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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KEEP AMERICA SAFE AND BEAUTIFUL

Plaintiff,

vs.

MARY’S GONE CRACKERS, INC.; IHERB,
LLC; DOES 1-25 INCLUSIVE

Defendants.

Case No. *****

**[PROPOSED] ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT**

Date:
Time:
Dept.:
Judge:
Action Filed:

Plaintiff, Keep America Safe and Beautiful (“KASAB”), and Defendants Mary’s Gone Crackers, Inc., having agreed through their respective counsel that judgment be entered pursuant to the terms of the Stipulation and Order Re: Consent Judgment (“Consent Judgment”) entered into by the parties, hereby attach same to the Judgment as “Exhibit 1.” After consideration of the papers submitted and arguments presented, the Court finds that the settlement agreement set forth in the attached Consent Judgment meets the criteria established by Health & Safety Code § 25249.7, in that:

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- a) the health hazard warning required by the Consent Judgment complies with Health & Safety Code § 25249.7;
- b) the reimbursement of fees and costs to be paid pursuant to the Consent Judgment is reasonable under California law;
- c) the civil penalty amount to be paid pursuant to the Consent Judgment is reasonable.

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: _____
JUDGE OF THE SAN DIEGO SUPERIOR COURT

Stephanie Sy, Esq. (SBN 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

KEEP AMERICA SAFE AND BEAUTIFUL

Plaintiff,

vs.

MARY'S GONE CRACKERS, INC.; IHERB,
LLC; DOES 1-25 INCLUSIVE

Defendants.

Case No. *****

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT MARY'S GONE
CRACKERS, INC.**

Date:
Time:
Dept.:
Judge:
Action Filed:

1. INTRODUCTION

1.1 The Parties

This Consent Judgment is hereby entered into by and between Keep America Safe and Beautiful ("KASAB") and Mary's Gone Crackers, Inc. ("Mary's"). KASAB and Mary's are collectively referred to as the "Parties," and each of them as a "Party." KASAB is a California Nonprofit Corporation seeking to promote awareness of exposures to chemicals that the State of California has deemed toxic, and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1 **1.2 Allegations and Representations**

2 (a) KASAB alleges that Mary's is a person in the course of doing business for purposes of
3 Proposition 65, Cal. Health & Safety Code § 25249.6 *et seq.*, and has offered for sale in the State
4 of California and sold in California the "Super Seed Crackers, Seaweed & Black Sesame" that
5 when used as intended exposes consumers to Lead and that such sales have not been accompanied
6 by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State
7 of California to cause cancer and reproductive harm. KASAB has cited the "Super Seed
8 Crackers, Seaweed & Black Sesame" as a specific example of the Products that are the subject of
9 its allegations.

10 (b) The Parties enter into this Consent Judgment to resolve all Proposition 65 claims
11 concerning the Covered Products (defined below) set forth in KASAB's Notice, including claims
12 against any and all downstream entities including, but not limited to, manufacturers, distributors,
13 customers, retailers, and affiliates, who allegedly violated Proposition 65 by distributing the
14 Covered Products in California.

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

21 **1.3 Covered Products**

22 The products that are covered by this Consent Judgment are defined as, "Super Seed
23 Crackers, Seaweed & Black Sesame" manufactured, distributed, sold, or offered for sale by
24 Mary's in the State of California ("Covered Products").

25 **1.4 Notice of Violation**

26 On or about December 15, 2021 KASAB served Mary's, Iherb, LLC, and all public
27 enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the
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1 State of California with a document entitled "60-Day Notice of Violation" (the "Notice") that
2 provided Mary's, Iherb, LLC, and such public enforcers with notice that alleged that Mary's and
3 Iherb, LLC, were in alleged violation of Proposition 65 for failing to warn consumers and
4 customers that the Covered Products exposed users in California to Lead. No public enforcer
5 diligently prosecuted the claims alleged in the Notice within sixty days plus service time relative
6 to the provision of the Notice to them by KASAB.

7 **1.5 No Admission**

8 Mary's denies the material allegations contained in KASAB's Notice and maintains that
9 it has not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an
10 admission by Mary's of any fact, finding, issue of law, or violation of law, or any other statutory,
11 regulatory, common law, or equitable doctrine; nor shall compliance with this Settlement
12 Agreement constitute or be construed as an admission by Mary's of any fact, finding, conclusion,
13 issue of law, or violation of law, such being specifically denied by Mary's. However, this section
14 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Mary's under
15 this Settlement Agreement.

16 **1.6 Execution/Effective Date**

17 1.6.1 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
18 date that this Court enters the Consent Judgment.

19 1.6.2 The term "Execution Date" shall mean the date this Consent Judgment is signed by
20 the Parties.

21 **2. INJUNCTIVE RELIEF**

22 2.1 Beginning sixty (60) days after the Effective Date (the "Compliance Date"), MGC
23 shall be permanently enjoined from manufacturing for sale in the State of California,
24 "Distributing into the State of California," or directly selling in the State of California, any
25 Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5
26 micrograms of lead per day, unless it meets the warning requirements under Section 2.2.

27 As used in this Settlement Agreement, the term "Distributing into the State of California"
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1 shall mean to directly ship a Covered Product into California for sale in California or to sell a
2 Covered Product to a distributor that MGC knows or has reason to know will sell the Covered
3 Product in California.

4 For purposes of this Settlement Agreement, "Daily Lead Exposure Level" shall be
5 measured in micrograms, and shall be calculated using the following formula: micrograms of lead
6 per gram of product, multiplied by grams of product consumed per day, which equals micrograms
7 of lead exposure per day.

8 2.2 If MGC is required to provide a warning pursuant to Section 2.1, then MGC shall
9 ensure that the Covered Products are in full compliance with California Code of Regulations,
10 Title 27, Article 6, Clear and Reasonable Warning Requirements § 25601-25603 (see also:
11 "www.P65Warnings.ca.gov."). The injunctive relief in Section 2 does not apply to any Covered
12 Product that has left the possession and is no longer under the control of MGC or its co-packer
13 prior to the Compliance Date and all claims as to such Covered Product are released in this
14 Settlement Agreement. Covered Products that were manufactured, packed, or labeled prior to the
15 Compliance Date shall be permitted to be sold as previously manufactured, packed or labeled.

16 **3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS**

17 3.1 Payment pursuant to Health & Safety Code Section 25249.7(b). Mary's shall pay a
18 Civil Penalty of \$500.00 to be apportioned in accordance with California Health & Safety Code
19 Section 25192, with 75% of these funds remitted to the State of California's Office of
20 Environmental Health Hazard Assessment (CCR Title 11 Div 4-Proposition 65 Private
21 Enforcement) and the remaining 25% of the penalty remitted to KASAB, as provided by
22 California Health & Safety Code Section 25249.7.

23 3.2 Mary's shall pay KASAB's counsel \$11,500.00 for attorneys' fees, expert and
24 investigation fees, and related costs associated with this matter and the Notice and incurred as a
25 result of investigating, bringing this matter to Mary's attention, and negotiating a settlement.
26 Payment of said monies shall be made via bank wire to the "Law Offices of Stephanie Sy" no
27 later than Five (5) days following the Execution Date.

1 3.3. The Law Offices of Stephanie Sy agrees to provide Mary's with tax identification
2 information within one (1) day following the Execution Date.

3 3.4 Other than the payment specified herein, each side is to bear its own attorneys'
4 fees and costs.

5 **4. CLAIMS COVERED AND RELEASED**

6 **4.1 Release of Downstream Customers**

7 This Consent Judgment is a full, final, and binding resolution between KASAB, acting in
8 the public interest, and Mary's. KASAB, on behalf of itself, releases Mary's and all entities and
9 persons from whom they obtain and to whom they directly or indirectly distribute or sell the
10 Products, including but not limited to each of its manufacturers, distributors, marketplace hosts,
11 wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners,
12 purchasers, and users, and their respective parent companies, corporate affiliates, subsidiaries,
13 officers, directors, attorneys, representatives, shareholders, agents, successors, and employees,
14 and sister entities (collectively "Releasees") from all claims for violations of Proposition 65
15 through the Effective Date based on exposure to Lead from the Covered Products.

16 In addition to the foregoing, KASAB, on behalf of itself, its past and current agents,
17 representatives, attorneys, and successors and/or assignees, hereby waives all rights to institute or
18 participate in, directly or indirectly, any form of legal action and releases any other claims, actions,
19 causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's
20 fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or
21 in the future that she could make against Mary's or the other Releasees relating to or arising from
22 the Covered Products. With respect to the foregoing waiver and release in this paragraph, KASAB
23 hereby specifically waives any and all rights and benefits which she now has, or in the future may
24 have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
26 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
27 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF**
28 **KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
 HIS OR HER SETTLEMENT WITH THE DEBTOR.

1 **4.2 MARY'S Release of KASAB**

2 Aside from any potential dispute relating to this Settlement Agreement, Mary's waives
3 any and all claims against KASAB, its attorneys and other representatives, for any and all actions
4 taken or statements made by KASAB and its attorneys and other representatives in the course of
5 investigating the claims or otherwise seeking enforcement of Proposition 65 against it in this
6 matter with respect to the Products.

7 **5. SEVERABILITY AND MERGER**

8 If subsequent to the execution of this Settlement Agreement any of the provisions of this
9 document are held by a court to be unenforceable, the validity of the enforceable provisions
10 remaining shall not be adversely affected.

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

15 **6. GOVERNING LAW**

16 6.1 This Consent Judgment shall be interpreted in accordance with the plain English
17 meaning of its terms and the construction thereof shall be governed by the laws in force in the
18 State of California, USA, without regard to conflicts of law principles. This Consent Judgment
19 resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to
20 alleged exposures to Lead arising from the Covered Products. In the event that Proposition 65 is
21 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
22 Products, then Mary's shall have no further obligations pursuant to this Consent Judgment with
23 respect to, and to the extent that, the Covered Products are so affected.

24 6.2 This Settlement Agreement shall apply to and be binding upon KASAB and
25 Mary's, its divisions, subdivisions, and subsidiaries, if any, and the Parties' successors and
26 assigns.

1 6.3 The Parties, including their counsel, have participated in the preparation of this
2 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
3 Consent Judgment was subject to revision and modification by the Parties and has been accepted
4 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
5 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
6 of the manner of the preparation of this Consent Judgment.

7 **7. NOTICES**

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

12 For MARY'S:

13 Natalie E. Rainer
14 Partner
15 K&L Gates LLP
16 4 Embarcadero Center
17 Suite 1200
18 San Francisco, California 94111

19 For KASAB:

20 Stephanie Sy, Esq.
21 Law Offices of Stephanie Sy
22 11622 El Camino Real, Suite 100
23 San Diego, California 92130

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

26 **8. COUNTERPARTS; FACSIMILE SIGNATURES**

27 The stipulations to this Settlement Agreement may be executed in counterparts and by
28 means of facsimile and/or portable document format (pdf), which taken together shall be deemed
to constitute one document.

1 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 9.1 KASAB agrees to promptly comply with the requirements set forth in California
3 Health & Safety Code §25249.7(f), and to promptly bring a Motion for Approval of this Consent
4 Judgment. Mary's agrees that it shall support approval of such Motion.

5 9.2 This Consent Judgment shall not be effective until it is approved and entered by
6 the Court, and it shall be null and void if, for any reason, it is not approved and entered by the
7 Court within 18 months after it has been fully executed by the Parties. In such a scenario, the
8 Parties agree to meet and confer on how to proceed, and if such agreement is not reached within
9 30-days, any monies that have been paid pursuant to Section 3 shall be refunded, and the case
10 shall proceed on its normal course.

11 9.3 If the Court approves this Consent Judgment and it is reversed or vacated by an
12 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
13 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
14 that have been paid pursuant to Section 3 shall be refunded within 15 days after remittitur to the
15 trial court, and the case shall proceed on its normal course on the trial court's calendar.

16 **10. MODIFICATION**

17 This Consent Judgment may be modified only by further written agreement of the Parties
18 and the approval of the Court, or upon the granting of a motion brought to the Court by either
19 Party. Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and
20 confer with the other Party prior to filing a motion to modify the Consent Judgment.

21 **11. ATTORNEY'S FEES**

22 11.1 Either Party may bring an action to enforce the terms of this Consent Judgment. A
23 Party who unsuccessfully brings or contests an action arising out of this Consent Judgment may
24 be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs unless
25 the unsuccessful party acted with substantial justification. For purposes of this Consent Judgment,
26 the term "substantial justification" shall carry the meaning used in the Civil Discovery Act of
27 1986, Code of Civil Procedure § 2016, *et seq.*

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

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

12. 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. 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 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this document. Each Party signatory certifies that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented, and legally bind that Party. Except as expressly provided herein, each Party is to bear its own fees and costs.

IT IS HEREBY SO STIPULATED AND AGREED:

Date: 06/15/2023

Date: 6/29/2023



By: My Chi Nguyen - COO
Keep America Safe and Beautiful

By: Takashi Fujii - CEO
Mary's Gone Crackers, Inc.