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MEMORANDUM

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BY ELECTRONIC MAIL

FROM: Olsson Frank Weeda Terman Matz PC

RE: Press Conference Announcing HHS/FDA Intent to Remove Synthetic Colors in Food

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Today, the U.S. Department Health and Human Services (HHS) Secretary Robert F. Kennedy, Jr. and U.S. Food and Drug Administration (FDA or Agency) Commissioner Marty Makary held a Press Event (which was also streamed on YouTube) and issued a Press Release to announce the intent to phase out the use of petroleum-based synthetic dyes in the nation's food supply and medications as part of the Trump Administration's efforts to Make America Healthy Again (MAHA).

Excluding FD&C Red No. 3 (which FDA revoked earlier this year), there are eight (8) FDA-authorized petroleum-based dyes permitted in food. FDA announced the following actions, which

Dr. Makary said will effectively remove all petroleum dyes from foods in the U.S.:

1. **Establishing a national standard and timeline** for the food industry to transition from petrochemical-based dyes to natural alternatives.
2. **Initiating the process to revoke authorization** for two synthetic food colorings—Citrus Red No. 2 and Orange B—within the coming months.
3. **Working with industry to eliminate six remaining synthetic dyes**—FD&C Green No. 3, FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Blue No. 1, and FD&C Blue No. 2—from the food supply by the end of 2025.
4. **Authorizing four new natural color additives** in the coming weeks, while also accelerating the review and approval of others.
5. **Partnering with the National Institutes of Health (NIH)** to conduct comprehensive research on how food additives impact children's health and development.

6. **Requesting that food and pharmaceutical companies remove FD&C Red No. 3** sooner than the 2027 (for foods) and 2028 (for drugs) deadlines previously set by FDA.

FDA's action plan to remove colors appears, in large part, to be based on cooperation and working with industry to remove six of the synthetic dyes from food. FDA will only initiate "the process" to remove the authorization two of eight colors, Orange B, and Citrus Red No. 2. "The process" refers to FDA's standard processes to revoke FDA's regulations that list such color additives, which will include notice and comment rulemaking. A Federal Register notice proposing to revoke the two additives is likely in the coming months, although industry comments may be limited – Orange B is only permitted in color sausage casings, and Citrus Red No. 2 may only be used on peels of mature oranges.

Although the Agency's desire to remove synthetic dyes is clear, many questions remain unanswered, particularly as to the basis for concerns, the need for quick action, and the ability of industry to take quick action.

Indeed, during the Press Event and in the Press Release, HHS and FDA did not point to any basis for what they are trying to do. The Commissioner referenced one study on petroleum-based synthetic dyes, and both the Commissioner and Secretary primarily relied on anecdotal evidence from parents and children, particularly "MAHA moms" or simply made unsupported assertions. The Commissioner highlighted the "toxic soup of chemicals" present in the American food supply and medicine, while the Secretary characterized sugar as poison and that advertising is fueling over-consumption of foods and drugs. Dr. Makary also suggested there are simple alternatives to synthetic dyes, such as watermelon juice and beet juice. He assured consumers that that these substitutions would not affect food prices, and the industry might assume that there will be no supply chain issues given that FDA expects industry to voluntarily remove these synthetic dyes by the end of this year.

Secretary Kennedy credited the state patchwork of food and color additive bans for forcing food manufacturers to come to the negotiating table. He encouraged advocates to continue their efforts to ban substances at the State level. The Secretary seemed to insinuate that HHS/FDA could provide a solution to the patchwork, although FDA would need to have preemptive authority. The Secretary was also unclear on whether there have been any negotiations with industry, he may have been referring to voluntary action like the IDFA Healthy Dairy in Schools Commitment, voluntary pledge to work to eliminate various color additives in milk, cheese, and yogurt products sold to K-12 schools for the National School Lunch and Breakfast Programs beginning during the 2026-2027 school year, which was applauded by U.S. Department of Agriculture Secretary Brooke Rollins just prior to HHS's press conference.

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OFW Law is monitoring this evolving situation, and we will provide additional detailed information in the coming weeks. We anticipate a lot of mixed messages in the media. We advise you to stay vigilant and contact us with any questions.