

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Safe Products for Californians LLC (“SPFC”) and Chimex Seeds Roots & Herbs L.L.C. and HomeGoods, Inc. (collectively “Respondents”). SPFC and Respondents are collectively referred to as the “Parties.” SPFC is a limited liability California company with its principal place of business within the State of California, County of Santa Clara, who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. For the purposes of this Settlement Agreement, the Parties agree that Respondents are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

SPFC alleges that Respondents manufacture, import, sells and/or distribute for sale in California, products containing cadmium and lead and lead compounds, and that they do so without providing the health hazard warning that SPFC alleges is required by Proposition 65. Cadmium and lead and lead compounds are listed pursuant to Proposition 65 as chemicals known to the state of California to cause cancer and reproductive toxicity.

1.3 Product Description

The products that are covered by this Settlement Agreement are identified as: “NutriVitaePlus – Flax Seed Blend with Garcinia Cambogia,” UPC# 6-89076-03794-5; “Green Vitae Essence - Green Superfood,” UPC# 0-19962-07020-4; “Moringa Vitae - Moringa Leaf Powder,” UPC# 0-19962-32980-7; and “NutriVitaePlus - Flaxseed Blend with Oat Bran,” UPC#

6-89076-03794-5; that are manufactured, imported, distributed, sold and/or offered for sale by Respondents and/or their customers in the state of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about September 5, 2018, SPFC served Respondents, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Respondents violated Proposition 65 when they failed to warn their customers and consumers in California that the Products expose users to cadmium and/or lead and lead compounds. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Respondents deny the material, factual and legal allegations contained in the Notice and maintains that all products that they have manufactured, imported, sold and/or distributed for sale in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Respondents of any fact, finding, and issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Respondents of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which this document has been signed by all Parties.

2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

As of the Effective Date, and continuing thereafter, Respondents shall only sell or offer for sale in California Products accompanied with one of the warnings described below.

There shall be no obligation for Respondents to provide either of the below warnings for Products that entered into the stream of commerce prior to the Effective Date.

OPTION 1:

“[new Prop 65 symbol] **WARNING:** Consuming this product can expose you to chemicals including cadmium and lead and lead compounds which are known to the State of California to cause cancer and birth defects and other reproductive harm. For more information go to: www.P65warnings.CA.gov/food”

OR:

OPTION 2:

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

The warning provided pursuant to Section 2.1 shall be prominently affixed to or printed upon the container or label of each Product. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Product sold over the internet where a California delivery address is indicated, the Warning shall be provided either by including the Warning on the product display page, by otherwise prominently displaying the Warning to the purchaser during the checkout process prior to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27 of the California Code of Regulations. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning.

In the event Respondents provide the Warning pursuant to OPTION 2, above, the entire Warning must be in a type size no smaller than the largest size used for other consumer information on the product, and in no case shall the Warning appear in a type size smaller than 6-point type. For all Warnings, the word “**WARNING**” shall be in all capital letters in bold print. No statements intended to or likely to have the effect of diminishing the impact of the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany

the Warning that state or imply that the source of the listed chemicals have an impact on or results in a less harmful effect of the listed chemicals.

Respondents 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.

3. MONETARY PAYMENTS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b), Respondents shall pay civil penalties in the amount of \$1,000.00. 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 Respondents' penalty payment under this Settlement Agreement to OEHHA. Within ten (10) days of this Agreement being signed by all Parties, Respondents shall issue a check payable to "Moore Law Firm, P.C., Trust Account" in the amount of \$250.00, and a check payable to OEHHA in the amount of \$750.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that SPFC and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Respondents expressed a desire to resolve SPFC's fees and costs. The Parties then negotiated a 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 section 1021.5. For all work performed

through the mutual execution of this agreement, Respondents shall reimburse SPFC and their counsel \$8,000.00 within forty-five (45) days of this Agreement being signed by all Parties. Respondents' payment shall be delivered to the address in Section 3.3 in the form of a check payable to "Moore Law Firm, P.C." The reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter to Respondents' attention and negotiating a settlement of the matter in the public interest.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 SPFC's Release of Proposition 65 Claims

SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, releases Respondents, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Respondents directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date that were or could have been asserted by SPFC relating to the Products. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to cadmium and lead and lead compounds from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Respondents.

4.2 SPFC's Individual Releases of Claims

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

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, SPFC, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the allegations made in the Notice.

4.3 Respondents' Release of SPFC

Respondents, on behalf of themselves, their 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 its 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 Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement 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 or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Respondents shall provide written notice to SPFC of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Respondents from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

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

For Respondents:

Hackler Flynn & Associates,
APC
597 Monterey Pass Road
Monterey Park, CA 91754

For SPFC:

Proposition 65 Coordinator
Moore Law Firm, P.C.
332 N 2nd Street
San Jose, CA 95112

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

8. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

9. COUNTERPARTS; FACSIMILE AND SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

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

11. MODIFICATION

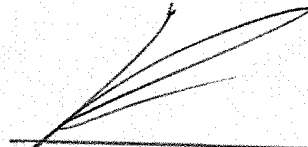
This Settlement Agreement may be modified only by a written agreement of the Parties.

12. AUTHORIZATION

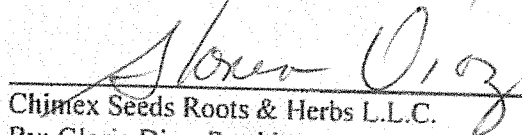
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

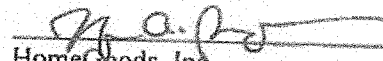
Dated: 11/29/18


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

Dated: 11/27/18


Chimex Seeds Roots & Herbs L.L.C.
By: Gloria Diaz, President

Dated: 11/27/18


HomeGoods, Inc.
By: Jennifer Regan (name), VP, legal to The TJX Companies, Inc. (title)
(ultimate parent of HomeGoods, Inc.)