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10 Attorneys for Plaintiff
ERIKA MCCARTNEY

11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SAN FRANCISCO**
13

14
15 ERIKA MCCARTNEY, in the public interest,)
16 Plaintiff,)
17 v.)
18 THE WHITEWAVE FOODS COMPANY, a)
Delaware Corporation; and DOES 1 through 500,)
19 inclusive,)
20 Defendants.)
21)
22 _____)

CIVIL ACTION NO. CGC-17-556701
**[PROPOSED] STIPULATED CONSENT
JUDGMENT**
[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

1 **1. INTRODUCTION**

2 This Action arises out of alleged violations of California’s Safe Drinking Water and Toxic
3 Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.* (also known as
4 and referred to herein as “Proposition 65”) regarding the Covered Product (defined below). Plaintiff
5 Erika McCartney (“MCCARTNEY”) alleges the Covered Product exposes consumers in California
6 to cadmium and lead. Cadmium and lead are hereinafter referred to as the “Listed Chemicals.”

7 **1.1** “Covered Product” means the Vega Maca Chocolate Bar identified in the Notices of
8 Violations discussed in Section 1.6, *infra*.

9 **1.2** MCCARTNEY is a California resident acting as a private enforcer of Proposition 65.
10 MCCARTNEY brings this Action in the public interest under California Health and Safety Code
11 Section 25249. MCCARTNEY says that she is dedicated to, among other causes, helping safeguard
12 the public from health hazards by reducing the use and misuse of hazardous and toxic chemicals and
13 substances, facilitating a safe environment for consumers and employees, and encouraging corporate
14 responsibility.

15 **1.3** Danone US, Inc. (formerly known as The WhiteWave Foods Company) is a Delaware
16 corporation, and both it and its current and/or former direct or indirect subsidiaries, including Sequel
17 Naturals ULC, Sequel Naturals LTD, and Vega US, LLC, are hereinafter referred to as
18 “WHITEWAVE” either collectively or individually as applicable.

19 **1.4** WHITEWAVE manufactures, distributes, and/or has sold the Covered Product in
20 California during the relevant period.

21 **1.5** MCCARTNEY and WHITEWAVE are hereinafter sometimes referred to
22 individually as a “Party” or collectively as the “Parties.”

23 **1.6** On or about November 16, 2016, and January 25, 2017, under California Health and
24 Safety Code Section 25249.7(d)(1), MCCARTNEY served 60-Day Notices of Violations of
25 Proposition 65 (“Notices of Violations”) on the California Attorney General, other public enforcers,
26 and The WhiteWave Foods Company and Sequel Naturals LTD, respectively. True and correct
27 copies of the Notices of Violations are attached hereto as Exhibits A and B.

28

1 **1.7** After more than sixty (60) days passed from service of the Notices of Violations, and
2 no designated governmental agency filed a complaint against WHITEWAVE related to the Covered
3 Product or the alleged violations, MCCARTNEY filed a complaint (the “Complaint”) for injunctive
4 relief and civil penalties. The Complaint is based on the allegations in the Notices of Violations in
5 connection with the Covered Product.

6 **1.8** WHITEWAVE generally denies all material and factual allegations contained in or
7 arising from MCCARTNEY’s Notices of Violations and the Complaint and asserts that it has various
8 affirmative defenses to the claims asserted therein. WHITEWAVE further specifically denies that
9 MCCARTNEY or California consumers have been harmed or damaged by its conduct or the Product
10 it has sold or sells, including the Covered Product. WHITEWAVE further asserts that the levels of
11 the Listed Chemicals in the Covered Product are naturally occurring as the result of natural geological
12 and plant processes. MCCARTNEY and WHITEWAVE each reserves all rights to allege additional
13 facts, claims, and affirmative defenses if the Court does not approve this Consent Judgment.

14 **1.9** The Parties enter into this Consent Judgment to settle, compromise and resolve
15 disputed claims and avoid prolonged and costly litigation. For purposes of the approval and entry of
16 this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject
17 matter of this Action and personal jurisdiction over the Parties, that venue is proper in this Court, and
18 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all
19 claims up through and including the Effective Date which were or could have been asserted in this
20 action based on the facts alleged in the NOV’s and Complaint.

21 **1.10** Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or
22 be construed as an admission by any of the Parties, or by any of their respective officers, directors,
23 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
24 franchisees, licensees, distributors, wholesalers, or retailers, of any fact, conclusion of law, issue of
25 law, violation of law, fault, wrongdoing, or liability, including without limitation, any admission
26 concerning any alleged violation of Proposition 65. Nor shall this Consent Judgment be construed to
27 impair WHITEWAVE’s rights under any prior Proposition 65 Consent Judgment. Except as
28 expressly set forth herein, nothing in this Consent Judgment shall prejudice, waive, or impair any

1 right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
2 provided, however, nothing in this Section shall affect the enforceability of this Consent Judgment.

3 **1.11** The “Effective Date” of this Consent Judgment shall be the date Notice of Entry of
4 Judgment by this Court is served via email on counsel for WHITEWAVE.

5 **2. INJUNCTIVE RELIEF, REFORMULATION, AND WARNINGS**

6 **2.1** Beginning two months from the Effective Date (the “Compliance Date”), and unless
7 otherwise provided herein, WHITEWAVE shall be permanently enjoined from Distributing into
8 California any Covered Product containing cadmium or lead at concentration levels above the
9 corresponding levels set in the Consent Judgment entered February 15, 2018 by the San Francisco
10 County Superior Court in *As You Sow v. Trader Joe’s Company, et al.*, Case No. CGC-15-548791
11 (“AYS Settlement”) unless the Covered Product is accompanied by a warning that complies with
12 Section 2.5. Those levels are as follows:

- 13 • **Product Warning Triggers Based on Lead Concentration Levels**

- 14 ▪ For Covered Products with up to 65% cacao content: A warning that complies
15 with Section 2.5 is required if the Covered Product’s lead concentration level exceeds 0.100 ppm,
16 provided, however, that as of February 15, 2025, the foregoing lead concentration level shall be
17 deemed to have been reduced to 0.065 ppm unless the AYS Settlement has been modified to a level
18 which supersedes the drop down to 0.065 ppm.

- 19 ▪ For Covered Products with greater than 65% and up to 95% cacao content: A
20 warning that complies with Section 2.5 is required if the Covered Product’s lead concentration level
21 exceeds 0.150 ppm, provided, however, that as of February 15, 2025, the foregoing lead
22 concentration level shall be deemed to have been reduced to 0.100 ppm unless the AYS Settlement
23 has been modified to a level which supersedes the drop down to 0.100 ppm.

- 24 ▪ For Covered Products with greater than 95% cacao content: A warning that
25 complies with Section 2.5 is required if the Covered Product’s lead concentration level exceeds 0.225
26 ppm, provided, however, that as of February 15, 2025, the foregoing lead concentration level shall
27 be deemed to have been reduced to 0.200 ppm unless the AYS Settlement has been modified to a
28 level which supersedes the drop down to 0.200 ppm.

1 • **Product Warning Triggers Based on Cadmium Concentration Levels**

2 ▪ For Covered Products with up to 65% cacao content: A warning that complies
3 with Section 2.5 is required if the Covered Product’s cadmium concentration level exceeds 0.400
4 ppm, provided, however, that as of February 15, 2025, the foregoing lead concentration level shall
5 be deemed to have been reduced to 0.320 ppm unless the AYS Settlement has been modified to a
6 level which supersedes the drop down to 0.320 ppm.

7 ▪ For Covered Products with greater than 65% and up to 95% cacao content: A
8 warning that complies with Section 2.5 is required if the Covered Product’s cadmium concentration
9 level exceeds 0.450 ppm, provided, however, that as of February 15, 2025, the foregoing lead
10 concentration level shall be deemed to have been reduced to 0.400 ppm unless the AYS Settlement
11 has been modified to a level which supersedes the drop down to 0.400 ppm.

12 ▪ For Covered Products with greater than 95% cacao content: A warning that
13 complies with Section 2.5 is required if the Covered Product’s cadmium concentration level exceeds
14 0.960 ppm, provided, however, that as of February 15, 2025, the foregoing lead concentration level
15 shall be deemed to have been reduced to 0.800 ppm unless the AYS Settlement has been modified to
16 a level which supersedes the drop down to 0.800 ppm.

17 **2.2** “Distributing into California” or “Distribute into California” means to ship any of the
18 Covered Product to California for sale or to sell any of the Covered Product to a distributor that
19 WHITEWAVE knows, or has reason to know, will redistribute the Covered Product in or into
20 California.

21 **2.3** If the lead agency’s warning regulations change, the Parties agree that WHITEWAVE
22 may either conform its warnings to the lead agency’s regulations or conform with the terms provided
23 in this Consent Judgment, and in so doing, will be in compliance with this Consent Judgment.


24 **2.4** All units of the Covered Product that have been or will have been distributed, shipped,
25 or sold, or otherwise placed in the stream of commerce through and including the Compliance Date
26 are exempt from all provisions in this Sections 2.1 through 2.3 and 2.5 and are included within the
27 release in Sections 7.1 through 7.5. To comply with this Consent Judgment, WHITEWAVE is not
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1 required to undertake any efforts or conduct to remove such Covered Product from the stream of
2 commerce.

3 **2.5 Clear and Reasonable Warnings.** If WHITEWAVE is required to provide a warning
4 under Section 2.1, WHITEWAVE must include either a long- or short-form warning (“Warning”) as
5 provided below. If a long-form Warning is provided, the following Warning must be utilized:

6
7 **[California Proposition 65] WARNING:** Consuming this product can expose you to
8 [chemicals including] [lead] [and/or] [cadmium], which is [are] known to the State of
9 California to cause cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food.

10 At least one of lead or cadmium must be included if WHITEWAVE elects to use the foregoing
11 Warning, but the other bracketed language may be deleted or included at WHITEWAVE’s option.
12 In the alternative, if WHITEWAVE must provide a Warning on any Covered Product under Section
13 2.1, WHITEWAVE may use this short-form Warning, at WHITEWAVE’s option:

14
15 1)  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

16 If the Covered Product’s container and/or label does not use the color yellow, the equilateral
17 triangle that precedes the short-form Warning language may be printed in black and white.

18 WHITEWAVE will provide the Warning on the container or label of each Covered Product,
19 through an online Warning before purchase, or through any other transmission method authorized
20 under § 25607.1 of Title 27 of the California Code of Regulations. On-product Warnings shall be
21 securely affixed to or printed on the container or label of each Covered Product. If the Warning is
22 on the label, it must be set off from surrounding information and enclosed in a box. If a Warning
23 is provided online, it must either appear on the checkout page, when a California delivery address
24 is indicated, or on the Covered Product’s display page, or by any other method authorized under §
25 25602(b) of Title 27 of the California Code of Regulations. If a Warning is provided on the
26 checkout page, an asterisk or other identifying method must identify what product(s) on the
27 checkout page are subject to the Warning.

28 The Warning shall be at least the same size as the largest of any other health or safety

1 warnings also on WHITEWAVE's website or the labeling or container of WHITEWAVE's product
2 packaging and the word "WARNING" shall be in all capital letters and in bold print. No statements
3 intended to have the effect of diminishing the impact of the Warning on an average lay person can
4 accompany the Warning, and no statements may accompany the Warning that state or imply that
5 the source of a listed chemical has any impact on the effects thereof. WHITEWAVE must display
6 the above Warning with such conspicuousness, as compared with other words, statements, or
7 designs on the label or container, or on its website, if applicable, to render the Warning likely to be
8 read and understood by an ordinary individual under customary conditions of purchase or use of
9 the product.

10 Notwithstanding the foregoing, no Warning is required for any Covered Product that contains
11 cadmium or lead at concentrations below the levels described in Section 2.1, *supra*.

12 **3. SETTLEMENT PAYMENT**

13 **3.1** In full satisfaction of all potential civil penalties, additional settlement payments,
14 attorneys' fees, and costs, WHITEWAVE shall make a total payment of \$35,000 ("Total Settlement
15 Amount") to Environmental Law Foundation within 30 days of whichever is later of (a) the Effective
16 Date or (b) the last date on which WHITEWAVE receives from MCCARTNEY complete and
17 accurate W-9s and account information for payment by wire transfer to Environmental Law
18 Foundation. The Total Settlement Amount shall be apportioned as follows:

19 **3.2 Civil Penalty.** \$11,000 shall be considered a civil penalty under California Health and
20 Safety Code Section 25249.7(b)(1). Of this amount, \$8,250 (75%) shall be payable to California's
21 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking
22 Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section
23 25249.12(c), and \$2,750 (25%) shall be payable to MCCARTNEY.

24 **3.3 Attorneys' Fees and Costs.** \$24,000 shall be distributed to Environmental Law
25 Foundation as reimbursement of MCCARTNEY's attorneys' fees, costs, investigation, and litigation
26 expenses ("Attorney's Fees and Costs") in bringing this action. Except as explicitly provided herein,
27 each Party shall bear its own fees and costs.

28

1 **4. MODIFICATION OF CONSENT JUDGMENT**

2 This Consent Judgment may be modified only by a written agreement and stipulation entered
3 as a modified Consent Judgment by the Court; or upon entry of a modified Judgment by the Court
4 following a motion by a Party after exhausting the meet and confer process set forth below. If either
5 Party requests or initiates a modification, it shall meet and confer with the other Party in good faith
6 before filing a motion to modify with the Court. If the Parties are unable to reach agreement on any
7 proposed modification despite their meet and confer efforts, the Party seeking the modification may
8 file the appropriate motion. The prevailing party on such motion shall be entitled to recover its
9 reasonable fees and costs associated therewith. One basis, but not the only basis, for WHITEWAVE
10 to seek a modification of this Consent Judgment is if Proposition 65 is changed, narrowed, limited,
11 or otherwise rendered inapplicable in whole or in part to the Covered Product or Listed Chemical due
12 to legislative change, a change in the implementing regulations, court decisions, or other legal basis.

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

14 **5.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
15 Consent Judgment.

16 **5.2** Subject to Section 5.3, any Party may, by motion or application for an order to show
17 cause filed with this Court, enforce the terms and conditions in this Consent Judgment. The prevailing
18 party in any such motion or application may ask the Court to award its reasonable attorneys' fees and
19 costs associated with such motion or application.

20 **5.3** Before filing any motion or application for an order to show cause under Section 5.2,
21 MCCARTNEY shall provide WHITEWAVE with 30 days written notice of any alleged violation(s).
22 If WHITEWAVE cures any such alleged violations within the 30-day period (or, if any such violation
23 cannot practicably be cured within 30 days, WHITEWAVE initiates a cure within the 30-day period
24 and finishes as soon as practicable), WHITEWAVE will not be in violation of the Consent Judgment.
25 WHITEWAVE shall have the ability to avail itself of the benefits of this section two (2) times per
26 year following the Effective Date.

27 **6. APPLICATION OF CONSENT JUDGMENT**

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1 This Consent Judgment shall apply to, be binding upon, and benefit the Parties and their
2 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
3 divisions, affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers (including
4 online retailers), predecessors, successors, and assigns.

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

6 **7.1** This Consent Judgment is a full, final, and binding resolution between
7 MCCARTNEY, on behalf of herself and the public interest on one hand, and WHITEWAVE and its
8 past and present officers, directors, owners, members, shareholders, employees, agents, parent
9 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers,
10 distributors, wholesalers, retailers (including online retailers), and all other upstream and downstream
11 entities and persons in the distribution chain of the Covered Product (collectively, “Released Parties”)
12 of any and all direct or derivative violations (or claimed violations) of Proposition 65 or its
13 implementing regulations, and any and all other legal claims or causes of action that could be asserted
14 against WHITEWAVE as a result of any such violations, for failure to provide Proposition 65
15 warnings of exposure to cadmium and lead from the handling, use, or consumption of the Covered
16 Product, and fully resolves all claims that have been or could have been asserted up to and including
17 the Effective Date for the alleged failure to provide Proposition 65 warnings for the Covered Product
18 regarding cadmium and lead.

19 **7.2** MCCARTNEY on behalf of herself (and not in her role as a representative of the
20 public interest) further hereby releases and discharges WHITEWAVE and the Released Parties, from
21 any and all claims and causes of action and obligations to pay damages, restitution, fines, civil
22 penalties, payment in lieu of penalties, and expenses (including but not limited to expert analysis
23 fees, expert fees, attorneys’ fees and costs) (collectively, “Claims”) based on or derivative of
24 Proposition 65 or its implementing regulations for exposure to cadmium and lead from the Covered
25 Product and/or failure to warn about cadmium and lead in the Covered Product to the extent that the
26 Covered Product was sold by WHITEWAVE prior to the Effective Date.

27 **7.3** Unless modified under Section 4 above, compliance with the terms of Section 2 of the
28 Consent Judgment shall be deemed to constitute compliance by any Released Party with Proposition

1 65 regarding alleged exposures to Listed Chemicals from the Covered Product as stated in the Notices
2 of Violations and the Complaint.

3 **7.4** It is possible that other Claims not known to MCCARTNEY arising out of the facts
4 alleged in the Notices of Violations or the Complaint and relating to the Listed Chemicals in the
5 Covered Product that were manufactured, sold or Distributed into California before the Effective
6 Date will develop or be discovered. MCCARTNEY, on behalf of herself, and each of her successors,
7 assigns, legatees, heirs, attorneys, and personal representatives only, acknowledges that the Claims
8 released herein include all known and unknown Claims and waives California Civil Code Section
9 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

10 **“A general release does not extend to claims that the creditor or releasing party**
11 **does not know or suspect to exist in his or her favor at the time of executing the**
12 **release and that, if known by him or her, would have materially affected his or**
13 **her settlement with the debtor or released party.”**

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

16 **7.5** MCCARTNEY, on one hand, and WHITEWAVE, on the other hand, each release and
17 waive all Claims they may have against each other for any statements or actions made or undertaken
18 by them in connection with the Notices of Violations or the Complaint. However, this shall not affect
19 or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

20 **8. CONSTRUCTION AND SEVERABILITY**

21 **8.1** The terms and conditions of this Consent Judgment were reviewed by the respective
22 counsel for the Parties before its signing, and each Party had an opportunity to fully discuss the terms
23 and conditions with its counsel. It is conclusively presumed that the Parties participated equally in
24 the preparation and drafting of this Consent Judgment.

25 **8.2** In any subsequent interpretation or construction of this Consent Judgment, the terms
26 and conditions shall not be construed against any Party. The Parties agree that no extrinsic evidence
27 has any bearing on the Parties’ agreement or understanding of any term.

28 **8.3** In the event that any of the provisions of this Consent Judgment is held by a court to
be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

1 **8.4** The terms and conditions of this Consent Judgment shall be governed by and
2 construed in accordance with the laws of the State of California.

3 **9. PROVISION OF NOTICE**

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

7 **For Erika McCartney:**

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

12 **For The WhiteWave Foods Company and Sequel Naturals LTD:**

13 Angela Agrusa
14 DLA Piper, LLP
15 2000 Avenue of the Stars, Suite 400 North Tower
16 Los Angeles, California 90067-4704

17 **10. COURT APPROVAL**

18 **10.1** Upon execution of this Consent Judgment by the Parties, MCCARTNEY shall notice
19 a Motion for Court Approval. The Parties shall use their commercially reasonable efforts to support
20 entry of this Consent Judgment.

21 **10.2** If the California Attorney General objects to any term in this Consent Judgment, the
22 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to
23 the hearing on the motion.

24 **10.3** If, despite the Parties' best efforts, the Court does not approve this Stipulated Consent
25 Judgment it shall be null and void and have no force or effect.

26 **11. EXECUTION AND COUNTERPARTS**

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

1 **12. ENTIRE AGREEMENT; AUTHORIZATION**

2 **12.1** This Consent Judgment contains the sole and entire agreement and understanding of
3 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or otherwise,
5 express or implied, other than those contained herein have been made by any Party. No other
6 agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to
7 bind any Party.

8 **12.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
9 the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly provided
10 herein, each Party shall bear its own fees and costs.

11 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

16 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

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

20 (a) Find that the terms and provisions of this Consent Judgment represent a good
21 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
22 diligently prosecuted, and that the public interest is served by such settlement; and

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(b) Make the findings pursuant to California Health and Safety Code Section 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

IT IS SO STIPULATED.

Dated: 8/13/19


Erika McCartney

Dated: _____

DANONE US, INC. F/K/A THE
WHITEWAVE FOODS COMPANY


Name: _____

Title: _____

APPROVED AS TO FORM:

Dated: 8/13/19

ENVIRONMENTAL LAW FOUNDATION
APRIL M. STRAUSS, A PC

By: 
April M. Strauss
Attorneys for Plaintiff

Dated: : _____

DLA PIPER LLP

By: _____
Angela Agrusa
Attorneys for Defendants

1 (b) Make the findings pursuant to California Health and Safety Code Section
2 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

3 **IT IS SO STIPULATED.**

4
5 Dated: 8/13/19


Erika McCartney

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7
8 Dated: 8/16/2019

DANONE US, INC. F/K/A THE
WHITEWAVE FOODS COMPANY


9
10
11 Name: 

12 Title: Sr. VP, General Counsel, Grocery

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15 APPROVED AS TO FORM:

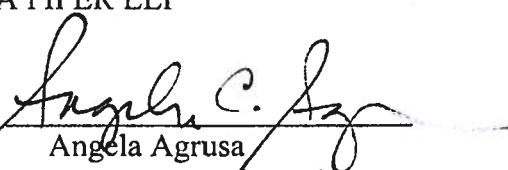
16 Dated: 8/13/19

ENVIRONMENTAL LAW FOUNDATION
APRIL M. STRAUSS, A PC

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19 By: 
April M. Strauss
Attorneys for Plaintiff

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21
22 Dated: : 8/15/19

DLA PIPER LLP

23
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25 By: 
Angela Agrusa
Attorneys for Defendants

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2019.

Judge of the Superior Court

Exhibit A

November 16, 2016

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

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

The WhiteWave Foods Company

Consumer Products and Listed Chemicals. The product that is the subject of this notice and the chemical in the product identified as exceeding allowable levels is:

Vega Maca Chocolate Bar – Cadmium and Lead

On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause developmental toxicity, and male reproductive toxicity.

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least November 16, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58th Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Robert B. Hancock
rbh@lawyer.com

Attachments

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

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 16, 2016



Robert B. Hancock

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On November 16, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
The WhiteWave Foods Company
1225 17th Street, Suite 1000
Denver, CO 80202

The WhiteWave Foods Company
c/o The Corporation Company;
Agent for Service
7700 E. Arapahoe Road, Suite 220
Centennial, CO 80112-1268

On November 16, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(l)** on the following parties by uploading the foregoing documents at the webpage listed below:

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

On November 16, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed under penalty of perjury pursuant to the laws of the State of California on November 16, 2016.



Robert B. Hancock

Service List

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PROP65@scgov.org

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Sacramento, CA 95814

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

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

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

Exhibit B

January 25, 2017

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

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

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

Sequel Naturals, LTD

Consumer Products and Listed Chemicals. The product that is the subject of this notice and the chemical in the product identified as exceeding allowable levels is:

Vega Maca Chocolate Bar – Cadmium and Lead

On May 1, 1997, the State of California officially listed cadmium as a chemical known to cause developmental toxicity, and male reproductive toxicity.

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least January 25, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58th Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Robert B. Hancock
rbh@lawyer.com

Attachments

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

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 25, 2017



Robert B. Hancock

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On January 25, 2017, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Sequel Naturals, LTD
101-3001 Wayburne Drive
Burnaby, BC V5G4W3

On January 25, 2017, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by uploading the foregoing documents at the webpage listed below:

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

On January 25, 2017, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed under penalty of perjury pursuant to the laws of the State of California on January 25, 2017.



Robert B. Hancock

Notice of Violations of California Health & Safety Code §25249.5 *et. seq.*
January 25, 2017
Page 5

Service List

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