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11 PLANT PEOPLE, PBC

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION

15 KEEP AMERICA SAFE AND BEAUTIFUL,

16 Plaintiff,

17 v.

18 PLANT PEOPLE, PBC; and DOES 1-30,
19 inclusive,

20 Defendants.

Case No. CGC-22-601013

[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment (“Agreement”) is entered into by and between plaintiff Keep America
3 Safe and Beautiful (“KASB”) and defendant Plant People, PBC (“Plant People”), with KASB and
4 Plant People each individually referred to as a “Party” and, collectively, the “Parties” to resolve the
5 allegations in the complaint filed in this matter based on the December 3, 2021 60-Day Notice of
6 Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health &
7 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

8 **1.1 The Parties**

9 KASB is a California-based non-profit organization proceeding in the public interest pursuant
10 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
11 California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated
12 from consumer products sold in California. Plant People is a dietary supplement products company
13 making products for health and wellness. Plant People is a person in the course of doing business for
14 purposes of California Health & Safety Code § 25249.11(b).

15 **1.2 Consumer Product Description**

16 KASB alleges Plant People manufactures, imports, distributes, sells, and offers for sale in
17 California dietary supplements containing the heavy metal, Lead, including, but not limited to,
18 *ADVANCED immune power organic mushroom multiplex for immune strength (60 Capsules), Lot#*
19 *21A008, Exp 01/2024*, without providing a warning pursuant to California Health & Safety Code
20 § 25249.5 *et seq.* (“**Proposition 65**”). Dietary supplements are referred to hereinafter as the
21 “Products.” Lead is listed pursuant to Proposition 65 as a chemical known to the State of California
22 to cause birth defects or other reproductive harm.

23 **1.3 Notice of Violation**

24 On December 3, 2021, KASB served Plant People, Vitamin Shoppe Industries LLC, the
25 California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of
26 Violation (“Notice”), alleging defendants violated Proposition 65 by failing to warn its customers
27 and consumers in California that its Products can expose users to Lead. To the best of the Parties
28

1 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the
2 allegations in the Notice.

3 **1.4 Complaint**

4 On July 29, 2022, KASB commenced the instant action (“Complaint”), naming Plant People,
5 PBC and Vitamin Shoppe Industries LLC as defendants for the alleged violations of Proposition 65
6 that are the subject of the Notice.

7 **1.5 No Admission**

8 The Parties enter into this Agreement to settle disputed claims between them as set forth
9 herein and in the Notice concerning Plant People’s compliance with Proposition 65. Specifically,
10 Plant People denies the factual and legal allegations contained in the Notice and Complaint and
11 maintains that all products it has sold or distributed for sale in California, including the Products,
12 have been, and are, in compliance with Proposition 65 or any other statutory, regulatory, common
13 law, or equitable doctrine. Nothing in this Agreement shall constitute or be construed as, nor shall
14 compliance with this Agreement constitute or be construed as, an admission by Plant People of any
15 fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however,
16 diminish or otherwise affect Plant People’s obligations, responsibilities, and duties under this
17 Agreement. Notwithstanding the allegations in the Notice, Plant People maintains that it has not
18 knowingly manufactured, or caused to be manufactured, the Products for sale in California in
19 violation of Proposition 65.

20 **1.6 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
22 over Plant People as to the allegations contained in the Complaint, venue is proper in the County of
23 San Francisco, and the Court has jurisdiction to enter and enforce the provisions of this Consent
24 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

25 **1.7 Effective Date**

26 For purposes of this Agreement, “Effective Date” shall mean the date on which the Court
27 approves this Consent Judgment and enters judgment pursuant to its terms.
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Reformulation Commitment**

3 Commencing on the Effective Date and continuing thereafter, all Products Plant People
4 manufactures for sale in or into California, directly or through one or more third party retailers or e-
5 commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as
6 defined by Section 2.2.

7 **2.2 Reformulation Standard**

8 For purposes of this Agreement, “Reformulated Products” are defined as Products which
9 contain lead (Pb) at less than or equal to 0.5 microgram per the Maximum Daily Label Serving
10 Suggestion. For purposes of this Agreement, the “Maximum Daily Label Serving Suggestion” is the
11 serving size multiplied by the highest number of servings the label suggests be consumed per day.
12 Defendant shall not reduce the Maximum Daily Label Serving Suggestion (by size, number of
13 capsules, volume, weight, or frequency) of any Products solely to comply with the Reformulation
14 Commitment of Section 2.1. To assess whether a Product is compliant, it must be analyzed by a
15 laboratory, accredited by the State of California, a federal agency, or a nationally recognized
16 accrediting organization, using inductively coupled plasma mass spectrometry (“ICP-MS”)
17 equipment with a level of detection (“LOD/LOQ”) of 10 ppb or less utilizing scientifically
18 appropriate methods and protocols for testing heavy metals in foods.

19 **2.3 Certification of Compliance with Reformulation Standard**

20 As of the Effective Date, any and all Products manufactured by Plant People for sale to (a)
21 consumers in California directly including through its own website, affiliated websites or a third party
22 website, to consumers located in California, and (b) customers with nationwide distribution and e-
23 commerce websites, shall be Reformulated Products as defined by Section 2.2.

24 **2.4 Customer Notification**

25 No later than thirty days after the Effective Date, Plant People shall send a letter, electronic or
26 otherwise (“Notification Letter”) to: (1) each customer in California to which it supplied the
27 Exemplar Products between December 3, 2020, and the Effective Date, unless confirmed in writing to
28 no longer have the Exemplar Product in inventory; and (2) any other customer that is a retailer or

1 distributor which has any inventory of the Exemplar Products, which Plant People supplied between
2 December 3, 2018, and the Effective Date, for sale to consumers in California. For purposes of this
3 Agreement, the term “Exemplar Products” means *ADVANCED immune power organic mushroom*
4 *multiplex for immune strength (60 Capsules), Lot# 21A008, Exp 01/2024*. The Notification Letter
5 shall advise the recipient that the Exemplar Products contain Lead, a chemical known to the State of
6 California to cause birth defects or other reproductive harm. The Notification letter shall inform the
7 recipient that all Exemplar Products must either (1) be returned to Plant People for a full refund or
8 (2) have a label, attached to the packaging of each Exemplar Product before it is sold in the California
9 market or to a customer in California, expressly referring to the Exemplar Product with the following
10 warning statement:

11 **WARNING:** Consuming this product can expose you to chemicals including Lead,
12 which are known to the State of California to cause birth defects or
13 other reproductive harm. For more information go to
14 www.P65Warnings.ca.gov/food.

15 The foregoing warning must print the word “**WARNING:**” in all capital letters and in bold
16 font. The Notification Letter shall enclose a shipping label with the return address and postage paid
17 by Plant People. If the customer is a retailer or distributor of the Exemplar Products, the
18 Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing
19 warning statement.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Initial Civil Penalty**

22 Pursuant to Health and Safety Code § 25249.7(b), Plant People agrees to pay a civil penalty
23 of \$1,000 within five (5) business days of the Effective Date. Plant People’s civil penalty payment
24 will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five
25 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
26 Assessment (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Plant
27 People shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$750;
28 and (b) “Keep America Safe and Beautiful” in the amount of \$250. KASB’s counsel shall deliver to
OEHHA and KASB their respective portion of the penalty payment.

1 **3.2 Reimbursement of Attorneys’ Fees and Costs**

2 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms
3 on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the
4 other material settlement terms, they negotiated and reached an accord on the amount of
5 reimbursement to be paid to KASB’s counsel, under general contract principles and the private
6 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
7 performed through the mutual execution and reporting of this Agreement to the Office of the
8 California Attorney General. Plant People agrees to reimburse KASB and its counsel \$21,500 of the
9 fees and costs incurred investigating, bringing this matter to Plant People’s attention, negotiating a
10 settlement in the public interest, and reporting its terms to Office of the California Attorney General
11 pursuant to Section 9 payable in seven (7) installments, with the first installment of \$3,500 due five
12 (5) days after the Effective Date, and each subsequent installment of \$3,000 due every subsequent
13 thirtieth day thereafter until paid in full. Each installment shall be made payable to “Seven Hills
14 LLP.” Plant People agrees to pay interest, at a rate of 3% simple interest, for all amounts due and
15 owing under this Section not received on or before the due date.

16 **3.3 Payments**

17 All payments payable and due under this Agreement shall be delivered to KASB’s counsel at
18 following address: Seven Hills LLP
 Attn: Laralei Paras
19 4 Embarcadero Center, Suite 1400
 San Francisco, CA 94111
20

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 KASB’s Public Release of Plant People**

23 This Agreement is a full, final and binding resolution between KASB, acting in the public
24 interest, and Plant People, of any violation of Proposition 65 that was or could have been asserted by
25 KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
26 assignees, against (a) Plant People, its owners, shareholders, representatives directors, officers,
27 employees, attorneys, and (b) each entity to whom Plant People directly or indirectly distributes or
28 sells Products, including, but not limited to, downstream distributors, wholesalers, customers,

1 retailers including Vitamin Shoppe Industries LLC, franchisees, cooperative members, licensors,
2 licensees, dealers, vendors, owners, shareholders, purchasers, and users (collectively, “**Releasees**”)
3 from all claims for violations of Proposition 65, based on alleged exposure to Lead contained in the
4 Products that were manufactured for sale by Plant People in California before the Effective Date, as
5 alleged in the Notice.

6 **4.2 KASB’s Private Release of Proposition 65 Claims**

7 In further consideration of the promises and agreements herein contained, KASB as an
8 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,
9 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB’s rights to
10 institute or participate in, directly or indirectly, any form of legal action and releases all claims that
11 KASB may have brought, including, without limitation, all actions, and causes of action, in law or in
12 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
13 including, but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under
14 Proposition 65 with respect to Lead in the Products manufactured, distributed, sold and/or offered for
15 sale by Plant People, before the Effective Date (collectively, “**Claims**”), against Plant People and
16 Releasees.

17 **4.3 Mutual Private Release of Unknown Claims**

18 KASB, on behalf of itself, its past and current agents, representatives, attorneys, successors,
19 and/or assignees and not in its representative capacity, on the one hand, and Plant People, on behalf
20 of itself, its owners, shareholders, representatives directors, officers, employees, attorneys, on the
21 other hand, provide a general release herein which shall be effective as a full and final accord and
22 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney’s fees,
23 damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown,
24 suspected or unsuspected, against either Party with respect to that allegations in the Notice and
25 Complaint, and Lead in the Products manufactured, distributed, sold and/or offered for sale by Plant
26 People, before the Effective Date. KASB acknowledges that it is familiar with California Civil Code
27 section 1542, which provides as follows:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
2 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
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 KASB, in its capacity only, and on behalf of itself its past and current agents, representatives,
5 attorneys, successors, and/or assignees, on the one hand, and Plant People, on behalf of itself, its
6 owners, shareholders, representatives directors, officers, employees, attorneys, on the other hand,
7 expressly waive and relinquish any and all rights and benefits which it may have under, or which may
8 be conferred on it by the provisions of California Civil Code section 1542 as well as under any other
9 state or federal statute or common law principle of similar effect, to the fullest extent that it may
10 lawfully waive such rights or benefits pertaining to the released matters.

11 **4.4 Plant People’s Release of KASB**

12 Plant People, on behalf of itself, its past and current agents, representatives, attorneys,
13 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other
14 representatives, for any and all actions taken or statements made, or could have been taken or made,
15 by KASB and its attorneys and other representatives, whether in the course of investigating claims or
16 otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

17 **4.4 Deemed in Compliance with Proposition 65**

18 The Parties agree that compliance by Plant People with this Agreement constitutes
19 compliance with Proposition 65 with respect to Lead in the Products except for any downstream
20 Releasees who has been instructed by Plant People pursuant to Section 2.4 to provide a warning and
21 fails to do so shall not be released for sales of any Products after the Effective Date.

22 **5. COURT APPROVAL**

23 Pursuant to California Health and Safety Code § 25249.7(f)(4), Plant People shall file and
24 serve a noticed motion for judicial approval of this Consent Judgment within ninety (90) days of the
25 date this agreement is fully executed. The Parties agree to mutually employ their best efforts, and
26 those of their counsel, to support entry of a judgment pursuant to the terms of this Consent
27 Judgment, and to obtain judicial approval of their settlement in the form of this Consent Judgment in
28 a timely manner. For purposes of this section, “best efforts” shall include, at a minimum, supporting

1 the motion for approval, responding to any third-party objection, and appearing at the hearing before
2 the Court if so requested.

3 **6. SEVERABILITY**

4 If, after the execution of this Agreement, any provision of this Agreement is deemed by a
5 court as unenforceable, the validity of the remaining provisions shall not be adversely affected.

6 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

19 For Plant People:

20 Hudson Gaines-Ross, CEO
21 Plant People, PBC
22 49 Elizabeth Street, 3rd Floor
23 New York, NY 10013

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.com

24 With a copy to:

25 Will Wagner
26 will.wagner@arnoldporter.com
27 ARNOLD & PORTER KAYE SCHOLER LLP
28 3 Embarcadero Center, 10th Floor
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.

1 **9. COUNTERPARTS AND PDF SIGNATURES**

2 This Agreement may be executed in counterparts and by portable document format (pdf)
3 signature, each of which shall be deemed an original and, all of which, when taken together, shall
4 constitute one and the same document.

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. ENTIRE AGREEMENT**

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

17 **12. DISPUTE RESOLUTION AND ENFORCEMENT**

18 KASB may, by motion or application for an order to show cause before the Superior Court of
19 San Francisco, enforce the terms and conditions contained in this Agreement. Prior to bringing any
20 motion or application to enforce the requirements of Section 2 above, KASB shall meet and confer
21 regarding the basis for KASB's anticipated motion or application in attempt to resolve it informally,
22 including providing Plant People a reasonably opportunity of at least thirty (30) days to cure any
23 alleged violation. Should such attempts at information resolution fail, KASB may file its
24 enforcement motion or application. The prevailing party on any motion or application to enforce this
25 Agreement shall be entitled to its reasonable attorney's fees and costs incurred as a result of such
26 motion or application. This Agreement may only be enforced by the Parties or a public authority
27 with enforcement rights pursuant to Proposition 65.

28

1 **13. MODIFICATION**

2 This Agreement may be modified only by: (i) a written agreement of the Parties and the entry
3 of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party
4 and the entry of a modified Consent Judgment by the Court thereon. No action to modify this
5 Agreement may be commenced or maintained, unless the Party seeking modification notifies the
6 other Party of the specific basis for the modification at least 90 days before filing any action. The
7 Parties shall meet and confer in good faith to resolve any dispute for at least 60 days after written
8 notice is provided. Should the Parties be unable to resolve such a dispute, either Party may file an
9 action in the Superior Court of the State of California in and for the City and County of San
10 Francisco to modify the terms and conditions contained in this Agreement.

11 **14. ATTORNEYS' FEES**


12 Except as specifically provided in this Agreement, each Party shall bear its own attorneys'
13 fees and costs incurred in connection with the Notice of Violation of Plaintiff's Complaint.

14 **15. AUTHORIZATION**

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


17 **AGREED TO:**

18 Date: 08/01/2023

19 
20 By: _____
21 My Nguyen, CFO
22 Keep America Safe and Beautiful

AGREED TO:

18 Date: 8/1/23

19 
20 By: _____
21 Hudson Gaines-Ross, CEO
22 Plant People, PBC