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Moon Juice, LLC and Moon Juice Ventures, LLC
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14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF SANTA CLARA**
16

17 SAFE PRODUCTS FOR CALIFORNIANS,)
LLC,)

18 Plaintiff,)

19 vs.)

20 MOON JUICE LLC, et al.;)

21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

No. 19CV344299

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff
4 Safe Products for Californians, LLC (“SPFC”) and defendants Moon Juice LLC and Moon Juice
5 Ventures, LLC (collectively “Moon Juice”). SPFC and Moon Juice are each referred to
6 individually as a “Party” and collectively as the “Parties.”

7 **1.2 SPFC**

8 SPFC is a limited liability California company with its principal place of business within
9 the State of California, County of Santa Clara, who seeks to promote awareness of exposures to
10 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
11 contained in consumer products.

12 **1.3 Moon Juice**

13 SPFC alleges, and, for purposes of this Consent Judgment, Moon Juice does not dispute,
14 that Moon Juice employ ten or more persons and are persons in the course of doing business for
15 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
16 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 SPFC alleges that powdered dietary supplements that Moon Juice manufacture, import,
19 sell and/or distribute for sale in California cause exposure to lead and lead compounds
20 (hereinafter referred to as “lead”) and cadmium and that they do so without providing the health
21 hazard warning that SPFC alleges is required by Proposition 65.

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are powdered dietary
24 supplements manufactured, imported, distributed, sold and/or offered for sale by Moon Juice,
25 identified in SPFC’s Notice of Violation as Powdered Dietary Supplements, including but not
26 limited to: Energy Food Maca 5:1 Concentrated Extract,” “Beauty Dust,” “Deep Chocolate
27 Adaptogenic Protein,” “Vanilla Mushroom Adaptogenic Protein,” “Stress Relief Ashwagandha
28 8:1 Concentrated Extract,” “Sex Dust,” and “Brain Dust,” that are manufactured, imported,

distributed, sold and/or offered for sale by Moon Juice and/or its customers in the state of California, hereinafter the “Covered Products.”

1.6 Notice of Violation

On or about September 5, 2018, SPFC served Moon Juice, and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that Moon Juice violated Proposition 65 when they failed to warn their customers and consumers in California that the Covered Products expose users to cadmium and lead and lead compounds. A true and correct copy of the 60-Day Notice dated February 22, 2018 is attached hereto as **Exhibit A**. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On or about March 11, 2019, SPFC commenced the instant action against Moon Juice for the alleged violations of Proposition 65 that are the subject of the Notice (“the Complaint”).

1.8 No Admission

Moon Juice 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 applicable laws. Nothing in this Consent Judgment shall be construed as an admission by Moon Juice 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 Moon Juice of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Moon Juice. 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 Moon Juice 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

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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 the date on which the Court enters this Consent Judgment.

2. INJUNCTIVE RELIEF

2.1 Product Removal

Beginning six (6) months from the Effective Date, Moon Juice 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 day and/or “Daily Cadmium Exposure Level” of more than 4.1 micrograms per day, unless it meets the warning requirements under section 2.3.

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

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

2.1.3 For purposes of this Consent Judgment, the “Daily Cadmium Exposure Level” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of

the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily shall be one.

2.2 Reformulated Covered Products

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

2.3 Clear and Reasonable Warnings

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

OPTION 1:

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

OR:

OPTION 2:

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

In connection with providing a cancer warning for lead and lead compounds, Moon Juice shall use the phrase “cancer and” in the warning if Moon Juice has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 2.1.2. Moon Juice also may include the reference to cancer if Moon Juice has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there is lead or cadmium present in each of the Covered Products.

1 The words “chemicals including” may be deleted from the warning content if the warning is
2 being provided for an exposure to a single chemical.

3 The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed
4 on the Covered Product’s packaging or label with such conspicuousness, as compared with other
5 words, statements, or designs as to render it likely to be read and understood by an ordinary
6 individual under customary conditions of purchase or use. If the warning is provided on the label,
7 it must be set off from other surrounding information and enclosed in a box. In addition, for any
8 Covered Product sold over the internet where a California delivery address is indicated, the
9 warning shall be provided either by including the warning on the product display page, by
10 otherwise prominently displaying the warning to the purchaser during the checkout process prior
11 to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27
12 of the California Code of Regulations. An asterisk or other identifying method must be utilized
13 to identify which products on the checkout page are subject to the warning.

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

20 If subsequently enacted changes to Proposition 65 or its implementing regulations require
21 the use of additional or different information on any warning, the Parties agree that the new safe
22 harbor warning may be utilized in place of the warnings set forth in this Section.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

25 Pursuant to Health and Safety Code section 25249.7(b), Moon Juice shall pay civil
26 penalties in the amount of \$4,000.00. The penalty payment shall be allocated according to Health
27 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the
28 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining

1 25% of the penalty paid to SPFC. SPFC's counsel shall be responsible for remitting Moon
2 Juice's penalty payment under this Consent Judgment to OEHHA. Within five (5) days of the
3 Effective Date, Moon Juice shall issue a check payable to "Safe Products for Californians, LLC"
4 in the amount of \$1,000.00, and a check payable to OEHHA in the amount of \$3,000.00. These
5 penalty payments shall be delivered to the address listed in Section 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 Moon Juice's
8 attention and negotiating a settlement in the public interest through the mutual execution of this
9 Consent Judgment and the Court's approval of the same, but exclusive of fees and costs on
10 appeal, if any, Moon Juice shall reimburse SPFC and its counsel a total of \$17,500.00. The
11 Parties negotiated this resolution of the compensation due to SPFC and its counsel under general
12 contract principles and the private attorney general doctrine codified at California Code of Civil
13 Procedure § 1021.5. These payments shall be in the form of checks payable to "Safe Products
14 for Californians, LLC" and shall be delivered to the address listed in Section 3.3 below as
15 follows: (1) \$6,000 within five (5) days of the Effective Date; (2) \$7,500 within thirty-five (35)
16 days of the Effective Date; and (3) \$4,000 within sixty-five (65) days of the Effective Date. The
17 reimbursement shall cover all fees and costs incurred by SPFC investigating, bringing this matter
18 to Moon Juice's attention, litigating, and negotiating a settlement of the matter in the public
19 interest.

20 **3.3 Payment Procedures**

21 The payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following
22 address:

23 Safe Products for Californians, LLC
24 Attn: Moore Law Firm
25 332 North Second Street
San Jose, California 95112

26 If any payment required hereunder is not received within five days of the date it is due,
27 Moon Juice shall be required to pay an additional \$50.00 as and for a late fee. In the event that
28 any payment required hereunder is returned for insufficient funds, closed account, or any other

1 reason, Moon Juice shall be required to pay a returned check fee of \$25.00, in addition to the
2 late fee as set forth above if the replacement payment is not received within five days of the
3 original payment due date. If any payment required hereunder is not received within fourteen
4 days of the date it is due, all remaining payments shall immediately become due and payable.

5 If for any reason this Consent Judgment is not entered by the Court within one year of
6 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with Moon
7 Juice about mutually agreeable steps the Parties can take to ensure entry of the Consent
8 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to
9 Moon Juice any and all monies paid by Moon Juice herein under Sections 3.1 and 3.2 upon Moon
10 Juice's written request.

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 SPFC's Release of Proposition 65 Claims**

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

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

2 SPFC, on behalf of itself, its past and current agents, representatives, attorneys,
3 successors, and assignees, hereby fully releases and discharges Releasees, as a bar to all actions,
4 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities,
5 and demands of SPFC of any nature, character, or kind, whether known or unknown, suspected
6 or unsuspected, limited to and arising out of alleged or actual exposures to cadmium and/or lead
7 and lead compounds in the Covered Products manufactured, imported, distributed, or sold by
8 Moon Juice prior to the Effective Date. The Parties further understand and agree that this Section
9 4.2 release shall not extend upstream to any entities that manufactured the Covered Products, or
10 any component parts thereof, or any distributors or suppliers who sold the Covered Products, or
11 any component parts thereof to Moon Juice. Nothing in this section affects SPFC's right to
12 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
13 Moon Juice's Covered Products.

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

24 **4.3 Moon Juice's Release of SPFC**

25 Moon Juice, on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and assignees, hereby waives any and all claims against SPFC and its attorneys and
27 other representatives, for any and all actions taken or statements made (or those that could have
28 been taken or made) by SPFC and their attorneys and other representatives, whether in the course

1 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter
2 with respect to the Covered Products.

3 **4.4 Waiver of Civil Code Section 1542**

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

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

13 **5. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one
16 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend
17 that time period due to what they mutually agree are reasonably unforeseeable circumstances.
18 SPFC and Moon Juice agree to support the entry of this agreement as a judgment, and to obtain
19 the Court's approval of their settlement in a timely manner. The Parties acknowledge that,
20 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required
21 for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Moon
22 Juice shall support, appearing at the hearing if so requested.

23 **6. SEVERABILITY**

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

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1 **7. GOVERNING LAW**

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

15 **8. NOTICE**

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

20 To Moon Juice:

To SPFC:

21 Abhishek K. Gurnani
22 Amin Talati Upadhye, LLP
100 S. Wacker Dr. Suite 2000
23 Chicago, IL 60606

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

24 Any Party, from time to time, may specify in writing to the other Party a change of
25 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 .pdf
3 signature, each of which shall be deemed an original, and all of which, when taken together,
4 shall constitute one and the same document.

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 SPFC agrees to comply with the reporting requirements referenced in Health & Safety
7 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. Each
12 party shall bear their own fees and costs in seeking modification of the Consent Judgment. In
13 the event that Proposition 65 is repealed or preempted, then Moon Juice shall have no further
14 obligation as to injunctive terms pursuant to this Consent Judgment with respect to, and to the
15 extent that the Covered Products are so affected.

16 **12. OTHER TERMS**

17 **12.1 No Other Agreements**

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

25 **12.2 Enforcement of Consent Judgment**

26 This Court shall retain jurisdiction of this matter to enforce, modify, or terminate this
27 Consent Judgment. If SPFC alleges that any Covered Product fails to qualify as a Reformulated
28 Covered Product (for which SPFC alleges that no Warning has been provided), then SPFC shall

1 inform Moon Juice, pursuant to the Notice provisions at paragraph 8 above, in a reasonably
2 prompt manner of its test results, including information sufficient to permit Moon Juice to
3 identify the Covered Products at issue. SPFC and Moon Juice will make a good faith attempt
4 to resolve any such disputes within 60 days of SPFC providing notice to Moon Juice of such
5 allegations. If SPFC is not satisfied with the resolution of the dispute after said 60-day period
6 has passed, SPFC may take any legal action it deems necessary with regard to such allegations.

7 **12.3 Construction**

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

17 **12.4 Application of Consent Judgment**

18 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
19 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
20 affiliates under common ownership (full or partial), divisions, franchisees, licensees, customers,
21 distributors, wholesalers, retailers, predecessors, successors, and assigns. This Consent
22 Judgment shall have no application to any Covered Product which is distributed or sold
23 exclusively outside the State of California.

24 **13. AUTHORIZATION**

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

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Dated: Apr 1, 2019


Kenneth R Moore (Apr 1, 2019)
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

Dated: 3/14/19


Moon Juice LLC
By: L SHAFF

Dated: 3/14/19


Moon Juice Ventures, LLC
By: L SHAFF