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County of San Francisco
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KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

MARKY'S GROUP, INC.; AMAZON.COM, INC.; and DOES 1-30, inclusive,

Defendants.

Case No. CGC-23-607238

~~[PROPOSED]~~ **CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 et seq. and Code of Civil Procedure § 664.6)

## 1. INTRODUCTION

This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful ("KASB") and defendant Marky's Group, Inc. ("Marky's"), with KASB and Marky's each individually referred to as a "Party" and collectively, as the "Parties," to resolve the allegations in the June 23, 2022 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* ("Proposition 65").

### 1.1 The Parties

KASB alleges it is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause birth defects or other reproductive harm are disclosed or eliminated from consumer products sold in California.

### 1.2 Consumer Product Description

KASB alleges that Marky's manufactures, imports, sells, or distributes for sale in California dried mushrooms containing Mercury and Mercury Compounds including, but not limited to, *Dried Porcini Mushrooms 100% Boletus Edulis-8OZ; UPC 709932082350, ASIN B09KVJ6LQZ,* without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* ("Proposition 65"). The products that are covered by this Consent Judgment are defined as dried mushrooms that Marky's has manufactured, imported, sold or distributed for sale in California, directly or indirectly. All such items shall be referred to herein as the "Products." Mercury and Mercury Compounds are listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

### 1.3 Notice of Violation

On June 23, 2022, KASB alleges that it served Marky's, Amazon.com, Inc. ("Amazon"), the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging Marky's violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to Mercury and Mercury Compounds. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

### 1.4 Complaint

On June 23, 2023, KASB commenced the instant action ("Complaint"), naming Marky's as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

### 1.5 No Admission

Marky's denies the material, factual and legal allegations contained in the Notice and Complaint and maintains that all products it manufactured, imported, sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including, without limitation, Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an admission by Marky's of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect

Marky's obligations, responsibilities, and duties under this Consent Judgment. Marky's maintains that it has not knowingly manufactured or caused to be manufactured the Products for sale in California in violation of Proposition 65.

**1.6 Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate: this Court has jurisdiction over Marky's as to the allegations contained in the Complaint; venue is proper in San Francisco County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

**1.7 Effective Date**

The term "Effective Date" means the date on which the Court approves this Consent Judgment and enters Judgment pursuant to its terms.

## 2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

**2.1 Commitment to Reformulate or Warn**

Commencing on or before the Effective Date (the "Commencement Date"), all Products Marky's grows, sources, produces, processes, packages, assembles, manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall either: (a) meet the Reformulation Standard for Reformulated Products, as defined by the following Section 2.2; or (b) bear a clear and reasonable health hazard warning, as defined by and set forth in Section 2.3. Products that were supplied or contracted to be supplied to third parties by Marky's prior to the Commencement Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold as already manufactured, packaged and labeled.

**2.2 Reformulation Standard Defined**

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products which contain no detectable amount of Mercury and Mercury Compounds (Hg). For purposes of this Agreement "no detectable amount" shall mean not detected when analyzed Pressure Digestion and Inductively Coupled Plasma/Mass Spectrometry by a laboratory accredited by the State of California, a federal agency, or the International Laboratory Accreditation Cooperation ("ILAC"),

and the European Accreditation Laboratory Committee in accordance with International Organization for Standards/International Electrotechnical Commission ("ISO/IEC") 17043 and ISO Guide 34 ("Accredited Laboratory"). All Mercury and Mercury Compounds concentration levels pursuant to this Section 2.2 shall be determined pursuant to a Pressure Digestion and Inductively Coupled Plasma/Mass Spectrometry with sample preparation and analysis in conformity with AOAC 2013.6 U.S. Environmental Protection Agency method ("EPA Method") 6020 or 6020A, or its equivalent, with inductively coupled plasma mass spectrometry ("ICP-MS") equipment with a level of detection of at least 0.01 parts per billion ("ppb") that meets standard laboratory QA/QC requirements. ("Reformulation Standard".)

**2.3 Clear and Reasonable Warnings**

As of the Commencement Date, for all Products that are not Reformulated Products, sold to consumers in California or offered for sale in California, Marky's shall provide clear and reasonable warnings to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Marky's shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the future.

For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

**(a) Warning Content:**

**Option 1:**

**WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING**: Consuming this product can expose you to Mercury and Mercury Compounds, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

OR

**Option 2:**

**WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING**: Consuming this product can expose you to chemicals including Mercury and Mercury Compounds, which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

*Or, for Products manufactured and labeled prior to January 1, 2028:*

**WARNING:** Consuming this product can expose you to Mercury and Mercury Compounds which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65warnings.ca.gov/food.

**(b) Short-Form Warning Content:** As an alternative to the warning set forth in the preceding subsection (a), Marky's may, but is not required to, use one of the following short-form warnings ("Short-Form"), subject to the additional requirements set forth in the following Sections (c) through (e):

**Option 1:**

**WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING:** Can expose you to Mercury and Mercury Compounds, a reproductive toxicant. See P65Warnings.ca.gov/food.

Or

**Option 2:**

**WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING:** Risk of reproductive harm from exposure to Mercury and Mercury Compounds. See www.P65Warnings.ca.gov/food.

*Or, for Products manufactured and labeled prior to January 1, 2028,*

**WARNING** Reproductive Harm – www.P65Warnings.ca.gov/food.

Warnings shall be provided as specified in the Proposition 65 regulations, in effect as of the Effective Date and as may be amended in the future.

Each warning shall be prominently placed 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 before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

**(c) Foreign Language Requirement.**

Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

**(d) On-Product Warnings.**

Marky's shall affix a warning to the Product label or otherwise directly on Products intended or provided for sale to consumers located in California and to customers with retail outlets in California, nationwide distribution, or e-commerce platforms. For the purposes of this Agreement, "Product label" means a display of written, printed, or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) must print the words "WARNING:", "CA WARNING" or "CALIFORNIA WARNING" in all capital letters and in bold font. The entire warning shall be set off from other surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the largest type size used for other consumer information on the Products.

Warnings provided pursuant to Section 2.3 by Marky's must print the words "WARNING:", "CA WARNING:", or "CALIFORNIA WARNING:" in all capital letters and in bold font, followed by a colon. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

**(e) Internet Warnings.**

For all Products manufactured, imported, distributed, sold or offered for sale via the internet to customers located in California, or sold in or into California by Marky's or its customers, directly or through third-party websites over which Marky's has the ability to control the application of warnings, Marky's shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and: (a) a warning on the Product display page; (b) a clearly marked hyperlink using the word "WARNING" or words "CA WARNING" or "CALIFORNIA WARNING "on the product display page that links to the Product warning; or (c) by an otherwise prominently displayed warning provided to the purchaser prior to completing the purchase, such that the consumer does not have to seek out the information being provided. If the warning is provided using the Short-Form content, pursuant to Section 2.3(b), then the warning provided on the website may use the same content. "Prominently displayed" is defined to mean the consumer does not have to search for it in the general content of the website. Where Marky's sells, ships, or distributes Products to third-party retailers,

websites, or e-commerce marketplaces, and where Marky's no longer has the ability to control the application of warnings, Marky's will inform such third-parties to include the same online warning as set forth above.

## 3. MONETARY SETTLEMENT TERMS

### 3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Marky's agrees to pay a civil penalty of $3,000 within ten (10) business days of the Effective Date. Marky's civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Marky's shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of $2,250; and (b) "Seven Hills LLP in Trust for KASB" in the amount of $750. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payment. Marky's shall deliver its civil penalty payments to the address listed in Section 3.3, below.

### 3.2 Reimbursement of Attorneys' Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice and Complaint without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Consent Judgment to the Office of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any. Within ten (10) business days of the Effective Date, Marky's shall issue a check in the amount of $23,500 and made payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing this matter to Marky's attention, litigating, negotiating a settlement in the public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the California Attorney General. Marky's shall deliver its payment to the address listed in Section 3.3.

### 3.3 Payments

All payments payable and due under this Consent Judgment shall be delivered to KASB's counsel at the following address:

Seven Hills LLP
Attn: Kimberly Gates Johnson
1 Embarcadero Center, Suite 1200
San Francisco, CA 94111

## 4. CLAIMS COVERED AND RELEASED

### 4.1 KASB's Release of Proposition 65 Claims in the Public Interest

This Consent Judgment is a full, final, and binding resolution between KASB on behalf of itself and in the public interest and Marky's for the alleged failure to provide a Proposition 65 warning of exposure to Mercury and Mercury Compounds in the Products as set forth in the Notice and Complaint, and fully resolves all claims that have been or could have been asserted in this action up through the Effective Date for failure to provide Proposition 65 warnings for the Products regarding Mercury and Mercury Compounds. KASB, on behalf of itself and in the public interest, hereby releases and discharges Marky's, Amazon, and their respective past and present officers, directors, shareholders, members, managers, owners insurers, employees, attorneys, parents, shareholders, divisions, affiliates, subdivisions, subsidiaries, agents, and their successors and assigns, and all customers, distributors, retailers, franchisees, marketplace hosts, internet marketplaces, and downstream persons or entities in the distribution chain of the Products to or via whom Marky's imported, sold or distributed Products, directly or indirectly, (collectively, the "Released Parties"), for any and all claims for violations of Proposition 65 arising out of or relating to the Products based on allegations that there was or is a failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to Mercury and Mercury Compounds contained in the Products that were manufactured, processed, distributed, sold and/or offered for sale before the Effective Date, as set forth in the Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to Mercury and Mercury Compounds in the Products. It is the Parties' intention that the Consent Judgment entered by the Court shall have preclusive effect such that no other actions by private enforcers, whether purporting to act in his, her or its interests or the public interest

shall be permitted to pursue and take any action with respect to any violation of Proposition 65 against the Released Parties based on the failure to warn of exposure to Mercury and Mercury Compounds from use of the Products prior to the Effective Date.

The Parties understand and agree these Section 4 releases shall neither extend: (a) to upstream entities that manufactured the Products or to any distributors or suppliers who sold the Products to Marly's; nor (b) downstream to Releasees who were instructed by Marky's, pursuant to Section 2, to provide a warning on Products that are not Reformulated Products and failed to do so.

**4.2 KASB's Individual Release of Claims**

KASB on behalf of itself and its past and current agents, representatives, attorneys successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), injunctive relief and mitigation of any nature whatsoever, whether known or unknown, fixed or contingent, based (collectively "Claims"), against the Released Parties arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Mercury and Mercury Compounds from the Products. In furtherance of the foregoing, as to alleged exposures to Mercury and Mercury Compounds from the Products, KASB on behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Mercury and Mercury Compounds from the Products by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO 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.

KASB understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if KASB suffers future damages arising out of or resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any violation

of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Mercury and Mercury Compounds from the Products, including but not limited to any exposure to, or failure to warn with respect to exposure to Mercury and Mercury Compounds from the Products, KASB will not be able to make any claim for those damages against Released Parties. Furthermore, KASB acknowledges that it intends these consequences for any such Claims arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Mercury and Mercury Compounds from Products as may exist as of the date of this release but which KASB does not know exist, and which, if known, would materially affect its decision to enter into this Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**5. COURT APPROVAL**

KASB shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). The Parties shall make all reasonable efforts possible to have the Consent Judgment approved by the Court. In exchange for payment, as described in Section 3, KASB shall dismiss the entire Complaint against Marky's and Amazon with prejudice within five (5) business days after the payments identified in Section 3 have cleared. If this Consent Judgment is not approved in full by the Court, (a) this Consent Judgment and any and all prior agreements between the Parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

**6. SEVERABILITY**

If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any provision of this Consent Judgment is deemed 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 California. In the event Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable, by reason of law, generally, as to the Products or as to Mercury and Mercury Compounds, then Marky's may provide KASB with written notice of any asserted change in the law, seek leave to amend the consent judgment, and the Parties may move the Court to modify the terms of this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Marky's 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) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For Marky's:

Jonathan E. Temchin, Partner
Tarter, Krinsky & Drogan, LLP
1350 Broadway
New York, NY 10018

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
1 Embarcadero Center, Suite 1200
San Francisco, CA 94111

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 AND PDF SIGNATURES

This Consent Judgment may be executed in counterparts and by 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

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

## 11. ENTIRE AGREEMENT

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

## 12. 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.

## 13. AUTHORIZATION

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

**AGREED TO:**

Date: 02/09/2026

By: _____
Lance Nguyen, CEO
Keep America Safe and Beautiful

**AGREED TO:**

Date: February 5th, 2026

By: _____
Mark Zaslavsky, CEO
Marky's Group, Inc.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

**IT IS SO ORDERED.**

Dated: April 20, 2026

JUDGE OF THE SUPERIOR COURT

JOSEPH M. QUINN