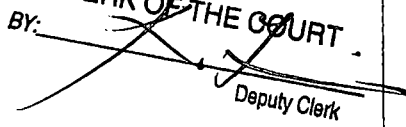


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Laralei Paras, State Bar No. 203319
Rebecca Jackson, State Bar No. 221583
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Telephone: (415) 926-7247
laralei@sevenhillslp.com
rebecca@sevenhillslp.com

Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

FILED
Superior Court of California
County of San Francisco
DEC 22 2023
CLERK OF THE COURT
BY: 
Deputy Clerk

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

ASIA TRANS & CO.; and DOES 1-30,
inclusive,

Defendants.

Case No. CGC-22-600759

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: November 27, 2023
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Richard B. Ulmer, Jr.

Complaint Filed: July 15, 2022
Trial Date: None set.

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In the above-entitled action, Plaintiff Keep America Safe and Beautiful and Defendant Asia Trans & Co., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 12/21/23

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JUDGE OF THE SUPERIOR COURT
RICHARD ULMER

EXHIBIT A

1 Laralei S. Paras, State Bar No. 203319
Rebecca M. Jackson, State Bar No. 221583
2 SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
3 San Francisco, CA 94111
Telephone: (415) 926-7247
4 laralei@sevenhillslp.com
rebecca@sevenhillslp.com

5 Attorneys for Plaintiff
6 KEEP AMERICA SAFE AND BEAUTIFUL

7 Caleb Liang, State Bar No. 261920
Patice A. Gore, State Bar No. 258776
8 LTL ATTORNEYS LLP
300 S. Grand Avenue, Suite 3950
9 Los Angeles, CA 90071

10 Attorneys for Defendant
ASIA TRANS & CO.

11
12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 KEEP AMERICA SAFE AND BEAUTIFUL,

18 Plaintiff,

19 v.

20 ASIA TRANS & CO.; and DOES 1-30,
inclusive,

21 Defendants.
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Case No. CGC-22-600759

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful (“KASB”) and defendant Asia Trans & Co. (“Asia Trans”), with KASB and Asia Trans each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 December 22, 2021 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

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

13 **1.2 Consumer Product Description**

14 KASB alleges that Asia Trans manufactures, imports, sells, or distributes for sale in California
15 dried plums containing the heavy metal, Lead (Pb), including but not limited to, *Seedless Li Hing Mui*
16 *(red), NET WT. 113g (4 oz), Best By 07 2023, Bar Code: X000H1FS2X, UPC: 7 46033 90150 0,*
17 *ASIN: B00DQFXFT4*, without providing the health hazard warning KASB alleges is required by
18 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). All such dried plums are
19 referred to hereinafter as the “Products.” Lead (Pb) is listed pursuant to Proposition 65 as a chemical
20 known to the State of California to cause cancer, developmental toxicity, and male reproductive
21 toxicity.

22 **1.3 Notice of Violation**

23 On December 22, 2021, KASB served Asia Trans, the California Attorney General, and the
24 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Asia
25 Trans violated Proposition 65 by failing to warn its customers and consumers in California that the
26 Products can expose users to Lead (Pb). No public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On July 15, 2022, KASB commenced the instant action (“**Complaint**”), naming Asia Trans
3 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.5 No Admission**

5 Asia Trans denies the material, factual and legal allegations contained in the Notice and
6 Complaint and maintains that all products it sold or distributed for sale in California, including the
7 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
8 be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
9 admission by Asia Trans of any fact, finding, conclusion of law, issue of law, or violation of law.
10 This section shall not, however, diminish or otherwise affect Asia Trans’ obligations,
11 responsibilities, and duties under this Consent Judgment.

12 **1.6 Jurisdiction**

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

17 **1.7 Effective Date**

18 The term “Effective Date” means the date on which the Court approves this Consent
19 Judgment and enters Judgment pursuant to its terms.

20 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

21 **2.1 Reformulation Commitment**

22 Commencing on the Effective Date and continuing thereafter, all Products Asia Trans
23 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
24 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
25 for Reformulated Products, as defined by Section 2.2 or be accompanied by clear and reasonable
26 warnings as set forth in Section 2.3.

1 **2.2 Reformulation Standard**

2 For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if
3 they contain Lead (Pb), contain Lead (Pb) in a maximum concentration of 17 parts per billion
4 (“**ppb**”) by weight when analyzed by a laboratory, accredited by the State of California, a federal
5 agency, or a nationally recognized accrediting organization, using inductively coupled plasma mass
6 spectrometry (“**ICP-MS**”) equipment with a level of detection (“**LOD/LOQ**”) of 10 ppb or less
7 utilizing scientifically appropriate adherence to the protocols set forth in AOAC Method 2013.06
8 (21st Ed., 2019).

9 **2.3 Product Warnings**

10 Commencing on or before the Effective Date, for all Products that are not Reformulated
11 Products packaged, assembled, imported, shipped, distributed, sold or offered for sale, Asia Trans
12 shall provide clear and reasonable warnings to customers in California in accordance with this
13 Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be
14 prominently placed with such conspicuousness as compared with other words, statements, or designs
15 as to render it likely to be read and understood by an ordinary individual under customary conditions
16 before purchase or use and shall be provided in a manner such that it is clearly associated with the
17 specific Product to which the warning applies.

18 (a) **Warning.** The Warning shall consist of the following statement:

19 **⚠ WARNING:** Consuming this product can expose you to Lead, which is
20 known to the State of California to cause birth defects or
21 other reproductive harm. For more information go to
 www.P65Warnings.ca.gov/food.

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

25 (c) **On-Product Warnings.** Asia Trans shall affix a warning to the Product label
26 or otherwise directly on Products provided for sale to consumers located in California and to
27 customers with retail outlets in California, nationwide distribution or e-commerce platforms. For the
28

1 purpose of this agreement, "Product label" means a display of written, printed or graphic material
2 printed on or affixed to each of the Products or its immediate container or wrapper. A warning
3 provided pursuant to section 2.3(a) must print the word "WARNING:" in all capital letters and in
4 bold font. The warning symbol to the left of the word "WARNING:" must be a black exclamation
5 point in a yellow equilateral triangle with a black outline, except if the labeling does not use the
6 color yellow, the symbol may be in black and white. The entire warning shall be set off from other
7 surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the
8 largest type size used for other consumer information on the Products.

9 (d) **Internet Warnings.** Asia Trans shall provide warnings for each Product both
10 on the Product label in accordance with Section 2.3(c), and by prominently displaying the warning,
11 or requiring the warning to be prominently displayed on affiliated websites, third party websites or
12 by retail customers, to consumers in California during the purchase of the Products without requiring
13 customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using
14 the word "WARNING" given in conjunction with the sale of the Products via the internet shall
15 appear either: (a) on the same web page the Products are displayed; (b) on the same web page as the
16 virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one
17 or more web pages displayed to a purchaser during the checkout process. The warning shall appear
18 adjacent to or immediately following the display, description, or price of the Products for which it is
19 given in the same type size or larger than other consumer information provided for the Products.

20 **2.4 Customer Notification**

21 No later than the Effective Date, Asia Trans shall send a letter, electronic or otherwise
22 ("Notification Letter") to: (1) each customer in California to which it supplied Products between
23 December 21, 2020 and the Effective Date; and (2) any other customer that is a retailer or distributor
24 that has any inventory of Products, which Asia Trans supplied between December 21, 2019, and the
25 Effective Date, for sale to consumers in California. The Notification Letter shall advise the recipient
26 that the Products contain Lead, a chemical known to the State of California to cause birth defects or
27 other reproductive harm. The Notification letter shall inform the recipient that all Products must
28 either (1) be returned to Asia Trans or (2) have a label, attached to the packaging of each Product

1 before it is sold in the California market or to a customer in California, expressly referring to the
2 Product with the following warning statement:

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

6 The foregoing warning must print the word **“WARNING:”** in all capital letters and in bold font.

7 The warning symbol to the left of the word **“WARNING:”** must be a black exclamation point in a
8 yellow equilateral triangle with a black outline. The entire warning shall be set off from other
9 surrounding information, enclosed in a box and appear in at least 6-point type and no smaller than
10 the largest type size used for other consumer information on the Products. The Notification Letter
11 shall enclose a return address label with postage to be paid by Asia Trans and advise the recipient
12 that the Product(s) may be returned using the return address label for a full refund to the original
13 form of payment used to purchase the product within 30 days of receipt of any Product(s) returned
14 using the return address label. If the customer is a retailer or distributor of the Products, the
15 Notification Letter shall include a sheet of white background, adhesive stickers with the foregoing
16 warning statement.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalty**

19 Pursuant to Health and Safety Code § 25249.7(b), Asia Trans agrees to pay a civil penalty of
20 \$29,500 within five (5) days of the Effective Date. Asia Trans’ civil penalty payment will be
21 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
22 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
23 (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Asia Trans shall
24 issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$22,125; and (b)
25 “Seven Hills LLP in trust for Keep America Safe and Beautiful” in the amount of \$7,375. KASB’s
26 counsel shall deliver to OEHHA and KASB their respective portions of the penalty payment.

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

2 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
3 reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the
4 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
5 amount of reimbursement to be paid to KASB's counsel, under general contract principles and the
6 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
7 work performed through the mutual execution and reporting of this Consent Judgment to the Office
8 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees
9 and costs on appeal, if any. Within five (5) days of the Effective Date, Asia Trans shall issue two
10 check for a total amount of \$28,500, with one check in the amount of \$555 payable to "Seven Hills
11 LLP in trust for Keep America Safe and Beautiful" for case costs and a second check in the amount
12 of \$27,945 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing
13 this matter to Asia Trans' attention, litigating, negotiating a settlement in the public interest,
14 obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the California
15 Attorney General.

16 **3.3 Payments**

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

19 Seven Hills LLP
20 Attn: Laralei Paras
21 4 Embarcadero Center, Suite 1400
22 San Francisco, CA 94111

23 **4. CLAIMS AND RELEASED**

24 **4.1 KASB's Release of Proposition 65 Claims**

25 This Consent Judgment is a full, final, and binding resolution of the claims for violations of
26 Proposition 65 that were or could have been asserted by KASB arising out of the allegations in the
27 Notice and in the Complaint. KASB, acting on its own behalf, in the public interest, and on behalf
28 of its past and current agents, representatives, attorneys, successors and assignees ("**Releasors**")
releases Asia Trans, its past and present parents, subsidiaries, affiliated entities under common

1 ownership, directors, officers, employees, attorneys, and each entity to whom Asia Trans directly or
2 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
3 wholesalers, marketplace hosts, customers, retailers, franchisees, cooperative members, and
4 licensees (“Releasees”) based on the failure to provide a clear and reasonable warning under
5 Proposition 65 about alleged exposures to Lead (Pb) contained in the Products that were
6 manufactured, processed, distributed, sold and/or offered for sale in California before the Effective
7 Date, as set forth in the Notice and Complaint. The Parties further agree that compliance with
8 Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to
9 alleged exposures to Lead (Pb) in the Products.

10 **4.2 KASB’s Individual Release of Claims**

11 KASB, in its individual capacity only and not in its representative capacity, also hereby
12 provides a release to Asia Trans and the Releasees which shall be effective as a full and final accord
13 and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys’ fees,
14 damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out
15 of alleged or actual exposures to Lead (Pb) in Products manufactured or distributed into the state of
16 California by Asia Trans prior to the Execution Date. Nothing in this section shall affect KASB’s
17 right to commence or prosecute an action under Proposition 65 against a Releasee that does not
18 involve Asia Trans’ Products.

19 **4.3 Asia Trans’ Release of KASB**

20 Asia Trans, on behalf of itself, its past and current agents, representatives, attorneys,
21 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been taken
23 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
24 claims or otherwise seeking to enforce Proposition 65 against him in this matter with respect to the
25 Products.

26 The Parties further understand and agree Section 4 releases shall not extend either (1)
27 upstream to any entities who sold, supplied, or manufactured the Products, or any component parts
28 thereof, to Asia Trans or (2) to Releasees who have been instructed by Asia Trans, pursuant to

1 Section 2.5, to provide a warning on Products that are not Reformulated Products and have failed to
2 do so. Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute an
3 action under Proposition 65 against a Releasee that does not involve Asia Trans' Products.

4 **5. COURT APPROVAL**

5 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
6 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
7 best efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
8 Consent Judgment, and to judicial approval of their settlement in a timely manner. For purposes of
9 this section, "best efforts" shall include, at a minimum, supporting the motion for approval,
10 responding to any third-party objection, and appearing at the hearing before the Court if so requested.

11 **6. SEVERABILITY**

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

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California
17 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
18 rendered inapplicable by reason of law generally, or as to the Products, then Asia Trans may provide
19 KASB with written notice of any asserted change in the law, and shall have no further injunctive
20 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
21 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Asia Trans from its
22 obligation to comply with any pertinent state or federal law or regulation.

1 **8. NOTICE**

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

5 For Asia Trans:

6 Christopher Cho, President
7 Asia Trans & Co.
8 73-5569 Kauhola Street, Suite 11
Kailua Kona, HI 96740

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

9 With a copy to:

10 Caleb Liang, Esq
11 Patice Gore, Esq.
12 LTL Attorneys LLP
300 S. Grand Avenue, Suite 3950
Los Angeles, CA 90071

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

22 **11. ENTIRE AGREEMENT**

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

4 **12. MODIFICATION**

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

8 **13. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13 Date: October 13, 2023

13 Date: 10-4-2023

14 By: 

14 By: 

15 My Nguyen, CEO
16 Keep America Safe and Beautiful

15 Christopher Cho, President
16 Asia Trans & Co.