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13 Attorneys for Defendant
EHP Labs Distribution LLC
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15 **SUPERIOR COURT OF CALIFORNIA**
16 **COUNTY OF SANTA CLARA**

17
18 SAFE PRODUCTS FOR CALIFORNIANS,) No. 19CV343837
LLC,)
19 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
20 vs.) (Health & Safety Code § 25249.5, *et seq.*)
21 EHP LABS DISTRIBUTION LLC, et al.;)
22 Defendants.)
23)
24)

25 **1. INTRODUCTION**

26 **1.1 Parties**

27 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff
28 Safe Products for Californians, LLC (“SPFC”) and defendant EHP Labs Distribution LLC

[PROPOSED] CONSENT JUDGMENT

1 (“EHP Labs”). SPFC and EHP Labs are each referred to individually as a “Party” and
2 collectively as the “Parties.”

3 **1.2 SPFC**

4 SPFC is a limited liability California company with its principal place of business within
5 the State of California, County of Santa Clara, who seeks to promote awareness of exposures to
6 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
7 contained in consumer and commercial products.

8 **1.3 EHP Labs**

9 For the purposes of this Consent Judgment, SPFC alleges that EHP Labs employs ten or
10 more persons and is a person in the course of doing business for purposes of the Safe Drinking
11 Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5
12 *et seq.* (“Proposition 65”).

13 **1.4 General Allegations**

14 SPFC alleges that the Powdered Dietary Supplements that EHP Labs manufactures,
15 imports, sells and/or distributes for sale in California cause exposure to lead and that EHP Labs
16 does so without providing the health hazard warning that SPFC alleges is required by Proposition
17 65.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are identified as “Blessed
20 Protein – Choc Coconut,” UPC# 8-58221-00747-2; “Blessed Protein – Vanilla Chai,” UPC# 8-
21 58221-00748-9; “Blessed Protein – Salted Caramel,” UPC# 8-58221-00746-5, that are
22 manufactured, imported, distributed, sold and/or offered for sale by EHP Labs and/or its
23 customers in the state of California, hereinafter the “Covered Products.”

24 **1.6 Notice of Violation**

25 On or about November 30, 2018, SPFC served EHP Labs, and certain requisite public
26 enforcement agencies, with a 60-Day Notice of Violation (“Notice”), alleging that EHP Labs
27 violated Proposition 65 when it failed to warn its customers and consumers in California that the
28 Covered Products expose users to lead. A true and correct copy of the 60-Day Notice served on

1 November 30, 2018 is attached hereto as **Exhibit A**. To the best of the Parties' knowledge, no
2 public enforcer has commenced and is diligently prosecuting the allegations set forth in the
3 Notices.

4 **1.7 Complaint**

5 On February 14, 2019, SPFC commenced the instant action (the "Action") for the alleged
6 violations of Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

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

21 **1.9 Jurisdiction**

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

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1 **1.10 Effective Date**

2 The Effective Date of this Consent Judgment is the date on which it is entered as a
3 Judgment by this Court.

4 **2. INJUNCTIVE RELIEF**

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

10 **2.1.1** For purposes of this Consent Judgment, the “Daily Lead Exposure Level” shall
11 be measured in micrograms, and shall be calculated using the following formula: micrograms of
12 lead per gram of product, multiplied by grams of product per serving of the product (using the
13 largest serving size appearing on the product label), multiplied by servings of the product per
14 day (using the largest number of recommended daily servings appearing on the product label),
15 which equals micrograms of lead exposure per day. If the label contains no recommended daily
16 servings, then the number of recommended daily servings of the product for purposes of the
17 formula in this Section 2.1.1 shall be calculated as one serving per day.

18 **2.1.2 Reformulated Covered Products**

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

22 **2.1.3 Clear and Reasonable Warnings**

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

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OPTION 1:

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

OR:

OPTION 2:

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

In connection with providing a cancer warning for lead, EHP Labs shall use the phrase “cancer and” in the warning if EHP Labs has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead. EHP Labs also may include the reference to cancer if EHP Labs has reason to believe that another Proposition 65 chemical is present which may require a cancer warning. The words “chemicals including” may be deleted from the warning content if the warning is being provided for an exposure to a single chemical.

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

In the event EHP Labs provides the warning pursuant to OPTION 2, above, the entire warning must be in a type size no smaller than the largest size used for other consumer information on the product, and in no case shall the warning appear in a type size smaller than 6-point type. For all warnings, the word “WARNING” shall be in all capital letters in bold print.

1 Any additional statements in the warning shall comply with Title 27, California Code of
2 Regulations, Section 25601(e). If subsequently enacted changes to Proposition 65 or its
3 implementing regulations require the use of additional or different information on any warning, the
4 Parties agree that the new safe harbor warning may be utilized in place of the warnings set forth in
5 this Section.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1** In full satisfaction of all potential civil penalties, additional settlement payments,
8 attorney's fees, and costs, EHP Labs shall make a total payment of \$25,000 ("Total Settlement
9 Amount"). The Total Settlement Amount shall be apportioned as follows:

10 **3.2 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

11 Pursuant to Health and Safety Code section 25249.7(b), EHP Labs shall pay civil
12 penalties in the amount of \$1,500. The penalty payment shall be allocated according to Health
13 and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the
14 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
15 25% of the penalty paid to SPFC. SPFC's counsel shall be responsible for remitting EHP Labs'
16 penalty payment under this Consent Judgment to OEHHA. Within ten business days of the
17 Court's entry of this Consent Judgment, EHP Labs shall issue a check payable to "Safe Products
18 for Californians, LLC" in the amount of \$375, and a check payable to OEHHA in the amount of
19 \$1,125. These penalty payments shall be delivered to the address listed in Section 3.3 below.

20 **3.3 Reimbursement of Attorneys' Fees and Costs**

21 For all work performed as a result of investigating, bringing this matter to EHP Lab's
22 attention and negotiating a settlement in the public interest through the mutual execution of this
23 Consent Judgment and the Court's approval of the same, but exclusive of fees and costs on
24 appeal, if any, EHP Labs shall reimburse SPFC and its counsel \$23,500. The Parties negotiated
25 this resolution of the compensation due to SPFC and its counsel under general contract principles
26 and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5.
27 EHP Labs' payment shall be delivered to the address in Section 3.3 in the form of a check
28 payable to "Moore Law Firm, P.C." within ten business days of the Court's entry of this Consent

1 Judgment. The reimbursement shall cover all fees and costs incurred by SPFC investigating,
2 bringing this matter to EHP Lab’s attention, litigating, and negotiating a settlement of the matter
3 in the public interest.

4 **3.4 Payment Procedures**

5 The payments pursuant to Sections 3.2 and 3.3 shall be delivered to the following
6 address:

7 Moore Law Firm, P.C.
8 Attn: Proposition 65 (SPFC)
9 300 South First Street, Suite 342
San Jose, California 95113

10 If for any reason this Consent Judgment is not entered by the Court within one year of
11 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with EHP
12 Labs about mutually agreeable steps the Parties can take to ensure entry of the Consent
13 Judgment.

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 SPFC’s Public Release of Proposition 65 Claims**

16 This Consent Judgment is a full, final, and binding resolution between SPFC, acting on
17 its own behalf and on behalf of the public interest, and EHP Labs and its parents, subsidiaries,
18 affiliated entities under common ownership, directors, shareholders, officers, employees, and
19 attorneys and the predecessors, agents, suppliers, distributors, retailers, successors, or assigns of
20 each of them (the “Releasees”). SPFC, on behalf of itself and in the public interest, hereby fully
21 releases and discharges the Releasees from any and all claims, actions, causes of action, suits,
22 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have
23 been asserted from the handling, use, or consumption of the Covered Products, as to any alleged
24 violation of Proposition 65 or its implementing regulations arising from the failure to provide
25 Proposition 65 warnings on the Covered Products regarding lead up to and including the
26 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance
27 with Proposition 65 with respect to exposure to lead from Covered Products as set forth in the
28 Notice of Violations.

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

2 SPFC, in its own capacity only and on its own behalf and on behalf of its past and current
3 agents, representatives, attorneys, successors, and/or assignees and *not* in its representative
4 capacity, also provides a release to EHP Labs and the Releasees which shall have preclusive
5 effect such that SPFC shall not be permitted to pursue and/or take any action with respect to any
6 other statutory or common law claim to the fullest extent that any such claim was or could have
7 been asserted by SPFC against EHP Labs and the Releasees, which shall be effective as a full
8 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
9 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of SPFC of any
10 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
11 alleged or actual exposures to lead in Covered Products manufactured, imported, distributed or
12 sold by EHP Labs and/or the Releasees, or the failure to provide a clear and reasonable warning
13 of exposure as well as any other claim based in whole or in part on the facts alleged in the Action
14 and the Notice, based on actions committed before the Effective Date (“Chemical Exposure
15 Claims”).

16 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code**

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

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
4 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER,
5 WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
6 WITH THE DEBTOR OR RELEASED PARTY.

6 **4.4 EHP Lab’s Release of SPFC**

7 EHP Labs, on its own behalf and on behalf of its past and current agents, representatives,
8 attorneys, successors and/or assignees, hereby waives any and all claims against SPFC and its
9 attorneys and other representatives, for any and all actions taken or statements made (or those
10 that could have been taken or made) by SPFC and its attorneys and other representatives in the
11 course of investigating claims, seeking to enforce Proposition 65 against it in this matter.

12 **5. ENTRY OF CONSENT JUDGMENT**

13 The Parties hereby request that the Court promptly enter this Consent Judgment. Upon
14 entry of this Consent Judgment, SPFC and EHP Labs waive their respective rights to a hearing
15 or trial on the allegations of the Action and Notice.

16 **5.1 COURT APPROVAL**

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

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1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California and apply within the State of California. In the event that Proposition 65 is repealed,
8 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
9 Products, then EHP Labs may provide SPFC with written notice of any asserted change in the
10 law, and shall have no further obligations pursuant to this Consent Judgment, with respect to,
11 and to the extent that, the Covered Products are so affected. Nothing in this Consent Judgment
12 shall be interpreted to relieve EHP Labs from its obligation to comply with any pertinent state
13 or federal law or regulation.

14 **8. NOTICE**

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

19 To EHP Labs:

20 Lynn R. Fiorentino
21 Arent Fox LLP
22 55 Second Street, Suite 2100
San Francisco, California 94105

To SPFC:

Moore Law Firm, P.C.
Attn: Proposition 65 (SPFC)
300 South First Street, Suite 342
San Jose, California 95113

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

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

27 This Consent Judgment may be executed in counterparts and by facsimile or portable
28 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.

[PROPOSED] CONSENT JUDGMENT

1 **10. 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 **11. 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. In the
8 event that Proposition 65 is repealed or preempted, then EHP Labs shall have no further
9 obligation as to injunctive terms pursuant to this Consent Judgment with respect to, and to the
10 extent that the Covered Products are so affected.

11 **12. OTHER TERMS**

12 **12.1 No Other Agreements**

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

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12.2 Construction

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

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: Nov 4, 2021


KR Moore (Nov 4, 2021 17:54 PDT)

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

Dated: _____

EHP Labs LLC
By: _____

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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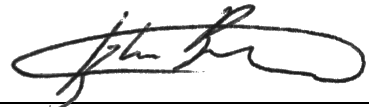
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The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

Dated: _____

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

Dated: 4 November 2021



EHP Labs LLC
By: Izhar Basha

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT