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10 KEEP AMERICA SAFE AND BEAUTIFUL

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF SAN FRANCISCO  
14

15 KEEP AMERICA SAFE AND BEAUTIFUL,  
16 Plaintiff,  
17 v.  
18 MARKY’S GROUP, INC.; AMAZON.COM,  
19 INC.; and DOES 1-30, inclusive,  
20 Defendants.

Case No. CGC-23-607238

**[PROPOSED] CONSENT JUDGMENT**

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

21 **1. INTRODUCTION**

22 This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful  
23 (“KASB”) and defendant Marky’s Group, Inc. (“Marky’s”), with KASB and Marky’s each individually  
24 referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the June 23, 2022  
25 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of  
26 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

27 **1.1 The Parties**

28 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           **1.2     Consumer Product Description**

2           KASB alleges that Marky’s manufactures, imports, sells, or distributes for sale in California  
3 dried mushrooms containing Mercury and Mercury Compounds including, but not limited to, *Dried*  
4 *Porcini Mushrooms 100% Boletus Edulis-8OZ; UPC 709932082350, ASIN B09KVJ6LQZ*, without  
5 providing the health hazard warning KASB alleges is required by California Health & Safety Code §  
6 25249.5 *et seq.* (“Proposition 65”). The products that are covered by this Consent Judgment are  
7 defined as dried mushrooms that Marky’s has manufactured, imported, sold or distributed for sale in  
8 California, directly or indirectly. All such items shall be referred to herein as the “Products.” Mercury  
9 and Mercury Compounds are listed pursuant to Proposition 65 as a chemical known to the State of  
10 California to cause birth defects or other reproductive harm.

11           **1.3     Notice of Violation**

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

18           **1.4     Complaint**

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

21           **1.5     No Admission**

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

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

#### 4 **1.6 Jurisdiction**

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

#### 9 **1.7 Effective Date**

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

### 12 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

#### 13 **2.1 Commitment to Reformulate or Warn**

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

#### 23 **2.2 Reformulation Standard Defined**

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

1 and the European Accreditation Laboratory Committee in accordance with International  
2 Organization for Standards/International Electrotechnical Commission (“ISO/IEC”) 17043 and ISO  
3 Guide 34 (“Accredited Laboratory”). All Mercury and Mercury Compounds concentration levels  
4 pursuant to this Section 2.2 shall be determined pursuant to a Pressure Digestion and Inductively  
5 Coupled Plasma/Mass Spectrometry with sample preparation and analysis in conformity with AOAC  
6 2013.6 U.S. Environmental Protection Agency method (“EPA Method”) 6020 or 6020A, or its  
7 equivalent, with inductively coupled plasma mass spectrometry (“ICP-MS”) equipment with a level  
8 of detection of at least 0.01 parts per billion (“ppb”) that meets standard laboratory QA/QC  
9 requirements. (“Reformulation Standard”).

### 10 **2.3 Clear and Reasonable Warnings**

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

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

#### 19 **(a) Warning Content:**

##### 20 **Option 1:**

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

24 OR

##### 25 **Option 2:**

26 **WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Consuming this  
27 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  
28 harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

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

2 **WARNING:** Consuming this product can expose you to Mercury and Mercury  
3 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](http://www.P65warnings.ca.gov/food).

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

8 **Option 1:**

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

12 Or

13 **Option 2:**

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

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

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

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

20 Each warning shall be prominently placed with such conspicuousness as compared with other  
21 words, statements, or designs as to render it likely to be read and understood by an ordinary  
22 individual under customary conditions before purchase or use and shall be provided in a manner such  
23 that it is clearly associated with the specific Product to which the warning applies.

24 **(c) Foreign Language Requirement.**

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

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

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

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

16           **(e) Internet Warnings.**

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

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

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty**

6 Pursuant to Health and Safety Code § 25249.7(b), Marky's agrees to pay a civil penalty of  
7 \$3,000 within ten (10) business days of the Effective Date. Marky's civil penalty payment will be  
8 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent  
9 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment  
10 ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Marky's shall issue its  
11 payment in two checks made payable to: (a) "OEHHA" in the amount of \$2,250; and (b) "Seven Hills  
12 LLP in Trust for KASB" in the amount of \$750. KASB's counsel shall deliver to OEHHA and KASB  
13 their respective portions of the penalty payment. Marky's shall deliver its civil penalty payments to the  
14 address listed in Section 3.3, below.

15 **3.2 Reimbursement of Attorneys' Fees and Costs**

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

1           **3.3     Payments**

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

4                     Seven Hills LLP  
5                     Attn: Kimberly Gates Johnson  
6                     1 Embarcadero Center, Suite 1200  
7                     San Francisco, CA 94111

7     **4.     CLAIMS COVERED AND RELEASED**

8           **4.1     KASB's Release of Proposition 65 Claims in the Public Interest**

9           This Consent Judgment is a full, final, and binding resolution between KASB on behalf of itself  
10 and in the public interest and Marky's for the alleged failure to provide a Proposition 65 warning of  
11 exposure to Mercury and Mercury Compounds in the Products as set forth in the Notice and Complaint,  
12 and fully resolves all claims that have been or could have been asserted in this action up through the  
13 Effective Date for failure to provide Proposition 65 warnings for the Products regarding Mercury and  
14 Mercury Compounds. KASB, on behalf of itself and in the public interest, hereby releases and  
15 discharges Marky's, Amazon, and their respective past and present officers, directors, shareholders,  
16 members, managers, owners insurers, employees, attorneys, parents, shareholders, divisions, affiliates,  
17 subdivisions, subsidiaries, agents, and their successors and assigns, and all customers, distributors,  
18 retailers, franchisees, marketplace hosts, internet marketplaces, and downstream persons or entities in  
19 the distribution chain of the Products to or via whom Marky's imported, sold or distributed Products,  
20 directly or indirectly, (collectively, the "Released Parties"), for any and all claims for violations  
21 of Proposition 65 arising out of or relating to the Products based on allegations that there was  
22 or is a failure to provide a clear and reasonable warning under Proposition 65 about alleged  
23 exposures to Mercury and Mercury Compounds contained in the Products that were manufactured,  
24 processed, distributed, sold and/or offered for sale before the Effective Date, as set forth in the  
25 Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent  
26 Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to  
27 Mercury and Mercury Compounds in the Products. It is the Parties' intention that the Consent  
28 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<sup>8</sup> interests or the public interest

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

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

#### 8 **4.2 KASB's Individual Release of Claims**

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

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

28 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

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

11 **5. COURT APPROVAL**

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

24 **6. SEVERABILITY**

25 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any  
26 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the  
27 remaining provisions shall not be adversely affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California  
3 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise  
4 rendered inapplicable, by reason of law, generally, as to the Products or as to Mercury and Mercury  
5 Compounds, then Marky's may provide KASB with written notice of any asserted change in the law,  
6 seek leave to amend the consent judgment, and the Parties may move the Court to modify the terms  
7 of this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing  
8 in this Consent Judgment shall be interpreted to relieve Marky's from its obligation to comply with  
9 any pertinent state or federal law or regulation.

10 **8. NOTICE**

11 Unless specified herein, all correspondence and notice required by this Consent Judgment shall  
12 be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a  
13 recognized overnight courier to any Party by the other at the following addresses:

14 For Marky's:

15 Jonathan E. Temchin, Partner  
16 Tarter, Krinsky & Drogan, LLP  
17 1350 Broadway  
New York, NY 10018

For KASB:

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

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

20 **9. COUNTERPARTS AND PDF SIGNATURES**

21 This Consent Judgment may be executed in counterparts and by portable document format  
22 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,  
23 shall constitute one and the same document.

24 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

25 KASB and its counsel agree to comply with the reporting form requirements referenced in  
26 California Health and Safety Code § 25249.7(f).  
27  
28

1 **11. ENTIRE AGREEMENT**

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

10 **12. MODIFICATION**

11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **13. AUTHORIZATION**

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

17 **AGREED TO:**

18 Date: 02/09/2026

19  
20  
21 By:   
Lance Nguyen, CEO  
Keep America Safe and Beautiful

17 **AGREED TO:**

18 Date: February 5th, 2026

19  
20  
21 By:   
Mark Zaslavsky, CEO  
Marky's Group, Inc.