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SEQUEL NATURALS ULC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA**

COMMUNITY SCIENCE INSTITUTE, a
non-profit association,

Plaintiff,

vs.

SEQUEL NATURALS ULC, a Canadian
unlimited liability corporation,

Defendant.

Case No. RG18909334

Assigned For All Purposes to The Honorable
Brad Seligman—Department 23

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Case Filed: June 16, 2018

First Amend. Comp. Filed: August 6, 2018

Trial Date: None Set

1 **1. INTRODUCTION**

2 **1.1** On June 16, 2018, Plaintiff Community Science Institute (“CSI”), a non-profit
3 association, as a private enforcer and in the public interest, initiated this action by filing a
4 Complaint for Injunctive Relief and Civil Penalties pursuant to the provisions of California
5 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”), against Sequel Naturals
6 ULC (“Sequel” or “Defendant”), and Sequel Naturals Ltd.

7 **1.2** CSI’s June 16, 2018 complaint was based on allegations contained in CSI’s
8 Notice of Violation (“NOV”) dated March 30, 2018 that was served on the California Attorney
9 General, other public enforcers, Sequel, and Sequel Naturals Ltd. A true and correct copy of the
10 March 30, 2018 NOV is attached as **Exhibit A** to this Consent Judgment and incorporated
11 herein by reference.

12 **1.3** On August 6, 2018, CSI filed a First Amended Complaint against Sequel,
13 Sequel Naturals Ltd., and The WhiteWave Foods Company based on the allegations in CSI’s
14 March 30, 2018 NOV and a January 18, 2018 NOV that was served on the California Attorney
15 General, other public enforcers, and The WhiteWave Foods Company. A true and correct copy
16 of the January 18, 2018 NOV is attached as **Exhibit B** to this Consent Judgment and
17 incorporated herein by reference.

18 **1.4** On January 23, 2019, Sequel Naturals Ltd. and The WhiteWave Foods
19 Company were dismissed from this action without prejudice.

20 **1.5** CSI filed the operative Second Amended Complaint (the “Complaint”) against
21 Defendant based on the allegations contained in CSI’s March 30, 2018 NOV, and January 18,
22 2018 NOV, and a November 1, 2019 NOV served on the California Attorney General, other
23 public enforcers, and Defendant (collectively, the “NOVs”). A true and correct copy of the
24 November 1, 2019 NOV is attached as **Exhibit C** to this Consent Judgment and incorporated
25 herein by reference.

26 **1.6** CSI alleges products manufactured, distributed, or sold by Defendant contain
27 the chemicals lead and cadmium, which are listed under Proposition 65 as carcinogens and/or
28 reproductive toxins, and expose consumers to lead and/or cadmium at levels which require a

1 Proposition 65 warning. The products (herein individually a “Covered Product” or collectively
2 the “Covered Products”) are all Vega powders, including powder supplements, shakes,
3 including shake powders and ready-to-drink products, protein bars, and protein snacks.
4 Attached hereto as Exhibit D is a non-exhaustive list of exemplar Vega products subject to the
5 Consent Judgment.

6 **1.7** Defendant denies all material and factual allegations in, or that arise from, CSI’s
7 NOVs and the Complaint and asserts it has affirmative defenses to CSI’s claims. Defendant
8 further specifically denies that CSI or California consumers have been harmed or damaged by
9 its alleged conduct or the Covered Products or other products Defendant sold or sells.
10 Defendant asserts that the lead and cadmium in the Covered Products are naturally occurring as
11 the result of natural geological and plant processes. Defendant and CSI each reserve all rights
12 to allege additional facts, claims, and affirmative defenses if this Consent Judgment is not
13 approved.

14 **1.8** CSI and Defendant are hereinafter referred to individually as a “Party” or
15 collectively as the “Parties.”

16 **1.9** CSI is an unincorporated association whose mission is to unite consumers and
17 industrial neighbors to reform government and industry practices for a toxic-free future.

18 **1.10** For purposes of this Consent Judgment, the Parties agree that Defendant is a
19 business entity that has employed ten or more persons at all times relevant to this action, and
20 Defendant qualifies as a “person in the course of doing business” within the meaning of
21 Proposition 65. Further, for purposes of this Consent Judgment, the Parties agree that Defendant
22 manufactures, distributes, and/or sells the Covered Products.

23 **1.11** Over 60 days have passed since the NOVs were served on the Attorney General,
24 public enforcers, and Defendant, and no designated governmental entity has filed a complaint
25 against Defendant with regard to the Covered Products or the violations alleged in the NOVs.

26 **1.12** CSI’s NOVs and Complaint allege that use of the Covered Products expose
27 persons in California to lead and/or cadmium without first providing clear and reasonable
28 warnings in violation of California Health and Safety Code section 25249.6. Defendant denies

1 all material allegations contained in the NOV's and Complaint.

2 **1.13** The Parties enter into this Consent Judgment to settle, compromise, and resolve
3 disputed claims and avoid prolonged and costly litigation. Nothing in this Consent Judgment
4 nor compliance with this Consent Judgment shall constitute or be construed as an admission by
5 any Party or any of their respective officers, directors, shareholders, affiliates, employees,
6 agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers, suppliers,
7 distributors, wholesalers, or retailers of any fact, issue of law, or violation of law. Nor shall
8 this Consent Judgment be construed to impair or limit Sequel's rights under any prior
9 Proposition 65 Consent Judgment.

10 **1.14** Except as expressly set forth in this Consent Judgment, nothing in this Consent
11 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties
12 may have in any current or future legal proceeding unrelated to these proceedings.

13 **1.15** The Effective Date of this Consent Judgment is the date on which Notice of
14 Entry of Judgment is served via email on counsel for Defendant.

15 **2. JURISDICTION AND VENUE**

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

23 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

24 **3.1** Starting one month from the Effective Date, Defendant shall not manufacture
25 for sale in, distribute into, or directly sell in the State of California, any Covered Product unless
26 such Covered Product (a) qualifies as a "Compliant Product" or (b) meets the warning
27 requirements under Section 3.2. A "Compliant Product" is one for which the results of the
28 testing performed by Defendant under Section 3.4 yield a daily exposure at or below 0.5

1 micrograms of lead and 4.1 micrograms of cadmium per day, as determined by exposure
2 calculation methodology of Section 3.1.2, excluding any naturally occurring heavy metal levels
3 as defined in Section 3.1.3, and by the quality control methodology described in Section 3.4.
4 Defendant shall be required to provide the warning set forth in Section 3.2 only for products
5 causing exposures in excess of the foregoing levels.

6 **3.1.1** As used herein, “distribute into the State of California” means to directly
7 ship a Covered Product into California for sale in California, or to sell a Covered Product to a
8 distributor Defendant knows or has reason to know will sell it in California.

9 **3.1.2** For purposes of this Consent Judgment and determining Defendant’s
10 compliance with Proposition 65, daily heavy metal exposure levels shall, provided there are no
11 directions on the product label to consume more than one serving per day, be calculated by
12 using the following formula: micrograms of heavy metal per gram (mcg/g) in the product
13 multiplied by one serving per day (4 grams for powders and shakes, 31.6 grams for ready-to-
14 drink products, 7 grams for bars, and 1.8 grams for protein snacks).

15 **3.1.3** For the purposes of this Consent Judgment and determining Defendant’s
16 compliance with Proposition 65, Defendant shall be afforded a naturally occurring allowance
17 of up to one part per million (1,000 ppb) lead for any cocoa powder in the Covered Products
18 pursuant to the September 28, 2001 letter from the Attorney General to Roger Lane Carrick
19 and Michele Corash and, 0.32 part per million (320 ppb) cadmium for any cocoa powder in the
20 Covered Products, pursuant to the Judgment approved by the Attorney General in *As You Sow*
21 *v. Trader Joe’s Company et al.*, S.F. Sup. Co. No. CGC-15-548791 (Feb. 15, 2018).

22 **3.1.4** Any additional determination of any naturally occurring heavy metal in
23 a given Covered Product may be established by a preponderance of evidence under California
24 Code of Regulation (“CCR”), Title 27, § 22501, pursuant to a meet and confer of the Parties
25 and, if necessary, a determination by a neutral arbitrator.

26 **3.2 Clear and Reasonable Warnings**

27 If Defendant is required to provide a warning pursuant to Section 3.1, Defendant must
28 include either a long- or short-form warning (“Warning”) as provided below.

1 **3.2.1** If a long-form Warning is provided, the following Warning must be
2 utilized:


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

6 Defendant shall use the phrase “cancer and” in this Warning if the daily lead exposure
7 level from consuming the Covered Product is greater than 15 micrograms or if the daily cadmium
8 exposure level from consuming the Covered Product is greater than 4.1 micrograms as determined
9 pursuant to the quality control methodology set forth in Section 3.4, or if additional testing
10 determines that another chemical is present that may require a Proposition 65 cancer warning.

11 **3.2.2** Alternatively, if Defendant must provide a Warning under Section 3.1,
12 Defendant may provide a short-form Warning. Where a short-form Warning is provided in
13 place of a long-form Warning, one of the following Warnings must be utilized:

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

15 OR

16 2)  **Warning:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

17
18
19 **3.2.3** Defendant shall use the second short-form Warning above if the daily
20 lead exposure level from consuming the Covered Products exceeds 15 micrograms or the daily
21 cadmium exposure level exceeds 4.1 micrograms, as determined under the quality control
22 methodology in Section 3.4, or if additional testing determines that another chemical is present
23 that may require a Proposition 65 cancer warning. The first short-form Warning may be used in
24 all other cases. If the container or label of the Covered Product is not printed using the color
25 yellow, the equilateral triangle that precedes the short-form Warning language may be printed in
26 black and white.
27

28 Defendant shall provide the Warning on the container or label of each Covered Product

1 or through an online Warning before purchase. On-product Warnings shall be securely affixed
2 to or printed on the container or label of each Covered Product. If the Warning is on the label,
3 it must be set off from surrounding information and enclosed in a box. For Covered Products
4 sold on the internet, the Warning shall appear on the checkout page, when a California delivery
5 address is indicated, on the product display page, or by any other method authorized under §
6 25602(b) of Title 27 of the CCRs. If the Warning for a Covered Product is provided on the
7 checkout page, an asterisk or other identifying method must be utilized to identify which
8 product or products on the checkout page are subject to the Warning.

9 The Warning shall be at least the same size as the largest of any other health or safety
10 warnings also appearing on a website or on the labeling or container of the Covered Products'
11 product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No
12 statements intended to or likely to have the effect of diminishing the impact of the Warning on the
13 average lay person can accompany the Warning, and no statements may accompany the Warning
14 that state or imply the source of the listed chemical has any impact on or results in a less harmful
15 effect of the listed chemical. Defendant must display the above Warning with such
16 conspicuousness, as compared with other words, statements or designs on the label or container,
17 or on its website, if applicable, to render the Warning likely to be read and understood by an
18 ordinary individual under customary conditions of purchase or use of the product.

19 **3.3 Modification to Safe-Harbor Warning Regulations**

20 The Parties agree that, should Proposition 65 warning regulations change after the date
21 this Consent Judgment is executed by the Parties, Defendant may either conform its warnings
22 to the revised regulations, or comply with the terms provided in this Consent Judgment, and in
23 so doing, will be in compliance with this Consent Judgment.

24 **3.4 Testing and Quality Control Methodology**

25 **3.4.1** Beginning within one year of the Effective Date, Defendant shall
26 arrange for lead and cadmium testing of each of the Covered Products at least once a year by
27 arranging for testing of one randomly selected sample of each of the Covered Products from
28 three randomly selected lots of the Covered Products, in the form intended for sale to the end-

1 user, which Defendant intends to distribute into the State of California. Each sample to be
2 tested shall be randomly selected. After three years from the Effective Date, Defendant shall
3 have no further obligation to test pursuant to this section.

4 **3.4.2** If tests conducted under this Section demonstrate that no Warning is
5 required for a Covered Product during each of three consecutive years, then the testing
6 requirements of this Section will no longer be required as to that Covered Product. However, if
7 during the three-year testing period, Defendant changes ingredient suppliers for any of the
8 Covered Products and/or reformulates any of the Covered Products, Defendant shall test that
9 Covered Product annually for three consecutive years after such change is made.

10 **3.4.3** For purposes of measuring the daily lead and cadmium exposure levels,
11 the highest of the three tested samples of each of the Covered Products shall be used for
12 calculating lead and cadmium exposure levels for that Covered Product as set forth in Section
13 3.1.2, above. If the highest lead or cadmium content test reflects an exposure in excess of the
14 Compliant Product Standard, Defendant has the right to retest three samples from the same lot.
15 The highest lead or cadmium content testing results from each lot that is retested for the second
16 round of sampling shall be used for calculating lead or cadmium exposure levels for that
17 Covered Product.

18 **3.4.4** All testing pursuant to this Consent Judgment shall be performed using a
19 laboratory method that complies with the performance and quality control factors appropriate
20 for the method used, including limit of detection, qualification, accuracy, and precision that
21 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
22 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

23 **3.4.5** All testing pursuant to this Consent Judgment shall be performed by an
24 independent third party laboratory certified by the California Environmental Laboratory
25 Accreditation Program or an independent third-party laboratory that is registered with the
26 United States Food & Drug Administration.

27 **3.4.6** Nothing in this Consent Judgment shall limit Defendant's ability to
28 conduct, or require that others conduct, additional testing of the Covered Products, including

1 the raw materials used in their manufacture.

2 **3.4.7** If CSI has a good faith belief that a Covered Product is in violation of
3 this Consent Judgment, it may request from Defendant (1) lab reports obtained pursuant to
4 Section 3.4 for such product(s) and (2) if Defendant is excluding “naturally occurring”
5 amounts of lead or cadmium under this Section, document(s) sufficient to show all ingredients,
6 including the quantity of each ingredient in the finished product, that contain naturally
7 occurring lead or cadmium in amounts that are necessary to reduce daily heavy metal exposure
8 level(s) below 0.5mcg/day lead and 4.1mcg/day cadmium. Sequel shall respond and provide
9 requested documents within one month of receipt of CSI’s written request. Defendant shall
10 retain all test results and documentation collected pursuant to this Consent Judgment for a
11 period of three years from the date of each test.

12 **3.4.8** The requirements of Section 3.4 shall not apply to any Covered Products
13 for which Defendant has provided a warning that complies with Section 3.2

14 **4. SETTLEMENT PAYMENT**

15 In full satisfaction of all potential civil penalties, additional settlement payments,
16 attorney’s fees, and costs, Defendant shall make a total payment of \$362,500.00 (“Total
17 Settlement Amount”) to CSI within 20 business days of the Effective Date (“Due Date”) on the
18 condition that CSI provides all necessary tax forms one month in advance of the Due Date.
19 Defendant shall make this payment via check made payable to Lozeau Drury LLP and sent to
20 1939 Harrison St., Suite 150, Oakland, California, 94612. The Total Settlement Amount shall
21 be apportioned as follows:

22 **4.1 Civil Penalty.** \$164,281.54 shall be considered a civil penalty pursuant to
23 California Health and Safety Code section 25249.7(b)(1). CSI shall remit 75% (\$121,928.57)
24 of the civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for
25 deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California
26 Health and Safety Code section 25249.12(c). CSI will retain the remaining 25% (\$40,642.86)
27 of the civil penalty.

28 **4.2 Additional Settlement Payment.** \$121,928.57 shall be considered an

1 Additional Settlement Payment (“ASP”), pursuant to CCR, title 11, sections 3203, subdivision
2 (d) and 3204. These funds shall be distributed by CSI or its counsel as follows:

3 **4.3 Key Sciences, LLC.** \$8,414.28 of the ASP funds shall be distributed to Key
4 Sciences, LLC (“Key Sciences”). Key Sciences will use the ASP for activities that address the
5 same public harm as alleged in this matter. Key Sciences will restrict use of the ASP received
6 from this Consent Judgment to the following purposes:

7 **4.3.1** ASP funds will be used by Key Sciences to offer free testing of products
8 purchased in California for Proposition 65 listed chemicals.

9 **4.3.2** Key Sciences activities will have a direct and primary effect within the
10 State of California because the funds will be used to support work being done by non-profits to
11 monitor compliance with Proposition 65.

12 **4.3.3** Key Sciences shall be fully accountable in that it will maintain adequate
13 records to document and will be able to demonstrate how the ASP funds will be spent and can
14 assure that the funds are being spent only for the proper, designated purposes described in this
15 Consent Judgment. CSI shall require, as a prerequisite to the transfer of any funds pursuant to
16 this Consent Judgment, that Key Sciences agree to provide the California Attorney General’s
17 office, within thirty days of any request, copies of documentation demonstrating how such funds
18 have been spent.

19
20 **4.4 Greenaction for Health & Environmental Justice.** \$32,514.29 of the ASP
21 funds shall be distributed to Greenaction for Health & Environmental Justice (“Greenaction”), a
22 nonprofit corporation that works to change government and corporate policies and practices to
23 protect health and to promote environmental, social and economic justice. Greenaction will
24 restrict use of the ASP received from this Consent Judgment to the purposes described below.

25 **4.4.1** Greenaction will use the funds to conduct community educational
26 outreach and civic engagement activities that protect the public health from Proposition 65
27 listed chemicals. Specifically, the funds will be used for the following three projects:
28

1 **4.4.2** The funds will go towards community outreach to inform residents of
2 Bayview Hunters Point in San Francisco how to file pollution complaints on [www.bvhp-](http://www.bvhp-ivan.org)
3 [ivan.org](http://www.bvhp-ivan.org) and how to engage with local, regional, and state agency officials on pollution issues
4 at the monthly meetings of the multi-stakeholder Bayview Hunters Point Environmental Justice
5 Response Task Force.

6 **4.4.3** The funds will also go towards community education and civic
7 engagement on assessment and cleanup of radiological and toxic contamination in Bayview
8 Hunters Point and Treasure Island in San Francisco. Funds will be used to pay for Greenaction
9 staff to conduct multilingual community education to inform residents about contaminants at
10 the Hunters Point Shipyard Superfund Site and at the former Naval station site at Treasure
11 Island, and to inform the community about civic engagement opportunities related to
12 assessment and cleanup of this contamination.

13 **4.4.4** The funds will also be used for educational outreach and engagement
14 with truckers and businesses that use diesel vehicles to inform them of the laws restricting
15 idling and health impacts of emissions from diesel vehicle idling.

16 **4.4.5** Greenaction's use of the ASP funds will have a direct and primary effect
17 within the State of California because it will go towards education, outreach, and engagement
18 of Californians on contamination and exposure to Proposition 65 listed chemicals occurring in
19 California.

20 **4.4.6** Greenaction shall be held fully accountable in that it will maintain
21 adequate records to document and will be able to demonstrate how the ASP funds will be spent
22 and can assure that the funds are being spent only for the proper, designated purposes
23 described in this Consent Judgment. CSI shall require, as a prerequisite to the transfer of any
24 funds pursuant to this Consent Judgment, that Greenaction agree to provide the California
25 Attorney General's office, within thirty days of any request, copies of documentation
26 demonstrating how such funds have been spent.

1 **4.5 Attorneys' Fees.** \$78,000 shall be distributed to Lozeau Drury LLP as
2 reimbursement of CSI's attorney's fees and reasonable costs incurred in bringing this action.
3 Except as explicitly provided herein, each Party shall bear its own fees and costs.

4 **4.6 Enforcement.** In the event that Defendant fails to timely remit the Total
5 Settlement Amount as set forth in this Section, Defendant shall be deemed to be in material
6 breach of its obligations under this Consent Judgment. CSI shall provide written notice of the
7 delinquency to Defendant via electronic mail. If Defendant fails to deliver the Total Settlement
8 Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue
9 interest at the statutory judgment interest rate provided in the California Code of Civil
10 Procedure section 685.010.

11 **5. MODIFICATION OF CONSENT JUDGMENT**

12 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
13 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
14 or (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
15 modified consent judgment.

16 **5.2** If Defendant seeks to modify this Consent Judgment under Section 5.1, then that
17 party must provide written notice to CSI of its intent ("Notice of Intent"). If CSI notifies
18 Defendant in a timely manner of CSI's intent to meet and confer, then the Parties shall meet
19 and confer in good faith as required in this Section. The Parties shall meet in person or via
20 telephone within thirty (30) days of service of a Notice of Intent. Within thirty (30) days of
21 such meeting, if CSI disputes the proposed modification, CSI shall provide to Defendant a
22 written basis for its position and the Parties shall continue to meet and confer for an additional
23 ten (10) days in an effort to resolve any remaining disputes. Should it become necessary, the
24 Parties may agree in writing to different deadlines for the meet-and-confer period.

25 **5.3** In the event that any party initiates or otherwise requests a modification under
26 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
27 modification of the Consent Judgment, the party initiating the modification shall reimburse the
28 other its costs and reasonable attorney's fees for the time spent in the meet-and-confer process

1 and filing and arguing the motion or application.

2 **5.4** Where the meet-and-confer process does not lead to a joint motion or
3 application in support of a modification of the Consent Judgment, then either Party may seek
4 judicial relief on its own and the prevailing party shall recover its costs and reasonable
5 attorney's fees. As used in the proceeding sentence, the term "prevailing party" means a party
6 who is successful in obtaining relief more favorable to it than the relief that the other party was
7 amenable to providing during the Parties' good faith attempt to resolve the dispute that is the
8 subject of the modification.

9 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
10 **JUDGMENT**

11 **6.1** This Court shall retain exclusive jurisdiction over the enforcement,
12 modification, or termination of this Consent Judgment and all related claims.

13 **6.2** If CSI alleges that any Covered Product fails to qualify as a Compliant Product
14 (for which CSI alleges that no Warning has been provided), then CSI shall timely inform
15 Defendant of its test results, including information sufficient to permit Defendant to identify the
16 Covered Products at issue. Defendant shall, within thirty (30) days following such notice,
17 provide CSI with testing information meeting the requirements of Sections 3.4.3 and 3.4.4. The
18 Parties shall first attempt to resolve the matter informally for 60 days prior to CSI taking any
19 further legal action.

20 **6.3** CSI may, by motion or order to show cause before the Superior Court of
21 Alameda County, enforce the terms and conditions contained in this Consent Judgment. In any
22 action brought by CSI to enforce this Consent Judgment, CSI may seek whatever fines, costs,
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

24 **7. APPLICATION OF CONSENT JUDGMENT**

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

1 have no application to any Covered Product which is distributed or sold exclusively outside the
2 State of California and which is not used by consumers residing in California.

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

4 **8.1** This Consent Judgment is a full, final, and binding resolution between CSI,
5 on behalf of itself and in the public interest, and Defendant and its respective officers,
6 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
7 franchisees, licensees, customers, distributors, wholesalers, affiliates, retailers (including
8 online retailers), and all other upstream and downstream entities in the distribution chain of any
9 Covered Product, and the predecessors, successors, and assigns of any of them (collectively,
10 "Released Parties"). CSI, on behalf of itself and in the public interest, hereby fully releases and
11 discharges the Released Parties from any and all claims, actions, causes of action, suits,
12 demands, liabilities, damages, penalties, fees, costs, and expenses arising out of or relating to
13 any omission of or other failure to provide clear and reasonable warnings, disclaimers, or
14 disclosures concerning exposure to lead or cadmium from the purchase, handling, use, or
15 consumption of the Covered Products.

16 **8.2** CSI on its own behalf only, and Defendant on its own behalf only, further
17 waive and release any and all claims they may have against each other for all actions or
18 statements made or undertaken in the course of seeking or opposing enforcement of
19 Proposition 65 in connection with the NOV's and Complaint up through and including the
20 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's
21 right to seek to enforce the terms of this Consent Judgment.

22 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
23 alleged in the NOV's and Complaint, and relating to the Covered Products, will develop or be
24 discovered. CSI on behalf of itself only, and Defendant on behalf of itself only, acknowledge
25 that this Consent Judgment is expressly intended to cover and include all such claims up
26 through and including the Effective Date, including all rights of action therefore. CSI and
27 Defendant acknowledge that the claims released in Sections 8.1 and 8.2 above may include
28 unknown claims, and nevertheless waive California Civil Code section 1542 as to any such

1 unknown claims. California Civil Code section 1542 reads as follows:

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

8 CSI on behalf of itself only, and Defendant on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 § 1542.

11 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 and satisfaction of any duty to provide warnings,
13 disclaimers, or disclosures concerning lead and cadmium by any Released Party regarding
14 alleged exposures to lead and/or cadmium in the Covered Products.

15 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

19 **10. GOVERNING LAW**

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

22 **11. PROVISION OF NOTICE**

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

26 **FOR COMMUNITY SCIENCE INSTITUTE:**

27 REBECCA L. DAVIS
28 LOZEAU | DRURY LLP
1939 Harrison St., Suite 150
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1 Email: rebecca@lozeaudrury.com

2 **FOR SEQUEL NATURALS ULC**

3 Angela Agrusa
4 DLA Piper LLP
5 2000 Avenue of the Stars
6 Suite 400 North Tower
7 Los Angeles, California 90067-4704

8 **12. COURT APPROVAL**

9 **12.1** Upon execution of this Consent Judgment by the Parties, CSI shall notice a
10 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
11 Consent Judgment.

12 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
13 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
14 prior to the hearing on the motion.

15 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
16 void and have no force or effect.

17 **13. EXECUTION AND COUNTERPARTS**

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

21 **14. DRAFTING**

22 The terms of this Consent Judgment have been reviewed by the respective counsel for
23 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
24 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
25 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
26 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
27 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
28 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
equally in the preparation and drafting of this Consent Judgment. The Parties agree that no
extrinsic evidence has any bearing on the Parties' agreement or understanding of any term.

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

2 If a dispute arises with respect to either Party's compliance with the terms of this Consent
3 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in
4 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be
5 filed in the absence of such a good faith attempt to resolve the dispute beforehand.
6

7 **16. ENTIRE AGREEMENT, AUTHORIZATION**

8 **16.1** This Consent Judgment contains the sole and entire agreement and
9 understanding of the Parties with respect to the entire subject matter herein, and any and all
10 prior discussions, negotiations, commitments, and understandings related hereto. No
11 representations, oral or otherwise, express or implied, other than those contained herein have
12 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
13 herein, shall be deemed to exist or to bind any Party.

14 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the Party he or she represents to stipulate to this Consent Judgment.

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

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

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

24 (2) Make the findings pursuant to California Health and Safety Code section
25 25249.7(f)(4), approve the Settlement, and approve and enter this Consent Judgment.

26 //

27 //

28 //

1 **IT IS SO STIPULATED:**

2 Dated: _____, 2019

COMMUNITY SCIENCE INSTITUTE

3 By: _____

4
5 Dated: 11/8, 2019

6 SEQUEL NATURALS ULC

7 

8 By: MICHAEL GEBRAEL
9 Its: President.

10 **APPROVED AS TO FORM:**

11 Dated: _____, 2019

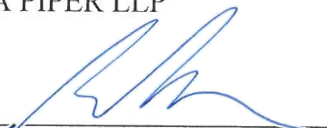
12 LOZEAU | DRURY LLP

13 By: _____

14 Rebecca L. Davis
15 Attorneys for Plaintiff Community
Science Institute

16 Dated: November 8, 2019

DLA PIPER LLP

17
18 By: 

19 Angela C. Agrusa
20 George Gigounas
21 Greg Sperla
Attorneys for Defendant Sequel Naturals
ULC

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26
27 Dated: _____, 2019

28 _____
Judge of the Superior Court

1 IT IS SO STIPULATED:

2 Dated: November 11, 2019

COMMUNITY SCIENCE INSTITUTE

3 By: Bradley Angel

4
5 Dated: _____, 2019

SEQUEL NATURALS ULC

6
7 By: _____

8 Its: _____

9
10 APPROVED AS TO FORM:

11 Dated: 11/14, 2019

LOZEAU | DRURY LLP

12 By: Rebecca L. Davis

13 Attorneys for Plaintiff Community

14 Science Institute

15
16 Dated: _____, 2019

DLA PIPER LLP

17 By: _____

18 Angela C. Agrusa

19 George Gigounas

20 Greg Sperla

21 Attorneys for Defendant Sequel Naturals
ULC

22 **ORDER AND JUDGMENT**

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

25 IT IS SO ORDERED, ADJUDGED AND DECREED.

26
27 Dated: _____, 2019

28 Judge of the Superior Court