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Clerk of the Superior Court

JUN 07 2024

By: V. Contreras, Deputy

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Superior Court of California,
County of San Diego

03/13/2024 at 09:58:50 AM

Clerk of the Superior Court
By Malka Manneh, Deputy Clerk

Stephanie Sy, Esq., (CSB# 247071)
LAW OFFICES OF STEPHEN URE, PC
11622 El Camino Real, Suite 100
San Diego, CA California 92130
Telephone: 858-746-9554

Attorneys for Plaintiff, Keep America Safe and Beautiful

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL) CASE NO.: 37-2022-00047296-CU-NP-CTL

Plaintiff

~~PROPOSED~~ ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT

AND

HAMMER NUTRITION
ENDURANCE MARKETING GROUP, INC .

AND

DOES 1-25 INCLUSIVE

Date: April 5, 2024
Time: 10:30am
Dept. C-64
Judge: HON. LOREN G. FREESTONE
Action Filed: November 22, 2022

Plaintiff, Keep America Safe And Beautiful and Defendant Hammer Nutrition, having
agreed through their respective counsel that judgment be entered pursuant to the terms of the

1 Stipulation and Order Re: Consent Judgment entered into by the parties, hereby attach same to
2 the Judgment as "Exhibit 1." After consideration of the papers submitted and arguments
3 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
4 meets the criteria established by Health & Safety Code §25249.7, in that:
5

- 6 a) the health hazard warning required by the Stipulation and Order Re: Consent
7 Judgment complies with Health & Safety Code §25249.7;
- 8 b) the reimbursement of fees and costs to be paid pursuant to the parties'
9 Stipulation and Order Re: Consent Judgment is reasonable under California
10 law; and
- 11 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and
12 Order Re: Consent Judgment is reasonable

13
14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil
15 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto
16 as Exhibit 1.

17
18 **IT IS SO ORDERED.**

19
20 **Dated:** 6/7/24



21 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**
22 **LOREN G. FREESTONE**

Exhibit 1

1 Law offices of Stephanie Sy
11622 El Camino Real, Suite 100
2 San Diego, CA 92130

3 Attorneys for Plaintiff Keep America Safe and Beautiful
4

5
6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 KEEP AMERICA SAFE AND BEAUTIFUL,

11 Plaintiff,

12 v.

13 HAMMER NUTRITION, INC
14 ENDURANCE MARKETING GROUP, INC.

15 AND

16 DOES 1-25

17 Defendants,
141

Case No. 37-2022-00047296-CU-NP-CTL

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT HAMMER NUTRITION
INC.**

19
20 **1. INTRODUCTION**

21 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
22 Keep America Safe and Beautiful (“KASAB”) acting on behalf of the public interest (hereinafter
23 “KASAB”), and Defendant Hammer Nutrition Inc. (“Hammer”), with KASAB and Hammer
24 collectively referred to as the “Parties” and each of them as a “Party.” KASAB is a California
25 Nonprofit Corporation seeking to promote awareness of exposures to toxic chemicals and
26 improve human health by reducing or eliminating hazardous substances contained in consumer
27

1 products. Hammer is a person in the course of doing business for purposes of Proposition 65,
2 Cal. Health & Safety Code §§ 25249.6 *et seq.*

3 1.2 **Allegations and Representations.** KASAB alleges that Hammer has offered for
4 sale in the State of California and has sold in California, the “Organic Vegan Protein” that
5 contains LEAD, and that such sales have not been accompanied by Proposition 65 warnings.
6 LEAD is listed under Proposition 65 as chemicals known to the State of California to cause
7 cancer and reproductive harm.

8 1.3 **Notices of Violation/Complaint.** On or about December 15, 2021, KASAB
9 served Hammer, Endurance Marketing Group, Inc., and various public enforcement agencies with
10 a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d)
11 (the "Notice"), alleging that Hammer, and Endurance Marketing Group, Inc were in violation of
12 Proposition 65 for failing to warn consumers and customers that the “Organic Vegan Protein”
13 exposed users in California to LEAD. No public enforcer diligently prosecuted the claims
14 threatened in the Notice within sixty days plus service time relative to the provision of the Notice
15 to them by KASAB.

16 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
17 has jurisdiction over Hammer as to the allegations contained in the complaint filed in this matter,
141 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
4 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
19 of all claims which were or could have been raised in the Complaint based on the facts alleged
20 therein and/or in the Notices.

21 1.5 Hammer denies the material allegations contained in KASAB’s Notice and
22 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
23 Judgment shall be construed as an admission by Hammer of any fact, finding, issue of law, or
24 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
25 an admission by Hammer of any fact, finding, conclusion, issue of law, or violation of law, such
26

1 being specifically denied by Hammer. However, this section shall not diminish or otherwise
2 effect the obligations, responsibilities, and duties of Hammer under this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

5 2.2 **Covered Product.** The term "Covered Product" means the "Organic Vegan
6 Protein" including vegan powdered food items/powdered food items and supplements designed,
7 manufactured, sold, distributed or otherwise made available to, by or for Hammer and its
8 downstream distributors and retailers.

9 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent
10 Judgment is entered as a Judgment of the Court.

11 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean LEAD.

12 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

13 2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
14 Releasees" shall have the meanings given in Section 5.1.


15 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent
16 Judgment is signed by the parties

17 **3. INJUNCTIVE RELIEF: WARNINGS**

141 3.1 Commencing on the Effective Date, Hammer shall not sell, offer for sale, or ship
4 for sale in California any Covered Product, unless the Covered Product is accompanied by
19 warning substantially similar to the following warning statement:
20

21 **WARNING:** Lead - Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

22
23 **Or**
24
25
26
27

1  **WARNING:** The use of this product can expose you to LEAD, which is a
2 chemical known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

3 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
4 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
5 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
6 words, statements, or designs as to render it likely to be read and understood by an ordinary
7 individual under customary conditions of purchase or use. A warning may be contained in the
8 same section of the packaging or labeling that states other safety warnings, if any, concerning the
9 use of the product and shall be at least the same size as those other safety warnings, but no less
10 than 6 point font. The warning shall be accompanied by a symbol consisting of a black
11 exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for
12 the product is not printed using the color yellow, the symbol may be printed in black and white.
13 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the
14 height of the word "WARNING". In the event the Covered Product is sold over the internet, a
15 warning must be provided on or with the Covered Product and a clearly marked hyperlink using
16 the word WARNING on the product display page. If the consumer information on the Covered
17 Product is in a foreign language, the warning must be provided in the foreign language. Covered
141 Products that were manufactured, packed, or labeled prior to the Execution Date shall be
4 permitted to be sold as previously manufactured, packed or labeled.

19 3.3

20 **4. MONETARY TERMS**

21 4.1 **Penalty.** Hammer shall pay a civil penalty of \$500.00 pursuant to Health and
22 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
23 Code § 25192, with 75% of these funds remitted to the State of California's Office of
24 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
25 KASAB, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be
26 made within 5 days of the Effective Date.
27

1 4.2 **Attorney's Fees.** Hammer agrees to pay reasonable attorney fees, inclusive of all
2 expenses and costs incurred as a result of investigating, bringing this matter to Hammer's
3 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
4 interest, pursuant to Code of Civil Procedure section 1021.5, in an amount of \$12,000.00.
5 Hammer shall wire KASAB's counsel the total sum of \$12,500.00 representing the civil penalty
6 and attorney fees in Sections 4.1 and 4.2 within 5 days following Effective Date, and wire
7 instruction information from KASAB's counsel.

8 **5. RELEASE OF ALL CLAIMS**

9 5.1 This consent judgment is a full, final, and binding resolution between KASAB
10 acting in the public interest, and Hammer, its owners, investors employees, directors, officers,
11 managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
12 companies, and affiliates, and their successors and assigns including, without limitations to, as
13 Endurance Marketing Group, Inc ("Defendant Releasees"), and all entities from whom they
14 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
15 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
16 retailers, franchisees, and cooperative members, and their successors and assigns ("Downstream
17 and Upstream Defendant Releasees"). Upon the Effective Date of this Consent Judgment, and
141 subject to payment by Hammer of the full settlement amount and compliance with the terms of
4 this Consent Judgment, KASAB, on behalf of itself, it's agents, successors, heirs, and assigns,
19 hereby fully and irrevocably releases and discharges Hammer, the Defendant Releasees, and the
20 Downstream Defendant Releasees from all claims for violations of Proposition 65 that were, or
21 which could have been, asserted in the Complaint based on exposure to and/or failure to warn
22 about Listed Chemicals from Covered Products as set forth in the Notice, with respect to any
23 Covered Products manufactured, distributed, or sold by Hammer, the Defendant Releasees, and/or
24 the Downstream Defendant Releasees prior to the Effective Date. Compliance with the terms of
25 this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
26 Products.

1 5.2 In addition to the foregoing, KASAB, on behalf of itself, it's past and current
2 agents, representatives, attorneys, and successors and/or assignees, and not in its representative
3 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
4 legal action and releases any Hammer, Defendant Releasees, and Downstream Defendant
5 Releasees from 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 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
8 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
9 related to or arising from Covered Products manufactured distributed or sold by Hammer or
10 Defendant Releasees, or Downstream Defendant Releasees. With respect to the foregoing
11 waivers and releases in this paragraph, KASAB hereby specifically waives any and all rights and
12 benefits which she now has, or in the future may have, conferred by virtue of the provisions of
13 Section 1542 of the California Civil Code, which provides as follows:
14

15
16 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
17 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
141 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
 OR RELEASED PARTY.
4

19 5.3 Hammer waives any and all claims against KASAB, its attorneys and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by KASAB and its attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to Covered Products. This agreement is also intended to be the final and
24 binding resolution between the parties without relation to time. To the extent permitted by
25 applicable law, the Releasees hereby expressly waive and release their right to plead any statute
26
27

1 of limitations as a defense to any claim relating to the Covered Products or any matter covered
2 under the Parties' agreement and Stipulated Consent Judgment.

3 **6. INTEGRATION**

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
5 any and all prior negotiations and understandings related hereto shall be deemed to have been
6 merged within it. No representations or terms of agreement other than those contained herein
7 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California and apply within the State of California. In the event that Proposition 65 is repealed or
11 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
12 Hammer shall provide written notice to KASAB of any asserted change in the law, and shall have
13 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
14 Covered Products are so affected.

15 **8. ENFORCEMENT**

16 8.1 KASAB may, by motion or application for an order to show cause before the
17 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
141 Judgment. Prior to bringing any motion or application to enforce the requirements of this
4 Consent Judgment, KASAB shall provide Hammer with a proposed Notice of Violation, and a
19 copy of any documentary evidence which purportedly supports KASAB's Notice of Violation.
20 The Parties shall then meet and confer in good faith for a period of at least sixty (60) days
21 regarding the basis for KASAB's anticipated motion or application in an attempt to resolve it
22 informally. Should such attempts at informal resolution fail, KASAB may file its enforcement
23 motion or application. This Consent Judgment may only be enforced by the Parties.

24 **9. NOTICES**

25 9.1 Unless specified herein, all correspondence and notices required to be provided
26 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
27

1 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
2 party by the other party at the following addresses:

3 For HAMMER:

4 Garth Ward, Esq.
5 Partner
6 Lewis Brisbois 550 West C Street, Suite 1700 San Diego, CA 92101

7 And

8 For KASAB:

9 Stephanie Sy, Esq.
10 Law Office of Stephanie Sy
11 11622 El Camino Real, Suite 100
12 San Diego, CA 92130

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

15 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

16 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
17 which shall be deemed an original, and all of which, when taken together, shall constitute one and
18 the same document.

19 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
20 **APPROVAL**

21 11.1 KASAB agrees to comply with the requirements set forth in California Health &
22 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
23 and Hammer agrees it shall support approval of such Motion.

24 11.2 This Consent Judgment shall not be effective until it is approved and entered by
25 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
26 within eighteen months after it has been fully executed by the Parties. In such a scenario, the
27 Parties agree to meet and confer on how to proceed and if such agreement is not reached within
30-days, any monies that have been paid pursuant to Section 4 shall be refunded and the case
shall proceed on its normal course.

1 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
3 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
4 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
5 trial court, and the case shall proceed on its normal course on the trial court's calendar.

6 **12. MODIFICATION**

7 12.1 This Consent Judgment may be modified only by express written agreement of the
8 Parties and the approval of the Court or upon the granting of a motion brought to the Court by
9 either Party.

10 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
11 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

12 **13. ATTORNEY'S FEES**

13 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
15 unless the unsuccessful party has acted with substantial justification. For purposes of this
16 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
17 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

141 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
4 own attorneys' fees and costs.

19 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
20 pursuant to law.

21 **14. RETENTION OF JURISDICTION**

22 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
23 Consent Judgment.

24 **15. AUTHORIZATION**

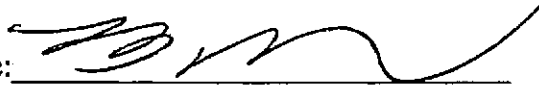

25 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
26 their respective Parties and have read, understood and agree to all of the terms and conditions of
27

1 this document and certifies that he or she is fully authorized by the Party he or she represents to
2 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
3 Except as explicitly provided herein each Party is to bear its own fees and costs.
4

5 **APPROVED AS TO FORM:**

7 AGREED TO:	AGREED TO:
8 Date : _____, 2023	Date: _____, 2023
9	
10 By: _____	By: _____
11 On Behalf of KASAB Stephanie Sy Law Office of Stephanie Sy	11 On Behalf of Hammer Nutrition Garth Ward, Esq. Partner Lewis Brisbois

14
15 **IT IS HEREBY SO STIPULATED:**

16 AGREED TO:	AGREED TO:
17	10/17/2023
141 Date: <u>10/19/2023</u>	Date: 
4 By: 	By: _____
19 <u>Keep America Safe And Beautiful</u>	<u>Hammer Nutrition</u>