

1 Tanya E. Moore, SBN 206683  
MOORE LAW FIRM, P.C. 332  
2 North Second Street  
San Jose, California 95112  
3 Telephone (408) 298-2000  
Facsimile (408) 298-6046  
4 E-mail: service@mission.legal

5 Attorneys for Plaintiff  
Safe Products for Californians, LLC  
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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF SANTA CLARA**

10  
11 SAFE PRODUCTS FOR CALIFORNIANS, ) No. 18CV337744  
LLC, )  
12 ) **[PROPOSED] CONSENT JUDGMENT**  
Plaintiff, )  
13 ) (Health & Safety Code § 25249.5, *et seq.*)  
vs. )  
14 )  
KULI KULI, INC.; SF MARKETS, LLC; )  
15 DOES 1 THROUGH 150, inclusive; )  
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 Kuli Kuli, Inc. (“Kuli Kuli”).  
23 SPFC and Kuli Kuli are each referred to individually as a “Party” and collectively as the  
24 “Parties.” Defendant SF Markets, LLC (“Sprouts,” and together with Kuli Kuli, collectively  
25 referred to as “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 Kuli Kuli**

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

8 **1.4 General Allegations**

9 SPFC alleges that powdered vegetable products that Defendants manufacture, import,  
10 sell and/or distribute for sale in California cause exposure to lead and lead compounds  
11 (hereinafter referred to as “lead”) and cadmium and that they do so without providing the  
12 health hazard warning that SPFC alleges is required by Proposition 65.

13 **1.5 Product Description**

14 The products that are covered by this Consent Judgment are powdered vegetable  
15 products manufactured by Kuli Kuli currently or in the future, identified in SPFC’s Notice of  
16 Violation as Powdered Dietary Supplements, including but not limited to “Organic Moringa  
17 Greens & Protein – Natural Greens,” UPC# 850460005349, and “Organic Moringa Greens &  
18 Protein – Vanilla,” UPC# 850460005332, that are manufactured, imported, distributed, sold  
19 and/or offered for sale by Kuli Kuli and/or its customers in the state of California, hereinafter  
20 the “Covered Products.”

21 **1.6 Notice of Violation**

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

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**1.7 Complaint**

On November 5, 2018, SPFC commenced the instant action against Defendants for the alleged violations of Proposition 65 that are the subject of the Notice (“the Complaint”).

**1.8 No Admission**

Kuli Kuli denies the material, factual and legal allegations contained in the Notice and Complaint and maintains that, to the best of its knowledge, all products that it has manufactured, imported, sold and/or distributed for sale in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Kuli Kuli 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 Kuli Kuli of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Kuli Kuli. 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 Kuli Kuli 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 one year from the date on which the Court enters this Consent Judgment.

**2. INJUNCTIVE RELIEF**

**2.1 Product Removal**

As of the Effective Date, Kuli Kuli shall be permanently enjoined 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 which expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per

1 day and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms per day, unless it  
2 meets the warning requirements under section 2.3.

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

7 **2.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall  
8 be measured in micrograms, and shall be calculated using the following formula: micrograms  
9 of lead per gram of product, multiplied by grams of product per serving of the product (using  
10 the largest serving size appearing on the product label), multiplied by servings of the product  
11 per day (using the largest number of recommended daily servings appearing on the label),  
12 which equals micrograms of lead exposure per day. If the label contains no recommended daily  
13 servings, then the number of recommended daily shall be one.

14 **2.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level”  
15 shall be measured in micrograms, and shall be calculated using the following formula:  
16 micrograms of cadmium per gram of product, multiplied by grams of product per serving of  
17 the product (using the largest serving size appearing on the product label), multiplied by  
18 servings of the product per day (using the largest number of recommended daily servings  
19 appearing on the label), which equals micrograms of cadmium exposure per day. If the label  
20 contains no recommended daily servings, then the number of recommended daily shall be one.

21 **2.2 Reformulated Covered Products**

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

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1           **2.3 Clear and Reasonable Warnings**

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

6           **OPTION 1:**

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

11           OR:

12           **OPTION 2:**

13           **WARNING:** [Cancer and] Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

14           In connection with providing a cancer warning for lead and lead compounds, Kuli Kuli  
15 shall use the phrase “cancer and” in the warning if Kuli Kuli has reason to believe that the  
16 “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to  
17 the quality control methodology set forth in Section 2.1.2. Kuli Kuli also may include the  
18 reference to cancer if Kuli Kuli has reason to believe that another Proposition 65 chemical is  
19 present which may require a cancer warning. As identified in the brackets, the warning shall  
20 appropriately reflect whether there is lead or cadmium present in each of the Covered Products.  
21 The words “chemicals including” may be deleted from the warning content if the warning is  
22 being provided for an exposure to a single chemical.

23           The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed  
24 on the Covered Product’s packaging or label with such conspicuousness, as compared with  
25 other words, statements, or designs as to render it likely to be read and understood by an  
26 ordinary individual under customary conditions of purchase or use. If the warning is provided  
27 on the label, it must be set off from other surrounding information and enclosed in a box. In  
28 addition, for any Covered Product sold over the internet where a California delivery address is

1 indicated, the warning shall be provided either by including the warning on the product display  
2 page, by otherwise prominently displaying the warning to the purchaser during the checkout  
3 process prior to completing the purchase, or by any other means authorized under Section  
4 25607.1 of Title 27 of the California Code of Regulations. An asterisk or other identifying  
5 method must be utilized to identify which products on the checkout page are subject to the  
6 warning.

7 In the event Kuli Kuli provides the warning pursuant to OPTION 2, above, the entire  
8 warning must be in a type size no smaller than the largest size used for other consumer  
9 information on the product, and in no case shall the warning appear in a type size smaller than  
10 6-point type. For all warnings, the word “WARNING” shall be in all capital letters in bold  
11 print. Any additional statements in the warning shall comply with Title 27, California Code of  
12 Regulations, Section 25601(e).

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

15 Pursuant to Health and Safety Code section 25249.7(b), Kuli Kuli shall pay civil  
16 penalties in the amount of \$1,000.00. The penalty payment shall be allocated according to  
17 Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid  
18 to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the  
19 remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting  
20 Kuli Kuli’s penalty payment under this Consent Judgment to OEHHA. Within five (5) business  
21 days of the Court’s approval of this Consent Judgment, Kuli Kuli shall issue a check payable to  
22 “Safe Products for Californians, LLC” in the amount of \$250.00, and a check payable to  
23 OEHHA in the amount of \$750.00. These penalty payments shall be delivered to the address  
24 listed in Section 3.3 below.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 For all work performed as a result of investigating, bringing this matter to Defendants’  
27 attention and negotiating a settlement in the public interest through the mutual execution of this  
28 Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on

1 appeal, if any, Kuli Kuli shall reimburse SPFC and its counsel \$19,750.00. The Parties  
2 negotiated this resolution of the compensation due to SPFC and its counsel under general  
3 contract principles and the private attorney general doctrine codified at California Code of  
4 Civil Procedure § 1021.5. Kuli Kuli's payment shall be due within five (5) business days of the  
5 Court's approval of this Consent Judgment and delivered to the address in Section 3.3 in the  
6 form of a check payable to "Safe Products for Californians, LLC." The reimbursement shall  
7 cover all fees and costs incurred by SPFC investigating, bringing this matter to Defendants'  
8 attention, litigating, and negotiating a settlement of the matter in the public interest.

### 9 **3.3 Payment Procedures**

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

12 Safe Products for Californians, LLC  
13 Attn: Mission Law Firm  
14 332 North Second Street  
15 San Jose, California 95112

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

## 22 **4. CLAIMS COVERED AND RELEASED**

### 23 **4.1 SPFC's Release of Proposition 65 Claims**

24 This Consent Judgment is a full, final and binding resolution between SPFC, on behalf  
25 of itself and in the public interest, its past and current agents, representatives, attorneys,  
26 successors, and assignees, and Kuli Kuli, its parents, subsidiaries, affiliated entities under  
27 common ownership, directors, officers, agents employees, attorneys, and each entity to whom  
28 Kuli Kuli directly or indirectly distributes or sells Covered Products, including, but not limited  
to, SF Markets, LLC, downstream distributors, wholesalers, customers, retailers, franchisees,

1 cooperative members, marketplace hosts and licensees (collectively, “Releasees”), from all  
2 claims for any violation of Proposition 65 through the Effective Date that were or could have  
3 been asserted by SPFC relating to the Covered Products. Compliance with the terms of this  
4 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
5 cadmium and/or lead and lead compounds from the Covered Products, as set forth in the  
6 Notice. The Parties further understand and agree that this Section 4.1 release shall not extend  
7 upstream to any entities that manufactured the Covered Products or any component parts  
8 thereof, or any distributors or suppliers who sold the Covered Products or any component parts  
9 thereof to Kuli Kuli.

#### 10 **4.2 SPFC’s Individual Release of Claims**

11 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,  
12 successors, and assignees, provides a release herein which shall be effective as a full and final  
13 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
14 attorneys’ fees, damages, losses, claims, liabilities, and demands of SPFC of any nature,  
15 character, or kind, whether known or unknown, suspected or unsuspected, limited to and  
16 arising out of alleged or actual exposures to cadmium and/or lead and lead compounds in the  
17 Covered Products manufactured, imported, distributed, or sold by Kuli Kuli prior to the  
18 Effective Date. The Parties further understand and agree that this Section 4.2 release shall not  
19 extend upstream to any entities that manufactured the Covered Products, or any component  
20 parts thereof, or any distributors or suppliers who sold the Covered Products, or any  
21 component parts thereof to Kuli Kuli. Nothing in this section affects SPFC’s right to  
22 commence or prosecute an action under Proposition 65 against a Releasee that does not involve  
23 Kuli Kuli’s Covered Products.

24 In further consideration of the promises and agreements herein contained, and for the  
25 payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current  
26 agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and  
27 waives any right to institute, participate in, directly or indirectly, any form of legal action and  
28 releases all claims that it may have, including without limitation, all actions and causes of



1 action in law and in equity, all obligations, expenses (including without limitation all  
2 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and  
3 demands against any of the Releasees of any nature, character, or kind, whether known or  
4 unknown, suspected or unsuspected, limited to and arising out of the allegations made in the  
5 Notice and Complaint.

6 **4.3 Kuli Kuli's Release of SPFC**

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

13 **4.4 Waiver of Civil Code Section 1542**

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

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
19 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
20 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF  
21 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS  
OR HER SETTLEMENT WITH THE DEBTOR.

22 **5. COURT APPROVAL**

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

1 acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed  
2 motion is required for judicial approval of this Consent Judgment, which motion SPFC shall  
3 draft and file and Kuli Kuli 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  
6 of 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 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of  
12 this Consent Judgment are rendered inapplicable or no longer required as a result of any such  
13 repeal or preemption or rendered inapplicable by reason of law generally as to the Covered  
14 Products, then Kuli Kuli shall provide written notice to SPFC of any asserted change in the law  
15 and shall have no further injunctive obligations pursuant to this Consent Judgment with respect  
16 to, and to the extent that, the Covered Products are so affected. If the Office of Environmental  
17 Health Hazard Assessment promulgates one or more regulations governing the provision of  
18 Proposition 65 warnings for foods, Kuli Kuli may comply with such regulations as to the  
19 Covered Products without being deemed in breach of this Consent Judgment. Nothing in this  
20 Consent Judgment shall be interpreted to relieve Kuli Kuli from any obligation to comply with  
21 any pertinent state or federal toxics control law.

22 **8. NOTICE**

23 Unless specified herein, all correspondence and notices required to be provided  
24 pursuant to this Consent Judgment shall be in writing and: (i) personally delivered, (ii) sent by  
25 first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight  
26 courier, to one Party by the other Party at the following addresses:  
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1 To Kuli Kuli:  
2 Jordan Moncharmont  
3 Kuli Kuli, Inc.  
4 600 Grand Ave., Suite 410B  
Oakland, CA 94610

To SPFC:  
Safe Products for Californians, LLC  
c/o Mission Law Firm  
332 North Second Street  
San Jose, California 95112

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

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

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

11 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

14 **11. MODIFICATION**

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

18 **12. OTHER TERMS**

19 **12.1 No Other Agreements**

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

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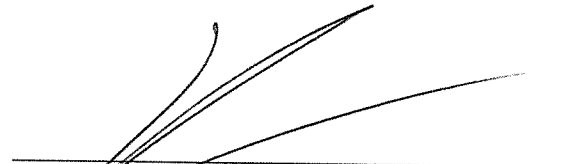
**12.2 Construction**

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

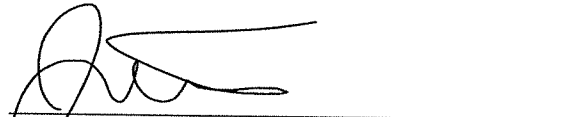
**13. AUTHORIZATION**

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: 11/29/18

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

Dated: 26 November 2018

  
Kuli Kuli, Inc.  
By: Jordan Moncharmont, CFO