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DBA DOLLAMUR SPORT SURFACES

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

DOLLAMUR L.P. DBA DOLLAMUR  
SPORT SURFACES; and DOES 1-30,  
inclusive,

Defendants.

Case No. CGC-22-603328

**[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 Dollamur L.P. dba Dollamur Sport Surfaces (“**Dollamur**”), with  
4     KASB and Dollamur each individually referred to as a “**Party**” and collectively, as the “**Parties**,” to  
5     resolve the allegations in the December 22, 2021 60-Day Notice of Violation in compliance with the  
6     Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.*  
7     (“**Proposition 65**”).

8           **1.1 The Parties**

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

14          **1.2 Consumer Product Description**

15          KASB alleges that Dollamur manufactures, imports, sells, or distributes for sale in California  
16    tape containing di(2ethylhexyl) phthalate (“**DEHP**”), including but not limited to, *Dollamur 3” Clear*  
17    *Vinyl Mat Tape (3 Pack)*, SKU# 20267270, Style: TC-3IN-3PACK, without providing the health  
18    hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.*  
19    (“**Proposition 65**”). All such tape is referred to hereinafter as the “**Products**.” DEHP is listed  
20    pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or  
21    other reproductive harm.

22          **1.3 Notice of Violation**

23          On September 3, 2021, KASB served Dollamur, the California Attorney General, and the  
24    requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging  
25    Dollamur violated Proposition 65 by failing to warn its customers and consumers in California that  
26    the Products can expose users to DEHP. No public enforcer has commenced and is diligently  
27    prosecuting an action to enforce the allegations set forth in the Notice.  
28

1           **1.4     Complaint**

2           On December 8, 2022, KASB commenced the instant action (“**Complaint**”), naming  
3 Dollamur as a defendant for the alleged violations of Proposition 65 that are the subject of the  
4 Notice.

5           **1.5     No Admission**

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

13           **1.6     Jurisdiction**

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

18           **1.7     Execution Date**

19           The term “Execution Date” means the date all parties have signed this Consent Judgment.

20           **1.8     Effective Date**

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

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

24           **2.1     Commitment to Reformulate or Warn**

25           Commencing on the Effective Date and continuing thereafter, all Products Dollamur  
26 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through  
27 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard  
28 for Reformulated Products, as defined by Section 2.2, or be accompanied by clear and reasonable

1 warnings pursuant to Section 2.3.

## 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”), di-n-butyl phthalate (“DBP”), diisononyl  
5 phthalate (“DINP”), butyl benzyl phthalate (“BBP”), di-isodecyl phthalate (“DIDP”) and di-n-hexyl  
6 phthalate (“DnHP”), contain any or all such chemicals each in a maximum concentration of less than  
7 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or accredited by the  
8 State of California, the United States Food and Drug Administration/Environmental Protection  
9 Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation  
10 body of the International Laboratory Accreditation Cooperation (“ILAC”).

11 For purposes of compliance with this reformulation standard, testing samples shall be  
12 prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC  
13 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or  
14 other methodologies utilized by federal or state government agencies to determine phthalate content  
15 in a solid substance. (“**Reformulation Standard**”).

## 16 **2.3 Clear and Reasonable Warnings**

17 Dollamur shall provide clear and reasonable warnings for all Products, that are not  
18 Reformulated Products, provided for sale to customers in California in accordance with this Section  
19 pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be  
20 prominently placed with such conspicuousness as compared with other words, statements, or designs  
21 as to render it likely to be read and understood by an ordinary individual under customary conditions  
22 before purchase or use and shall be provided in a manner such that it is clearly associated with the  
23 specific Product to which the warning applies.  
24

### 25 **(a) Warnings**

26 The Warning shall consist of one of the following statements:

- 27 1. For Products containing DEHP:  
28

1                   **⚠WARNING:** This product can expose you to DEHP, which is known to the  
2                   State of California to cause cancer and birth defects or other  
3                   reproductive harm. For more information go to  
4                   www.P65Warnings.ca.gov.

5                   - or -

6                   2. For Products containing any other phthalate chemical(s):

7                   **⚠WARNING:** This product can expose you to chemicals including  
8                   [name of chemical or chemicals], which [is/are] are  
9                   known to the State of California to cause [cancer] [and]  
10                  [birth defects or other reproductive harm]. For more  
11                  information go to www.P65Warnings.ca.gov.

12                  **(b) Foreign Language Requirement**

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

17                  **2.4 Product Warnings**

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

28                  **2.5 Internet Warnings**

                  If, after the Effective Date, Dollamur sells Products, via the internet directly, or indirectly  
                  through customers with nationwide distribution or e-commerce websites, to customers located in  
                  California, Dollamur 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 Dollamur sells Products directly to consumers with e-commerce websites, Dollamur shall inform those customers in writing of their obligation to provide online warnings consistent with Title 27 California Code of Regulations § 25602(b) as a condition of sale of the Products.

## 2.6 Customer Notification

No later than the Effective Date, Dollamur shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each customer in California to which it supplied Products between September 3, 2020 and September 3, 2021; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Dollamur supplied between September 3, 2018 and September 3, 2021, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to Dollamur for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the following warning statement:

**⚠️WARNING:** This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The foregoing warning 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. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by Dollamur. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the foregoing warning statements.

1     **3.     MONETARY SETTLEMENT TERMS**

2             **3.1     Civil Penalty**

3             Pursuant to Health and Safety Code § 25249.7(b), Dollamur agrees to pay a civil penalty of  
4     \$6,000 within ten (10) business days of the Effective Date. Dollamur's civil penalty payment will be  
5     allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent  
6     (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment  
7     ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Dollamur shall issue  
8     its payment in two checks made payable to: (a) "OEHHA" in the amount of \$4,500; and (b) "Seven  
9     Hills in Trust for KASB" in the amount of \$1,500. KASB's counsel shall deliver to OEHHA and  
10    KASB their respective portions of the penalty payment.

11            **3.2     Reimbursement of Attorneys' Fees and Costs**

12            KASB and its counsel offered to resolve the allegations in the Notice and Complaint without  
13    reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the  
14    Parties finalized the other material settlement terms, they negotiated and reached an accord on the  
15    amount of reimbursement to be paid to KASB's counsel, under general contract principles and the  
16    private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all  
17    work performed through the mutual execution and reporting of this Consent Judgment to the Office  
18    of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees  
19    and costs on appeal, if any. Within ten (10) business days of the Effective Date, Dollamur shall  
20    issue a check in the amount of \$28,500 payable to "Seven Hills LLP" for all fees and other costs  
21    incurred investigating, bringing this matter to Dollamur's attention, litigating, negotiating a  
22    settlement in the public interest, obtaining the Court's approval of its terms pursuant to Section 5,  
23    and reporting to the California Attorney General.

24            **3.3     Payments**

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

27                   Seven Hills LLP  
28                   Attn: Laralei Paras  
                    4 Embarcadero Center, Suite 1400

4. **CLAIMS COVERED AND RELEASED**

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

This Consent Judgment is a full, final, and binding resolution 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 Dollamur, its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dollamur directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees, cooperative members, and licensees ("**Releasees**") based on the failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured, processed, distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP in the Products.

The Parties understand and agree this Section 4.1 release shall not extend (a) to upstream entities that sold, supplied, or manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Dollamur nor (b) to Releasees who have been instructed by Dollamur, pursuant to Sections 2.5 and 2.6, to provide a warning on Products that are not Reformulated Products and have failed to do so.

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

In further consideration of the promises and agreements herein contained, KASB, as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including,

1 but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65  
2 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by  
3 Dollamur and sold in or into California before the Effective Date, against Dollamur and Releasees.

#### 4 **4.3 Dollamur's Release of KASB**

5 Dollamur, on behalf of itself, its past and current agents, representatives, attorneys,  
6 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other  
7 representatives, for any and all actions taken or statements made (or those that could have been taken  
8 or made) by KASB and its attorneys and other representatives, whether in the course of investigating  
9 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the  
10 Products.

11 The Parties further understand and agree Section 4 releases shall not extend upstream to any  
12 entities that sold, supplied or manufactured the Products or any component parts thereof, to Dollamur.  
13 Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute an action under  
14 Proposition 65 against a Releasee that does not involve Dollamur's Products.

#### 15 **5. COURT APPROVAL**

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

#### 22 **6. SEVERABILITY**

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

#### 26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California  
28 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise

rendered inapplicable by reason of law generally, or as to the Products, then Dollamur may provide KASB with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Dollamur from its obligation to comply with any pertinent state or federal law or regulation.

**8. NOTICE**

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

For Dollamur:

Barbara Adams, Esq.  
Steptoe & Johnson LLP  
One Market Plaza  
Steuart Tower, 10<sup>th</sup> Floor, Suite 1070  
San Francisco, CA 94105

For KASB:

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

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

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

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

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

**11. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those

specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**12. MODIFICATION**

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

**13. AUTHORIZATION**

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

**AGREED TO:**

Date: 04/10/2023

By: 

My Nguyen, Chief Operating Officer  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 4/6/23

By: 

Don Ochsenreiter, President  
Dollamur L.P.  
dba Dollamur Sport Surfaces