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FILED
Clerk of the Superior Court

OCT 28 2022

By: R. Day, Deputy

6 *Attorneys for Plaintiff, Keep America Safe and Beautiful*

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN DIEGO

10 UNLIMITED CIVIL JURISDICTION

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13 KEEP AMERICA SAFE AND BEAUTIFUL) CASE NO.: 37-2022-00024335-CU-NP-CTL

14)
15)
16 Plaintiff)

~~PROPOSED~~ ORDER APPROVING
STIPULATION AND ORDER RE:
CONSENT JUDGMENT

17 AND)

18)
19 JFC INTERNATIONAL INC.,)
WALMART.COM)

20 AND)

21 DOES 1-25 INCLUSIVE)
22)
23)

Date: October 28, 2022

Time: 09:00AM

Dept. C-73

Judge: Hon. Joel R. Wohlfeil

Action Filed: June 22, 2022

24)
25)
26)
27 Plaintiff, Keep America Safe And Beautiful and Defendant JFC International Inc., having
28 agreed through their respective counsel that judgment be entered pursuant to the terms of the

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

1 Stipulation and Order Re: Consent Judgment entered into by the parties, hereby attach same to
2 the Judgment as "Exhibit 1." After consideration of the papers submitted and arguments
3 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
4 meets the criteria established by Health & Safety Code §25249.7, in that:
5

- 6 a) the health hazard warning required by the Stipulation and Order Re: Consent
7 Judgment complies with Health & Safety Code §25249.7;
- 8 b) the reimbursement of fees and costs to be paid pursuant to the parties'
9 Stipulation and Order Re: Consent Judgment is reasonable under California
10 law; and
- 11 c) the civil penalty amount to be paid pursuant to the parties' Stipulation and
12 Order Re: Consent Judgment is reasonable
13

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that pursuant to Code of Civil
15 Procedure §664.6, judgment is entered in accordance with the Consent Judgment attached hereto
16 as Exhibit 1.
17

18 **IT IS SO ORDERED.**

19
20 Dated: OCT 28 2022

JOEL R. WOHLFEIL

21 **JUDGE OF THE SAN DIEGO SUPERIOR COURT**
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1 Stephanie Sy (247071)
2 Law offices of Stephanie Sy
3 11622 El Camino Real, Suite 100
4 San Diego, CA 92130

5 Attorneys for Plaintiff Keep America Safe and Beautiful

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF SAN DIEGO

8 KEEP AMERICA SAFE AND BEAUTIFUL,

9 Plaintiff,

10 v.

11 JFC INTERNATIONAL, INC
12 WALMART.COM

13 AND

14 DOES 1-25

15 Defendants,
16
17

Case No. 37-2022-00024335-CU-NP-CTL

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT JFC
INTERNATIONAL, INC.**

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4 **1. INTRODUCTION**

19 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff Keep
20 America Safe and Beautiful (“KASAB”) acting on behalf of the public interest (hereinafter
21 “KASAB”), and Defendant JFC International Inc. (“JFC”), with KASAB and JFC collectively
22 referred to as the “Parties” and each of them as a “Party.” KASAB is a California Nonprofit
23 Corporation seeking to promote awareness of exposures to toxic chemicals and improve human
24 health by reducing or eliminating hazardous substances contained in consumer products. JFC is a
25 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
26 §§ 25249.6 *et seq.*
27

1 1.2 **Allegations and Representations.** KASAB alleges that JFC has offered for sale in
2 *the State of California and has sold in California, the "Dynasty Bamboo Shoots Sliced"* that
3 contains LEAD, and that such sales have not been accompanied by Proposition 65 warnings.
4 LEAD is listed under Proposition 65 as chemicals known to the State of California to cause cancer
5 and reproductive harm.

6 1.3 **Notices of Violation/Complaint.** On or about March 31, 2022, KASAB served
7 JFC, Walmart.com., and various public enforcement agencies with a document entitled "60-Day
8 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that
9 JFC, and Walmart.com., were in violation of Proposition 65 for failing to warn consumers and
10 customers that the "Dynasty Bamboo Shoots Sliced" exposed users in California to LEAD. No
11 public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus
12 service time relative to the provision of the Notice to them by KASAB.

13 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over JFC as to the allegations contained in the complaint filed in this matter, that venue
15 is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter, and
16 oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims
17 which were or could have been raised in the Complaint based on the facts alleged therein and/or in
141 the Notices.

4 1.5 JFC denies the material allegations contained in KASAB's Notice and Complaint
19 and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be
20 construed as an admission by JFC of any fact, finding, issue of law, or violation of law; nor shall
21 compliance with this Consent Judgment constitute or be construed as an admission by JFC of any
22 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by JFC.
23 However, this section shall not diminish or otherwise effect the obligations, responsibilities, and
24 duties of JFC under this Consent Judgment.

25 **2. DEFINITIONS**

26 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.
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2.2 **Covered Product.** The term "Covered Product" means the "Dynasty Bamboo Shoots Sliced" designed, manufactured, sold, distributed or otherwise made available to, by or for JFC and its downstream distributors and retailers.

2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent Judgment is entered as a Judgment of the Court.

2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean LEAD.

2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant Releasees" shall have the meanings given in Section 5.1.

2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent Judgment is signed by the parties

3. INJUNCTIVE RELIEF: WARNINGS

3.1 Commencing on the Effective Date, JFC shall not sell, offer for sale, or ship for sale in California any Covered Product, unless the Covered Product is accompanied by a clear and reasonable warning that complies with Proposition 65's warning regulations, including Cal. Code Regs. tit. 27, § 25600 *et. seq.*, including 25607.1 and 25607.2.

4. MONETARY TERMS

4.1 **Penalty.** JFC shall pay a civil penalty of \$100.00 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to KASAB, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be made within 10 days of the Effective Date.

4.2 **Attorney's Fees.** JFC agrees to pay reasonable attorney fees, inclusive of all expenses and costs incurred as a result of investigating, bringing this matter to JFC's attention, litigating and negotiating and obtaining judicial approval of a settlement in the public interest,

1 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$18,900.00. JFC shall wire
2 KASAB's counsel the total sum of \$19,000.00 representing the civil penalty and attorney fees in
3 Sections 4.1 and 4.2 within 10 days following Effective Date, and wire instruction information
4 from KASAB's counsel.

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 This consent judgment is a full, final, and binding resolution between KASAB
7 acting in the public interest, and JFC, its owners, investors employees, directors, officers, managers,
8 attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies,
9 and affiliates, and their successors and assigns including, without limitations to, as Walmart, Inc.,
10 Walmart.com USA, LLC ("Defendant Releasees"), and all entities from whom they obtain and to
11 whom they directly or indirectly distribute or sell Covered Products, including but not limited to
12 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
13 franchisees, and cooperative members, and their successors and assigns ("Downstream Defendant
14 Releasees"). Upon the Effective Date of this Consent Judgment, and subject to payment by JFC of
15 the full settlement amount and compliance with the terms of this Consent Judgment, KASAB, on
16 behalf of itself, it's agents, successors, heirs, and assigns, hereby fully and irrevocably releases and
17 discharges JFC, the Defendant Releasees, and the Downstream Defendant Releasees from all
141 claims for violations of Proposition 65 that were, or which could have been, asserted in the
4 Complaint based on exposure to and/or failure to warn about Listed Chemicals from Covered
19 Products as set forth in the Notice, with respect to any Covered Products manufactured, distributed,
20 or sold by JFC, the Defendant Releasees, and/or the Downstream Defendant Releasees prior to the
21 Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with
22 Proposition 65 with regard to the Covered Products.

23 5.2 In addition to the foregoing, KASAB, on behalf of itself, it's past and current agents,
24 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity,
25 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
26 and releases any JFC, Defendant Releasees, and Downstream Defendant Releasees from any and
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1 all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
2 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
3 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
4 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
5 Products manufactured distributed or sold by JFC or Defendant Releasees, or Downstream
6 Defendant Releasees. With respect to the foregoing waivers and releases in this paragraph, KASAB
7 hereby specifically waives any and all rights and benefits which she now has, or in the future may
8 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
9 provides as follows:

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12 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
13 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
14 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
15 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
16 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR**
17 **OR RELEASED PARTY.**

18
19 5.3 JFC waives any and all claims against KASAB, its attorneys and other
20 representatives, for any and all actions taken or statements made (or those that could have been
21 taken or made) by KASAB and its attorneys and other representatives, whether in the course of
22 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
23 and/or with respect to Covered Products. This agreement is also intended to be the final and binding
24 resolution between the parties without relation to time. To the extent permitted by applicable law,
25 the Releasees hereby expressly waive and release their right to plead any statute of limitations as a
26 defense to any claim relating to the Covered Products or any matter covered under the Parties'
27 agreement and Stipulated Consent Judgment.

24 **6. INTEGRATION**

25 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
26 any and all prior negotiations and understandings related hereto shall be deemed to have been
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1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then JFC
7 shall provide written notice to KASAB of any asserted change in the law, and shall have no further
8 obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered
9 Products are so affected.

10 **8. ENFORCEMENT**

11 8.1 KASAB may, by motion or application for an order to show cause before the
12 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
13 Judgment. Prior to bringing any motion or application to enforce the requirements of this Consent
14 Judgment, KASAB shall provide JFC with a proposed Notice of Violation, and a copy of any
15 documentary evidence which purportedly supports KASAB's Notice of Violation. The Parties
16 shall then meet and confer in good faith for a period of at least sixty (60) days regarding the basis
17 for KASAB's anticipated motion or application in an attempt to resolve it informally. Should such
141 attempts at informal resolution fail, KASAB may file its enforcement motion or application. This
4 Consent Judgment may only be enforced by the Parties.

19 **9. NOTICES**

20 9.1 Unless specified herein, all correspondence and notices required to be provided
21 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
22 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
23 by the other party at the following addresses:

24
25 For JFC:

26 Steven Garrett, Esq.
27

1 Steve Teraoka, Esq.
2 Teraoka & Partners LLP
3 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4 And

5 For KASAB:

6 Stephanie Sy, Esq.
7 Law Office of Stephanie Sy
8 11622 El Camino Real, Suite 100
San Diego, CA 92130

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

11 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

12 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
13 which shall be deemed an original, and all of which, when taken together, shall constitute one and
14 the same document.

15 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
APPROVAL

16 11.1 KASAB agrees to comply with the requirements set forth in California Health &
17 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
141 and JFC agrees it shall support approval of such Motion.

4 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
19 Court and shall be null and void if, for any reason, it is not approved and entered by the Court
20 within eighteen months after it has been fully executed by the Parties. In such a scenario, the Parties
21 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days,
22 any monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed
23 on its normal course.

24 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
25 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
26 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have
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1 been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court,
2 and the case shall proceed on its normal course on the trial court's calendar.

3 **12. MODIFICATION**

4 12.1 This Consent Judgment may be modified only by express written agreement of the
5 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either
6 Party.

7 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
8 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9 **13. ATTORNEY'S FEES**

10 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
11 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
12 the unsuccessful party has acted with substantial justification. For purposes of this Consent
13 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
14 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

15 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
16 own attorneys' fees and costs.

17 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
141 pursuant to law.

4 **14. RETENTION OF JURISDICTION**


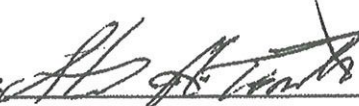
19 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **15. AUTHORIZATION**

22 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties and have read, understood and agree to all of the terms and conditions of this
24 document and certifies that he or she is fully authorized by the Party he or she represents to execute
25 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
26 explicitly provided herein each Party is to bear its own fees and costs.
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APPROVED AS TO FORM:

<p>AGREED TO: Date : <u>October 27</u>, 2022 By: <u></u> On Behalf of KASAB Stephanie Sy Sy and Smith LP</p>	<p>AGREED TO: Date: <u>October 26</u>, 2022 By: <u></u> On Behalf of JFC International, Inc. Steve Teraoka Teraoka & Partners LLP</p>
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IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 10/27/2022

Date: October 26, 2022

By:  NGOC-BICH HOANG VO
Keep America Safe And Beautiful

By: 
JFC International, Inc.