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13

14 **SUPERIOR COURT OF CALIFORNIA**  
15 **COUNTY OF SANTA CLARA**

16  
17 SAFE PRODUCTS FOR CALIFORNIANS, )  
LLC, )

18 Plaintiff, )

19 vs. )

20 PERFECT KETO LLC, et al.; )

21 Defendants. )  
22 )  
23 )

No. 20CV371148

**[PROPOSED] CONSENT JUDGMENT**

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

24 **1. INTRODUCTION**

25 **1.1 Parties**

26 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff  
27 Safe Products for Californians, LLC (“SPFC”) and defendant Perfect Keto LLC (“Perfect  
28 Keto”). SPFC and Perfect Keto are each referred to individually as a “Party” and collectively as  
the “Parties.”

[PROPOSED] CONSENT JUDGMENT

1           **1.2     SPFC**

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

6           **1.3     Perfect Keto**

7           For the purposes of this Consent Judgment, SPFC alleges, and Perfect Keto does not  
8 dispute, that Perfect Keto employs ten or more persons and is a person in the course of doing  
9 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”).

11           **1.4     General Allegations**

12           SPFC alleges that the Perfect Keto Dietary Supplements and Keto Bars that Perfect Keto  
13 manufactures, imports, sells and/or distributes for sale in California cause exposure to lead and  
14 that Perfect Keto does so without providing the health hazard warning that SPFC alleges is  
15 required by Proposition 65.

16           **1.5     Product Description**

17           The products that are covered by this Consent Judgment are identified as “Base – Coffee  
18 Betahydroxybutyrate (BHB) Ketone Supplement,”; “Base – Salted Caramel  
19 Betahydroxybutyrate (BHB) Ketone Supplement,”; “Medium Chain Triglyceride (MCT) Oil  
20 Powder,”; “Lemon Keto Greens Powder with MCTs,”; “Keto Nootropic Exogenous Ketone and  
21 Herbal Supplement,”; “Matcha MCT Oil Powder Medium Chain Triglyceride Supplement,”;  
22 “Instant Keto Coffee – Original,”; “Instant Keto Coffee - French Vanilla,”; “Instant Keto Coffee  
23 – Mocha,”; “Almond Butter Brownie Keto Bar,”; and “Salted Caramel Keto Bar,” that are  
24 manufactured, imported, distributed, sold and/or offered for sale by Perfect Keto and/or its  
25 customers in the state of California, hereinafter the “Covered Products.”

26           **1.6     Notices of Violation**

27           On or about May 21, 2019 and October 24, 2019, SPFC served Perfect Keto, and certain  
28 requisite public enforcement agencies, with 60-Day Notices of Violation (“Notices”), alleging

1 that Perfect Keto violated Proposition 65 when it failed to warn its customers and consumers in  
2 California that the Covered Products expose users to lead. A true and correct copy of the 60-Day  
3 Notices dated May 21, 2019 and October 24, 2019 are attached hereto as **Exhibit A**. To the best  
4 of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the  
5 allegations set forth in the Notices.

#### 6 **1.7 Complaint**

7 On September 24, 2020, SPFC commenced the instant action (the "Action") for the  
8 alleged violations of Proposition 65 that are the subject of the Notice.

#### 9 **1.8 No Admission**

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

#### 23 **1.9 Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
25 jurisdiction over Perfect Keto as to the allegations contained in the Action, that venue is proper  
26 in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the  
27 provisions as a full and final binding resolution of all claims which were or could have been  
28

1 raised in the Action based on the facts alleged therein and/or notice of this Consent Judgment  
2 pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

3 **1.10 Effective Date**

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

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Product Removal**

8 Commencing ninety (90) days after the Effective Date and continuing thereafter, Perfect  
9 Keto shall only ship, distribute, sell or offer for sale in California, Reformulated Product pursuant  
10 to Section 2.2 or Product that is labeled with a clear and reasonable warning pursuant to Section  
11 2.3. Perfect Keto shall have no obligation to label Covered Products that were shipped prior to  
12 the Effective Date.

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

21 **2.2 Reformulated Covered Products**

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

25 **2.3 Clear and Reasonable Warnings**

26 For any Covered Products manufactured after the Effective Date that do not qualify as  
27 Reformulated Covered Products and are directly sold or offered for sale in California by Perfect  
28

Keto after the Effective Date, Perfect Keto shall only sell or offer said non-reformulated Covered Products for sale in California when accompanied with one of the following warnings:

**OPTION 1:**

**WARNING:** Consuming this product can expose you to [chemicals including] lead 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](http://www.P65warnings.CA.gov/food)”

**OR:**

**OPTION 2:**

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

In connection with providing a cancer warning for lead, Perfect Keto shall use the phrase “cancer and” in the warning if Perfect Keto has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead. Perfect Keto also may include the reference to cancer if Perfect Keto 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 Perfect Keto 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. Any additional statements in the warning shall comply with Title 27, California Code of Regulations, Section 25601(e). If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning, the Parties agree that the new safe harbor warning may be utilized in place of the warnings set forth in this Section.

### **3. MONETARY SETTLEMENT TERMS**

**3.1** In full satisfaction of all potential civil penalties, additional settlement payments, attorney’s fees, and costs, Perfect Keto shall make a total payment of \$62,500.00 (“Total Settlement Amount”) to SPFC, with an initial payment of \$32,500.00 to be paid within 5 days of the Effective Date, and a final payment of \$30,000.00 to be paid within 35 days of the Effective Date. The Total Settlement Amount shall be apportioned as follows:

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

Pursuant to Health and Safety Code section 25249.7(b), Perfect Keto shall pay civil penalties in the amount of \$27,500.00. The penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to SPFC. SPFC’s counsel shall be responsible for remitting Perfect Keto’s penalty payment under this Consent Judgment to OEHHA. Within five business days of all Parties signing this Consent Judgment, Perfect Keto shall issue a check payable to “Safe Products for Californians, LLC” in the amount of \$6,875.00, and a check payable to OEHHA in the amount of \$20,625.00. These penalty payments shall be delivered to the address listed in Section 3.3 below.

#### **3.3 Reimbursement of Attorneys’ Fees and Costs**

For all work performed as a result of investigating, bringing this matter to Perfect Keto’s attention and negotiating a settlement in the public interest through the mutual execution of this Consent Judgment and the Court’s approval of the same, but exclusive of fees and costs on

1 appeal, if any, Perfect Keto shall reimburse SPFC and its counsel \$35,000.00. The Parties  
2 negotiated this resolution of the compensation due to SPFC and its counsel under general  
3 contract principles and the private attorney general doctrine codified at California Code of Civil  
4 Procedure § 1021.5. Perfect Keto's payment shall be delivered to the address in Section 3.3 in  
5 the form of a check payable to "Moore Law Firm, P.C." within five business days of all Parties  
6 signing this Consent Judgment. The reimbursement shall cover all fees and costs incurred by  
7 SPFC investigating, bringing this matter to Perfect Keto's attention, litigating, and negotiating a  
8 settlement of the matter in the public interest.

### 9 **3.4 Payment Procedures**

10 The payments pursuant to Sections 3.2 and 3.3 shall be delivered to the following  
11 address:

12 Moore Law Firm, P.C.  
13 Attn: Proposition 65 (SPFC)  
14 300 South First Street, Suite 342  
San Jose, California 95113

15 If for any reason this Consent Judgment is not entered by the Court within one year of  
16 the date the Consent Judgment is executed by all Parties, SPFC shall meet and confer with  
17 Perfect Keto about mutually agreeable steps the Parties can take to ensure entry of the Consent  
18 Judgment. If such steps cannot be agreed between the Parties, SPFC shall promptly return to  
19 Perfect Keto any and all monies paid by Perfect Keto herein under Sections 3.1 and 3.2 upon  
20 Perfect Keto's written request.

## 21 **4. CLAIMS COVERED AND RELEASED**

### 22 **4.1 SPFC's Public Release of Proposition 65 Claims**

23 This Consent Judgment is a full, final, and binding resolution between SPFC, acting on  
24 its own behalf and on behalf of the public interest, and Perfect Keto and its parents, subsidiaries,  
25 affiliated entities under common ownership, directors, shareholders, officers, employees, and  
26 attorneys and the predecessors, agents, suppliers, distributors, retailers, successors, or assigns of  
27 each of them (the "Releasees"). SPFC, on behalf of itself and in the public interest, hereby fully  
28 releases and discharges the Releasees from any and all claims, actions, causes of action, suits,

1 demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have  
2 been asserted from the handling, use, or consumption of the Covered Products, as to any alleged  
3 violation of Proposition 65 or its implementing regulations arising from the failure to provide  
4 Proposition 65 warnings on the Covered Products regarding lead up to and including the  
5 Effective Date.. Compliance with the terms of this Consent Judgment constitutes compliance  
6 with Proposition 65 with respect to exposure to lead from Covered Products as set forth in the  
7 Notices of Violations.

#### 8 **4.2 SPFC's Individual Release of Claims**

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

#### 23 **4.3 Waiver of Rights Under Section 1542 of the California Civil Code**

24 SPFC, acting on its own behalf only with respect to the Individual Release, waives all  
25 rights to institute any and all manner of actions, causes of action, claims, demands, rights, suits,  
26 obligations, debts, contracts, agreements, promises liabilities, damages, charges, losses, costs,  
27 expenses and attorney's fees of any nature whatsoever, known or unknown, in law or equity,  
28 fixed or contingent now or in the future with respect to the Covered Products manufactured,



1 distributed, or sold by Perfect Keto and the Releasees who may use, maintain, distribute or sell  
2 the Covered Products, for the Proposition 65 Claims and the Chemical Exposure Claims  
3 (referred to collectively in this Sections as “Claims”). In furtherance of the foregoing, SPFC,  
4 acting on its own behalf only and acting in its individual capacity with respect to the Individual  
5 Release, waives any and all rights and benefits which SPFC now has, or in the future may have,  
6 conferred upon SPFC with respect to the Claims by virtue of the provisions of § 1542 of the  
7 California Civil Code, which provides as follows:

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

#### 13           **4.4     Perfect Keto’s Release of SPFC**

14           Perfect Keto, on its own behalf and on behalf of its past and current agents,  
15 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against  
16 SPFC and its attorneys and other representatives, for any and all actions taken or statements  
17 made (or those that could have been taken or made) by SPFC and its attorneys and other  
18 representatives in the course of investigating claims, seeking to enforce Proposition 65 against  
19 it in this matter.

### 20           **5.     ENTRY OF CONSENT JUDGMENT**

21           The Parties hereby request that the Court promptly enter this Consent Judgment. Upon  
22 entry of this Consent Judgment, SPFC and Perfect Keto waive their respective rights to a hearing  
23 or trial on the allegations of the Action and Notice.

#### 24           **5.1     COURT APPROVAL**

25           This Consent Judgment is not effective until it is approved and entered by the Court and  
26 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
27 year after it has been fully executed by all Parties, unless the Parties mutually agree to extend  
28 that time period due to what they mutually agree are reasonably unforeseeable circumstances.

SPFC and Perfect Keto agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which motion SPFC shall draft and file and Perfect Keto shall support, appearing at the hearing if so requested.

**6. SEVERABILITY**

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

**7. GOVERNING LAW**

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

**8. NOTICE**

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

To Perfect Keto:

Abhishek K. Gurnani  
Amin Talati Wasserman, LLP  
100 S. Wacker Dr. Suite 2000  
Chicago, IL 60606

To SPFC:

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

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

**9. 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.

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

**11. MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any Party and the entry of a modified Consent Judgment by the Court thereon. In the event that Proposition 65 is repealed or preempted, then Perfect Keto shall have no further obligation as to injunctive terms pursuant to this Consent Judgment with respect to, and to the extent that the Covered Products are so affected.

**12. OTHER TERMS**

**12.1 No Other Agreements**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter set forth in this Consent Judgment, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are deemed merged. There are no warranties, representations, or other agreements between the Parties except as expressly set forth in this Consent Judgment. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party. No other agreements not specifically contained or referenced in this Consent Judgment, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions

1 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
2 provisions whether or not similar, nor shall such waiver constitute a continuing waiver. Nothing  
3 in this Consent Judgment shall release, or in any way affect any rights that Perfect Keto might  
4 have against any other party.


5 **12.2 Construction**

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


16 **13. AUTHORIZATION**

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

20 Dated: Apr 6, 2021

  
KR Moore (Apr 6, 2021 18:27 PDT)  
Safe Products for Californians, LLC  
By: Randy Moore, Operating Manager

23 Dated: 04/07/2021

  
Perfect Keto LLC  
By: William Palmer, Vice President - Finance

25 **IT IS SO ORDERED.**

26 Dated: \_\_\_\_\_

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