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19CV344299
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Attorneys for Defendants
Moon Juice, LLC and Moon Juice Ventures, LLC

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

SAFE PRODUCTS FOR CALIFORNIANS,
LLC,

Plaintiff,

vs.

MOON JUICE LLC, et al.;

Defendants.

No. 19CV344299

~~PROPOSED~~ CONSENT JUDGMENT

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

~~PROPOSED~~ CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff
4 Safe Products for Californians, LLC (“SPFC”) and defendants Moon Juice LLC and Moon
5 Juice Ventures, LLC (collectively “Moon Juice”). SPFC and Moon Juice are each referred to
6 individually as a “Party” and collectively as the “Parties.”

7 **1.2 SPFC**

8 SPFC is a limited liability California company with its principal place of business
9 within the State of California, County of Santa Clara, who seeks to promote awareness of
10 exposures to toxic chemicals and to improve human health by reducing or eliminating
11 hazardous substances contained in consumer products.

12 **1.3 Moon Juice**

13 SPFC alleges, and, for purposes of this Consent Judgment, Moon Juice does not
14 dispute, that Moon Juice employ ten or more persons and are persons in the course of doing
15 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
16 California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 SPFC alleges that powdered dietary supplements that Moon Juice manufacture, import,
19 sell and/or distribute for sale in California cause exposure to lead and lead compounds
20 (hereinafter referred to as “lead”) and cadmium and that they do so without providing the
21 health hazard warning that SPFC alleges is required by Proposition 65.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are powdered dietary
24 supplements manufactured, imported, distributed, sold and/or offered for sale by Moon Juice,
25 identified in SPFC’s Notice of Violation as Powdered Dietary Supplements, including but not
26 limited to: Energy Food Maca 5:1 Concentrated Extract,” “Beauty Dust,” “Deep Chocolate
27 Adaptogenic Protein,” “Vanilla Mushroom Adaptogenic Protein,” “Stress Relief Ashwagandha
28 8:1 Concentrated Extract,” “Sex Dust,” and “Brain Dust,” that are manufactured, imported,

distributed, sold and/or offered for sale by Moon Juice and/or its customers in the state of California, hereinafter the “Covered Products.”

1.6 Notice of Violation

On or about September 5, 2018, SPFC served Moon Juice, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Moon Juice violated Proposition 65 when they failed to warn their customers and consumers in California that the Covered Products expose users to cadmium and lead and lead compounds. A true and correct copy of the 60-Day Notice dated February 22, 2018 is attached hereto as **Exhibit A**. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On or about March 11, 2019, SPFC commenced the instant action against Moon Juice for the alleged violations of Proposition 65 that are the subject of the Notice (“the Complaint”).

1.8 No Admission

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

1.9 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Moon Juice as to the allegations contained in the Complaint, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the

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2 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
3 section 664.6.

4 **1.10 Effective Date**

5 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
6 on which the Court enters this Consent Judgment.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Product Removal**

9 Beginning six (6) months from the Effective Date, Moon Juice shall be permanently
10 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
11 California,” or directly selling in the State of California, any Covered Products manufactured
12 after the Effective Date which expose a person to a “Daily Lead Exposure Level” of more than
13 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” of more than 4.1
14 micrograms per day, unless it meets the warning requirements under section 2.3.

15 **2.1.1** As used in this Consent Judgment, the term “Distributing into the State of
16 California” shall mean to directly ship a Covered Product into California for sale in California
17 or to sell a Covered Product to a distributor Moon Juice knows or has reason to know will sell
18 the Covered Products in California.

19 **2.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall
20 be measured in micrograms, and shall be calculated using the following formula: micrograms
21 of lead per gram of product, multiplied by grams of product per serving of the product (using
22 the largest serving size appearing on the product label), multiplied by servings of the product
23 per day (using the largest number of recommended daily servings appearing on the label),
24 which equals micrograms of lead exposure per day. If the label contains no recommended daily
25 servings, then the number of recommended daily shall be one.

26 **2.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level”
27 shall be measured in micrograms, and shall be calculated using the following formula:
28 micrograms of cadmium per gram of product, multiplied by grams of product per serving of

the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily shall be one.

2.2 Reformulated Covered Products

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

2.3 Clear and Reasonable Warnings

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

OPTION 1:

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

OR:

OPTION 2:

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

In connection with providing a cancer warning for lead and lead compounds, Moon Juice shall use the phrase “cancer and” in the warning if Moon Juice has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 2.1.2. Moon Juice also may include the reference to cancer if Moon Juice has reason to believe that another Proposition 65 chemical is

1 present which may require a cancer warning. As identified in the brackets, the warning shall
2 appropriately reflect whether there is lead or cadmium present in each of the Covered Products.
3 The words “chemicals including” may be deleted from the warning content if the warning is
4 being provided for an exposure to a single chemical.

5 The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed
6 on the Covered Product’s packaging or label with such conspicuousness, as compared with
7 other words, statements, or designs as to render it likely to be read and understood by an
8 ordinary individual under customary conditions of purchase or use. If the warning is provided
9 on the label, it must be set off from other surrounding information and enclosed in a box. In
10 addition, for any Covered Product sold over the internet where a California delivery address is
11 indicated, the warning shall be provided either by including the warning on the product display
12 page, by otherwise prominently displaying the warning to the purchaser during the checkout
13 process prior to completing the purchase, or by any other means authorized under Section
14 25607.1 of Title 27 of the California Code of Regulations. An asterisk or other identifying
15 method must be utilized to identify which products on the checkout page are subject to the
16 warning.

17 In the event Moon Juice provides the warning pursuant to OPTION 2, above, the entire
18 warning must be in a type size no smaller than the largest size used for other consumer
19 information on the product, and in no case shall the warning appear in a type size smaller than
20 6-point type. For all warnings, the word “WARNING” shall be in all capital letters in bold
21 print. Any additional statements in the warning shall comply with Title 27, California Code of
22 Regulations, Section 25601(e).

23 If subsequently enacted changes to Proposition 65 or its implementing regulations require
24 the use of additional or different information on any warning, the Parties agree that the new safe
25 harbor warning may be utilized in place of the warnings set forth in this Section.

26 **3. MONETARY SETTLEMENT TERMS**

27 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

28

Pursuant to Health and Safety Code section 25249.7(b), Moon Juice shall pay civil penalties in the amount of \$4,000.00. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Moon Juice’s penalty payment under this Consent Judgment to OEHHA. Within five (5) days of the Effective Date, Moon Juice shall issue a check payable to “Safe Products for Californians, LLC” in the amount of \$1,000.00, and a check payable to OEHHA in the amount of \$3,000.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Attorneys’ Fees and Costs

For all work performed as a result of investigating, bringing this matter to Moon Juice’s attention and negotiating a settlement in the public interest through the mutual execution of this Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on appeal, if any, Moon Juice shall reimburse SPFC and its counsel a total of \$17,500.00. The Parties negotiated this resolution of the compensation due to SPFC and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. These payments shall be in the form of checks payable to “Safe Products for Californians, LLC” and shall be delivered to the address listed in Section 3.3 below as follows: (1) \$6,000 within five (5) days of the Effective Date; (2) \$7,500 within thirty-five (35) days of the Effective Date; and (3) \$4,000 within sixty-five (65) days of the Effective Date. The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Moon Juice’s attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Procedures

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

Safe Products for Californians, LLC
Attn: Moore Law Firm

[PROPOSED] CONSENT JUDGMENT

332 North Second Street
San Jose, California 95112

If any payment required hereunder is not received within five days of the date it is due, Moon Juice shall be required to pay an additional \$50.00 as and for a late fee. In the event that any payment required hereunder is returned for insufficient funds, closed account, or any other reason, Moon Juice shall be required to pay a returned check fee of \$25.00, in addition to the late fee as set forth above if the replacement payment is not received within five days of the original payment due date. If any payment required hereunder is not received within fourteen days of the date it is due, all remaining payments shall immediately become due and payable.

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

4. CLAIMS COVERED AND RELEASED

4.1 SPFC's Release of Proposition 65 Claims

This Consent Judgment is a full, final and binding resolution between SPFC, on behalf of itself and in the public interest, its past and current agents, representatives, attorneys, successors, and assignees, and Moon Juice, its parents, subsidiaries, affiliated entities under common (full or partial) ownership, directors, shareholders, officers, agents, employees, attorneys, and each entity to whom Moon Juice directly or indirectly distributes or sells Covered Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, marketplace hosts and licensees (collectively, "Releasees"), from all claims for any violation of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Covered Products. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to cadmium and/or lead and lead compounds from the Covered Products, as set forth in the Notice. The Parties further understand and agree that this

1 Section 4.1 release shall not extend upstream to any entities that manufactured the Covered
2 Products or any component parts thereof, or any distributors or suppliers who sold the Covered
3 Products or any component parts thereof to Moon Juice.

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5 **4.2 SPFC's Individual Release of Claims**

6 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and assignees, hereby fully releases and discharges Releasees, as a bar to all
8 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
9 liabilities, and demands of SPFC of any nature, character, or kind, whether known or unknown,
10 suspected or unsuspected, limited to and arising out of alleged or actual exposures to cadmium
11 and/or lead and lead compounds in the Covered Products manufactured, imported, distributed,
12 or sold by Moon Juice prior to the Effective Date. The Parties further understand and agree that
13 this Section 4.2 release shall not extend upstream to any entities that manufactured the Covered
14 Products, or any component parts thereof, or any distributors or suppliers who sold the
15 Covered Products, or any component parts thereof to Moon Juice. Nothing in this section
16 affects SPFC's right to commence or prosecute an action under Proposition 65 against a
17 Releasee that does not involve Moon Juice's Covered Products.

18 In further consideration of the promises and agreements herein contained, and for the
19 payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current
20 agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and
21 waives any right to institute, participate in, directly or indirectly, any form of legal action and
22 releases all claims that it may have, including without limitation, all actions and causes of
23 action in law and in equity, all obligations, expenses (including without limitation all
24 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and
25 demands against any of the Releasees of any nature, character, or kind, whether known or
26 unknown, suspected or unsuspected, limited to and arising out of the allegations made in the
27 Notice and Complaint.

28 **4.3 Moon Juice's Release of SPFC**

1 Moon Juice, on behalf of itself, its past and current agents, representatives, attorneys,
2 successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and
3 other representatives, for any and all actions taken or statements made (or those that could have
4 been taken or made) by SPFC and their attorneys and other representatives, whether in the
5 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
6 matter with respect to the Covered Products.

7 **4.4 Waiver of Civil Code Section 1542**

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

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
13 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
14 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF
15 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
16 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
17 PARTY.

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court
20 and shall be null and void if, for any reason, it is not approved and entered by the Court within
21 one year after it has been fully executed by all Parties, unless the Parties mutually agree to
22 extend that time period due to what they mutually agree are reasonably unforeseeable
23 circumstances. SPFC and Moon Juice agree to support the entry of this agreement as a
24 judgment, and to obtain the Court's approval of their settlement in a timely manner. The
25 Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
26 noticed motion is required for judicial approval of this Consent Judgment, which motion SPFC
27 shall draft and file and Moon Juice shall support, appearing at the hearing if so requested.

28 **6. SEVERABILITY**

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

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6 **7. GOVERNING LAW**

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

20 **8. NOTICE**

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

25 To Moon Juice:

26 Abhishek K. Gurnani
27 Amin Talati Upadhye, LLP
100 S. Wacker Dr. Suite 2000
28 Chicago, IL 60606

To SPFC:

Safe Products for Californians, LLC
c/o Moore Law Firm
332 North Second Street
San Jose, California 95112

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

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9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any Party and the entry of a modified Consent Judgment by the Court thereon. Each party shall bear their own fees and costs in seeking modification of the Consent Judgment. In the event that Proposition 65 is repealed or preempted, then Moon Juice shall have no further obligation as to injunctive terms pursuant to this Consent Judgment with respect to, and to the extent that the Covered Products are so affected.

12. OTHER TERMS

12.1 No Other Agreements

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements addressing compliance with Proposition 65 as to the Covered

Products not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12.2 Enforcement of Consent Judgment

This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this Consent Judgment. If SPFC alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for which SPFC alleges that no Warning has been provided), then SPFC shall inform Moon Juice, pursuant to the Notice provisions at paragraph 8 above, in a reasonably prompt manner of its test results, including information sufficient to permit Moon Juice to identify the Covered Products at issue. SPFC and Moon Juice will make a good faith attempt to resolve any such disputes within 60 days of SPFC providing notice to Moon Juice of such allegations. If SPFC is not satisfied with the resolution of the dispute after said 60-day period has passed, SPFC may take any legal action it deems necessary with regard to such allegations.

12.3 Construction

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

12.4 Application of Consent Judgment

This Consent Judgment may apply to, be binding upon, and benefit the Parties and their respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, affiliates under common ownership (full or partial), divisions, franchisees, licensees,

1 customers, distributors, wholesalers, retailers, predecessors, successors, and assigns. This
2 Consent Judgment shall have no application to any Covered Product which is distributed or
3 sold exclusively outside the State of California.

4 **13. AUTHORIZATION**

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

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9 Dated: October 27, 2019

/s/ Randy Moore

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

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12 Dated: October 28, 2019

/s/ Laura Shaff

Moon Juice LLC
By: Laura Shaff

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16 Dated: October 28, 2019

/s/ Laura Shaff

Moon Juice Ventures, LLC
By: Laura Shaff

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19 **ATTESTATION**

20 Concurrence in the filing of this document has been obtained from each of the individual(s)
21 whose electronic signature is attributed above.

22 /s/ Tanya E. Moore

23 Tanya E. Moore
24 Attorney for Plaintiff,
Safe Products for Californians, LLC

25 JUDGMENT IS ENTERED IN ACCORD WITH THE PROVISIONS OF THE CONSENT
26 JUDGMENT.

27 Dated: November 18, 2019

Mary S. O'Rand

JUDGE OF THE SUPERIOR COURT