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

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 19CV348969
LLC,)
12) **[PROPOSED] CONSENT JUDGMENT**
Plaintiff,)
13) (Health & Safety Code § 25249.5, *et seq.*)
vs.)
14)
BRANDS OF BRITAIN, LLC, et al.;)
15)
16 Defendants.)
17)
18)

19 **1. INTRODUCTION**

20 **1.1 Parties**

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

26 **1.2 SPFC**

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

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

3 **1.3 Brands of Britain**

4 SPFC alleges, and, for purposes of this Consent Judgment, Brands of Britain does not
5 dispute, that Brands of Britain employed ten or more persons prior to June 12, 2018 and is a
6 person in the course of doing business for purposes of the Safe Drinking Water and Toxic
7 Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq.*
8 (“Proposition 65”).

9 **1.4 General Allegations**

10 SPFC alleges that powdered dietary supplements that Brands of Britain manufactures,
11 imports, sells and/or distributes for sale in California cause exposure to cadmium and that they
12 do so without providing the health hazard warning that SPFC alleges is required by Proposition
13 65.

14 **1.5 Product Description**

15 The products that are covered by this Consent Judgment are powdered dietary
16 supplements manufactured, imported, distributed, sold and/or offered for sale by Brands of
17 Britain, identified in SPFC’s Notice of Violation as Powdered Dietary Supplements, including
18 but not limited to: “Linwoods – Ground flaxseed, Probiotic, Vitamin D,” UPC#
19 094776135813, that are manufactured, imported, distributed, sold and/or offered for sale by
20 Brands of Britain and/or its customers in the state of California, hereinafter the “Covered
21 Products.”

22 **1.6 Notices of Violation**

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

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1.7 Complaint

On May 28, 2019, SPFC commenced the instant action against Defendants for the alleged violations of Proposition 65 that are the subject of the Notices (“the Complaint”).

1.8 No Admission

Brands of Britain denies the material, factual and legal allegations contained in the Notices 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 Brands of Britain 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 Brands of Britain of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Brands of Britain. 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 Brands of Britain 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 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.10 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean thirty (30) days from the date on which the Court enters this Consent Judgment.

2. INJUNCTIVE RELIEF

2.1 Product Removal

As of the Effective Date, Brands of Britain shall refrain from manufacturing for sale in the State of California, “Distributing into the State of California,” or directly selling in the State of California, any Covered Products manufactured after the Effective Date.

1 **2.1.1** As used in this Consent Judgment, the term “Distributing into the State of
2 California” shall mean to directly ship a Covered Product into California for sale in California
3 or to sell a Covered Product to a distributor Brands of Britain knows or has reason to know will
4 sell the Covered Products in California.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

7 Pursuant to Health and Safety Code section 25249.7(b), Brands of Britain shall pay
8 civil penalties in the amount of two thousand dollars (\$2,000.00). The penalty payment shall be
9 allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the
10 penalty amount paid to the California Office of Environmental Health Hazard Assessment
11 (“OEHHA”) and the remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be
12 responsible for remitting Brands of Britain’s penalty payment under this Consent Judgment to
13 OEHHA. Within ten (10) business days of receiving notice of the Court’s approval of this
14 Consent Judgment, Brands of Britain shall issue a check payable to “Safe Products for
15 Californians, LLC” in the amount of five hundred dollars (\$500.00), and a check payable to
16 OEHHA in the amount of one thousand five hundred dollars (\$1,500.00). These penalty
17 payments shall be delivered to the address listed in Section 3.3 below.

18 **3.2 Reimbursement of Attorneys’ Fees and Costs**

19 For all work performed as a result of investigating, bringing this matter to Brands of
20 Britain’s attention and negotiating a settlement in the public interest through the mutual
21 execution of this Consent Judgment and the Court’s approval of the same, but exclusive of fees
22 and costs on appeal, if any, Brands of Britain shall reimburse SPFC and its counsel eighteen
23 thousand dollars (\$18,000.00). The Parties negotiated this resolution of the compensation due
24 to SPFC and its counsel under general contract principles and the private attorney general
25 doctrine codified at California Code of Civil Procedure § 1021.5. Brands of Britain’s payment
26 shall be due within ten (10) business days of receiving the Court’s approval of this Consent
27 Judgment and delivered to the address in Section 3.3 in the form of a check payable to “Moore
28 Law Firm, P.C.” The reimbursement shall cover all fees and costs incurred by SPFC

1 investigating, bringing this matter to Brands of Britain’s attention, litigating, and negotiating a
2 settlement of the matter in the public interest.

3 **3.3 Payment Procedures**

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

6 Safe Products for Californians, LLC
7 Attn: Moore Law Firm
8 332 North Second Street
9 San Jose, California 95112

10 If for any reason this Consent Judgment is not entered by the Court within one year of
11 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with
12 Brands of Britain 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 Brands of Britain any and all monies paid by Brands of Britain herein under Sections
15 3.1 and 3.2 upon Brands of Britain’s written request.

16 **4. CLAIMS COVERED AND RELEASED**

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

18 This Consent Judgment is a full, final and binding resolution between SPFC, on behalf
19 of itself and in the public interest, its past and current agents, representatives, attorneys,
20 successors, and assignees, and Brands of Britain, its parents, subsidiaries, affiliated entities
21 under common ownership, directors, officers, agents, employees, attorneys, and each entity to
22 whom Brands of Britain directly or indirectly distributes or sells Covered Products, including,
23 but not limited to, SF Markets, LLC, downstream distributors, wholesalers, customers,
24 retailers, franchisees, cooperative members, marketplace hosts and licensees (collectively,
25 “Releasees”), from all claims for any violation of Proposition 65 through the Effective Date
26 that were or could have been asserted by SPFC relating to the Covered Products. Compliance
27 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with
28 respect to exposures to cadmium from the Covered Products, as set forth in the Notices. The
Parties further understand and agree that this Section 4.1 release shall not extend upstream to

1 any entities that manufactured the Covered Products or any component parts thereof, or any
2 distributors or suppliers who sold the Covered Products or any component parts thereof to
3 Brands of Britain.

4 **4.2 SPFC's Individual Release of Claims**

5 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and assignees, provides a release herein which shall be effective as a full and final
7 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities, and demands of SPFC of any nature,
9 character, or kind, whether known or unknown, suspected or unsuspected, limited to and
10 arising out of alleged or actual exposures to cadmium in the Covered Products manufactured,
11 imported, distributed, or sold by Brands of Britain prior to the Effective Date. The Parties
12 further understand and agree that this Section 4.2 release shall not extend upstream to any
13 entities that manufactured the Covered Products, or any component parts thereof, or any
14 distributors or suppliers who sold the Covered Products, or any component parts thereof to
15 Brands of Britain.

16 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 Brands of Britain'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 Notices and Complaint.

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4.3 Brands of Britain’s Release of SPFC

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

4.4 Waiver of Civil Code Section 1542

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

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

5. COURT APPROVAL

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one 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 Brands of Britain 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 Brands of Britain shall support, appearing at the hearing if so requested.

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

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

19 **8. NOTICE**

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

24 To Brands of Britain:

25 Wendy L, Manley, Esq.
26 Wendel Rosen LLP
27 1111 Broadway, 24th Floor
28 Oakland, CA 94607

To SPFC:

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

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

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

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

10 **11. MODIFICATION**

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

14 **12. OTHER TERMS**

15 **12.1 No Other Agreements**

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

23 **12.2 Construction**


24 The Parties, including their counsel, have participated in the preparation of this Consent
25 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
26 Consent Judgment was subject to revision and modification by the Parties and has been
27 accepted and approved as to its final form by all Parties and their Counsel. Accordingly, any
28 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any

1 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
2 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
3 to be resolved against the drafting Party should not be employed in the interpretation of this
4 Consent Judgment and, in this regard the Parties hereby waive California Civil Code section
5 1654.

6 **13. AUTHORIZATION**

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

10
11 Dated: Nov 13, 2019


KR Moore (Nov 13, 2019)
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

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15 Dated: _____

Brands of Britain, LLC
By: Mark Rajeski

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17 **IT IS SO ORDERED.**

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19 Dated: _____

JUDGE OF THE SUPERIOR COURT

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Dated: _____

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

Dated: October 30, 2019



Brands of Britain, LLC
By: Mark Rajeski

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT