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10
11 **SUPERIOR COURT OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13 SAFE PRODUCTS FOR CALIFORNIANS,) No. 19CV340967
14 LLC,)
15 Plaintiff,) **CONSENT JUDGMENT**
16 vs.) (Health & Safety Code § 25249.5, *et seq.*)
17 VITAL AMINE, INC. dba ORA ORGANIC;)
18 DOES 1 THROUGH 150, inclusive;)
19 Defendants.)

20 **1. INTRODUCTION**

21 **1.1 Parties**

22 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff
23 Safe Products for Californians, LLC (“SPFC”) and defendant Vital Amine, Inc. dba Ora
24 Organic (“Vital Amine”). SPFC and Vital Amine are each referred to individually as a “Party”
25 and collectively as the “Parties.”

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

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

3 **1.3 Vital Amine**

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

7 **1.4 General Allegations**

8 SPFC alleges that the dietary supplements that Vital Amine manufactures, imports,
9 sells and/or distributes for sale in California cause exposure to lead and lead compounds
10 (hereinafter referred to as “lead”) and that they do so without providing the health hazard
11 warning that SPFC alleges is required by Proposition 65.

12 **1.5 Notice of Violation**

13 On or about May 8, 2018, SPFC served Vital Amine, and certain requisite public
14 enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Vital Amine
15 violated Proposition 65 when it failed to warn its customers and consumers in California that
16 various supplement products expose users to lead and lead compounds. To the best of the
17 Parties’ knowledge, no public enforcement has commenced that is diligently prosecuting the
18 allegations set forth in the Notice.

19 **1.6 Product Description**

20 The products identified in the Notice and in this Consent Judgment are identified in
21 Exhibit A, attached hereto, collectively referred to herein as the “Supplement Products” that
22 are manufactured, imported, distributed, sold and/or offered for sale by Vital Amine and/or its
23 customers in the state of California.

24 **1.7 Complaint**

25 On January 9, 2019, SPFC individually and on behalf of the public interest commenced
26 the instant action against Vital Amine for the alleged violations of Proposition 65 that are the
27 subject of the Notice. Upon entry of this Consent Judgment, the Complaint shall be deemed to
28 be amended to include allegations as to all Supplement Products identified in Exhibit A.

1 **1.8 Exposure to Naturally Occurring Chemicals**

2 SPFC and Vital Amine dispute how exposure levels to lead are calculated under
3 Proposition 65. Vital Amine contends that any lead detectable in the Supplement Products is
4 naturally occurring within the meaning of California Code of Regulations, Title 27, Section
5 25501. The Parties recognize and acknowledge that proving or disproving that any lead that
6 may be contained in the Supplement Products is naturally occurring would be extremely
7 expensive and time-consuming, requiring the expenditure of resources out of proportion with
8 any benefits derived from the process.

9 Prior court-approved Consent Judgments in *As You Sow v. Botanical Laboratories, Inc.*
10 et al., San Francisco Superior Court Case No. CGC-04-429563 (filed May 23, 2005) allow,
11 inter alia, similar dietary supplement products containing a concentration of lead in the
12 products of up to four (4) micrograms per day, assuming the product is used or consumed
13 according to the defendant's consumer use instructions, to be sold in California without a
14 warning.

15 Other court-approved Consent Judgments in *Environmental Law Foundation v. Abbott*
16 *Laboratories* et al., San Francisco Superior Court Lead Case No. CGC-10-503002 (filed
17 February 18, 2014) ("*Abbott Labs*"), and *As You Sow v. Garden of Life, LLC*, San Francisco
18 Superior Court Case No. CGC-14-540621 (filed June 26, 2015) (*Garden of Life*) set the
19 following warning thresholds for lead: 4.0 micrograms of lead per day (for chocolate and
20 gainer protein supplement products) and 3.0 micrograms of lead per day (for all other protein
21 supplement products).

22 The Supplement Products are similar to the types of products covered in the *Garden of*
23 *Life* and *Abbott Labs* Consent Judgments. As such, Vital Amine contends that the same
24 warning thresholds under Proposition 65 should apply to the businesses within the same
25 competitive marketplace.

26 **1.9 No Admission**

27 Vital Amine denies SPFC's claims that Supplement Products require warnings under
28 Proposition 65. However, for the purpose of avoiding prolonged and costly litigation

1 concerning the claims and defenses in this Action, the Parties enter into this Consent Judgment
2 as a full settlement of all claims that were raised in the Complaint based on the facts alleged
3 therein, or which could have been raised in the Complaint arising out of the facts alleged
4 therein. By execution of this Consent Judgment, Vital Amine does not admit any violation of
5 Proposition 65 or any other law. Nothing in this Consent Judgment shall be construed as an
6 admission by Vital Amine of any fact, finding, conclusion, issue of law, or violation of law.
7 However, this paragraph shall not diminish or affect the responsibilities and duties of the
8 Parties under this Consent Judgment.

9 **1.10 Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over Vital Amine as to the allegations contained in the Complaint, that venue is
12 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
13 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
14 section 664.6.

15 **1.11 Effective Date**

16 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
17 this Consent Judgment is entered as a Judgment of the Court.

18 **2. INJUNCTIVE RELIEF**

19 **2.1 Monitoring**

20 No later than one hundred and eighty (180) days after entry of this Consent Judgement,
21 Vital Amine will test or arrange for the testing of lead in each of the Supplement Products it
22 intends to distribute or sell in California.

23 The amount of lead deemed “naturally occurring” in each of the Supplement Products
24 is the sum of the amounts of “naturally occurring” lead supplied by the quantity of each
25 ingredient listed in Table 2.1.1 that is present in each Supplement Product. For each ingredient
26 listed in Table 2.1.1, the amount of lead deemed “naturally occurring” is listed in Table 2.1.1
27 in micrograms of “naturally occurring” lead per gram of the ingredient contained in the
28 Supplement Product:

Table 2.1.1

Ingredient	Amount of lead (Pb) per gram of ingredient deemed naturally occurring
Calcium	0.8 micrograms Pb per 1000 milligrams of calcium
Ferrous Fumarate	0.4 micrograms Pb per gram of ferrous fumarate
Zinc Oxide	8.0 micrograms Pb per gram of zinc oxide
Magnesium Oxide	0.4 micrograms Pb per gram of magnesium oxide
Magnesium Carbonate	0.332 micrograms Pb per gram of magnesium carbonate
Magnesium Hydroxide	0.4 micrograms Pb per gram of magnesium hydroxide
Zinc Gluconate	0.8 micrograms Pb per gram of zinc gluconate
Potassium Chloride	1.1 micrograms Pb per gram of potassium chloride

2.1.2 As used in this Consent Judgment, the term “Distributing into the State of California” shall mean to directly ship a Product into California for sale in California or to sell a Product to a distributor Vital Amine knows or has reason to know will sell the Products in California.

2.1.3 Vital Amine may use a testing laboratory with Environmental Laboratory Certification from the State of California, Department of Health Services, Environmental Laboratory Accreditation Program; NSF International; American Association for Laboratory Accreditation for Chemical Testing; certified by the EPA, FDA, or by International Standards Organization/IEC via ANSI-ASQ; or an in-house laboratory or other facility experienced in testing for lead levels in foods that complies with the Production and Process Control System: Requirements for Laboratory Operations set forth in 21 C.F.R. Part 111, Subpart J, including but not limited to the requirements for written procedures, requirements for laboratory control processes, requirements for laboratory methods for testing and examination, record retention policies, and other laboratory requirements.

2.1.4 All testing pursuant to this Consent Judgment shall be performed using a laboratory method that complies with the performance and quality control factors appropriate

1 for the method used, including limit of detection, qualification, accuracy, and precision that
2 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”) set
3 forth in EPA Methods 6020, 6020a. The laboratory must digest at least 0.5 grams of each
4 sample with a level of detection of at least 4 parts per billion. The sample preparation method
5 must use a microwave or heat assisted acid digestion method.

6 2.1.5 To fulfill its monitoring obligation under Section 2.1 and using a testing method
7 described therein, Vital Amine must test three (3) samples of the final product of each
8 Supplement Product, with samples randomly selected from three (3) different lots (or from the
9 maximum number of lots that are available for testing if there are fewer than three (3) lots
10 available). The testing required under this Section 2.1 will be repeated annually for two (2)
11 years following the compilation of the initial data set. All laboratory test data and certifications
12 (if applicable) must be retained by Vital Amine for a period of two (2) years from the date of
13 testing. However, Vital Amine is not required to test any Supplement Products if it is providing
14 a warning for those products that complies with Section 3.

15 2.1.6 On and after the Effective Date, any single test result which exceeds 5.75
16 micrograms of lead in a Daily Serving, as calculated under this Section 2 shall be deemed an
17 outlier. On and after the first anniversary of the Effective Date, any single test result which
18 exceeds 5.0 micrograms of lead in a Daily Serving as calculated under this Section 2 shall be
19 deemed an outlier. Any outlier result as described in this Section 2.1.6 is referenced to
20 hereinafter as an "Outlier."

21 2.1.7 At Vital Amine’s option, any single Outlier test result may be subject to
22 validation before it is deemed a final Outlier result for purposes of this Consent Judgment. The
23 validation process shall consist of two (2) steps.

24 (a) First, Vital Amine shall check its equipment, test processes, validation
25 procedures, laboratory contamination, operator error and any other factors which could have
26 produced an erroneous result. If the result is determined erroneous due to testing error or
27 failure to satisfy quality assurance or quality control procedures, the result shall be discarded

1 and not used for any purpose under this Consent Judgment. The Supplement Product shall then
2 be re-tested as if such test were the first test.

3 (b) Second, if a single Outlier test result is obtained and the steps in 2.1.7(a)
4 have not invalidated the result, then Vital Amine may collect up to three (3) more samples
5 from the same lot or batch and have those samples tested in accordance with this Section 2.
6 The arithmetic mean of the test results of all samples tested from the single lot or batch
7 (including the original Outlier test result) shall then be determined. That mean test result shall
8 be deemed the final result and shall constitute the applicable test result for purposes of this
9 Consent Judgment. If this validated test result is an Outlier as defined in Section 2.1.6, then the
10 terms of Section 3 shall apply to that Outlier test result.

11 2.1.8 If there is an allegation that a Supplement Product is in violation of Section 3,
12 SPFC may make a written request to Vital Amine for data generated in compliance with
13 Section 2.1. In response to such a request, Vital Amine will provide to SPFC the date the
14 analysis was performed, the name of the laboratory conducting the test, the test method used
15 by the laboratory, the detection limit used by the laboratory, the lot numbers of the samples
16 tested, and the analytical results within thirty (30) days of SPFC's written request. SPFC shall
17 keep all such information and data strictly confidential. Vital Amine shall provide to SPFC
18 within thirty (30) days of completing the initial testing of its Supplement Products under
19 Section 2.1, and annually thereafter during the testing period set forth in Section 2.1, a list of
20 all such products for which the test results obtained pursuant to this Section 2.1 indicate a
21 Proposition 65 warning is required pursuant to Section 3 herein.

22 **3. CLEAR AND REASONABLE WARNINGS**

23 Pursuant to this Consent Judgment, warnings are required under Proposition 65 only
24 with respect to Supplement Products that Vital Amine sells to California consumers that
25 expose users to more than 3 micrograms of lead in a Daily Serving, or to more than 4
26 micrograms of lead in a Daily Serving for gainer products and chocolate products.

27 **3.1** A Daily Serving (for purpose of determining Proposition 65 compliance for
28 chemicals present in the Supplement Products) shall be defined as one of the following, as

1 applicable: (a) if the Supplement Product label includes a recommended number of servings,
2 then the recommended serving size; (b) if the Supplement Product label includes no
3 recommended number of servings, then the serving size set forth on the “Nutrition Facts” or
4 “Supplement Facts” portion of the label; or (c) if the Supplement Product label recommends a
5 range of servings in one day, then the amount which is the higher recommended serving size.

6 **3.2** When calculating whether a Supplement Product exceeds the warning threshold
7 set forth in Section 3: (1) Vital Amine must compare the warning threshold value to the
8 arithmetic mean of at least three (3) samples tested in accordance with Section 2. However,
9 Vital Amine may, at its option, calculate the arithmetic mean using three (3) samples and Vital
10 Amine may base its calculation on the Daily Serving amount as defined in Section 3.1.
11 Notwithstanding the foregoing, Vital Amine may not include an Outlier test result (as defined
12 in Section 2.1.6) in calculating the arithmetic mean, and if Vital Amine elects to sell a
13 Supplement Product to California customers for which an Outlier test result is obtained and
14 validated as provided for in Section 2.1.7, then that specific product lot or batch from which
15 the Outlier result was derived shall be subject to the warning obligations of this Section 3.
16 Vital Amine shall have sixty (60) days from the date the relevant test result mean is calculated
17 to satisfy the applicable obligations of this Section 3 for Supplement Products manufactured,
18 distributed, or sold after that date.

19 **3.3 Warning Standard.**

20 No later than one (1) year after entry of this Consent Judgment, Vital Amine shall not
21 manufacture for sale in the State of California, distribute into the State of California, or sell in
22 the State of California any Supplement Product the ingestion of which results in exposure
23 greater than the applicable warning threshold set forth in Section 3, as calculated in accordance
24 with Section 3.1, unless a warning is placed or affixed on the packaging, labeling, or directly to
25 or on the Supplement Product that states:

26 **OPTION 1:**

27 “[new Prop 65 symbol] **WARNING:** Consuming this product can expose you to
28 [chemicals including] lead which is [are] known to the State of California to cause [cancer and]

1 birth defects and other reproductive harm. For more information go to:
2 www.P65warnings.CA.gov/food”

3 OR:

4 **OPTION 2:**

5 “[new Prop 65 symbol] **WARNING:** [Cancer and] Reproductive Harm –
6 www.P65Warnings.ca.gov”

7 Vital Amine shall use the phrase “cancer and” in the Warning if Vital Amine has
8 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead
9 as determined pursuant to the quality control methodology set forth in Section 2.1 or if Vital
10 Amine has reason to believe that another Proposition 65 chemical is present which may require
11 a cancer warning. The words “chemicals including” may be deleted from the warning content
12 if the warning is being provided for an exposure to lead only.

13 The warning provided pursuant to Section 3.3 shall be prominently affixed to or printed
14 upon the container or label of each Supplement Product. If the Warning is provided on the
15 label, it must be set off from other surrounding information and enclosed in a box. In addition,
16 for any Supplement Product sold over the internet where a California delivery address is
17 indicated, the Warning shall be provided either by including the Warning on the product
18 display page, by otherwise prominently displaying the Warning to the purchaser during the
19 checkout process prior to completing the purchase, or by any other means authorized under
20 Section 25607.1 of Title 27 of the California Code of Regulations.

21 In the event Vital Amine provides the Warning pursuant to OPTION 2, above, the
22 entire Warning must be in a type size no smaller than the largest size used for other consumer
23 information on the product, and in no case shall the Warning appear in a type size smaller than
24 6-point type. For all Warnings, the word “WARNING” shall be in all capital letters in bold
25 print. No statements intended to or likely to have the effect of diminishing the impact of the
26 Warning on the average lay person shall accompany the Warning. Further, no statements may
27 accompany the Warning that state or imply that the source of the listed chemical has an impact
28 on or results in a less harmful effect of the listed chemical.

Vital Amine must display the above Warning on the Products' packaging, labeling, website or instruction booklet and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

4 MONETARY SETTLEMENT TERMS

4.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

Pursuant to Health and Safety Code section 25249.7(b), Vital Amine shall pay civil penalties in the amount of \$4,000. 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 Vital Amine's penalty payment under this Consent Judgment to OEHHA. Within ten (10) business days of the Effective Date, Vital Amine shall issue a check payable to "Moore Law Firm, A.P.C., Trust Account" in the amount of \$1,000, and a check payable to OEHHA in the amount of \$3,000. These penalty payments shall be delivered to the address listed in Section 4.3 below.

4.2 Reimbursement of Attorneys' Fees and Costs

For all reasonable work performed as a result of investigating, bringing this matter to Vital Amine'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, Vital Amine shall reimburse SPFC and its counsel \$26,000. 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. Vital Amine's payment shall be due within ten (10) business days of the Effective Date, and delivered to the address in Section 4.3 in the form of a check payable to "Moore Law Firm, P.C." The reimbursement shall cover all reasonable fees and costs incurred by SPFC investigating, bringing this matter to Vital Amine's attention, litigating, and negotiating a settlement of the matter in the public interest.

1 **4.3 Payment Procedures**

2 The payments pursuant to Sections 4.1 and 4.2 shall be delivered to the following
3 address:

4 Moore Law Firm, P.C.
5 Attn: Proposition 65 (SPFC)
6 332 North Second Street
 San Jose, California 95112

7 If for any reason this Consent Judgment is not entered by the Court within one (1) year
8 of the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with
9 Vital Amine about mutually agreeable steps the Parties can take to ensure entry of the Consent
10 Judgment.

11 **5. APPLICATION OF CONSENT JUDGMENT**

12 This Consent Judgment shall apply to and be binding upon SPFC and Vital Amine, their
13 respective officers, directors, shareholders and the predecessors, successors or assigns of each
14 of them.

15 **6. CLAIMS COVERED AND RELEASED**

16 **6.1 SPFC's Release of Proposition 65 Claims**

17 This Consent Judgment is a full, final, and binding resolution between SPFC, acting on
18 its own behalf and in the public interest, and Vital Amine and its respective officers, directors,
19 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
20 franchisees, licensees, customers, packagers, contractors, manufacturers, distributors,
21 wholesalers, retailers, users, and all other upstream and downstream entities in the distribution
22 chain of any Supplement Product, and the predecessors, successors, and assigns of any of them
23 (collectively "Released Parties"). SPFC, on behalf of itself and in the public interest, hereby
24 waives all rights to institute or participate in (directly or indirectly) any form of legal action
25 against Released Parties and fully releases and discharges the Released Parties from any and all
26 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
27 expenses asserted, or that could have been asserted from the handling, use, or consumption of
28 the Supplement Products, as to any alleged violation of Proposition 65 or its implementing

1 regulations arising from the failure to provide Proposition 65 warnings on the Supplement
2 Products regarding lead up to and including the Effective Date.

3 **6.2** SPFC on its own behalf only, and Vital Amine on its own behalf only, further
4 waive and release any and all claims they may have against each other for all actions or
5 statements made or undertaken in the course of seeking or opposing enforcement of
6 Proposition 65 in connection with the Notice and Complaint up through and including the
7 Effective Date, provided, however, that nothing in this Section 6.2 shall affect or limit any
8 Party's right to seek to enforce the terms of this Consent Judgment.

9 **6.3** It is possible that other claims not known to the Parties, arising out of the facts
10 alleged in the Notice and Complaint, and relating to the Supplement Products, will develop or
11 be discovered. SPFC on behalf of itself only, and Vital Amine, on behalf of itself only,
12 acknowledge that this Consent Judgment is expressly intended to cover and include all such
13 claims up through and including the Effective Date, including all rights of action therefore.
14 SPFC and Vital Amine acknowledge that the claims released in Section 6.1 and 6.2 above may
15 include all unknown claims, and nevertheless waive California Civil Code section 1542 as to
16 any such unknown claims. California Civil Code section 1542 reads as follows:

17 A general release does not extend to claims that the creditor or releasing party does not
18 know or suspect to exist in his or her favor at the time of executing the release and that, if
19 known by him or her, would have materially affected his or her settlement with the debtor or
20 released party.

21 SPFC and Vital Amine acknowledge and understand the significance and consequences
22 of this specific waiver of California Civil Code section 1542.

23 **6.4** Compliance with the terms of this Consent Judgment shall be deemed to
24 constitute compliance with Proposition 65 by any release regarding alleged exposures to lead
25 in the Supplement Products as set forth in the Notice and Complaint.

26 **7. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court
28 and shall be null and void if, for any reason, it is not approved and entered by the Court within

one (1) year after it has been fully executed by all Parties, unless the Parties mutually agree to extend that time period due to what they mutually agree are reasonably unforeseeable circumstances. SPFC and Vital Amine agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Vital Amine shall support, appearing at the hearing if so requested.

8. SEVERABILITY

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

9. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Supplement Products, then Vital Amine shall have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Supplement Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Vital Amine from its obligation to comply with any pertinent state or federal law or regulation.

10. NOTICE

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

To Vital Amine:

Hazel Ocampo, Esq.
Procopio, Cory, Hargreaves & Savitch LLP
525 B Street, Suite 2200
San Diego, CA 92101

To SPFC:

Moore Law Firm, P.C.
Attn: Proposition 65 (SPFC)
332 North Second Street
San Jose, California 95112

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

11. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

12. COMPLIANCE WITH REPORTING REQUIREMENTS

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

13. 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.

14. OTHER TERMS

14.1 No Other Agreements

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed merged. There are no warranties, representations, or other agreements between the Parties except as expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing

1 waiver. Nothing in this Consent Judgment shall release, or in any way affect any rights that
2 Vital Amine might have against any other party.

3 **15. CONSTRUCTION**


4 The Parties, including their counsel, have participated in the preparation of this Consent
5 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been
7 accepted and approved as to its final form by all Parties and their Counsel. Accordingly, any
8 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
9 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
10 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
11 to be resolved against the drafting Party should not be employed in the interpretation of this
12 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
13 1654.

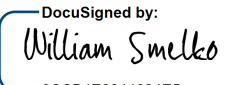
14 **16. AUTHORIZATION**

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

18 Dated: Mar 13, 2019

19
20 4/13/2019
21 Dated:


Kenneth R Moore (Mar 13, 2019)
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

DocuSigned by:

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Vital Amine, Inc. dba Ora Organics
By: William Smelko, Chief Executive Officer

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EXHIBIT A

Vital Amine’s Supplement Products

Any dietary supplement powders, shakes, tablets, capsules, pastes and products containing natural plant extracts, plant powders, food-based powders, vitamins and minerals that are, at any time, manufactured, distributed, or sold by Vital Amine. Without limiting the generality of the foregoing, the Supplement Products include the following:

Superfood Protein Supplement – all forms, flavors, varieties, and sizes
Organic Acai Powder-- all forms, flavors, varieties, and sizes
Organic Greens Powder– all forms, flavors, varieties, and sizes
Organic Pre-Workout Powder – all forms, flavors, varieties, and sizes