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KEEP AMERICA SAFE AND BEAUTIFUL

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Attorneys for Defendant  
FAR WEST FUNGI, INC.

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

KEEP AMERICA SAFE AND BEAUTIFUL,  
  
Plaintiff,  
  
v.  
  
FAR WEST FUNGI, INC.; and DOES 1-30,  
inclusive,  
  
Defendants.

Case No. CGC-23-606748  
[PROPOSED]  
**CONSENT JUDGMENT**

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 Far West Fungi, Inc. (“Far West”), with KASB and Far  
4 West each individually referred to as a “Party” and, collectively, as the “Parties” to resolve the  
5 allegations in the complaint filed in this matter based on the May 27, 2022 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 chemicals known to the State of California  
11 to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from  
12 consumer products sold in California. Far West is a grower and provider of organic dried mushrooms  
13 and related products in California. Far West is a person in the course of doing business for purposes  
14 of California Health & Safety Code § 25249.11(b).

15 **1.2 Consumer Product Description**

16 KASB alleges Far West manufactures, imports, distributes, sells, and offers for sale in  
17 California dried mushrooms containing the heavy metals, Lead and Cadmium, including, but not  
18 limited to, the *Far West Fungi Tree Oyster Jerky; 852944001854; Lot #J116*, without providing a  
19 warning pursuant to California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”).  
20 Hereinafter, all such dried mushroom products are referred to as the “Products.” Lead is listed  
21 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or  
22 other reproductive harm. Cadmium is listed pursuant to Proposition 65 as a chemical known to cause  
23 cancer, birth defects and reproductive harm.

24 **1.3 Notice of Violation**

25 On May 27, 2022, KASB served Far West, the California Attorney General, and the requisite  
26 public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging defendant  
27 violated Proposition 65 by failing to warn its customers and consumers in California that its Products  
28

1 can expose users to Lead and Cadmium. To the best of the Parties' knowledge, no public enforcer  
2 has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

3 **1.4 Complaint**

4 On May 26, 2023, KASB commenced the instant action ("Complaint"), naming Far West as  
5 a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.5 No Admission**

7 Far West denies the factual and legal allegations contained in the Notice and maintains that  
8 all products it sold or distributed for sale, in or into California, including the Products, have been,  
9 and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as,  
10 nor shall compliance with this Agreement constitute or be construed as, an admission by Far West of  
11 any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not,  
12 however, diminish or otherwise affect Far West's obligations, responsibilities, and duties under this  
13 Agreement.

14 **1.6 Jurisdiction**

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

19 **1.7 Effective Date**

20 For purposes of this Agreement, "Effective Date" shall mean the date on which the Court  
21 approves this Consent Judgment and enters judgment pursuant to its terms.

22 **2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS & NOTIFICATION**

23 **2.1 Commitment to Reformulate or Warn**

24 Commencing on or before 30 days after the Effective Date, and continuing thereafter, all  
25 Products Far West manufactures, distributes, sells or offers for sale, in or into California, directly or  
26 to one or more third party retailers or e-commerce marketplaces, shall either: (a) meet the  
27 Reformulation Standard for Reformulated Products, as defined by Section 2.2; or (b) be  
28

1 accompanied by a clear and reasonable health hazard warning pursuant to the following Sections 2.3  
2 through 2.6.

3 **2.2 Reformulation Standard & Reformulated Products Defined**

4 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products  
5 which contain:

6 (a) Lead (Pb) in a maximum concentration of no more than 0.5 micrograms per day, based on  
7 consumption of a "Single Serving"; and/or

8 (b) Cadmium (Cd) of no more than 4.1 micrograms per day, based on consumption of a  
9 "Single Serving."

10 A "Single Serving" is defined as either 5 grams, or 0.176 ounces, of the Product. To assess  
11 whether a Product is compliant, the Product must be analyzed by a laboratory, accredited by the  
12 State of California, a federal agency, or a nationally recognized accrediting organization  
13 ("Accredited Laboratory"), using: (1) inductively coupled plasma mass spectrometry ("ICP-MS")  
14 equipment with a level of detection ("LOD/LOQ") of 10 ppb or less utilizing scientifically  
15 appropriate methods and protocols for testing heavy metals, or Lead, in foods; and (2) inductively  
16 coupled plasma mass spectrometry ("ICP-MS") utilizing scientifically appropriate adherence to the  
17 protocols set forth in AOAC Method 2015.01 or 2013.06 (21<sup>st</sup> Ed., 2019) with a LOD/LOQ of 0.10  
18 ppm or less for Cadmium in foods. ("Reformulation Standard.")

19 **2.3 Product Warnings**

20 For all Products that are not Reformulated Products in compliance with the Reformulation  
21 Standard set forth above at 2.2, Far West shall provide clear and reasonable warnings to customers in  
22 California in accordance with this Section, pursuant to Title 27 California Code of Regulations §  
23 25600, et seq. Each warning shall be prominently placed with such conspicuousness as compared  
24 with other words, statements, or designs as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions before purchase or use and shall be provided in a  
26 manner such that it is clearly associated with the specific Product to which the warning applies.

27 (a) **Warnings.** The Warning shall consist of one of the following statements:  
28

1 (1) For Products containing Lead in excess of the corresponding  
2 concentrations listed in Section 2.2(a), Far West shall use the following warning:

3 **WARNING:** Consuming this product can expose you to chemicals including  
4 Lead, which is known to the State of California to cause  
5 cancer and birth defects or other reproductive harm. For more  
6 information go to: [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

7 (2) For Products containing Cadmium in excess of the corresponding  
8 concentrations listed in Section 2.2(b), Far West shall use the following warning:

9 **WARNING:** Consuming this product can expose you to chemicals including  
10 Cadmium [Cd], which is known to the State of California to  
11 cause birth defects or other reproductive harm. For more  
12 information go to: [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

13 (3) For Products containing both Lead and Cadmium in excess of the  
14 corresponding concentrations listed in Section 2.2(a) or (b), Far West shall use the following  
15 warning:

16 **WARNING:** Consuming this product can expose you to chemicals,  
17 including Cadmium [Cd] and Lead, which are known to the  
18 State of California to cause cancer and birth defects or other  
19 reproductive harm. For more information go to  
20 [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21 A warning provided pursuant to this Section 2.3(a) must print the word "**WARNING:**" in all capital  
22 letters and in bold font. The warning symbol to the left of the word "**WARNING:**" must be a black  
23 exclamation point in a yellow equilateral triangle with a black outline, except, if the labeling does  
24 not use the color yellow, then the symbol may be in black and white. The entire warning shall be set  
25 off from other surrounding information, enclosed in a box and appear in at least 6-point type but no  
26 smaller than the largest type size used for other consumer information on the Products.

27 (b) **Short-Form Warnings.** As an alternative to the foregoing warnings  
28 detailed in Section 2.3(a), Far West may, but is not required to, use one of the following short-form  
warnings, as appropriate:

**WARNING:** Cancer and Reproductive Harm-[www. P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

Or

**WARNING:** Reproductive Harm-[www. P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 (c) **Foreign Language Requirement.** Where a consumer product sign,  
2 label or shelf tag used to provide a warning includes consumer information in language(s) other than  
3 English, the warning must also be provided in the other language(s) in addition to English.

4 **2.4 On-Product Warnings.**

5 Far West shall affix a warning to the Product label or otherwise directly on Products  
6 provided for sale to consumers located in California and to customers with retail outlets in  
7 California, nationwide distribution or e-commerce platforms. For purposes of this agreement,  
8 "Product label" means a display of written, printed or graphic material printed on or affixed to each  
9 of the Products or its immediate container or wrapper.

10 **2.5 Internet Warnings.**

11 For all Products manufactured, distributed, sold or offered for sale via the internet to  
12 customers located in California, or sold into California by Far West, directly or through third-party  
13 websites over which Far West has the ability to control the application of warnings, Far West shall  
14 provide warnings for each Product, both on the Product label in accordance with Section 2.3 and by  
15 prominently displaying, or requiring the warning to be prominently displayed on affiliated websites,  
16 third party websites or by retail customers, to consumers in California during the purchase of the  
17 Products without requiring customers to seek out the warning. The warning or a clearly marked  
18 hyperlink to the warning using the word "WARNING" given in conjunction with the sale of the  
19 Products via the internet shall appear either: (a) on the same web page on which the Products are  
20 displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page  
21 as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the  
22 checkout process, in accordance with Cal. Code Regs., tit.27, § 25602(b). The warning shall appear  
23 adjacent to or immediately following the display, description, or price of the Products for which it is  
24 given in the same type size or larger than other consumer information provided for the Products. For  
25 purposes of this Consent Judgment, a warning is not prominently displayed if the purchaser must  
26 search for it in the general content of the website. For third-party websites, as a condition of sale, Far  
27 West shall notify sellers the Products must be accompanied by a warning, prior to and as a condition  
28 of sale in or into California, and shall supply the warning requirements as detailed in this Section.

1           **2.1 Customer Notification**

2           No later than thirty (30) days after the Effective Date, Far West shall send a letter, electronic  
3 or otherwise ("Notification Letter"), to: (1) each customer in California to which it supplied Products  
4 between May 27, 2023, and the Effective Date, unless confirmed in writing to no longer have the  
5 Products in inventory; and (2) any other retailer or distributor customer that Far West has reason to  
6 believe have remaining inventory of the Products, supplied by Far West between May 27, 2023, and  
7 the Effective Date, for sale to consumers in California. For purposes of this Section, the term  
8 "Products" means, specifically, the *Far West Fungi Tree Oyster Jerky; 852944001854; Lot # J116*.  
9 The Notification Letter shall advise the recipient the Products contain Lead and Cadmium, chemicals  
10 known to the State of California to cause cancer and birth defects or other reproductive harm, and it  
11 shall inform the recipient the Products must either (1) be returned to Far West for a full refund or  
12 (2) have a label, attached to the packaging of each Product, prior to sale in the California market or to  
13 a customer in California, expressly referring to the Product with the preceding Section 2.3 warnings.  
14 Far West shall advise recipients to print the word "WARNING:" in all capital letters and in bold font.  
15 The Notification Letter shall enclose a shipping label with the return address and postage paid by Far  
16 West. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a  
17 sheet of white background, adhesive stickers with one of the forgoing Section 2.3 warning statements.

18           **3. MONETARY SETTLEMENT TERMS**

19           **3.1 Initial Civil Penalty**

20           Pursuant to Health and Safety Code § 25249.7(b), Far West agrees to pay a civil penalty of  
21 \$4,500 within five (5) business days of the Effective Date. Far West's civil penalty payment will be  
22 allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent  
23 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment  
24 ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Far West shall issue  
25 its payment in two checks made payable to: (a) "OEHHA" in the amount of \$3,375; and (b) "Seven  
26 Hills in Trust for Keep America Safe and Beautiful" in the amount of \$1,125. KASB's counsel shall  
27 deliver to OEHHA and KASB their respective portion of the penalty payment.

28           **3.2 Reimbursement of Attorneys' Fees and Costs**

1 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms  
2 on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the  
3 other material settlement terms, they negotiated and reached an accord on the amount of  
4 reimbursement to be paid to KASB's counsel, under general contract principles and the private  
5 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work  
6 performed through the mutual execution and reporting of this Agreement to the Office of the  
7 California Attorney General. Far West agrees to reimburse KASB and its counsel \$25,000 of the  
8 fees and costs incurred investigating, bringing this matter to Far West's attention, negotiating a  
9 settlement in the public interest, and reporting its terms to Office of the California Attorney General  
10 pursuant to Section 9.

### 11 3.3 Payments

12 All payments payable and due under this Agreement shall be delivered to KASB's

13 counsel at following address: Seven Hills LLP  
14 Attn: Kimberly Gates Johnson  
15 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

## 16 4. CLAIMS COVERED AND RELEASED

### 17 4.1 KASB's Public Release of Far West

18 This Agreement is a full, final and binding resolution between KASB, acting in the public  
19 interest, and Far West, of any violation of Proposition 65 that was or could have been asserted by  
20 KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or  
21 assignees, against Far West, its owners, shareholders, representatives directors, officers, employees,  
22 attorneys, and each entity to whom Far West directly or indirectly distributes or sells Products,  
23 including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,  
24 cooperative members, licensors, licensees, dealers, vendors, owners, shareholders, purchasers, and  
25 users (collectively, "Releasees") from all claims for violations arising under Proposition 65 for the  
26 failure to provide a warning, based on alleged exposure to Lead and Cadmium contained in Products  
27 manufactured for sale and sold by Far West in California before the Effective Date, as alleged in the  
28 Notice.



1           **4.2    KASB's Private Release of Proposition 65 Claims**

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

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

16           **4.3    Far West's Release of KASB**

17           Far West, on behalf of itself, its past and current agents, representatives, attorneys,  
18 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and  
19 other representatives, for any and all actions taken or statements made, or could have been taken or  
20 made, by KASB and its attorneys and other representatives, whether in the course of investigating  
21 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the  
22 Products.

23           **5. COURT APPROVAL**

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

1 manner. For purposes of this section, "best efforts" shall include, at a minimum, supporting the  
2 motion for approval, responding to any third-party objection, and appearing at the hearing before the  
3 Court if so requested. Pursuant to the foregoing, Far West Fungi's obligation under this Consent  
4 Judgment are predicated on Court Approval in accord with this Section.

5 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

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

16 **8. NOTICE**

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

21 For Far West:

22 Ian Garrone, Chief Executive Officer  
23 Far West Fungi, Inc.  
24 390 Swift Ave., Ste. 11  
25 South San Francisco, CA 94080

For KASB:

Kimberly Gates Johnson, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
laralei@sevenhillsllp.com

26 With a copy to:

27 S. Craig Cox, Esq.  
28 craig@jrgattorneys.com  
JOHNSON, ROVELLA, RETTERER,  
ROSENTHAL & GILLES, LLP  
270 El Dorado St.  
Monterey, CA 93940

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

3 **9. COUNTERPARTS AND PDF SIGNATURES**

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

10 **11. ENTIRE AGREEMENT**

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

19 **12. DISPUTE RESOLUTION AND ENFORCEMENT**

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

28

1 This Agreement may only be enforced by the Parties or a public authority with enforcement rights  
2 pursuant to Proposition 65.

3 **13. MODIFICATION**

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

13 **14. ATTORNEYS' FEES**

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

16 **15. AUTHORIZATION**

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

19 **AGREED TO:**

**AGREED TO:**

20 Date: 05/03/2024

Date: 4/30/2024

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23 By: \_\_\_\_\_  
24 Lance Nguyen, Chief Executive Officer  
25 Keep America Safe and Beautiful

23   
24 Ian Garrone, Chief Executive Officer  
25 Far West Fungi, Inc.

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