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KEEP AMERICA SAFE AND BEAUTIFUL

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

SKITS, LLC; SPACEBOUND, INC.;
AMAZON.COM, INC.; and DOES 1-30,
inclusive,

Defendants.

Case No. CGC-21-595343

[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 SpaceBound, Inc. (“**SpaceBound**”), with KASB and SpaceBound
4 each individually referred to as a “**Party**” and collectively, as the “**Parties**,” to resolve the allegations
5 in the January 20, 2021 60-Day Notice of Violation in compliance with the Safe Drinking Water and
6 Toxic 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
9 pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the
10 State of California to cause cancer, birth defects, or other reproductive harm are disclosed or
11 eliminated from consumer products sold in California. SpaceBound is a person in the course of
12 doing business for purposes of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 KASB alleges that SpaceBound manufactures, imports, sells, or distributes for sale in
15 California Relief Pod Safety Kits with vinyl pockets containing di(2ethylhexyl) phthalate
16 (“**DEHP**”), namely, the *Relief Pod Traveler Pro Plus Safety Kit*, #411670, UPC 8 47238 00044 6,
17 without providing the health hazard warning that KASB alleges is required by California Health &
18 Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Relief Pod Traveler Pro Plus Safety Kits #
19 411670 are referred to hereinafter as the “**Products**.” DEHP is listed pursuant to Proposition 65 as a
20 chemical known to the State of California to cause birth defects or other reproductive harm.

21 **1.3 Notice of Violation**

22 On January 20, 2021, KASB served SpaceBound, Skits, LLC, Amazon.com, Inc., the
23 California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of
24 Violation (“**Notice**”), alleging SpaceBound violated Proposition 65 by failing to warn its customers
25 and consumers in California that the Products can expose users to DEHP. No public enforcer has
26 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On September 20, 2021, KASB commenced the instant action (“**Complaint**”), naming
3 SpaceBound as a defendant for the alleged violations of Proposition 65 subject to the Notice.

4 **1.5 No Admission**

5 SpaceBound 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 SpaceBound of any fact, finding, conclusion of law, issue of law, or violation of law.
10 This section shall not, however, diminish or otherwise affect SpaceBound’s obligations,
11 responsibilities, and duties under this Consent Judgment.

12 **1.6 Limited Consent to Jurisdiction**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over SpaceBound 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 **1.8 Compliance Date**

21 The term “Compliance Date” is the date that is sixty (60) days from the Effective Date.

22 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

23 **2.1 Reformulation Commitment**

24 Except as otherwise provided for herein, commencing on the Compliance Date and continuing
25 thereafter, all Products SpaceBound imports, sells, ships, or distributes for sale in or into California,
26 directly or through one or more third party retailers or e-commerce platforms, shall be Reformulated
27 Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to
28 Section 2.3. Any products that have been distributed, shipped, and/or sold by SpaceBound prior to

1 the Effective Date shall not be subject to the requirements of Section 2.


2 **2.2 Reformulation Standard**

3 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
4 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”) contain any such chemical in a
5 maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a
6 laboratory accredited by the State of California, a federal agency, or a nationally recognized
7 accrediting organization. For purposes of compliance with this reformulation standard, testing
8 samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”)
9 methodology CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency
10 methodology 8270D, or other methodologies utilized by federal or state government agencies to
11 determine phthalate content in a solid substance.

12 **2.3 Clear and Reasonable Warnings**

13 SpaceBound shall provide clear and reasonable warnings for all Products provided for sale to
14 customers in California in accordance with this Section pursuant to Title 27 California Code of
15 Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness
16 as compared with other words, statements, or designs as to render it likely to be read and understood
17 by an ordinary individual under customary conditions before purchase or use and shall be provided
18 in a manner such that it is clearly associated with the specific Product to which the warning applies.

19 (a) **Warning.** The Warning for DEHP in excess of the Reformulation Standard for
20 Reformulated Products set forth in Section 2.2 shall consist of one of the following statement:

21  **WARNING:** This product can expose you to DEHP, which is
22 known to the State of California to cause birth
23 defects or other reproductive harm. For more
24 information go to www.P65Warnings.ca.gov.

25 (b) **Foreign Language Requirement.** Where a consumer product sign, label or
26 shelf tag used to provide a warning includes consumer information, as that term is defined in Title 27
27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than
28 English, the warning must also be provided in those languages in addition to English.

2.4 Product Warnings

SpaceBound shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For the purpose of this Consent Judgment, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to each of a Product or its immediate container or wrapper. A warning provided pursuant to Section 2.3(a) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the Products.

2.5 Internet Warnings

If, after the Compliance Date, SpaceBound sells Products via the internet directly, or indirectly through customers with nationwide distribution or e-commerce websites, to customers located in California, SpaceBound shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase and without requiring the purchaser to search for the warning in the general content of the website. If SpaceBound sells Products directly to consumers with e-commerce websites, SpaceBound shall inform those customers in writing of their obligation to provide online warnings consistent with Title 27 Cal. Code of Regulations § 25602(b).

3. MONETARY SETTLEMENT TERMS

3.1 Payment from SpaceBound

Within ten (10) business days of the Effective Date, SpaceBound shall make a payment of \$26,000 (the “Total Settlement Payment”) in settlement and total satisfaction of all the claims referred to in the Notice, the Complaint, and in the Consent Judgment. SpaceBound’s obligation to pay the Total Settlement Payment is contingent on the Court’s approval of the Consent Judgment.

1 The Total Settlement Payment shall be paid in three (3) separate checks made payable and allocated
2 as follows:

3 **3.2 Civil Penalty**

4 Pursuant to Health and Safety Code § 25249.7(b), SpaceBound agrees to pay a civil penalty of
5 \$2,500. SpaceBound's civil penalty payment will be allocated according to Health and Safety Code
6 § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office
7 of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent
8 (25%) retained by KASB. SpaceBound shall issue its payment by either checks made payable to (a)
9 "OEHHA" in the amount of \$1,875; and (b) "Seven Hills LLP in trust for Keep America Safe and
10 Beautiful" in the amount of \$625. KASB's counsel shall deliver to KASB its respective portion of
11 the penalty payment.

12 **3.2 Reimbursement of Attorneys' Fees and Costs**

13 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
14 reaching terms on the amount of reimbursement of attorneys' fees and costs. After the Parties
15 finalized the other material settlement terms, they reached an accord on the amount of
16 reimbursement for KASB's counsel, under general contract principles and the private attorney
17 general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed
18 through the mutual execution and reporting of this Consent Judgment to the Office of the California
19 Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on
20 appeal, if any. The portion of the Total Settlement Amount attributable to KASB's attorney's fees
21 and costs, \$23,500, shall be paid to Seven Hills LLP.

22 **3.3 Payments**

23 The OEHHA portion of the civil penalty payment in the amount of \$1,875 shall be made
24 payable to OEHHA and associated with taxpayer identification number 68-0284486. This payment
25 shall be delivered as follows:

26 For United States Postal Service Delivery:

27 Attn: Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS #19B

Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Attn: Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814

The KASB portion of the civil penalty payment in the amount of \$625 shall be made payable to Seven Hills LLP in trust for Keep America Safe and Beautiful and associated with taxpayer identification number and the portion of the Total Settlement Agreement attributable to KASB's attorney's fees and costs in the amount of \$23,500 shall be made payable to Seven Hills LLP and associated with taxpayer identification number. These payments shall be delivered to the office of Seven Hills LLP, Attn: Laralei Paras, 4 Embarcadero Center, Suite 1400, San Francisco, CA 94111.

KASB and its counsel will provide completed W-9s, or other required tax documents, to SpaceBound as a condition of SpaceBound making any payment, including payment of the penalty to OEHHA.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Proposition 65 Claims

This Consent Judgment is a full, final, and binding resolution between KASB, on the one hand, and SpaceBound, on the other hand, of the claims that were or could have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents, representatives, attorneys, successors and assignees ("**Releasors**") releases SpaceBound, Amazon.com, Inc., and each of their past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom SpaceBound directly or indirectly exports, distributes, and/or sells the Products including, but not limited to, its downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees, cooperative members, and licensees ("**Releasees**") from all claims for violations of Proposition 65 based on the failure to provide a clear and reasonable warning about alleged exposures to DEHP contained in the Products that were distributed, sold and/or offered for sale in California before the Compliance Date as set forth in the Notice and Complaint. The Parties further agree that compliance with Section 2 of this

1 Consent Judgment shall be deemed compliance with Proposition 65 with respect to alleged
2 exposures to DEHP in the Products. The release in this Section 4.1 applies to all Products
3 distributed, and/or sold prior to the Compliance Date, regardless of the date any other Releasee
4 distributes or sells the Products. Nothing in these Section 4 releases shall affect KASB's right to
5 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
6 SpaceBound's Products.

7 **4.2 SpaceBound's Release of KASB**

8 SpaceBound, on behalf of itself, its past and current agents, attorneys, successors, assignees
9 and representatives, hereby waives any and all claims against KASB, its attorneys and other
10 representatives, for any and all actions taken or statements made by KASB, its attorneys and other
11 representatives, in the course of investigating claims or otherwise seeking to enforce Proposition 65
12 against it in this matter with respect to the Products.

13 **4.3 Release of Unknown Claims**

14 It is possible that other claims not known to the Parties arising out of the facts contained in the
15 Notice, or alleged in the Complaint, relating to the Products, will hereafter be discovered or
16 developed. KASB, on behalf of itself only, and SpaceBound, acknowledges that this Consent
17 Judgment is expressly intended to cover and include all such claims through and including the
18 Effective Date, including all rights of action therefor. The Parties each acknowledge that the claims
19 released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless each Party
20 respectively intends to release such claims, and in doing so waives California Civil Code § 1542.

21 The Parties each understand and acknowledge that the significance and consequence of this
22 waiver of California Civil Code § 1542 is that, even if a Party suffers future damages arising out of or
23 resulting from, or related directly or indirectly to, in whole or in part, the Products, including but not
24 limited to any exposure to, or failure to warn with respect to exposure to, the Products, such Party
25 will not be able to make any claim for those damages against the other Party.

26 **5. ENFORCEMENT**

27 **5.1** The terms of this Consent Judgment shall be enforced by the Parties hereto and any
28 other public or private enforcer. A Party may enforce any of the terms and conditions of this Consent

1 Judgment only after that Party first provides sixty (60) days' notice to the Party allegedly failing to
2 comply with the terms and conditions of this Consent Judgment and attempts to resolve such Party's
3 failure to comply in an open and good faith manner. The provisions of sections 5.2 through 5.3 shall
4 be prerequisites to enforce alleged violations of Section 2 of this Consent Judgment by any other
5 means.

6 **5.2 Notice of Violation**

7 Prior to bringing any proceeding to enforce the terms of this Consent Judgment, SpaceBound
8 shall be provided with a written notice of violation ("NOV") that includes information sufficient for
9 SpaceBound to be able to understand and correct the violation, including but not limited to: (a) the
10 name of the Product, (b) specific date(s) when the Product was sold in California, and (c) the store,
11 website, or other place at which the Product was available for sale to consumers, and (d) any test
12 report in support of the allegations in the notice.

13 **5.3 Notice of Election Response**

14 Within 30 days of receiving a NOV, SpaceBound shall serve a Notice of Election ("NOE")
15 either contesting or not contesting the NOV.

16 **5.3.1 Non-Contested NOV.** No further action regarding the alleged violation shall
17 be taken against a Defendant that serves a NOE that elects not to contest the NOV and meets the
18 following condition:

- 19 (a) The Product was produced, distributed, shipped, and/or sold by the Defendant
20 for sale in California before the Compliance Date.
- 21 (b) If the condition in Section 5.3.1(a) is not met, the Parties shall meet and confer
22 in good faith for a period of no less than 30 days before any other action may
23 be taken to enforce the terms of this Consent Judgment.

24 **5.3.2 Contested NOV.** If a Defendant serves a NOE electing to contest the NOV,
25 the provisions of this Section 5.3.2 shall apply.

- 1 (a) Defendant may request that the sample(s) of Products tested be subject to
2 confirmatory testing at an EPA or California-accredited laboratory.
- 3 (b) If the confirmatory testing establishes that the Products do not contain DEHP,
4 as applicable, in excess of the levels allowed in Section 2.1, above, no further
5 action regarding the alleged violation shall be taken. If the testing does not
6 establish compliance with Section 2.1 above, Defendant may withdraw its
7 NOE to contest the violation and may serve a new NOV pursuant to Section
8 5.3.1.
- 9 (c) If Defendant does not withdraw a NOE to contest the NOV or take action
10 under Section 5.3.1. above, the Parties shall meet and confer in good faith for a
11 period of no less than 30 days before any other action may be taken to enforce
12 the terms of this Consent Judgment.

13 **6. COURT APPROVAL**

14 Pursuant to California Health and Safety Code § 25249.7(f)(4), Spacebound shall file with the
15 Court and serve on the Office of the Attorney General of the State of California a noticed motion for
16 judicial approval of this Consent Judgment within thirty (30) days of the date this agreement is fully
17 executed. The Parties agree to mutually employ their best efforts, and those of their counsel, to
18 support the entry of a judgment pursuant to the terms of this Consent Judgment, and to judicial
19 approval of their settlement in a timely manner. For purposes of this section, “best efforts” shall
20 include, at a minimum, supporting the motion for approval, responding to any third-party objection,
21 and appearing at the hearing before the Court if so requested.

22 This Consent Judgement is not effective until it is approved and entered by the Court.

23 **7. SEVERABILITY**

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

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1 **8. 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 that Proposition 65 is repealed, preempted, or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Products, then SpaceBound may
5 provide KASB with written notice of any asserted change in the law, and shall have no further
6 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
8 SpaceBound from its obligation to comply with any pertinent state or federal law or regulation.

9 **9. NOTICE**

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

13 For SpaceBound:

14 Patricia Miller, CEO
15 SpaceBound, Inc.
16 280 Opportunity Way
17 LaGrange, OH 44050

For KASB:

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

16 With a copy to:

17 Scott P. Shaw
18 Merchant & Gould P.C.
19 8383 Wilshire Blvd., Suite 935
20 Beverly Hills, CA 90211

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

22 **10. COUNTERPARTS AND PDF SIGNATURES**

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

26 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

1 **12. ENTIRE AGREEMENT**

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

10 **13. MODIFICATION**

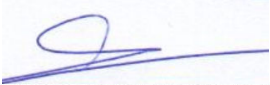
11 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
12 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
13 any party and the entry of a modified Consent Judgment by the Court thereon.

14 **14. AUTHORIZATION**

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

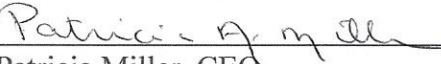
18 **AGREED TO:**

19 Date: March 31, 2023

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21 By: 
22 My Nguyen, CFO
23 Keep America Safe and Beautiful
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27
28

AGREED TO:

Date: March 30, 2023

By: 
Patricia Miller, CEO
SpaceBound, Inc.