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6
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FILED

FEB 20 2019

Clerk of the Court
Superior Court of CA County of Santa Clara
BY *R. Burciaga* DEPUTY
R. Burciaga

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

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11 SAFE PRODUCTS FOR CALIFORNIANS,)
LLC,)
12 Plaintiff,)
13 vs.)
14 KULI KULI, INC., et al.)
15 Defendants.)
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No. 18CV337744

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: February 19, 2019
Time: 9:00 a.m.
Department: 8
Honorable Sunil R. Kulkarni

**[PROPOSED] JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND
CONSENT JUDGMENT**


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Plaintiff, Safe Products for Californians, LLC, and Defendant, Kuli Kuli, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving the parties' Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 2/20/19



JUDGE OF THE SUPERIOR COURT

Sunil R. Kulkarni

~~PROPOSED~~ JUDGMENT PURSUANT TO TERMS OF PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT

EXHIBIT 1

1 Tanya E. Moore, SBN 206683
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Safe Products for Californians, LLC
6

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 SAFE PRODUCTS FOR CALIFORNIANS,)
12 LLC,)

No. 18CV337744

13 Plaintiff,

[PROPOSED] CONSENT JUDGMENT

14 vs.

(Health & Safety Code § 25249.5, *et seq.*)

15 KULI KULI, INC.; SF MARKETS, LLC;
DOES 1 THROUGH 150, inclusive;

16 Defendants.
17

18
19 **1. INTRODUCTION**

20 **1.1 Parties**

21 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff
22 Safe Products for Californians, LLC (“SPFC”) and defendant Kuli Kuli, Inc. (“Kuli Kuli”).
23 SPFC and Kuli Kuli are each referred to individually as a “Party” and collectively as the
24 “Parties.” Defendant SF Markets, LLC (“Sprouts,” and together with Kuli Kuli, collectively
25 referred to as “Defendants”) is an intended third-party beneficiary of this Consent Judgment.

26 **1.2 SPFC**

27 SPFC is a limited liability California company with its principal place of business
28 within the State of California, County of Santa Clara, who seeks to promote awareness of

[PROPOSED] CONSENT JUDGMENT

1 exposures to toxic chemicals and to improve human health by reducing or eliminating
2 hazardous substances contained in consumer products.

3 **1.3 Kuli Kuli**

4 SPFC alleges, and, for purposes of this Consent Judgment only, Kuli Kuli does not
5 dispute, that Kuli Kuli employs ten or more persons and is a person in the course of doing
6 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
7 California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65").

8 **1.4 General Allegations**

9 SPFC alleges that powdered vegetable products that Defendants manufacture, import,
10 sell and/or distribute for sale in California cause exposure to lead and lead compounds
11 (hereinafter referred to as "lead") and cadmium and that they do so without providing the
12 health hazard warning that SPFC alleges is required by Proposition 65.

13 **1.5 Product Description**

14 The products that are covered by this Consent Judgment are powdered vegetable
15 products manufactured by Kuli Kuli currently or in the future, identified in SPFC's Notice of
16 Violation as Powdered Dietary Supplements, including but not limited to "Organic Moringa
17 Greens & Protein – Natural Greens," UPC# 850460005349, and "Organic Moringa Greens &
18 Protein – Vanilla," UPC# 850460005332, that are manufactured, imported, distributed, sold
19 and/or offered for sale by Kuli Kuli and/or its customers in the state of California, hereinafter
20 the "Covered Products."

21 **1.6 Notice of Violation**

22 On or about June 27, 2018, SPFC served Defendants, and certain requisite public
23 enforcement agencies, with a 60-Day Notice of Violation ("Notice"), alleging that Defendants
24 violated Proposition 65 when they failed to warn their customers and consumers in California
25 that the Covered Products expose users to cadmium and lead and lead compounds. To the best
26 of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the
27 allegations set forth in the Notice.

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1 **1.7 Complaint**

2 On November 5, 2018, SPFC commenced the instant action against Defendants for the
3 alleged violations of Proposition 65 that are the subject of the Notice (“the Complaint”).

4 **1.8 No Admission**

5 Kuli Kuli denies the material, factual and legal allegations contained in the Notice and
6 Complaint and maintains that, to the best of its knowledge, all products that it has
7 manufactured, imported, sold and/or distributed for sale in California, including the Covered
8 Products, have been and are in compliance with all laws. Nothing in this Consent Judgment
9 shall be construed as an admission by Kuli Kuli of any fact, finding, and issue of law or
10 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
11 an admission by Kuli Kuli of any fact, finding, conclusion, issue of law or violation of law,
12 such being specifically denied by Kuli Kuli. This section shall not, however, diminish or
13 otherwise affect the obligations, responsibilities and duties under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Kuli Kuli as to the allegations contained in the Complaint, that venue is
17 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
18 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
19 section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean one year
22 from the date on which the Court enters this Consent Judgment.

23 **2. INJUNCTIVE RELIEF**

24 **2.1 Product Removal**

25 As of the Effective Date, Kuli Kuli shall be permanently enjoined from manufacturing
26 for sale in the State of California, “Distributing into the State of California,” or directly selling
27 in the State of California, any Covered Products manufactured after the Effective Date which
28 expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per

1 day and/or "Daily Cadmium Exposure Level" of more than 4.1 micrograms per day, unless it
2 meets the warning requirements under section 2.3.

3 **2.1.1** As used in this Consent Judgment, the term "Distributing into the State of
4 California" shall mean to directly ship a Covered Product into California for sale in California
5 or to sell a Covered Product to a distributor Kuli Kuli knows or has reason to know will sell the
6 Covered Products in California.

7 **2.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall
8 be measured in micrograms, and shall be calculated using the following formula: micrograms
9 of lead per gram of product, multiplied by grams of product per serving of the product (using
10 the largest serving size appearing on the product label), multiplied by servings of the product
11 per day (using the largest number of recommended daily servings appearing on the label),
12 which equals micrograms of lead exposure per day. If the label contains no recommended daily
13 servings, then the number of recommended daily shall be one.

14 **2.1.3** For purposes of this Consent Judgment, the "Daily Cadmium Exposure Level"
15 shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
17 the product (using the largest serving size appearing on the product label), multiplied by
18 servings of the product per day (using the largest number of recommended daily servings
19 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
20 contains no recommended daily servings, then the number of recommended daily shall be one.

21 **2.2 Reformulated Covered Products**

22 Reformulated Covered Products are Covered Products manufactured after the Effective
23 date for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per
24 day and/or "Daily Cadmium Exposure Level" is no more than 4.1 micrograms of cadmium per
25 day as determined by the quality control methodology described in Sections 2.1.2 and 2.1.3.

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1 **2.3 Clear and Reasonable Warnings**

2 For any Covered Products manufactured after the Effective Date that do not qualify as
3 Reformulated Covered Products and are directly sold or offered for sale in California by Kuli
4 Kuli after the Effective Date, Kuli Kuli shall only sell or offer said non-reformulated Covered
5 Products for sale in California when accompanied with one of the following warnings:

6 **OPTION 1:**

7 **WARNING:** Consuming this product can expose you to chemicals including [lead]
8 [and] [cadmium] which [is] [are] known to the State of California to cause [cancer and] birth
9 defects or other reproductive harm. For more information go to:
10 www.P65warnings.CA.gov/food"

11 OR:

12 **OPTION 2:**

13 **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov/food

14 In connection with providing a cancer warning for lead and lead compounds, Kuli Kuli
15 shall use the phrase "cancer and" in the warning if Kuli Kuli has reason to believe that the
16 "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to
17 the quality control methodology set forth in Section 2.1.2. Kuli Kuli also may include the
18 reference to cancer if Kuli Kuli has reason to believe that another Proposition 65 chemical is
19 present which may require a cancer warning. As identified in the brackets, the warning shall
20 appropriately reflect whether there is lead or cadmium present in each of the Covered Products.
21 The words "chemicals including" may be deleted from the warning content if the warning is
22 being provided for an exposure to a single chemical.

23 The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed
24 on the Covered Product's packaging or label with such conspicuousness, as compared with
25 other words, statements, or designs as to render it likely to be read and understood by an
26 ordinary individual under customary conditions of purchase or use. If the warning is provided
27 on the label, it must be set off from other surrounding information and enclosed in a box. In
28 addition, for any Covered Product sold over the internet where a California delivery address is

1 indicated, the warning shall be provided either by including the warning on the product display
2 page, by otherwise prominently displaying the warning to the purchaser during the checkout
3 process prior to completing the purchase, or by any other means authorized under Section
4 25607.1 of Title 27 of the California Code of Regulations. An asterisk or other identifying
5 method must be utilized to identify which products on the checkout page are subject to the
6 warning.

7 In the event Kuli Kuli provides the warning pursuant to OPTION 2, above, the entire
8 warning must be in a type size no smaller than the largest size used for other consumer
9 information on the product, and in no case shall the warning appear in a type size smaller than
10 6-point type. For all warnings, the word "WARNING" shall be in all capital letters in bold
11 print. Any additional statements in the warning shall comply with Title 27, California Code of
12 Regulations, Section 25601(e).

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b), Kuli Kuli shall pay civil
16 penalties in the amount of \$1,000.00. The penalty payment shall be allocated according to
17 Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid
18 to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
19 remaining 25% of the penalty paid to SPFC. SPFC's counsel shall be responsible for remitting
20 Kuli Kuli's penalty payment under this Consent Judgment to OEHHA. Within five (5) business
21 days of the Court's approval of this Consent Judgment, Kuli Kuli shall issue a check payable to
22 "Safe Products for Californians, LLC" in the amount of \$250.00, and a check payable to
23 OEHHA in the amount of \$750.00. These penalty payments shall be delivered to the address
24 listed in Section 3.3 below.

25 **3.2 Reimbursement of Attorneys' Fees and Costs**

26 For all work performed as a result of investigating, bringing this matter to Defendants'
27 attention and negotiating a settlement in the public interest through the mutual execution of this
28 Consent Judgment and the Court's approval of the same, but exclusive of fees and costs on

1 appeal, if any, Kuli Kuli shall reimburse SPFC and its counsel \$19,750.00. The Parties
2 negotiated this resolution of the compensation due to SPFC and its counsel under general
3 contract principles and the private attorney general doctrine codified at California Code of
4 Civil Procedure § 1021.5. Kuli Kuli's payment shall be due within five (5) business days of the
5 Court's approval of this Consent Judgment and delivered to the address in Section 3.3 in the
6 form of a check payable to "Safe Products for Californians, LLC." The reimbursement shall
7 cover all fees and costs incurred by SPFC investigating, bringing this matter to Defendants'
8 attention, litigating, and negotiating a settlement of the matter in the public interest.

9 **3.3 Payment Procedures**

10 The payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following
11 address:

12 Safe Products for Californians, LLC
13 Attn: Mission Law Firm
14 332 North Second Street
15 San Jose, California 95112

16 If for any reason this Consent Judgment is not entered by the Court within one year of
17 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with Kuli
18 Kuli about mutually agreeable steps the Parties can take to ensure entry of the Consent
19 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to
20 Kuli Kuli any and all monies paid by Kuli Kuli herein under Sections 3.1 and 3.2 upon Kuli
21 Kuli's written request.

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 SPFC's Release of Proposition 65 Claims**

24 This Consent Judgment is a full, final and binding resolution between SPFC, on behalf
25 of itself and in the public interest, its past and current agents, representatives, attorneys,
26 successors, and assignees, and Kuli Kuli, its parents, subsidiaries, affiliated entities under
27 common ownership, directors, officers, agents employees, attorneys, and each entity to whom
28 Kuli Kuli directly or indirectly distributes or sells Covered Products, including, but not limited
to, SF Markets, LLC, downstream distributors, wholesalers, customers, retailers, franchisees,

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1 cooperative members, marketplace hosts and licensees (collectively, "Releasees"), from all
2 claims for any violation of Proposition 65 through the Effective Date that were or could have
3 been asserted by SPFC relating to the Covered Products. Compliance with the terms of this
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
5 cadmium and/or lead and lead compounds from the Covered Products, as set forth in the
6 Notice. The Parties further understand and agree that this Section 4.1 release shall not extend
7 upstream to any entities that manufactured the Covered Products or any component parts
8 thereof, or any distributors or suppliers who sold the Covered Products or any component parts
9 thereof to Kuli Kuli.

10 **4.2 SPFC's Individual Release of Claims**

11 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and assignees, provides a release herein which shall be effective as a full and final
13 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
14 attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature,
15 character, or kind, whether known or unknown, suspected or unsuspected, limited to and
16 arising out of alleged or actual exposures to cadmium and/or lead and lead compounds in the
17 Covered Products manufactured, imported, distributed, or sold by Kuli Kuli prior to the
18 Effective Date. The Parties further understand and agree that this Section 4.2 release shall not
19 extend upstream to any entities that manufactured the Covered Products, or any component
20 parts thereof, or any distributors or suppliers who sold the Covered Products, or any
21 component parts thereof to Kuli Kuli. Nothing in this section affects SPFC's right to
22 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
23 Kuli Kuli's Covered Products.

24 In further consideration of the promises and agreements herein contained, and for the
25 payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current
26 agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and
27 waives any right to institute, participate in, directly or indirectly, any form of legal action and
28 releases all claims that it may have, including without limitation, all actions and causes of

1 action in law and in equity, all obligations, expenses (including without limitation all
2 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
3 demands against any of the Releasees of any nature, character, or kind, whether known or
4 unknown, suspected or unsuspected, limited to and arising out of the allegations made in the
5 Notice and Complaint.

6 **4.3 Kuli Kuli's Release of SPFC**

7 Kuli Kuli, on behalf of itself, its past and current agents, representatives, attorneys,
8 successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and
9 other representatives, for any and all actions taken or statements made (or those that could have
10 been taken or made) by SPFC and their attorneys and other representatives, whether in the
11 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
12 matter with respect to the Covered Products.

13 **4.4 Waiver of Civil Code Section 1542**

14 With respect to the foregoing waivers and releases in this Settlement Agreement, SPFC
15 hereby specifically waives any and all rights and benefits which it now has, or in the future
16 may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
17 which provides as follows:

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

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court
24 and shall be null and void if, for any reason, it is not approved and entered by the Court within
25 one year after it has been fully executed by all Parties, unless the Parties mutually agree to
26 extend that time period due to what they mutually agree are reasonably unforeseeable
27 circumstances. SPFC and Kuli Kuli agree to support the entry of this agreement as a judgment,
28 and to obtain the Court's approval of their settlement in a timely manner. The Parties

1 acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed
2 motion is required for judicial approval of this Consent Judgment, which motion SPFC shall
3 draft and file and Kuli Kuli shall support, appearing at the hearing if so requested.

4 **6. SEVERABILITY**

5 If, subsequent to the execution of this Consent Judgment as a judgment, any provision
6 of this Consent Judgment is held by a court to be unenforceable, the validity of the remaining
7 provisions shall not be adversely affected.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the state of
10 California and apply within the state of California. In the event that Proposition 65 is repealed
11 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of
12 this Consent Judgment are rendered inapplicable or no longer required as a result of any such
13 repeal or preemption or rendered inapplicable by reason of law generally as to the Covered
14 Products, then Kuli Kuli shall provide written notice to SPFC of any asserted change in the law
15 and shall have no further injunctive obligations pursuant to this Consent Judgment with respect
16 to, and to the extent that, the Covered Products are so affected. If the Office of Environmental
17 Health Hazard Assessment promulgates one or more regulations governing the provision of
18 Proposition 65 warnings for foods, Kuli Kuli may comply with such regulations as to the
19 Covered Products without being deemed in breach of this Consent Judgment. Nothing in this
20 Consent Judgment shall be interpreted to relieve Kuli Kuli from any obligation to comply with
21 any pertinent state or federal toxics control law.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notices required to be provided
24 pursuant to this Consent Judgment shall be in writing and: (i) personally delivered, (ii) sent by
25 first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight
26 courier, to one Party by the other Party at the following addresses:

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1 To Kuli Kuli:
2 Jordan Moncharmont
3 Kuli Kuli, Inc.
4 600 Grand Ave., Suite 410B
Oakland, CA 94610

To SPFC:
Safe Products for Californians, LLC
c/o Mission Law Firm
332 North Second Street
San Jose, California 95112

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

7 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by facsimile or .pdf
9 signature, each of which shall be deemed an original, and all of which, when taken together,
10 shall constitute one and the same document.

11 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

12 SPFC agrees to comply with the reporting requirements referenced in Health & Safety
13 Code section 25249.7(f).

14 **11. MODIFICATION**

15 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
16 and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful
17 motion of any Party and the entry of a modified Consent Judgment by the Court thereon.

18 **12. OTHER TERMS**

19 **12.1 No Other Agreements**

20 This Consent Judgment contains the sole and entire agreement and understanding of the
21 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
22 negotiations, commitments and understandings related hereto. No representations, oral or
23 otherwise, express or implied, other than those contained herein have been made by any party
24 hereto. No other agreements addressing compliance with Proposition 65 as to the Covered
25 Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
26 bind any of the Parties.

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[PROPOSED] CONSENT JUDGMENT

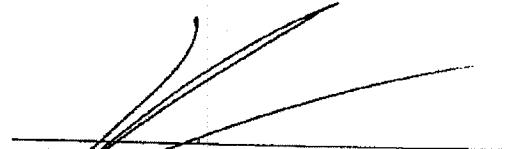
1 **12.2 Construction**

2 The Parties, including their counsel, have participated in the preparation of this Consent
3 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
4 Consent Judgment was subject to revision and modification by the Parties and has been
5 accepted and approved as to its final form by all Parties and their Counsel. Accordingly, any
6 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
7 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
8 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
9 to be resolved against the drafting Party should not be employed in the interpretation of this
10 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
11 1654.

12 **13. AUTHORIZATION**

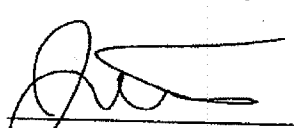
13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of
15 this Consent Judgment.

16
17 Dated: 11/29/18



Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

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19
20
21 Dated: 26 November 2018



Kuli Kuli, Inc.
By: Jordan Moncharmont, CFO