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

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV323058
LLC,)
12 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
13 vs.) (Health & Safety Code § 25249.5, *et seq.*)
14 SWEDA COMPANY, LLC; et al.;)
15 Defendants.)
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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff Safe Products for Californians, LLC (“SPFC”) and defendant Sweda Company, LLC dba LA Traders (“Sweda”) with SPFC and Sweda each referred to individually as a “Party” and collectively as the “Parties.”

1.2 Plaintiff

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

1.3 Defendant

Sweda employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

1.4 General Allegations

SPFC alleges that the products Sweda manufactures, imports, sells and/or distributes for sale in California cause exposure to di(2-ethylhexyl) phthalate (“DEHP”) and diisononyl phthalate (“DINP”), and that it does so without providing the health hazard warning that SPFC alleges is required by Proposition 65.

1.5 Product Description

The products that are covered by this Settlement Agreement are identified as, “Small Vinyl Zip Bag (Set of 200) Item #PVC100, ASIN #B013XEYBFE, allegedly containing DEHP and/or DINP, which are manufactured, imported, distributed, sold and/or offered for sale by Sweda and/or its customers in the state of California, hereinafter the “Covered Products.”

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1 **1.6 Notice of Violation**

2 On January 4, 2018, SPFC served Sweda and the requisite public enforcement agencies
3 with a 60-Day Notice of Violation (“Notice”), alleging that Sweda violated Proposition 65
4 when it failed to warn its customers and consumers in California that the Covered Product
5 exposes users to DEHP and DINP. To the best of the Parties’ knowledge, no public enforcer
6 has commenced and is diligently prosecuting an action to enforce the allegations set forth in
7 the Notice.

8 **1.7 Complaint**

9 On February 7, 2018, SPFC commenced the instant action naming Sweda as a
10 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

11 **1.8 No Admission**

12 Sweda denies the material, factual, and legal allegations contained in the Notice and
13 Complaint, and maintains that all of the products that it has sold or distributed for sale in
14 California, including the Covered Products, have been, and are, in compliance with all laws.
15 Nothing in this Consent Judgment shall be construed as an admission by Sweda of any fact,
16 finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
17 Consent Judgment constitute or be construed as an admission by Sweda of any fact, finding,
18 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish
19 or otherwise affect Sweda’ obligations, responsibilities, and duties under this Consent
20 Judgment.

21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Sweda as to the allegations contained in the Complaint, that venue is proper in
24 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
26 section 664.6.

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1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
3 that the Court grants the motion for approval of this Consent Judgment contemplated by
4 Section 5.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Product Removal**

7 Sweda has removed the Covered Products from all sales channels and has destroyed all
8 remaining Covered Products in its inventory. As of the Effective Date, Sweda shall not directly
9 sell, or ship for sale in California any Covered Products. Although Sweda does not intend to
10 sell any further Covered Products, if any additional Covered Products are sold by Sweda into
11 California, those Covered Products shall comply with the standards as set forth in Sections 2.3
12 and 2.4 of this Consent Judgment.

13 **2.2 Customer Notification for Covered Products No Longer in Sweda’ Control**

14 No later than thirty (30) days after the Effective Date, Sweda shall send a letter,
15 electronic or otherwise (“Notification Letter”), to each California retailer to which it supplied
16 the Covered Products for resale in California, if any. The Notification Letter shall advise the
17 recipient that portions of the Covered Products “contain DEHP and DINP, chemicals known to
18 the State of California to cause cancer, birth defects and other reproductive harm,” and request
19 that the recipient either: (a) label the Covered Products remaining in inventory for sale in
20 California, or to California Customers, pursuant to Section 2; or (b) return, at Sweda’s sole
21 expense, all units of the Covered Products held by a California customer or for sale in
22 California or to California customers to Sweda or a party Sweda has otherwise designated. The
23 Notification Letter shall require a response from the recipient within fifteen (15) days
24 confirming whether the Covered Products will be labeled or returned. Sweda shall maintain
25 records of all correspondence or other communications generated pursuant to this Section for
26 one year after the Effective Date and shall promptly produce copies of such records upon
27 SPFC’s reasonable written request.

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1 **2.3 Reformulation Standards**

2 For the purposes of this Consent Judgment, “Reformulated Products” are defined as
3 Covered Products that contain DEHP or DINP in concentrations that do not exceed 1,000 parts
4 per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing
5 methodologies 3580A and 8270C or equivalent methodologies utilized by state or federal
6 agencies for the purpose of determining DEHP or DINP content in a solid substance.

7 **2.4 Clear and Reasonable Warnings**

8 For any Covered Products directly sold or offered for sale in California by Sweda that
9 are not Reformulated Products, Sweda shall only sell or offer for sale in California Covered
10 Products accompanied with the following warnings:

11
12 “[new Prop 65 symbol] WARNING: This product can expose you to chemicals
13 including DEHP, which is known to the state of California to cause cancer, birth
14 defects and other reproductive harm. For more information go to:
15 www.P65warnings.CA.gov”

16
17 “[new Prop 65 symbol] WARNING: This product can expose you to chemicals
18 including DINP, which is known to the state of California to cause cancer. For more
19 information go to: www.P65warnings.CA.gov”

20
21 The warning provided pursuant to Section 2.4 shall be prominently affixed to or printed
22 on the Covered Products’ packaging, labeling, or instruction booklet and displayed with such
23 conspicuousness, as compared with other words, statements, or designs as to render it likely to
24 be read and understood by an ordinary individual under customary conditions of purchase or
25 use. A warning may be contained in the same section of the packaging, labeling, or instruction
26 booklet that states other safety warnings, if any, concerning the use of the product and shall be
27 at least the same size as those other safety warnings.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Monetary Settlement**

3 In full and complete satisfaction of all civil penalties and reasonable attorney's fees and
4 costs incurred by SPFC and its counsel that have or could have been claimed in connection
5 with this action, Sweda shall pay the total sum of \$24,000 as further described and in Sections
6 3.2 and 3.3 below. Payment shall be made by May 30, 2018 in two separate checks made
7 payable to "Mission Law Firm, A.P.C., Trust Account," with one check indicating the amount
8 in Section 3.2, and the other check indicating the amount in Section 3.3. Both checks shall be
9 delivered to the address provided in Section 3.4, below.

10 **3.2 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

11 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
12 claims referred to in this Consent Judgment, Sweda shall pay \$2,000.00 in civil penalties in
13 accordance with this Section. The penalty payment will be allocated in accordance with
14 California Health & Safety Code § 25249.12(c)(l) & (d), with 75% of the funds remitted to the
15 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
16 25% of the penalty remitted to SPFC. SPFC's counsel shall be responsible for remitting the
17 penalty payment(s) under this Consent Judgment to OEHHA, and for sending a copy of such
18 remittance to counsel for Sweda.

19 **3.3 Reimbursement of Attorneys' Fees and Costs**

20 The Parties acknowledge that SPFC and its counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
22 leaving the issue to be resolved after the material terms of the agreement had been settled.
23 Shortly after the other settlement terms had been finalized, Sweda expressed a desire to resolve
24 SPFC's fees and costs. The Parties then negotiated a resolution of the compensation due to
25 SPFC and its counsel under general contract principles and the private attorney general
26 doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed
27 through the mutual execution of this agreement and the Court's approval of the same, but
28 exclusive of fees and costs on appeal, if any, Sweda shall reimburse SPFC and its counsel

1 \$22,000.00. The reimbursement shall cover all fees and costs incurred by SPFC investigating,
2 bringing this matter to Sweda' attention, litigating, and negotiating a settlement of the matter in
3 the public interest.

4 **3.3 Payment Procedures**

5 All payments required by this Consent Judgment shall be delivered to the following
6 address:

7 Mission Law Firm, A.P.C.
8 Attn: Proposition 65 (SPFC)
9 332 North Second Street
San Jose, California 95112

10 If for any reason this Consent Judgment is not entered by the Court within nine (9)
11 months of the date the Consent Judgment is executed by all parties, SPFC shall meet and
12 confer with Sweda about mutually agreeable steps the parties can take to ensure entry of the
13 Consent Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly
14 return to Sweda any and all monies paid by Sweda herein under Section 3 upon Sweda's
15 written request.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 SPFC's Release of Proposition 65 Claims**

18 SPFC, acting on its own behalf and in the public interest, releases Sweda and its
19 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
20 employees, and attorneys, each entity to whom Sweda directly or indirectly distributes or sells
21 the Covered Products including, but not limited to, downstream distributors, wholesalers,
22 customers, retailers, franchisers, cooperative members, licensors and licensees, and
23 Amazon.com, Inc. (along with its parents, subsidiaries, affiliated entities under common
24 ownership, directors, officers, agents, employees, and attorneys) (collectively, "Releasees")
25 from all claims for violations of Proposition 65 through the Effective Date that were or could
26 have been asserted by SPFC relating to the Covered Products. Compliance with the terms of
27 this Settlement Agreement constitutes compliance with Proposition 65 with respect to
28 exposures to DEHP and DINP from the Covered Products, as set forth in the Notice. The

1 Parties further understand and agree that this Section 4.1 release shall not extend upstream to
2 any entities that manufactured the Covered Products or any component parts thereof, or any
3 distributors or suppliers who sold the Covered Products or any component parts thereof to
4 Sweda.

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, provides a release herein which shall be effective as a full and final
8 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
9 attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature,
10 character, or kind, whether known or unknown, suspected or unsuspected, limited to and
11 arising out of alleged or actual exposures to DEHP and DINP in the Covered Products
12 manufactured, imported, distributed, or sold by Sweda prior to the Effective Date. The Parties
13 further understand and agree that this Section 4.2 release shall not extend upstream to any
14 entities that manufactured the Covered Products, or any component parts thereof, or any
15 distributors or suppliers who sold the Covered Products, or any component parts thereof to
16 Sweda. Nothing in this section affects SPFC's right to commence or prosecute an action under
17 Proposition 65 against a Releasee that does not involve Sweda'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.

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1 **4.3 Sweda' Release of SPFC**

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

8 **5. COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court
10 and shall be null and void if, for any reason, it is not approved and entered by the Court within
11 one (1) year after it has been fully executed by all Parties. SPFC and Sweda agree to support
12 the entry of this agreement as a judgment, and to obtain the Court's approval of their
13 settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and
14 Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this
15 Consent Judgment, which motion SPFC shall draft and file and Sweda shall support, appearing
16 at the hearing if so requested. SPFC agrees to file a notice of motion within fifteen (15)
17 calendar days after the Effective Date.

18 **6. SEVERABILITY**

19 If, subsequent to the Court's approval and entry of this Consent Judgment as a
20 judgment, any provision of this Consent Judgment is held by a court to be unenforceable, the
21 validity of the remaining provisions shall not be adversely affected.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed,
25 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the
26 Covered Products, then Sweda may provide SPFC with written notice of any asserted change
27 in the law, and shall have no further obligations pursuant to this Consent Judgment, with
28 respect to, and to the extent that, the Covered Products are so affected. Nothing in this Consent

1 Judgment shall be interpreted to relieve Sweda from its obligation to comply with any pertinent
2 state or federal law or regulation.

3 **8. NOTICE**

4 Unless specified herein, all correspondence and notice required by this Consent
5 Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or
6 certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by
7 the other at the following addresses:

8 To Sweda:

9 Jim Hagan, CEO
10 Sweda Company LLC
11 17411 Valley Blvd
12 City of Industry, CA 91744

To SPFC:

Mission Law Firm, A.P.C.
Attn: Proposition 65 (SFPC)
332 North Second Street
San Jose, CA 95112

12 Lucas Quass
13 Latham & Watkins LLP
14 650 Town Center Drive
15 Costa Mesa, CA 92626-1925

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

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

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

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

23 SPFC and its counsel agree to comply with the reporting form requirements referenced
24 in California Health and Safety Code section 25249.7(f).

25 **11. MODIFICATION**

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

1 **12. OTHER TERMS**

2 **12.1 No Other Agreements**

3 This Consent Judgment contains the sole and entire agreement and understanding of the
4 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
5 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
6 deemed merged. There are no warranties, representations, or other agreements between the
7 Parties except as expressly set forth in this Consent Judgment. No representations, oral or
8 otherwise, express or implied, other than those specifically referred to in this Consent
9 Judgment have been made by any Party. No other agreements not specifically contained or
10 referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any
11 of the Parties. No supplementation, modification, waiver, or termination of this Consent
12 Judgment shall be binding unless executed in writing by the Party to be bound. No waiver of
13 any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of
14 any of the other provisions whether or not similar, nor shall such waiver constitute a continuing
15 waiver. Nothing in this Consent Judgment shall release, or in any way affect any rights that
16 Sweda might have against any other party.

17 **12.2 Construction**


18 The Parties, including their counsel, have participated in the preparation of this Consent
19 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been
21 accepted and approved as to its final form by all Parties and their Counsel. Accordingly, any
22 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
23 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
24 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
25 to be resolved against the drafting Party should not be employed in the interpretation of this
26 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
27 1654.

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1 **13. AUTHORIZATION**

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

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6 Dated: May 25, 2018


K R Moore (May 25, 2018)
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

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9 Dated: 5/29/2018


Sweda Company, LLC
Print Name: Jim Hasen
Print Title: CEO

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