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

10
11 SAFE PRODUCTS FOR CALIFORNIANS,)
LLC,)

No. 18CV332640

12 Plaintiff,

[PROPOSED] CONSENT JUDGMENT

13 vs.

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

14 AMAZON.COM, INC., et al.;

15 Defendants.
16
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 Lyfe Ventures LLC (“Lyfe
23 Ventures”). SPFC and Lyfe Ventures are each referred to individually as a “Party” and
24 collectively as the “Parties.” Defendant Amazon.com, Inc., is an intended third-party beneficiary
25 of this Consent Judgment.

26 **1.2 SPFC**

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

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

3 **1.3 General Allegations**

4 SPFC alleges that the powdered dietary supplements that Lyfe Ventures manufactures,
5 imports, sells and/or distributes for sale in California cause exposure to lead and lead compounds
6 (hereinafter referred to as “lead”) and that Lyfe Ventures does so without providing the health
7 hazard warning that SPFC alleges is required by Proposition 65.

8 **1.4 Product Description**

9 The products that are covered by this Consent Judgment are identified as “All in One –
10 Daily Essentials Shake,” ASIN B01JTEQMFO that are manufactured, imported, distributed,
11 sold and/or offered for sale by Lyfe Ventures and/or its customers in the state of California,
12 hereinafter the “Covered Products.”

13 **1.5 Notice of Violation**

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

19 **1.6 Complaint**

20 On July 31, 2018, SPFC commenced the instant action (the “Action”) for the alleged
21 violations of Proposition 65 that are the subject of the Notice. On September 3, 2019, SPFC
22 amended its Complaint to name Lyfe Ventures in the Action.

23 **1.7 No Admission**

24 The Parties enter into this Consent Judgment pursuant to a full settlement of disputed
25 claims between the Parties as alleged in the Action for the purpose of avoiding prolonged
26 litigation. By execution of this Consent Judgment, Lyfe Ventures does not admit any material,
27 factual, and legal allegations contained in the Notice and Action, and maintains that all of the
28 products that it has sold or distributed for sale in California, including the Covered Products,

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1 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
2 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of
3 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission
4 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being
5 specifically denied by Lyfe Ventures. Nothing in this Consent Judgment shall prejudice, waive,
6 or impair any right, remedy or defense that Lyfe Ventures may have in any other further legal
7 proceedings unrelated to this Action. This Section shall not, however, diminish or otherwise
8 affect Lyfe Ventures’s obligations, responsibilities, and duties under this Consent Judgment.

9 **1.8 Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
11 jurisdiction over Lyfe Ventures as to the allegations contained in the Action, that venue is proper
12 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
13 provisions as a full and final binding resolution of all claims which were or could have been
14 raised in the Action based on the facts alleged therein and/or notice of this Consent Judgment
15 pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

16 **1.9 Effective Date**

17 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date
18 that this Consent Judgment is adopted by the Court.

19 **2. INJUNCTIVE RELIEF**

20 **2.1 Product Removal**

21 Commencing one-hundred-eighty (180) days after the Effective Date and continuing
22 thereafter, Lyfe Ventures shall only ship, distribute, sell or offer for sale in California,
23 Reformulated Product pursuant to Section 2.2 or Product that is labeled with a clear and
24 reasonable warning pursuant to Section 2.3. Lyfe Ventures shall have no obligation to label
25 Covered Products that were shipped prior to the product removal deadline.

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1 **2.2 Reformulated Covered Products**

2 Reformulated Covered Products are Covered Products manufactured after the Effective
3 date for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per
4 day.

5 2.2.1 For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall
6 be measured in micrograms, and shall be calculated using the following formula: micrograms of
7 lead per gram of product, multiplied by grams of product per serving of the product (using the
8 largest serving size appearing on the product label), multiplied by servings of the product per
9 day (using the largest number of recommended daily servings appearing on the product label),
10 which equals micrograms of lead exposure per day. If the label contains no recommended daily
11 servings, then the number of recommended daily servings of the product for purposes of the
12 formula in this Section 2.1.1 shall be calculated as one serving per day.

13 **2.3 Clear and Reasonable Warnings**

14 Commencing one-hundred-eighty (180) days after the Effective Date and continuing
15 thereafter, for any Covered Products manufactured that do not qualify as Reformulated Covered
16 Products and are directly sold or offered for sale in California by Lyfe Ventures after the
17 Effective Date, Lyfe Ventures shall only sell or offer said non-reformulated Covered Products
18 for sale in California when accompanied with one of the following warnings:

19 **OPTION 1:**

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

23 **OR:**

24 **OPTION 2:**

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

26 In connection with providing a cancer warning for lead and lead compounds, Lyfe
27 Ventures shall use the phrase “cancer and” in the warning if Lyfe Ventures has reason to believe
28 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead. Lyfe Ventures also

1 may include the reference to cancer if Lyfe Ventures has reason to believe that another
2 Proposition 65 chemical is present which may require a cancer warning. The words “chemicals
3 including” may be deleted from the warning content if the warning is being provided for an
4 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 other
7 words, statements, or designs as to render it likely to be read and understood by an ordinary
8 individual under customary conditions of purchase or use. If the warning is provided on the label,
9 it must be set off from other surrounding information and enclosed in a box. In addition, for any
10 Covered Product sold over the internet where a California delivery address is indicated, the
11 warning shall be provided either by including the warning on the product display page, by
12 otherwise prominently displaying the warning to the purchaser during the checkout process prior
13 to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27
14 of the California Code of Regulations. An asterisk or other identifying method must be utilized
15 to identify which products on the checkout page are subject to the warning.

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

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

24 Pursuant to Health and Safety Code section 25249.7(b), Lyfe Ventures shall pay civil
25 penalties in the amount of \$500.00. The penalty payment shall be allocated according to Health
26 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the
27 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
28 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Lyfe

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1 Ventures's penalty payment under this Consent Judgment to OEHHA. Within five business days
2 of all Parties signing this Consent Judgment, Lyfe Ventures shall issue a check payable to "Safe
3 Products for Californians, LLC" in the amount of \$125.00, and a check payable to OEHHA in
4 the amount of \$375.00. These penalty payments shall be delivered to the address listed in Section
5 3.3 below.

6 **3.2 Reimbursement of Attorneys' Fees and Costs**

7 For all work performed as a result of investigating, bringing this matter to Lyfe
8 Ventures's attention and negotiating a settlement in the public interest through the mutual
9 execution of this Consent Judgment and the Court's approval of the same, but exclusive of fees
10 and costs on appeal, if any, Lyfe Ventures shall reimburse SPFC and its counsel \$ 18,933.18.
11 The Parties negotiated this resolution of the compensation due to SPFC and its counsel under
12 general contract principles and the private attorney general doctrine codified at California Code
13 of Civil Procedure § 1021.5. Lyfe Ventures's payment shall delivered to the address in Section
14 3.3 in the form of a check payable to "Moore Law Firm, P.C." within five business days of all
15 Parties signing this Consent Judgment. The reimbursement shall cover all fees and costs incurred
16 by SPFC investigating, bringing this matter to Lyfe Ventures's attention, litigating, and
17 negotiating a settlement of the matter in the public interest.

18 **3.3 Payment Procedures**

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

21 Moore Law Firm, P.C.
22 Attn: Proposition 65 (SPFC)
23 300 South First Street, Suite 342
24 San Jose, California 95113

25 If for any reason this Consent Judgment is not entered by the Court within one year of
26 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with Lyfe
27 Ventures about mutually agreeable steps the Parties can take to ensure entry of the Consent
28 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to

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1 Lyfe Ventures any and all monies paid by Lyfe Ventures herein under Sections 3.1 and 3.2 upon
2 Lyfe Ventures's written request.

3 **4. CLAIMS COVERED AND RELEASED**

4 **4.1 SPFC's Public Release of Proposition 65 Claims**

5 This Consent Judgment is a full, final, and binding resolution between SPFC, acting on
6 its own behalf and on behalf of the public interest, releases Lyfe Ventures and its parents,
7 subsidiaries, affiliated entities under common ownership, directors, shareholders, officers,
8 employees, and attorneys and the predecessors, agents, suppliers, successors, or assigns of each
9 of them, and each entity to whom Lyfe Ventures directly or indirectly distributes or sells Covered
10 Products, including but not limited to, Amazon.com, downstream distributors, wholesalers,
11 customers, retailers, franchisees, cooperative members, importers, and licensees (the
12 "Releasees"), for any claims with respect to any Covered Products manufactured, imported,
13 distributed or sold by Lyfe Ventures and on or prior to the date of entry of this Consent Judgment,
14 including but not limited to any violations arising under Proposition 65 that was or could have
15 been asserted in the Action against Lyfe Ventures and the Releasees for unwarned exposures to
16 lead from the Covered Products manufactured, imported, distributed or sold by Lyfe Ventures
17 prior to the Effective Date ("Proposition 65 Claims"). This Consent Judgment shall have
18 preclusive effect such that no other person or entity, whether purporting to act in his, her or its
19 interest or the public interest shall be permitted to pursue and/or take any action with respect to
20 any violation of Proposition 65 that was alleged in the Action or that could have been brought
21 pursuant to the Notice against Lyfe Ventures and the Releasees as to alleged exposure to lead in
22 the Covered Products, as set forth in the Notice and Action. Compliance with the terms of this
23 Consent Judgment constitutes compliance with Proposition 65 by Lyfe Ventures and it is deemed
24 sufficient to satisfy all obligations concerning compliance by the Releasees with respect to the
25 alleged or actual failure to warn about exposures to lead from Products manufactured, sold or
26 distributed for sale and any and all other requirement of Proposition 65 with respect to the
27 products by Lyfe Ventures after the Effective Date.

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1 **4.2 SPFC’s Individual Release of Claims**

2 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current
3 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative
4 capacity, also provides a release to Lyfe Ventures and the Releasees which shall have preclusive
5 effect such that SPFC shall not be permitted to pursue and/or take any action with respect to any
6 other statutory or common law claim to the fullest extent that any such claim was or could have
7 been asserted by SPFC against Lyfe Ventures and the Releasees, which shall be effective as a
8 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
9 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of SPFC of any
10 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
11 alleged or actual exposures to lead in Covered Products manufactured, imported, distributed or
12 sold by Lyfe Ventures and/or the Releasees, or the failure to provide a clear and reasonable
13 warning of exposure as well as any other claim based in whole or in part on the facts alleged in
14 the Action and the Notice, based on actions committed before the Effective Date (“Chemical
15 Exposure Claims”).

16 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code**

17 As to SPFC’s public release of Proposition 65 Claims set forth in Section 4.1 (“Public
18 Release”) and its individual release of Chemical Exposure Claims set forth in 4.2 (“Individual
19 Release”), SPFC, acting on its own behalf and on behalf of the public with respect to the Public
20 Release and acting in its individual capacity with respect to the Individual Release, waives all
21 rights to institute any and all manner of actions, causes of action, claims, demands, rights, suits,
22 obligations, debts, contracts, agreements, promises liabilities, damages, charges, losses, costs,
23 expenses and attorney’s fees of any nature whatsoever, known or unknown, in law or equity,
24 fixed or contingent now or in the future with respect to the Covered Products manufactured,
25 distributed, or sold by Lyfe Ventures and the Releasees who may use, maintain, distribute or sell
26 the Covered Products, for the Proposition 65 Claims and the Chemical Exposure Claims
27 (referred to collectively in this Sections as “Claims”). In furtherance of the foregoing, SPFC,
28 acting on its own behalf and on behalf of the public with respect to the Public Release and acting

1 in its individual capacity with respect to the Individual Release, waives any and all rights and
2 benefits which SPFC now has, or in the future may have, conferred upon SPFC with respect to
3 the Claims by virtue of the provisions of § 1542 of the California Civil Code, which provides as
4 follows:

5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
6 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
7 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
8 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
9 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
10 WITH THE DEBTOR OR RELEASED PARTY.

11 **4.3 Lyfe Ventures’s Release of SPFC**

12 Lyfe Ventures, on its own behalf and on behalf of its past and current agents,
13 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
14 SPFC and its attorneys and other representatives, for any and all actions taken or statements
15 made (or those that could have been taken or made) by SPFC and its attorneys and other
16 representatives in the course of investigating claims, seeking to enforce Proposition 65 against
17 it in this matter.

18 **5. ENTRY OF CONSENT JUDGMENT**

19 The Parties hereby request that the Court promptly enter this Consent Judgment. Upon
20 entry of this Consent Judgment, SPFC and Lyfe Ventures waive their respective rights to a
21 hearing or trial on the allegations of the Action and Notice.

22 **5.1 COURT APPROVAL**

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

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1 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required
2 for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Lyfe
3 Ventures 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 of
6 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 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
12 Products, then Lyfe Ventures may provide SPFC with written notice of any asserted change in
13 the law, and shall have no further obligations pursuant to this Consent Judgment, with respect
14 to, and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
15 shall be interpreted to relieve Lyfe Ventures from its obligation to comply with any pertinent
16 state or federal law or regulation.

17 **8. NOTICE**

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

22 To Lyfe Ventures:

23 Michael Gleason
24 Hahn Loeser & Parks LLP
25 One America Plaza
26 600 West Broadway, Suite 1500
27 San Diego, CA 92101

To SPFC:

Moore Law Firm, P.C.
Attn: Proposition 65 (SPFC)
300 South First Street, Suite 342
San Jose, California 95113

28 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.

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

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. MODIFICATION**

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

12 **12. OTHER TERMS**

13 **12.1 No Other Agreements**

14 This Consent Judgment contains the sole and entire agreement and understanding of the
15 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and
16 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are
17 deemed merged. There are no warranties, representations, or other agreements between the
18 Parties except as expressly set forth in this Consent Judgment. No representations, oral or
19 otherwise, express or implied, other than those specifically referred to in this Consent Judgment
20 have been made by any Party. No other agreements not specifically contained or referenced in
21 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.
22 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
23 binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
24 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
25 provisions whether or not similar, nor shall such waiver constitute a continuing waiver. Nothing
26 in this Consent Judgment shall release, or in any way affect any rights that Lyfe Ventures might
27 have against any other party.

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12.2 Construction

The Parties have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. Each Party has had the opportunity to consult counsel with regard to the preparation of this Consent Judgment. 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. 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.

13. AUTHORIZATION

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

Dated: Sep 28, 2021


K (Sep 28, 2021 10:45 PDT)
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

Dated: _____

Lyfe Ventures LLC
By: _____

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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Dated: _____

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

Dated: September 28, 2021



Lyfe Ventures LLC
By: Chris Manderino, Co-Founder & CEO

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT