT, AUTHORIZATION**

17 **15.1** This Consent Judgment contains the sole and entire agreement and
18 understanding of the Parties with respect to the entire subject matter herein, and any and all
19 prior discussions, negotiations, commitments and understandings related hereto. No
20 representations, oral or otherwise, express or implied, other than those contained herein have
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
22 herein, shall be deemed to exist or to bind any Party.

23 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully
24 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
25 explicitly provided herein, each Party shall bear its own fees and costs.

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

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

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


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

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

8 **IT IS SO STIPULATED:**

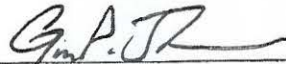
9 Dated: 4/27/, 2015

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hepburn, Executive Director

12 Dated: 4/29, 2015

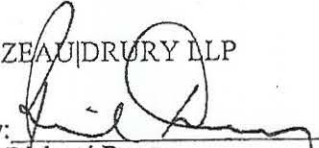
MONAVIE LLC

By: 
Its: Gordon P. Jackson
General Counsel

17 **APPROVED AS TO FORM:**


18 Dated: April 27, 2015

LOZEAU DRURY LLP

By: 
Richard Drury
Attorney for Plaintiff Environmental
Research Center

23 Dated: 5/4, 2015

LEWIS BRISBOIS BISGAARD & SMITH
LLP

By: 
Garth Ward
Attorney for Defendant MonaVie LLC

ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2015

Judge of the Superior Court