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10 WHITNEY R. LEEMAN, PH.D.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

FARMER BROS. CO.; and DOES 1-150,
inclusive,

Defendants.

Case No. CGC-13-529495

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Farmer Bros. Co.**

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

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

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

11 **1.3 Farmer Bros. Co.**

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

15 **1.4 General Allegations**

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

22 **1.5 Product Description**

23 The product covered by this Consent Judgment is a food extract, flavor or coloring
24 allegedly containing or previously containing 4-MEI sold or offered for sale in California by
25 Farmer Bros. listed on Exhibit A attached hereto, collectively hereinafter the “Product.”
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1 proper in San Francisco County, and that this Court has jurisdiction to enter and enforce the
2 provisions of this Consent Judgment, pursuant to Code of Civil Procedure section 664.6, as a full
3 and binding resolution of all claims that were or could have been raised in the Complaint against
4 Farmer Bros. based on the facts alleged therein and in the Notice.

5 **1.10 Effective Date**

6 For purposes of this Consent Judgment, the term “Effective Date” shall mean September
7 1, 2013.

8 **2. INJUNCTIVE RELIEF: REFORMULATION**

9 **2.1 Reformulation**

10 As of the Effective Date, Farmer Bros. shall only manufacture, sell, or distribute for sale
11 in California the “Reformulated Product.” For purposes of this Consent Judgment, a
12 Reformulated Product is defined as a Product that contains no detectable 4-MEI. “No detectable”
13 is defined as containing less than or equal to 1 part per million (“ppm”) of 4-MEI when analyzed
14 pursuant to U.S. Environmental Protection Agency testing methodology 8321A (LC/MS).

15 **3. MONETARY TERMS**

16 **3.1 Civil Penalties**

17 In settlement of all the claims referred to in this Consent Judgment, Farmer Bros. shall pay
18 \$30,000 in civil penalties. Each penalty payment will be allocated in accordance with Health and
19 Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
20 Environmental Health Hazard Assessment (“OEHHA”), in the form of a check made payable to
21 “OEHHA,” and the remaining 25% of the penalty remitted to Dr. Leeman, in the form of a check
22 made payable to “The Chanler Group in Trust for Whitney R. Leeman.”

23 **3.2 Initial Civil Penalty**

24 On or before the Effective Date, Farmer Bros. shall pay an initial civil penalty of \$5,000.

25 **3.3 Final Civil Penalty**

26 On or before December 31, 2013, Farmer Bros. shall pay a final civil penalty of \$25,000
27 which may be waived, as per Section 3.3.1 below:

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3.3.1 Potential Waiver – Certification

The final civil penalty totaling \$25,000 shall be waived, if no later than December 15, 2013, an officer of Farmer Bros. provides Dr. Leeman’s counsel with written certification that all of the Product purchased for sale by Farmer Bros., imported for sale by Farmer Bros., distributed for sale by Farmer Bros., or manufactured by Farmer Bros. for sale in California after December 15, 2013 comply with the Reformulation Standard set forth in Section 2 above. The certification in lieu of a final civil penalty payment provided by this section is a material term, and time is of the essence.

3.4 Reimbursement of Dr. Leeman’s Fees and Costs

The parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Dr. Leeman expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Dr. Leeman and her counsel under general contract principles and the private attorney general doctrine, codified at Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Farmer Bros. shall, on or before the Effective Date, pay \$43,000 for fees and costs, including without limitation, all attorneys’ fees, costs and expenses incurred as a result of investigating, bringing this matter to Farmer Bros. attention, and negotiating a settlement in the public interest.

3.5 Sales Data

Farmer Bros. understands that the sales data it provided to Dr. Leeman was a material factor upon which Dr. Leeman has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Consent Judgment. To the best of Farmer Bros. knowledge, the sales data provided by Farmer Bros. to Dr. Leeman is full and complete, and is a true and accurate reflection of any and all sales of the Product by Farmer Bros. in California during the period January 1, 2012 to May 2013.

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

15 **3.6 Payment Procedures**

16 **3.6.1 Issuance of Payments**

17 (a) All payments owed to Dr. Leeman and her attorneys, pursuant to Sections
18 3.1 through 3.4, shall be delivered to the following address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

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

27 For United States Postal Service:

28 Mike Gyrics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 P.O. Box 4010

1 Sacramento, CA 95812-4010

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

3 Mike Gyrics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street
7 Sacramento, CA 95814

8 **3.6.2 Proof of Payment**

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

12 **3.6.3 Tax Documentation**

13 Upon making each payment required by this Section 3.6, Farmer Bros. shall issue separate
14 1099 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the
15 Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN:
16 68-0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to “Whitney
17 R. Leeman,” whose address and tax identification number shall be furnished upon request after
18 this consent judgment is fully executed by the Parties; for each payment in reimbursement of fees
19 and costs, Farmer Bros. shall issue a separate 1099 form to “The Chanler Group” (EIN: 94-
20 3171522).

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Dr. Leeman’s Release of Proposition 65 Claims**

23 Dr. Leeman, acting on her own behalf and in the public interest, and on behalf of each of
24 her predecessors, successors, partners, partnerships, agents, representatives, insurers, attorneys,
25 heirs, assignors and assignees, accountants and all persons and entities acting or claiming by,
26 through, under or in concert with any of them, hereby irrevocably releases and forever discharges
27 Farmer Bros. its parents, subsidiaries, affiliated entities under common ownership, directors,
28 officers, employees, attorneys, and each entity to whom Farmer Bros. directly or indirectly
distributes or sells the Product, including, without limitation, its downstream distributors,

1 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”)
2 from all claims, demands, suits, liabilities, causes of action or actions, now or in the future, for
3 violations of Proposition 65 based on alleged exposures to 4- MEI from the Product (“Claim”).
4 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
5 with respect to exposures to 4- MEI from the Product.

6 **4.2 Dr. Leeman’s Individual Release of the Claim**

7 Dr. Leeman also, in her individual capacity only and *not* in her representative capacity,
8 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
9 bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses,
10 claims, liabilities and demands of Dr. Leeman of any nature, character or kind, whether known or
11 unknown, suspected or unsuspected, limited to and arising out of the Claim. The Parties
12 understand that the Claim only pertains to the product listed on Exhibit A.

13 In furtherance of the foregoing, Dr. Leeman, on her own behalf, hereby waives any and all
14 rights and benefits which she now has, or in the future may have, conferred upon her with respect
15 to the Claim by virtue of the provisions of Section 1542 of the California Civil Code, which
16 provides as follows:

17 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
18 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
19 EXIST IN HIS OR HER FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
21 HER MUST HAVE MATERIALLY AFFECTED HIS OR
22 HER SETTLEMENTS WITH THE DEBTOR.”

21 Dr. Leeman understands and acknowledges that the significance and consequences of this
22 waiver of California Civil Code Section 1542 is that even if Dr. Leeman, suffers future damages
23 arising out of the Claim, Dr. Leeman will not be able to make any claim for those damages
24 against any Releasees pertaining to, the Product in Ex. A. Furthermore, Dr. Leeman
25 acknowledges that she intends these consequences and this Release for any such claims pertaining
26 to the Product which may exist as of the date of this Release, but which Dr. Leeman does not
27 know exist, and which, if known, would materially affect her decision to enter into this Consent

1 Judgment, regardless of whether her lack of knowledge is the result of ignorance, oversight, error,
2 negligence, or any other cause. The Parties further understand and agree that this Section 4.2
3 release expressly excludes any upstream entities, such as distributors and suppliers, who sold the
4 Product or any component parts thereof to Farmer Bros.

5 In further consideration of the promises and agreements herein contained, Dr. Leeman, on
6 her own behalf and on behalf of her past and current agents, representatives, attorneys, successors,
7 and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any
8 form of legal action, and releases all claims that she may have against Farmer Bros. and
9 Releasees, as it pertains to the Claim, unless the sales data is inaccurate as set forth in Section 3.5,
10 in which case her claims are limited to the relief set forth in that section.

11 **4.3 Farmer Bros. Release of Dr. Leeman**

12 Farmer Bros., on behalf itself, its past and current agents, representatives, attorneys,
13 successors, and/or assignees, hereby waives any and all claims against Dr. Leeman and her
14 attorneys and other representatives, for any and all actions taken or statements made (or those that
15 could have been taken or made) by Dr. Leeman and her attorneys and other representatives,
16 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
17 against it in this matter with respect to the Product.

18 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

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

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **8. NOTICES**

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

9 For Farmer Bros. Co.:	For Dr. Leeman:
10 Lee N. Smith, Esq.	Proposition 65 Coordinator
11 Weintraub Tobin, LLP	The Chanler Group
400 Capitol Mall, 11th Floor	2560 Ninth Street
Sacramento, CA 95814	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565
12 Attorneys for Farmer Bros. Co.	Attorneys for Dr. Whitney R. Leeman

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

21 Dr. Leeman agrees to comply with the reporting form requirements referenced in Health
22 and Safety Code section 25249.7(f). In addition, the Parties acknowledge that, pursuant to Health
23 and Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
24 Consent Judgment. Dr. Leeman shall prepare and file such motion to approve this Consent
25 Judgment, and Farmer Bros. shall not oppose such motion. In furtherance of obtaining such
26 approval, Dr. Leeman and Farmer Bros. and their respective counsel agree to mutually employ
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1 their best efforts to support the entry of this agreement as a Consent Judgment and obtain
2 approval of the Consent Judgment by the Court in a timely manner.

3 **11. MODIFICATION**

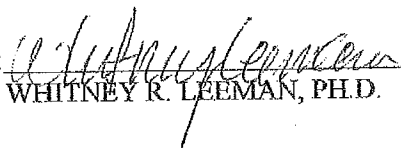
4 This Consent Judgment may be modified only by written agreement of the Parties.

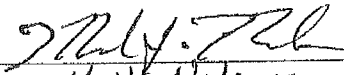
5 **12. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

10
11 By: 
12 WHITNEY R. LEEMAN, PH.D.

By: 
Name: Mark Nelson
Title: CFO
FARMER BROS. CO.

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15 Date: 8/13/13

Date: 8/15/13

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EXHIBIT A

1. SKU: #11031 EXT MAPLE IMIT QT 12/CS, also referred to as “SKU: #011031 (#8 40825 00122 2),
Sierra Brand Premium Products Imitation Maple Flavor”