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

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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.)
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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

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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1.7 Complaint

On January 18, 2019, SPFC commenced the instant action (the “Action”) for the alleged violations of Proposition 65 that are the subject of the Notice. On August 18, 2023, SPFC amended its Complaint to name DPL Trading in the Action.

1.8 No Admission

The Parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the Parties as alleged in the Action for the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, DPL Trading does not admit any material, factual, and legal allegations contained in the Notice and Action, and maintains that all of the products that it has sold 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 of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by DPL Trading. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that DPL Trading may have in this Action, or any other further legal proceedings unrelated to this Action. This Section shall not, however, diminish or otherwise affect DPL Trading’s 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 DPL Trading as to the allegations contained in the Action, that venue is proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of this Settlement as a full and final binding resolution of all claims which were or could have been raised in the Action based on the facts alleged therein and/or notice of this 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

5 **OR:**

6 **OPTION 2:**

7 ** WARNING:** [Cancer and] Reproductive Harm – 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. If consumer information is provided in a foreign
2 language with regard to any Product, the Warning must also be provided in that language. With
3 respect to any downstream reseller customers of DPL Trading who are subject to Proposition 65,
4 DPL Trading may give written notice, pursuant to California Health & Safety Code
5 § 25600.2(b), to the authorized agent for the downstream customer. Any third-party website that
6 does not provide the required warning after receiving such notice is not released for future
7 compliance. In the event that warnings requirements under Proposition 65 are modified after the
8 Effective Date, DPL Trading reserves the right to amend the form and content of its warning
9 label so long as it remains consistent with legal and regulatory requirements.

10 In the event DPL Trading provides the warning pursuant to OPTION 2, above, the entire
11 warning must be in a type size no smaller than the largest size used for other consumer
12 information on the product, and in no case shall the warning appear in a type size smaller than
13 6-point type. Further, for Option 2 Warning, a symbol consisting of a black exclamation point
14 in a yellow equilateral triangle with a bold black outline must be placed to the left of the text of
15 the warning in a size no smaller than the height of the word “WARNING”. If the sign, label, or
16 shelf tag for the product is not printed using the color yellow, the symbol may be provided in
17 black and white. For all warnings, the word “WARNING” shall be in all capital letters in bold
18 print. Any additional statements in the warning shall comply with Title 27, California Code of
19 Regulations, Section 25601(e).

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

22 Pursuant to Health and Safety Code section 25249.7(b), DPL Trading shall pay civil
23 penalties in the amount of \$4,000. The penalty payment shall be allocated according to Health
24 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the
25 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining
26 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting DPL
27 Trading’s penalty payment under this Consent Judgment to OEHHA. Within five business days
28 of all Parties signing this Consent Judgment, DPL Trading shall issue a check payable to “Safe

1 Products for Californians, LLC” in the amount of \$1,000 and a check payable to OEHHA in the
2 amount of \$3,000. These penalty payments shall be delivered to the address listed in Section 3.3
3 below.

4 **3.2 Reimbursement of Attorneys’ Fees and Costs**

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

16 **3.3 Payment Procedures**

17 The payments pursuant to Sections 3.1 and 3.2 shall be delivered to the following
18 address:

19 Moore Law Firm, P.C.
20 Attn: Proposition 65 (SPFC)
21 332 North Second Street
San Jose, California 95112

22 If for any reason this Consent Judgment is not entered by the Court within six months of
23 the last date on which a party signed the Consent Judgment, SPFC shall meet and confer with
24 DPL Trading about mutually agreeable steps the Parties can take to ensure entry of the Consent
25 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to
26 DPL Trading any and all monies paid by DPL Trading herein under Sections 3.1 and 3.2 upon
27 DPL Trading’s written request, no later than 30 days after DPL Trading’s demand.
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 SPFC’s Public Release of Proposition 65 Claims**

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

16 **4.2 SPFC’s Individual Release of Claims**

17 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current
18 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative
19 capacity, also provides a release to DPL Trading and the Releasees which shall have preclusive
20 effect such that SPFC shall not be permitted to pursue and/or take any action with respect to any
21 other statutory or common law claim to the fullest extent that any such claim was or could have
22 been asserted by SPFC against DPL Trading and the Releasees, which shall be effective as a full
23 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
24 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of SPFC of any
25 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
26 alleged or actual exposures to lead in Covered Products manufactured, imported, distributed or
27 sold by DPL Trading and/or the Releasees, or the failure to provide a clear and reasonable
28 warning of exposure as well as any other claim based in whole or in part on the facts alleged in

1 the Action and the Notice, based on actions committed before the Effective Date (“Chemical
2 Exposure Claims”).

3 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code**

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

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

22 **4.4 DPL Trading’s Release of SPFC**

23 DPL Trading, on its own behalf and on behalf of its past and current agents,
24 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
25 SPFC and its attorneys and other representatives, for any and all actions taken or statements
26 made (or those that could have been taken or made) by SPFC and its attorneys and other
27 representatives in the course of investigating claims, seeking to enforce Proposition 65 against
28 it in this matter leading up to and including the effective date of this agreement.

1 **5. ENTRY OF CONSENT JUDGMENT**

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

5 **5.1 COURT APPROVAL**

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

15 **6. SEVERABILITY**

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

19 **7. GOVERNING LAW**

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

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1 **8. NOTICE**

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

6 To DPL Trading:

To SPFC:

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

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

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

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

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

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

19 **11. MODIFICATION**

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

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1 **12. OTHER TERMS**

2 **12.1 No Other Agreements**

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

17 **12.2 Construction**

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


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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: Apr 23, 2024


KRM Moore (Apr 23, 2024 14:36 PDT)

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

Dated: 04/18/2024



DPL Trading, Inc.
By: Yangsheng Pu

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT