

JUL 19 2024

By: R. Day, Deputy

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6 *Attorneys for Plaintiff, KEEP AMERICA SAFE AND BEAUTIFUL*

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10 **UNLIMITED CIVIL JURISDICTION**
11

13	KEEP AMERICA SAFE AND BEAUTIFUL)	CASE NO.: 37-2023-00011271-CU-NP-CTL
14)	
15	Plaintiff)	PROPOSED
16)	JUDGMENT APPROVING
17	AND)	PROP 65 STIPULATION AND
18)	CONSENT JUDGMENT
19	WATER PURE, INC.;)	(<i>Cal. Health & Safety Code § 25249.6 et seq.</i>)
20	AMAZON.COM, INC.;)	
21	AND)	Date: July 19, 2024
22	DOES 1-25 INCLUSIVE)	Time: 09:00am
23)	Dept. C-73
24	Defendants.)	Judge: Hon. JOEL R. WOHLFEIL
)	Action Filed: March 17, 2023

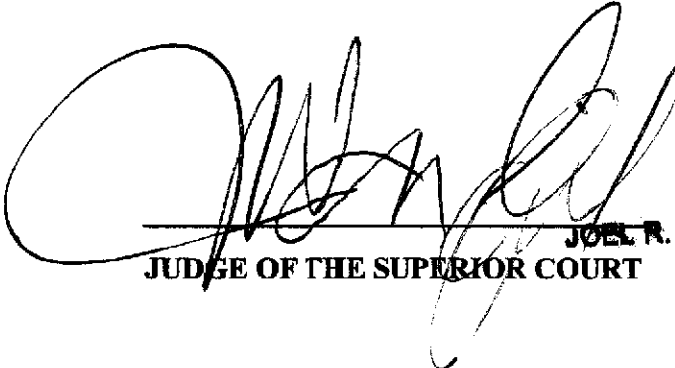
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In the above entitled action, Plaintiff, Keep America Safe and Beautiful and Defendant Pure Water, Inc., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a [Proposed] Consent Judgment entered into by the parties, and following issuance of an order approving this Proposition 65 settlement agreement and entering this Consent Judgment on July 19, 2024.

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

IT IS SO ORDERED.

Dated: 7-19-24



JOEL R. WOHLFIEL
JUDGE OF THE SUPERIOR COURT

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12 2049 Century Park East, Suite 2300
13 Los Angeles, CA 90067
14 Telephone: 310.229.9900

15 Attorneys for Defendant WATER PURE, INC.

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **IN AND FOR THE COUNTY OF SAN DIEGO**

18 **KEEP AMERICA SAFE AND BEAUTIFUL,**

19 **Plaintiff,**

20 **v.**

21 **WATER PURE, INC.; AMAZON.COM, INC.;**
22 **and DOES 1-25, inclusive,**

23 **Defendants.**

Case No. 37-2023-00011271-CU-NP-CTL

Assigned to: Hon. Joel R. Wohlfeil
Dept: C-73

**[PROPOSED] STIPULATED CONSENT
JUDGMENT AS TO DEFENDANT
WATER PURE, INC.**

Action Filed: March 17, 2023
Trial Date: None Set

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[PROPOSED] STIPULATED CONSENT JUDGMENT

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1. INTRODUCTION

1.1 The Parties

This [Proposed] Stipulated Consent Judgment (“Consent Judgment”) is hereby entered into by and between Keep America Safe And Beautiful, acting on behalf of the public interest (hereinafter “KASB”) and Water Pure, Inc. dba Purity Products (hereinafter “Purity Products”). Collectively KASB and Purity Products shall be referred to hereafter as the “Parties” and each of them as a “Party.” KASB is a non-profit corporation organized under the laws of California and acting in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. Purity Products is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 Allegations and Representations

KASB alleges that Purity Products has offered for sale in the State of California and has sold in California, a product which contains lead, and that such sales have not been accompanied by Proposition 65 warnings. The State of California has listed lead as a chemical known to cause cancer, developmental toxicity and reproductive harm. Purity Products denies the allegations and contends that there is no exposure and no violation under Proposition 65 for an alleged failure to warn.

1.3 Covered Product Description

The product that is covered by this Consent Judgment is identified as “EverStrong Powder – Muscle Matrix Blend.” All such items shall be referred to herein as the “Covered Product.”

1.4 Notices of Violation/Complaint

1.4.1 On or about March 31, 2022, KASB served Purity Products and various public enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Purity Products was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed

1 users in California to lead. No public enforcer diligently prosecuted the claims threatened in the
2 Notice within sixty days plus service time relative to the provision of the Notice to them by
3 KASB.

4 **1.4.2** On March 17, 2023, KASB, acting in the interest of the general public in
5 the State of California, filed a complaint in the Superior Court of California, County of San
6 Diego, styled *Keep America Safe and Beautiful v. Water Pure, Inc., et al.*, Case No. 37-2023-
7 00011271-CU-NP-CTL (“Complaint”), alleging violations of Health & Safety Code §25249,
8 based on the alleged failure to warn of exposures to lead contained in the Covered Product
9 manufactured, distributed, or sold by Purity Products.

10 **1.5 Effective Date**

11 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this
12 Consent Judgment is entered as a judgment of the Court.

13 **2. STIPULATION TO JURISDICTION/NO ADMISSION**

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

20 Nothing in this Consent Judgment shall be construed as an admission by Purity Products
21 of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
22 Judgment constitute or be construed as an admission by Purity Products of any fact, finding,
23 conclusion, issue of law, or violation of law, such being specifically denied by Purity Products
24 including, but not limited to, any admission related to exposure of failure to warn. However, this
25 section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Purity
26 Products under this Consent Judgment.

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1 **3. INJUNCTIVE RELIEF**

2 **3.1** Beginning sixty (60) days after the Effective Date, Purity Products shall be
3 permanently enjoined from manufacturing for sale in the State of California, "Distributing into
4 the State of California," or directly selling in the State of California, any Covered Product that
5 expose a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day,
6 unless it meets the warning requirements under Section 3.2.

7 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of
8 California" shall mean to directly ship a Covered Product into California for sale in California or
9 to sell a Covered Product to a distributor that Purity Products knows or has reason to know will
10 sell the Covered Product in California. The injunctive relief in Section 3 does not apply to any
11 Covered Product that is already manufactured and labeled as of the Effective Date or that has left
12 the possession and is no longer under the control of Purity Products prior to the Effective Date.
13 All claims as to such Covered Product are released in this Consent Judgment.

14 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level"
15 shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product as stated on the label, multiplied by servings of the product per day stated on the 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 shall be one.

20 **3.2 Clear and Reasonable Warnings**

21 If Purity Products is required to provide a warning pursuant to Section 3.1, one of the
22 following warnings must be utilized ("Warning"):

23 **Option 1:**

24 **WARNING:** Consuming this product can expose you to lead, which is known to the State
25 of California to cause [cancer and], birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov/food

26 **Option 2:**

27 **WARNING:** [Cancer and] Reproductive Harm – <http://www.p65warnings.ca.gov/food>
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1 Purity Products shall use the phrase "cancer and" in the Warning if the exposure level is
2 greater than 15 micrograms of lead per day.

3 The Warning shall be securely affixed to or printed upon the label of each Covered
4 Product, and it must be set off from other surrounding information. For purposes of this Consent
5 Judgment, the term "label" means a display of written, printed or graphic material that is printed
6 on or affixed to a Covered Product or its immediate container or wrapper. The warning must be
7 set off from other surrounding information, enclosed in a box. If consumer information on the
8 package is in a foreign language, the warning must also be provided in the foreign language. In
9 addition, for any Covered Product sold over the internet, the Warning shall appear on the
10 checkout page in full text or through a clearly marked hyperlink using the word "WARNING" in
11 all capital and bold letters when a California delivery address is indicated for any purchase of any
12 Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently
13 displaying either the Option 1 Warning or the Option 2 Warning without content that detracts
14 from the Warning. An asterisk or other identifying method must be utilized to identify which
15 products on the checkout page are subject to the Warning. The Warning shall comply with the
16 relevant safe harbor provisions under California law, applicable to the Covered Product and
17 chemical at issue, as those regulations may be amended from time to time.

18 **4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

19 With regard to all claims that have been raised or which could be raised with respect to
20 failure to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Purity
21 Products shall pay a civil penalty of \$500.00 pursuant to Health and Safety Code section
22 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with
23 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
24 Assessment and the remaining 25% of the penalty remitted to KASB, as provided by California
25 Health & Safety Code § 25249.12(d) and the instructions directly below.

26 Purity Products shall issue two separate payments for the penalty: (a) one by check made
27 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of
28 the total penalty (i.e., \$375.00) and (b) one by wire transfer in an amount representing 25% of the

1 total penalty (i.e., \$125.00) to KASB's payment address below. Purity Products shall make these
2 payments within ten (10) business days following the Effective Date, at which time such
3 payments shall be made to the following addresses respectively:

4 The payment owed to KASB shall be wired to the following payment address:

5 Beneficiary: Keep America Safe and Beautiful
6 Wells Fargo Bank Routing Number: 121000248
7 Wells Fargo Bank Account Number: XXXXXX9471
8 Beneficiary Address: 10512 Sycamore Avenue, Stanton, CA 90680

9 The payments owed to OEHHHA shall be delivered to OEHHHA at the following addresses:

10 For United States Postal Delivery:

11 Mike Gyurics
12 Senior Accounting Officer -- MS 19-B
13 Office of Environmental Health Hazard Assessment
14 P.O. Box 4010
15 Sacramento, CA. 95812-0410

16 5. REIMBURSEMENT OF FEES AND COSTS

17 The Parties reached an accord on the compensation due to KASB and its counsel under
18 the private attorney general doctrine and principles of contract law. Under these legal principles,
19 Purity Products shall reimburse KASB's counsel for fees and costs incurred as a result of
20 investigating, bringing this matter to Purity Products attention, and negotiating a settlement in the
21 public interest. Purity Products shall pay KASB's counsel \$14,000.00 for all attorneys' fees,
22 expert and investigation fees and related costs associated with this matter and the Notice. Within
23 ten (10) business days of the Effective Date, Purity Products shall mail a check to the following
24 address payable to "Law Offices of Stephanie Sy," for KASB's counsel's payment:

25 Stephanie Sy
26 Law Offices of Stephanie Sy
27 11622 El Camino Real, Suite 100
28 San Diego, CA 92130

As a condition to receiving the payments provided in Sections 4 and 5 above, KASB's
attorneys, Law Offices of Stephanie Sy, shall provide Purity Products executed W9 forms for
each entity receiving a payment within three (3) days of full execution by the Parties of this

1 Consent Judgment. Other than the payment required hereunder, each side is to bear its own
2 attorneys' fees and costs.

3 **6. RELEASE OF ALL CLAIMS**

4 **6.1 KASB's Release of Purity Products and Other Releasees**

5 KASB, on behalf of itself, and on behalf of the public interest, releases Purity Products
6 and all entities and persons from whom they obtain and to whom they directly or indirectly
7 distribute or sell the Covered Product including, but not limited to, Amazon.com, Inc., and each
8 of their manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, retailers,
9 franchisees, dealers, customers, owners, purchasers, and users, and their respective parent
10 companies, corporate affiliates, sister entities, subsidiaries, officers, directors, attorneys,
11 representatives, shareholders, agents, successors, and employees (collectively "Releasees") from
12 all claims for violations of Proposition 65 through the Effective Date based on exposure to lead
13 from the Covered Product.

14 In addition to the foregoing, KASB, on behalf of itself, past and current agents,
15 representatives, officers, directors, employees, attorneys, and successors and/or assignees, and not
16 in its representative capacity, hereby waives all rights to institute or participate in, directly or
17 indirectly, any form of legal action and releases any other claims that it could make against Purity
18 Products or the other Releasees with respect to violations of Proposition 65 based upon the
19 Covered Product. With respect to the foregoing waivers and releases in this paragraph, KASB
20 hereby specifically waives any and all rights and benefits which it now has, or in the future may
21 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
22 provides as follows:

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
24 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
25 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
26 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
27 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
28 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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6.2 Purity Products's Release of KASB

Purity Products waives any and all claims against KASB, its attorneys and other representatives, for any and all actions taken, or statements made by KASB and its attorneys and other representatives, in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Product.

7. SEVERABILITY AND MERGER

If, subsequent to the execution of this Consent Judgment, any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

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

8. 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. Compliance with the terms of this Consent Judgment resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to alleged exposures to lead arising from the Covered Product. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Purity Products shall provide written notice to KASB 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 Product is so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

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For Purity Products:

Daniel S. Silverman
Venable LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Phone: 310-229-0373
Email: DSilverman@Venable.com

and

For KASB:

Stephanie Sy
Law Offices of Stephanie Sy
11622 El Camino Real, Suite 100
San Diego, CA 92130
Phone: 858-746-9554
Email: stephanie@stephanisylaw.com

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

10. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES

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

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1 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
2 **APPROVAL**

3 KASB agrees to comply with the requirements set forth in California Health & Safety
4 Code §25249.7(f) and to promptly file a Motion for Approval of this Consent Judgment and
5 Purity Products shall support approval of such Motion.

6 This Consent Judgment shall not be effective until it is approved and entered by the Court
7 and shall be null and void if, for any reason, it is not approved and entered by the Court within
8 twelve months after it has been fully executed by the Parties.

9 **13. MODIFICATION**

10 This Consent Judgment may be modified only by further stipulation of the Parties and the
11 approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **14. ATTORNEY'S FEES**

13 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.

18 **15. RETENTION OF JURISDICTION**

19 This Court shall retain jurisdiction of this matter to implement or modify the Consent
20 Judgment.


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1 **16. AUTHORIZATION**

2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
3 Party he or she represents to stipulate to this Consent Judgment.

4
5 **STIPULATED AND AGREED TO:**

6 **KEEP AMERICAN SAFE AND
7 BEAUTIFUL**


8 Date: 05/20/2024
9 By:  Lance Nguyen
10 Title: COO

**WATER PURE, INC. dba PURITY
11 PRODUCTS**

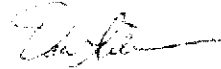
12 Date: 5/21/24
13 By: Jason Kam JASON KAM
14 Title: VP BUSINESS DEVELOPMENT

15 **APPROVED AS TO FORM:**

16 **LAW OFFICES OF STEPHANIE SY**

17 By: 
18 Stephanie Sy
19 Attorneys for Plaintiff, KEEP AMERICA
20 SAFE AND BEAUTIFUL

VENABLE LLP

21 By: 
22 Daniel S. Silverman
23 Attorneys for Defendant,
24 WATER PURE, INC. dba PURITY
25 PRODUCTS

26 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

27 Dated: _____
28 _____
Judge of the Superior Court