

1 Caspar Jivalagian, Esq., State Bar No.: 282818
Vache Thomassian, Esq., State Bar No.: 289053
2 Tro Krikorian, Esq., State Bar No.: 317183
KJT LAW GROUP, LLP
3 230 N. Maryland Avenue, Suite 306
Glendale, California 91206
4 Telephone: 818-507-8525
Facsimile: 818-507-8588

5 Attorneys for Plaintiff,
6 **KEEP AMERICA SAFE AND BEAUTIFUL**

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 **KEEP AMERICA SAFE AND BEAUTIFUL,**

Case No.: 24STCV02775

12 Plaintiff,

13 v.

[PROPOSED] CONSENT JUDGMENT AS
TO VITAL PLAN, INC.

14 Vital Plan, Inc.; Amazon.com Services, LLC; and
15 **DOES 1 through 100, inclusive,**
16 Defendant.

(Health & Safety Code § 25249.6 *et. seq.* and
Code Civ. Proc. § 664.6)

KJT LAWGROUP LLP
Jivalagian | Thomassian

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between Keep America
4 Safe and Beautiful, acting on behalf of the public interest (hereinafter “KASB”) and VITAL PLAN,
5 INC. (hereinafter “Vital Plan” or “Defendant”). Collectively KASB and Vital Plan shall be referred
6 to hereafter as the “Parties” and each of them as a “Party.” KASB is a non-profit corporation
7 organized under the laws of California, and acting in the interest of the general public dedicated to
8 protecting the health of California citizens and the environment through the elimination or reduction
9 of toxic chemicals utilized in manufacturing consumer products and to increasing public awareness of
10 those chemicals through the promotion of sound environmental practices and corporate
11 responsibility.. Plaintiff alleges that Defendant is a person in the course of doing business for
12 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

13 **1.2 Allegations and Representations**

14 KASB alleges that Defendant has offered for sale in the State of California and has sold in
15 California, products, which contain lead, and that such sales have not been accompanied by
16 Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of
17 California to cause cancer and birth defects or other reproductive harm. Defendant denies the
18 allegations of the Complaint, and contends that there is no exposure and no violation under
19 Proposition 65 for an alleged failure to warn. Defendant specifically denies that any of its products
20 requires a Proposition 65 warning or otherwise causes harm to any person.

21 **1.3 Covered Product Description**

22 The product covered by this Consent Judgment are identified as Vital Plan - Pure Chlorella;
23 UPC #: B09GJ1B9CR. All such products shall be referred to herein as the “Covered Product.”

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1.4 Notices of Violation/Complaint

1.4.1 On or about February 3, 2023, KASB served Vital Plan, Amazon.com Services, LLC (“Amazon”) and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Vital Plan was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Vital Plan.

1.4.2 On February 2, 2024, KASB, acting in the interest of the general public in the State of California, filed a complaint in the Superior Court of Los Angeles County alleging violations of Health & Safety Code §25249.6 (the “Complaint”) based on the alleged failure to warn of exposures to lead contained in the Covered Product manufactured, distributed, or sold by Defendant.

1.5 Effective Date

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this Consent Judgment is entered as a judgment of the Court.

For purposes of this Consent Judgment, the term “Execution Date” shall mean the date this Consent Judgment is signed by all parties in Clause 16 below.

2. STIPULATION TO JURISDICTION/NO ADMISSION

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter, that venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

1 Defendant denies the material, factual and legal allegations contained in Plaintiff's Notice and
2 Complaint, and maintains that all products, including but not limited to the Covered Product, that
3 they have sold and distributed in California have been and are in compliance with all applicable laws,
4 and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed
5 as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor shall
6 compliance with this Consent Judgment constitute or be construed as an admission by Defendant of
7 any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
8 Defendant, including, but not limited to, any admission related to exposure of failure to warn.
9 However, this section shall not diminish or otherwise affect the obligations, responsibilities, and
10 duties of Defendant under this Consent Judgment.

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12 **3. INJUNCTIVE RELIEF: WARNINGS, REFORMULATION AND TESTING**

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14 **3.1** Beginning on the Effective Date, Vital Plan shall be permanently enjoined from
15 manufacturing for sale in the State of California, "Distributing into the State of California," or directly
16 selling in the State of California, any Covered Product that expose a person to a "Daily Lead
17 Exposure Level" of more than 0.5 micrograms of lead per day, unless it meets the warning
18 requirements under Section 3.2.

19
20 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
21 shall mean to directly ship a Covered Product into California for sale in California or to sell a
22 Covered Product to a distributor that Vital Plan knows or has reason to know will sell the Covered
23 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that
24 has left the possession, and is no longer under the control of Vital Plan prior to the Effective Date
25 and all claims as to such Covered Product are released in this Consent Judgment.

26
27 **3.1.2** For purposes of this Consent Judgment, the "Daily Lead Exposure Level" shall be
28 measured in micrograms, and shall be calculated using the following formula: micrograms of lead per

1 gram of product, multiplied by grams of product per serving of the product (using the largest serving
2 size appearing on the product label), multiplied by servings of the product per day (using the largest
3 number of recommended daily servings appearing on the label), which equals micrograms of lead
4 exposure per day. If the label contains no recommended daily servings, then the number of
5 recommended daily servings shall be one.

7 **3.2 Clear and Reasonable Warnings**

8 3.2.1 If Vital Plan is required to provide a warning pursuant to Section 3.1, one of the
9 following warnings must be utilized ("Warning"):

10 **Option 1:**

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

14 **Option 2:**

15 **WARNING:** [Cancer and] Reproductive Harm – <http://www.p65warnings.ca.gov/food>

16 Vital Plan shall use the phrase "cancer and" in the Warning if Vital Plan has reason to believe
17 that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead.

18 The Warning shall be securely affixed to or printed upon the label of each Covered Product
19 and it must be set off from other surrounding information. In addition, for any Covered Product sold
20 over the internet, the Warning shall appear on the checkout page, or prominently displayed to the
21 purchaser prior to completing the purchase, in full text or through a clearly marked hyperlink using
22 the word "**WARNING**" or "**CALIFORNIA WARNING**" or "**CA WARNING**" in all capital and
23 bold letters when a California delivery address is indicated for any purchase of any Covered Product.
24 If a hyperlink is used, the hyperlink must go directly to a page prominently displaying the Warning
25 without content that detracts from the Warning.
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1 The Warning shall be at least the same size as the largest of any other health or safety
2 warnings also appearing on the website or on the label and the word "**WARNING**" or
3 "**CALIFORNIA WARNING**" or "**CA WARNING**" shall be in all capital letters and in bold print.
4 No statements intended to or likely to have the effect of diminishing the impact of the Warning on
5 the average lay person shall accompany the Warning. Further, no statements may accompany the
6 Warning that state or imply that the source of the listed chemical has an impact on or results in a less
7 harmful effect of the listed chemical.

9 Vital Plan must display the above Warning with such conspicuousness, as compared with
10 other words, statements or designs on the label, or on its website, if applicable, to render the Warning
11 likely to be read and understood by an ordinary individual under customary conditions of purchase
12 or use of the product. For purposes of this Consent Judgment, the term "label" means a display of
13 written, printed or graphic material that is printed on or affixed to a Covered Product or its
14 immediate container or wrapper. The warning must be set off from other surrounding information,
15 enclosed in a box. If consumer information on the package is in a foreign language, the warning must
16 also be provided in the foreign language.

18 Notwithstanding the foregoing, Defendant may comply with this Section 3 by providing
19 warnings as specified in the Proposition 65 regulations applicable to the Covered Product and
20 chemical at issue, in effect as of the Effective Date, or as such regulations may be modified or
21 amended in the future.

23 **4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

24 With regard to all claims that have been raised or which could be raised with respect to failure
25 to warn pursuant to Proposition 65 with regard to lead in the Covered Product, Defendant shall pay a
26 civil penalty of \$5,000.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned
27 in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the
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1 State of California’s Office of Environmental Health Hazard Assessment and the remaining 25% of
2 the penalty remitted to KASB, as provided by California Health & Safety Code § 25249.12(d) and
3 the instructions directly below.

4 Defendant shall issue two separate checks for the penalty payment: (a) one check made
5 payable to “OEHHA” (tax identification number: 68-0284486) in an amount representing 75% of the
6 total penalty (i.e., \$3,750.00) and (b) one check in an amount representing 25% of the total penalty
7 (i.e., \$1,250.00) made payable directly to KASB. Defendant shall mail these payments within thirty
8 (30) days following the Effective Date, at which time such payments shall be mailed to the following
9 addresses respectively:
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11 All payments owed to KASB shall be delivered by the way of wire transfer to the following
12 payment address:

13 Beneficiary: Keep America Safe and Beautiful
14 Wells Fargo Bank Routing Number: 121000248
15 Wells Fargo Bank Account Number: 6767279471
16 Beneficiary Address: 10512 Sycamore Avenue, Stanton, CA 90680-2629

17 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
18 addresses:

19 For United States Postal Delivery:

20 Mike Gyurics
21 Senior Accounting Officer -- MS 19-B
22 Office of Environmental Health Hazard Assessment
23 P.O. Box 4010
24 Sacramento, CA. 95812-0410

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

1 **5. REIMBURSEMENT OF FEES AND COSTS**

2 The parties reached an accord on the compensation due to KASB and its counsel under the
3 private attorney general doctrine and principles of contract law. Under these legal principles,
4 Defendant shall reimburse KASB’s counsel for fees and costs, incurred as a result of investigating,
5 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.
6 Defendant shall pay KASB’s counsel \$40,000.00 for all attorneys’ fees, expert and investigation fees
7 and related costs associated with this matter and the Notice. Defendant shall mail a check payable to
8 “KJT Law Group,” via certified mail to the address for KASB’s counsel within thirty (30) days
9 following the Effective Date. Other than the payment required hereunder, each side is to bear its own
10 attorneys’ fees and costs.
11

12 All payments owed to KASB’s Counsel shall be delivered to the following payment address:

13 **KJT LAW GROUP LLP**
14 **230 N. Maryland Avenue, Suite 306**
15 **Glendale, CA 91206**

16 **6. RELEASE OF ALL CLAIMS**

17 **6.1 KASB’s Release of Defendant, Releasees, and Downstream Releasees**

18 As to those matters raised in the Complaint and in the Notice of Violation, KASB, on behalf
19 of itself, *and on behalf of the public interest*, and his past and current agents, representatives,
20 attorneys, successors and/or assignees (the “Releasors”), hereby waives and releases any and all claims
21 against Defendant and Amazon and each of their respective trustees, parent companies, corporate
22 affiliates, subsidiaries, predecessors, successors and assigns (collectively “Releasees”) and each
23 entity or party to whom Releasees directly or indirectly distribute or sell the Covered Product
24 including without limitation, distributors, wholesalers, licensors, licensees, auctioneers, retailers,
25 franchisees, dealers, customers, owners, purchasers and users (collectively “Downstream
26 Releasees”), and all Releasees and Downstream Releasees’ their respective officers, directors,
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1 attorneys, representatives, shareholders, agents, and employees, and sister and parent entities for
2 injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys,
3 experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of
4 Defendant, Releasees, or Downstream Releasees to provide clear, accurate and reasonable warnings
5 under Proposition 65 about exposure to lead arising from the sale, distribution, or use of any
6 Covered Product sold, manufactured or distributed by Defendant, Releasees, or Downstream
7 Releasees in California, up through the Effective Date. Compliance with the Consent Judgment by
8 Defendant, a Releasee, or a Downstream Releasee shall constitute compliance with Proposition 65 by
9 that Defendant, Releasee, or Downstream Releasee with respect to the presence of lead in the
10 Covered Product. Plaintiff agrees that any and all claims in the Complaint are resolved with prejudice
11 by this Consent Judgment.

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14 In addition to the foregoing, KASB, on behalf of itself, its past and current agents,
15 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
16 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and
17 releases any other Claims that it could make against Defendant, Releasees or Downstream Releasees
18 with respect to violations of Proposition 65 based upon the Covered Product. With respect to the
19 foregoing waivers and releases in this paragraph, KASB hereby specifically waives any and all rights
20 and benefits which it now has, or in the future may have, conferred by virtue of the provisions of
21 Section 1542 of the California Civil Code, which provides as follows:
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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 **6.2 Defendant's Release of KASB**

Defendant waives any and all claims against KASB, its attorneys and other representatives, for

1 any and all actions taken or statements made (or those that could have been taken or made) by KASB
2 and its attorneys and other representatives, in the course of investigating claims or otherwise seeking
3 enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered
4 Product.

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6 **7. SEVERABILITY AND MERGER**

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

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

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15 **8. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California
17 and apply within the State of California.

18
19 **9. NOTICES**

20 Unless specified herein, all correspondence and notices required to be provided pursuant to
21 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
22 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
23 other party at the following addresses:

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25 For Vital Plan:

26 Corrie L. Plant, Esq.
27 Bick Law LLP
28 520 Newport Center Drive, Suite 750
Newport Beach, CA 92660

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For KASB:

Tro Krikorian, Esq.
KJT LAW GROUP, LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206
Phone: 818-507-8528

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

10. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by email or facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT

APPROVAL

KASB agrees to comply with the requirements set forth in California Health & Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and Defendant shall support approval of such Motion.

1 This Consent Judgment shall not be effective until it is approved and entered by the Court
2 and shall be null and void if, for any reason, it is not approved and entered by the Court within
3 eighteen months after it has been fully executed by the Parties.

4 **13. MODIFICATION**

5 This Consent Judgment may be modified only by further stipulation of the Parties and the
6 approval of the Court or upon the granting of a motion brought to the Court by either Party.

7 **14. ATTORNEY'S FEES**

8 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
9 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
10 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
11 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
12 Code of Civil Procedure Section 2016, et seq.

13 **15. RETENTION OF JURISDICTION**

14 This Court shall retain jurisdiction of this matter to implement or modify the Consent
15 Judgment.

16 **16. AUTHORIZATION**

17 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party
18 he or she represents to stipulate to this Consent Judgment.

19 **STIPULATED AND AGREED TO:**

20 Date: 10/03/2024 _____

21 Date: October 2, 2024

22 By:  _____
23 By: Lance Nguyen

24 By: 

25 **KEEP AMERICA SAFE AND
26 BEAUTIFUL**

27 **Braden Rawls, CEO
28 VITAL PLAN, INC.**

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APPROVED AS TO FORM:

10/3/2024

Date: 10/04/2024

Date: _____

By: _____


By: _____


TRO KRIKORIAN, ESQ.
ATTORNEY FOR PLAINTIFF,
KEEP AMERICA SAFE AND BEAUTIFUL

CAROLINE L. PLANT, ESQ.
ATTORNEY FOR DEFENDANT,
VITAL PLAN, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED:

Dated: _____

Judge of the Superior Court