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

10  
11 SAFE PRODUCTS FOR CALIFORNIANS, ) No. 19CV342125  
LLC, )  
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 DPL Trading, Inc. (“DPL  
23 Trading”). SPFC and DPL Trading are each referred to individually as a “Party” and collectively  
24 as the “Parties.” Defendant Amazon.com, Inc., is an intended third-party beneficiary of this  
25 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

[PROPOSED] CONSENT JUDGMENT

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

3 **1.3 DPL Trading**

4 For the purposes of this consent judgment, SPFC alleges that DPL Trading employs ten  
5 or more persons and is a person in the course of doing business for purposes of the Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5  
7 *et seq.* (“Proposition 65”).

8 **1.4 General Allegations**

9 SPFC alleges that the powdered dietary supplements that DPL Trading manufactures,  
10 imports, sells and/or distributes for sale in California cause exposure to lead and lead compounds  
11 (hereinafter referred to as “lead”) and that DPL Trading does so without providing the health  
12 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 identified as “Organic  
15 Moringa Leaf Powder,” “Organic Spirulina,” “Organic Sunflower Lecithin,” “Organic Maca  
16 Powder,” “Organic Barley Grass Powder,” “Organic Turmeric Root Powder,” and “Organic  
17 Ashwagandha Powder,” that are manufactured, imported, distributed, sold and/or offered for sale  
18 by DPL Trading and/or its customers in the state of California, hereinafter the “Covered  
19 Products.”

20 **1.6 Notice of Violation**

21 On or about October 19, 2018, SPFC served DPL Trading, and certain requisite public  
22 enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that DPL Trading  
23 violated Proposition 65 when it failed to warn its customers and consumers in California that the  
24 Covered Products expose users to lead. To the best of the Parties’ knowledge, no public enforcer  
25 has commenced and is diligently prosecuting the allegations set forth in the Notice.

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1           **1.7     Complaint**

2           On January 18, 2019, SPFC commenced the instant action (the “Action”) for the alleged  
3 violations of Proposition 65 that are the subject of the Notice. On August 18, 2022,<sup>3</sup>SPFC  
4 amended its Complaint to name DPL Trading in the Action.

5           **1.8     No Admission**

6           The Parties enter into this Consent Judgment pursuant to a full settlement of disputed  
7 claims between the Parties as alleged in the Action for the purpose of avoiding prolonged  
8 litigation. By execution of this Consent Judgment, DPL Trading does not admit any material,  
9 factual, and legal allegations contained in the Notice and Action, and maintains that all of the  
10 products that it has sold or distributed for sale in California, including the Covered Products,  
11 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be  
12 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of  
13 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission  
14 of any fact, finding, conclusion of law, issue of law, or violation of law, the same being  
15 specifically denied by DPL Trading. Nothing in this Consent Judgment shall prejudice, waive,  
16 or impair any right, remedy or defense that DPL Trading may have in this Action, or any other  
17 further legal proceedings unrelated to this Action. This Section shall not, however, diminish or  
18 otherwise affect DPL Trading’s obligations, responsibilities, and duties under this Consent  
19 Judgment.

20           **1.9     Jurisdiction**

21           For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over DPL Trading as to the allegations contained in the Action, that venue is proper  
23 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the  
24 provisions of this Settlement as a full and final binding resolution of all claims which were or  
25 could have been raised in the Action based on the facts alleged therein and/or notice of this  
26 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

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1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date  
3 that this Consent Judgment is signed by the Court.

4           **2. INJUNCTIVE RELIEF**

5           **2.1 Product Removal**

6           Commencing ninety (90) days after the Effective Date and continuing thereafter, DPL  
7 Trading shall only ship, distribute, sell or offer for sale in California, Reformulated Product  
8 pursuant to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant  
9 to Section 2.3. DPL Trading shall have no obligation to label Covered Products that were shipped  
10 prior to the Effective Date.

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

19           **2.2 Reformulated Covered Products**

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

23           **2.3 Clear and Reasonable Warnings**

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


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1           **OPTION 1:**

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

5           **OR:**

6           **OPTION 2:**

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

8           In connection with providing a cancer warning for lead and lead compounds, DPL  
9 Trading shall use the phrase “cancer and” in the warning if DPL Trading has reason to believe  
10 that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined  
11 pursuant to the quality control methodology set forth in Section 2.1.2. DPL Trading also may  
12 include the reference to cancer if DPL Trading has reason to believe that another Proposition 65  
13 chemical is present which may require a cancer warning. The words “chemicals including” may  
14 be deleted from the warning content if the warning is being provided for an exposure to a single  
15 chemical.

16           The warning provided pursuant to Section 2.3 shall be prominently affixed to or printed  
17 on the Covered Product’s packaging or label with such conspicuousness, as compared with other  
18 words, statements, or designs as to render it likely to be read and understood by an ordinary  
19 individual under customary conditions of purchase or use. If the warning is provided on the label,  
20 it must be set off from other surrounding information and enclosed in a box. In addition, for any  
21 Covered Product sold over the internet where a California delivery address is indicated, the  
22 warning shall be provided either by including the warning on the product display page, by  
23 otherwise prominently displaying the warning to the purchaser during the checkout process prior  
24 to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27  
25 of the California Code of Regulations. An asterisk or other identifying method must be utilized  
26 to identify which products on the checkout page are subject to the warning. The Warning may  
27 be provided with a conspicuous hyperlink stating “WARNING” in all capital and bold letters so  
28 long as the hyperlink goes to a page directly to a page prominently displaying the Warning

1 without content that detracts from the Warning. Given DPL Trading’s lack of control over third-  
2 party websites, the online warning requirements expressed in this section only apply to the  
3 Covered Products when sold through DPL Trading’s website. With respect to any downstream  
4 reseller customers of DPL Trading who are subject to Proposition 65, DPL Trading may give  
5 written notice, including labels, labeling, shelf signs, or tags bearing the Warning and all  
6 necessary warning materials to the authorized agent of such downstream reseller customers.  
7 Such written notice shall instruct the downstream reseller customers that the labels, labeling,  
8 shelf signs, or tags bearing the Warning must be displayed in such conspicuousness, as compared  
9 with other words, statements, or designs, as to render the Warning likely to be seen, read, and  
10 understood by an ordinary individual prior to sale. In the event that warnings requirements under  
11 Proposition 65 are modified after the Effective Date, DPL Trading’s reserves the right to amend  
12 the form and content of its warning label so long as it remains consistent with legal and  
13 regulatory requirements.

14 In the event DPL Trading 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. Further, for Option 2 Warning, a symbol consisting of a black exclamation point  
18 in a yellow equilateral triangle with a bold black outline must be placed to the left of the text of  
19 the warning in a size no smaller than the height of the word “WARNING”. If the sign, label, or  
20 shelf tag for the product is not printed using the color yellow, the symbol may be provided in  
21 black and white. For all warnings, the word “WARNING” shall be in all capital letters in bold  
22 print. Any additional statements in the warning shall comply with Title 27, California Code of  
23 Regulations, Section 25601(e).

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

26 Pursuant to Health and Safety Code section 25249.7(b), DPL Trading shall pay civil  
27 penalties in the amount of \$4,000. The penalty payment shall be allocated according to Health  
28 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the

1 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
2 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting DPL  
3 Trading’s penalty payment under this Consent Judgment to OEHHA. Within five business days  
4 of all Parties signing this Consent Judgment, DPL Trading shall issue a check payable to “Safe  
5 Products for Californians, LLC” in the amount of \$1,000 and a check payable to OEHHA in the  
6 amount of \$3,000. These penalty payments shall be delivered to the address listed in Section 3.3  
7 below.

### 8 **3.2 Reimbursement of Attorneys’ Fees and Costs**

9 For all work performed as a result of investigating, bringing this matter to DPL Trading’s  
10 attention and negotiating a settlement in the public interest through the mutual execution of this  
11 Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on  
12 appeal, if any, DPL Trading shall reimburse SPFC and its counsel \$26,000. The Parties  
13 negotiated this resolution of the compensation due to SPFC and its counsel under general  
14 contract principles and the private attorney general doctrine codified at California Code of Civil  
15 Procedure § 1021.5. DPL Trading’s payment shall be delivered to the address in Section 3.3 in  
16 the form of a check payable to “Moore Law Firm, P.C.” within five business days of all Parties  
17 signing this Consent Judgment. The reimbursement shall cover all fees and costs incurred by  
18 SPFC investigating, bringing this matter to DPL Trading’s attention, litigating, and negotiating  
19 a settlement of the matter in the public 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 Moore Law Firm, P.C.  
24 Attn: Proposition 65 (SPFC)  
25 332 North Second Street  
26 San Jose, California 95112

26 If for any reason this Consent Judgment is not entered by the Court within six months of  
27 the last date on which a party signed the Consent Judgment, SPFC shall meet and confer with  
28 DPL Trading about mutually agreeable steps the Parties can take to ensure entry of the Consent

1 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to  
2 DPL Trading any and all monies paid by DPL Trading herein under Sections 3.1 and 3.2 upon  
3 DPL Trading's written request, no later than 30 days after DPL Trading's demand.

4 **4. CLAIMS COVERED AND RELEASED**

5 **4.1 SPFC's Public Release of Proposition 65 Claims**

6 This Consent Judgment is a full, final, and binding resolution between SPFC, acting on  
7 its own behalf and on behalf of the public interest, releases DPL Trading and its parents,  
8 subsidiaries, partners, joint venturers, affiliated entities under common ownership, directors,  
9 shareholders, officers, employees, and attorneys and the predecessors, agents, suppliers,  
10 successors, or assigns of each of them expressly including Amazon.com, Inc. (the "Releasees").  
11 SPFC, on behalf of itself and in the public interest, hereby fully releases and discharges the  
12 Releasees from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
13 penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling,  
14 use, or consumption of the Covered Products, as to any alleged violation of Proposition 65 or its  
15 implementing regulations arising from the failure to provide Proposition 65 warnings on the  
16 Covered Products regarding lead up to and including the Effective Date. Compliance with the  
17 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
18 exposure to lead from Covered Products as set forth in the Notices of Violations.

19 **4.2 SPFC's Individual Release of Claims**

20 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current  
21 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative  
22 capacity, also provides a release to DPL Trading and the Releasees which shall have preclusive  
23 effect such that SPFC shall not be permitted to pursue and/or take any action with respect to any  
24 other statutory or common law claim to the fullest extent that any such claim was or could have  
25 been asserted by SPFC against DPL Trading and the Releasees, which shall be effective as a full  
26 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
27 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of SPFC of any  
28 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of



1 alleged or actual exposures to lead in Covered Products manufactured, imported, distributed or  
2 sold by DPL Trading and/or the Releasees, or the failure to provide a clear and reasonable  
3 warning of exposure as well as any other claim based in whole or in part on the facts alleged in  
4 the Action and the Notice, based on actions committed before the Effective Date (“Chemical  
5 Exposure Claims”).

6 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code**

7 SPFC, acting on its own behalf only with respect to the Individual Release, waives all  
8 rights to institute any and all manner of actions, causes of action, claims, demands, rights, suits,  
9 obligations, debts, contracts, agreements, promises liabilities, damages, charges, losses, costs,  
10 expenses and attorney’s fees of any nature whatsoever, known or unknown, in law or equity,  
11 fixed or contingent now or in the future with respect to the Covered Products manufactured,  
12 distributed, or sold by DPL Trading and the Releasees who may use, maintain, distribute or sell  
13 the Covered Products, for the Proposition 65 Claims and the Chemical Exposure Claims  
14 (referred to collectively in this Sections as “Claims”). In furtherance of the foregoing, SPFC,  
15 acting on its own behalf only and acting in its individual capacity with respect to the Individual  
16 Release, waives any and all rights and benefits which SPFC now has, or in the future may have,  
17 conferred upon SPFC with respect to the Claims by virtue of the provisions of § 1542 of the  
18 California Civil Code, which provides as follows:

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

25 **4.4 DPL Trading’s Release of SPFC**

26 DPL Trading, on its own behalf and on behalf of its past and current agents,  
27 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against  
28 SPFC and its attorneys and other representatives, for any and all actions taken or statements

1 made (or those that could have been taken or made) by SPFC and its attorneys and other  
2 representatives in the course of investigating claims, seeking to enforce Proposition 65 against  
3 it in this matter leading up to and including the effective date of this agreement.

4 **5. ENTRY OF CONSENT JUDGMENT**

5 The Parties hereby request that the Court promptly enter this Consent Judgment. Upon  
6 entry of this Consent Judgment, SPFC and DPL Trading waive their respective rights to a hearing  
7 or trial on the allegations of the Action and Notice.

8 **5.1 COURT APPROVAL**

9 This Consent Judgment is not effective until it is approved and entered by the Court and  
10 shall be null and void if, for any reason, it is not approved and entered by the Court within six  
11 months after the last date executed by the Parties, unless the Parties mutually agree to extend  
12 that time period due to what they mutually agree are reasonably unforeseeable circumstances.  
13 SPFC and DPL Trading agree to support the entry of this agreement as a judgment, and to obtain  
14 the Court's approval of their settlement in a timely manner. The Parties acknowledge that,  
15 pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required  
16 for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and DPL  
17 Trading shall support, appearing at the hearing if so requested.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of  
24 California and apply within the State of California. In the event that Proposition 65 is repealed,  
25 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered  
26 Products, then DPL Trading may provide SPFC with written notice of any asserted change in  
27 the law, and shall have no further obligations pursuant to this Consent Judgment, with respect  
28 to, and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment

1 shall be interpreted to relieve DPL Trading from its obligation to comply with any pertinent state  
2 or federal law or regulation.

3 **8. NOTICE**

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

8 To DPL Trading:

To SPFC:

9 John A. S. Baik, Esq.  
10 BAIK LAW GROUP APC  
3250 Wilshire Boulevard, Suite 601  
11 Los Angeles, CA 90010

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

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

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

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

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

21 **11. MODIFICATION**

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

25 **12. OTHER TERMS**

26 **12.1 No Other Agreements**

27 This Consent Judgment contains the sole and entire agreement and understanding of the  
28 Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and

1 all prior discussions, negotiations, commitments, or understandings related thereto, if any, are  
2 deemed merged. There are no warranties, representations, or other agreements between the  
3 Parties except as expressly set forth in this Consent Judgment. No representations, oral or  
4 otherwise, express or implied, other than those specifically referred to in this Consent Judgment  
5 have been made by any Party. No other agreements not specifically contained or referenced in  
6 this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties.  
7 No supplementation, modification, waiver, or termination of this Consent Judgment shall be  
8 binding unless executed in writing by the Party to be bound or ordered by the Court. No waiver  
9 of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver  
10 of any of the other provisions whether or not similar, nor shall such waiver constitute a  
11 continuing waiver. Nothing in this Consent Judgment shall release, or in any way affect any  
12 rights that DPL Trading might have against any other party.

13 **12.2 Construction**


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

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1 **13. AUTHORIZATION**

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

5  
6 Dated: Aug 17, 2023

  
KR Moore (Aug 17, 2023 11:48 PDT)  
Safe Products for Californians, LLC  
By: Randy Moore, Operating Manager

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9 Dated: \_\_\_\_\_

\_\_\_\_\_  
DPL Trading, Inc.  
By: \_\_\_\_\_

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11 **IT IS SO ORDERED.**

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13 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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1 **13. AUTHORIZATION**

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

5  
6 Dated: \_\_\_\_\_

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

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9 Dated: 10/11/2022

*George Pu*  
\_\_\_\_\_  
DPL Trading, Inc.  
By: George Pu

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11 **IT IS SO ORDERED.**

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13 Dated: \_\_\_\_\_

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JUDGE OF THE SUPERIOR COURT

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