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7

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 19CV348901
12 LLC,)
13 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
14 vs.) (Health & Safety Code § 25249.5, *et seq.*)
15 HOMEGOODS, INC., et al.;)
16 Defendants.)
17

18 **1. INTRODUCTION**

19 **1.1 Parties**

20 This Consent Judgment (“Consent Judgment”) is entered into by and between Safe
21 Products for Californians, LLC (“SPFC”) and Orient Solutions Ltd. (“Orient Solutions”). SPFC
22 and Orient Solutions are each referred to individually as a “Party” and collectively as the
23 “Parties.” Defendants HomeGoods, Inc. and T.J. Maxx of CA, LLC (collectively “TJX”) and
24 Amazon.com, Inc. (“Amazon,” and together with Orient Solutions and TJX, collectively referred
25 to as “Defendants”) are intended third-party beneficiaries of this 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 Orient Solutions**

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

8 **1.4 General Allegations**

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

13 **1.5 Product Description**

14 The products that are covered by this Consent Judgment are identified as “Minvita Cacao
15 Superfood Nibs,” UPC 5-060255-370278, S053640; “Minvita Energy Superfood Blend,” UPC
16 5-060255-370476, S064890; “Minvita Mulberry Superfood Blend,” UPC 5-060255-370285,
17 ASIN B00HVEOE4G; “Minvita Moringa Superfood Powder,” UPC 5-060255-370223, ASIN
18 B075CT5P39; and “Minvita Detox Superfood Blend,” UPC 5-060255-370483, ASIN
19 B072J8J5V7; that are manufactured, imported, distributed, sold and/or offered for sale by Orient
20 Solutions and/or its customers in the state of California, hereinafter the “Covered Products.”

21 **1.6 Notice of Violation**

22 On or about November 15, 2018, SPFC served TJX and Amazon, and certain requisite
23 public enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that
24 Defendants violated Proposition 65 when they failed to warn their customers and consumers in
25 California that the Covered Products expose users to lead and lead compounds. To the best of
26 the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
27 allegations set forth in the Notice.

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1 **1.7 Complaint**

2 On May 28, 2019, SPFC commenced the instant action for the alleged violations of
3 Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

5 Orient Solutions denies the material, factual, and legal allegations contained in the Notice
6 and Complaint, and maintains that all of the products that it has sold or distributed for sale in
7 California, including the Covered Products, have been, and are, in compliance with all laws.
8 Nothing in this Consent Judgment shall be construed as an admission of any fact, finding,
9 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent
10 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law,
11 issue of law, or violation of law, the same being specifically denied by Orient Solutions. This
12 Section shall not, however, diminish or otherwise affect Orient Solutions' obligations,
13 responsibilities, and duties under this Consent Judgment.

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Orient Solutions as to the allegations contained in the Complaint, that venue is
17 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
18 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
19 section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
22 that the Court grants the motion for approval of this Consent Judgment contemplated by Section
23 5.

24 **2. INJUNCTIVE RELIEF**

25 **2.1 Reformulated Covered Products**

26 As of the Effective Date, Orient Solutions shall be permanently enjoined from
27 manufacturing for sale in the State of California, "Distributing into the State of California," or
28 directly selling in the State of California, any Covered Products manufactured after the Effective

1 Date that expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of
2 lead per day, unless it meets the warning requirements under section 2.2.

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

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

14 **2.2 Clear and Reasonable Warnings**

15 For any Covered Products manufactured after the Effective Date that do not meet the
16 standard for Reformulated Covered Products in Section 2.1 of this Consent Judgment, Orient
17 Solutions shall provide one of the following warnings:

18 **OPTION 1:**

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

22 OR:

23 **OPTION 2:**

24 “**⚠ WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov”

25 Orient Solutions shall use the phrase “cancer and” in the Warning if Orient Solutions has
26 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead or
27 if Orient Solutions has reason to believe that another Proposition 65 chemical is present which
28

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

3 The warning provided pursuant to Section 2.2 shall be prominently affixed to or printed
4 upon the container or label of each Covered Product. If the Warning is provided on the label, it
5 must be set off from other surrounding information and enclosed in a box. In addition, for any
6 Covered Product Orient Solutions sells over the internet, including but not limited to products
7 sold by Orient Solutions on Amazon.com, where a California delivery address is indicated, the
8 Warning shall be provided either by including the Warning on the product display page, by
9 otherwise prominently displaying the Warning to the purchaser during the checkout process prior
10 to completing the purchase, or by any other means authorized under Section 25607.1 of Title 27
11 of the California Code of Regulations.

12 In the event Orient Solutions provides the Warning pursuant to OPTION 2, above, the
13 entire Warning must be in a type size no smaller than the largest size used for other consumer
14 information on the product, and in no case shall the Warning appear in a type size smaller than
15 6-point type. For all Warnings, the word “WARNING” shall be in all capital letters in bold print.
16 No statements intended to or likely to have the effect of diminishing the impact of the Warning
17 on the average lay person shall accompany the Warning. Further, no statements may accompany
18 the Warning that state or imply that the source of the listed chemical has an impact on or results
19 in a less harmful effect of the listed chemical.

20 Orient Solutions must display the above Warning on the Covered Products’ packaging,
21 labeling, website or instruction booklet and displayed with such conspicuousness, as compared
22 with other words, statements, or designs as to render it likely to be read and understood by an
23 ordinary individual under customary conditions of purchase or use.

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), Orient Solutions shall pay civil
27 penalties in the amount of \$1,000.00. 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 Orient
3 Solutions’ penalty payment under this Consent Judgment to OEHHA. Within ten (10) business
4 days of the Effective Date, Orient Solutions shall issue a check payable to “Safe Products for
5 Californians, LLC” in the amount of \$250.00, and a check payable to OEHHA in the amount of
6 \$750.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 For all work performed as a result of investigating, bringing this matter to Defendants’
9 attention and negotiating a settlement in the public interest through the mutual execution of this
10 Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on
11 appeal, if any, Orient Solutions shall reimburse SPFC and its counsel \$10,000.00. The Parties
12 negotiated this resolution of the compensation due to SPFC and its counsel under general
13 contract principles and the private attorney general doctrine codified at California Code of Civil
14 Procedure § 1021.5. Orient Solutions’ payment shall be due within ten (10) business days the
15 Effective Date, and delivered to the address in Section 3.3 in the form of a check payable to
16 “Moore Law Firm, P.C.” The reimbursement shall cover all fees and costs incurred by SPFC
17 investigating, bringing this matter to Defendants’ attention, litigating, and negotiating a
18 settlement of the matter in the public interest.

19 **3.3 Payment Procedures**

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

22 Moore Law Firm, P.C.
23 Attn: Proposition 65 (SPFC)
24 332 North Second Street
25 San Jose, California 95112
26
27
28

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 SPFC's Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final and binding resolution between SPFC, on behalf
4 of itself and in the public interest, its past and current agents, representatives, attorneys,
5 successors, and assignees, and Orient Solutions, Amazon, and TJX including each of their
6 parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
7 employees, and attorneys and the predecessors, successors, or assigns of each of them
8 ("Releasees") and each entity to whom Orient Solutions directly or indirectly distribute or sell
9 the Covered Products including, but not limited to, their downstream distributors, wholesalers,
10 customers, retailers, franchisers, cooperative members, licensors and licensees including, but not
11 limited to, TJX ("Downstream Releasees") for all claims for any violations arising under
12 Proposition 65 for unwarned exposures to lead from the Covered Products manufactured,
13 imported, distributed or sold by Defendants prior to the Effective Date, as set forth in the Notice.
14 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
15 65 by Defendants with respect to the alleged or actual failure to warn about exposures to lead
16 from Covered Products manufactured, sold or distributed for sale by Orient Solutions after the
17 Effective Date.

18 **4.2 SPFC's Individual Release of Claims**

19 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current
20 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative
21 capacity, also provides a release to Defendants, Releasees, and Downstream Releasees, which
22 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
23 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
24 demands of SPFC of any nature, character or kind, whether known or unknown, suspected or
25 unsuspected, arising out of alleged or actual exposures to lead in Covered Products
26 manufactured, imported, distributed or sold by Defendants before the Effective Date.

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1 **4.3 Orient Solutions's Release of SPFC**

2 Orient Solutions, on its own behalf and on behalf of its past and current agents,
3 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
4 SPFC and its attorneys and other representatives, for any and all actions taken or statements
5 made (or those that could have been taken or made) by SPFC and its attorneys and other
6 representatives in the course of investigating claims, seeking to enforce Proposition 65 against
7 it in this matter, or with respect to the Covered Products.

8 **4.4 Waiver of Civil Code Section 1542**

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

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

18 **5. COURT APPROVAL**

19 This Consent Judgment is not effective until it is approved and entered by the Court and
20 shall be null and void if, for any reason, it is not approved and entered by the Court within one
21 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend
22 that time period due to what they mutually agree are reasonably unforeseeable circumstances.
23 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f),
24 a noticed motion is required for judicial approval of this Consent Judgment, which motion SPFC
25 shall draft and file.

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1 **6. 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 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
5 Products, then Orient Solutions may provide SPFC with written notice of any asserted change in
6 the law, and shall have no further obligations pursuant to this Consent Judgment, with respect
7 to, and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
8 shall be interpreted to relieve Orient Solutions from its obligation to comply with any pertinent
9 state or federal law or regulation.

10 **7. NOTICE**

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

15 To Orient Solutions:

 To SPFC:

16 Orient Solutions Ltd.
17 Park House
18 15-19 Greenhill Crescent
19 Watford
20 WD18 8PH

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

21 With copy to:
22 Jeff Margulies
23 Norton Rose Fulbright US LLP
24 555 South Flower Street, 40th Floor
25 Los Angeles, CA 90043

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

28 **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **9. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **10. MODIFICATION**

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

8 **11. OTHER TERMS**

9 **11.1 No Other Agreements**

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

24 **11.2 Construction**

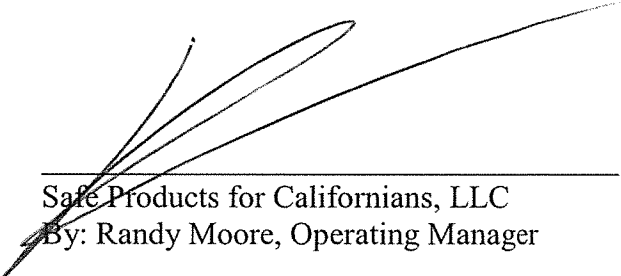
25 The Parties have participated in the preparation of this Consent Judgment and this
26 Consent Judgment is the result of the joint efforts of the Parties. Each Party has had the
27 opportunity to consult counsel with regard to the preparation of this Consent Judgment. This
28 Consent Judgment was subject to revision and modification by the Parties and has been accepted

1 and approved as to its final form by all Parties. Accordingly, any uncertainty or ambiguity
2 existing in this Consent Judgment shall not be interpreted against any Party as a result of the
3 manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
4 that any statute or rule of construction providing that ambiguities are to be resolved against the
5 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
6 regard the Parties hereby waive California Civil Code section 1654.

7 **12. AUTHORIZATION**

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

11
12 Dated: 7/10/19

13 
Safe Products for Californians, LLC
By: Randy Moore, Operating Manager

14
15 Dated: _____

16 Oriental Solutions Ltd.
By: _____(name), _____(title)

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2 existing in this Consent Judgment shall not be interpreted against any Party as a result of the
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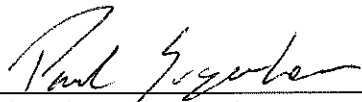
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9 respective Parties and have read, understood, and agree to all of the terms and conditions of this
10 Consent Judgment.

11
12 Dated: _____

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

13
14
15 Dated: 03/07/19



Oriental Solutions Ltd.
By: Paul Gugenheim (name), Director (title)