

1 George Rikos, Esq. (SBN 204864)
2 **LAW OFFICES OF GEORGE RIKOS**
3 555 West Beech Street, Suite 500
4 San Diego, CA 92101
5 Telephone: (858) 342-9161
6 Facsimile: (858) 724-1453
7 Email: george@georgerikoslaw.com

8 Attorneys for Plaintiff,
9 Blue Water Cosaint, LLC

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 BLUE WATER COSAINT, LLC

14 Plaintiff,

15 v.

16 AMAZON.COM, Inc., a Delaware
17 corporation; BOB KENNE SERVICES, Inc., a
18 Florida Corporation; DOES 1-10

19 Defendants.

Case No. 37-2022-00046786-CU-MC-CTL

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This settlement and prospective consent judgment (“Settlement”) is
3 entered into by and between Blue Water Cosaint, LLC (“Blue Water”) and Bob Kenne Services,
4 Inc. (“Kenne”). Together, Blue Water and Kenne are collectively referred to as the “Parties.” Blue
5 Water is a limited liability company located in the State of California and seeks to promote
6 awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating
7 hazardous substances contained in consumer products.

8 **1.2 General Allegations.** Blue Water alleges that Kenne is a person in the course of
9 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
10 & Safety Code Sections 25249.6 et seq. (“Proposition 65”) and that Wood Dust is listed pursuant to
11 Proposition 65 as a substance known to the State of California to cause cancer. Blue Water alleges
12 that Kenne has therefore exposed individuals to Wood Dust from its sales of Wood Smith USA
13 Cedar Sachet Bags (“Product”) without first providing users and consumers of the product with a
14 clear and reasonable cancer warning as required pursuant to Proposition 65. Kenne denies Blue
15 Water’s allegations.

16 **1.3 Product Description.** The products covered by this Settlement are all Wood Smith
17 USA Cedar Sachet Bags, including, without limitation, all varieties (the “Products”) that have been
18 manufactured, imported, distributed, offered for sale and/or sold in California by Kenne or any of
19 its downstream distributors to whom it sells its products.

20 **1.4 Notice of Violation, Complaint, and Jurisdiction.** On November 19, 2021 Blue
21 Water served Kenne and various public enforcement agencies with a document entitled “Notice of
22 Violation of California Health & Safety Code § 25249.6 et seq.” (the “Notice”). The Notice
23 provided Kenne and such others, including public enforcers, with notice that alleged that Kenne was
24 in violation of California Health & Safety Code § 25249.6 for failing to warn California consumers
25 and customers that use of the Products will expose them to Wood Dust. No public enforcer has
26 diligently prosecuted the allegations set forth in the Notice. On November 18, 2022, based on the
27 Notice and the absence of any authorized public prosecutor of Proposition 65 having filed a suit
28 based on the allegations contained therein. For purposes of this Settlement, the parties stipulate that

1 this Court has jurisdiction over the allegations of violations contained in the Complaint and personal
2 jurisdiction over Kenne, that venue is proper in the County of San Diego, and that this Court has
3 jurisdiction to enter this Settlement as a consent judgment as a full and final resolution of the claims
4 and allegations contained in the Complaint.


5 **1.5 No Admission.** This Settlement resolves claims that are denied and disputed. The
6 Parties enter into this Settlement as a full and final settlement of any and all claims between the
7 Parties for the purpose of avoiding prolonged litigation. Nothing in this Settlement shall be
8 construed as an admission by Kenne of any fact, finding, issue of law, or violation of law; nor shall
9 compliance with this Settlement constitute or be construed as an admission by Kenne of any fact,
10 finding, conclusion, issue of law or violation of law, such being specifically denied by Kenne.
11 However, this Section 1.5 shall not diminish or otherwise affect Kenne’s obligations,
12 responsibilities and duties under this Settlement.

13 **1.6 Effective Date.** For purposes of this Settlement, the term “Effective Date” shall
14 mean the date this Settlement has been approved by the Court and Blue Water has provided notice
15 to Kenne that it has been entered in the Court’s records as a consent judgment.


16 **2. INJUNCTIVE RELIEF**

17 **2.1 Compliance with Proposition 65 Warning Regulations.** As of the Effective Date, and
18 continuing thereafter, a clear and reasonable exposure warning as set forth herein must be
19 provided for the Products at issue in this lawsuit that Kenne manufacturers, imports, distributes,
20 sells, or offers for sale in California. There shall be no obligation for such an exposure warning to
21 be provided for Products that entered the stream of commerce prior to the Effective Date. The
22 warning shall consist of either the Warning or Alternative Warning described in §§ 2.1(a) or (b),
23 respectively:

24 (a) Warning. The “Warning” shall consist of the statement:

25
26  **WARNING:** This product can expose you to Wood Dust, which is known to the State of
27 California to cause cancer. For more information go to www.P65Warnings.ca.gov;

1 (b) **Alternative Warning:** Kenne may, but are not required to, use the alternative short-
2 form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

3  **WARNING:** Cancer - www.P65Warnings.ca.gov.

4 2.2 A **Warning or Alternative Warning** provided pursuant to § 2.1 must have the term
5 “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the
6 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a
7 black outline, except that if the label for the Products does not use the color yellow, the symbol
8 may be in black and white. The symbol must be in a size no smaller than the height of the word
9 “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling
10 and displayed with such conspicuousness, as compared with other words, statements, or designs as
11 to render it likely to be read and understood by an ordinary individual under customary conditions
12 of purchase or use.

13 2.3 **Compliance with Warning Regulations.** Kenne shall be deemed to be in compliance with
14 this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by
15 complying with warning requirements adopted by the State of California’s Office of
16 Environmental Health Hazard Assessment (“OEHHA”) that are applicable to this product.

17 2.4. **Alternative to Warning.** For Product not packaged by Kenne but sold in bulk, Kenne
18 may as the manufacturer of the Product, **provide a written notice directly to the authorized**
19 **agent for a distributor or retail seller** who is subject to Section 25249.6 of the Act, which: (1)
20 States that the product may result in an exposure to one or more listed chemicals; (2) Includes the
21 exact name or description of the product or specific identifying information for the product such as
22 a Universal Product Code or other identifying designation; (3) Includes all necessary warning
23 materials such as labels, labeling, shelf signs or tags, and warning language for products sold on
24 the Internet, that satisfies Section 25249.6 of the Act; (4) Has been sent to the retail seller, and the
25 manufacturer, producer, packager, importer, supplier, or distributor has obtained confirmation
26 electronically or in writing of receipt of the notice. If the manufacturer, producer, packager,
27 importer, supplier, or distributor of a product is complying with this section by providing a written
28 notice directly to the authorized agent: (1) The notice must be renewed, and receipt of the renewed

1 notice confirmed electronically or in writing by the retail seller’s authorized agent within six
2 months during the first year after the effective date of this section, then annually thereafter during
3 the period in which the Product is sold in California by the retail seller.

4 **2.5 Internet Warnings**

5 If, after the Effective Date, Kenne sells Products, via the internet, through its own website,
6 affiliated websites or a third party website, to consumers located in California or to customers with
7 nationwide distribution and e-commerce websites, Kenne shall provide warnings for each
8 Product both on the Product label in accordance with Section 2.3(d), and by prominently
9 displaying , or requiring the warning to be prominently displayed on affiliated websites, third
10 party websites or by retail customers, to the consumer during the purchase of the Products
11 without requiring customers to seek out the warning. The warning or a clearly marked
12 hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the
13 Products via the internet shall appear either: (a) on the same web page on which the Products
14 are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same
15 page as the price for the Products; or (d) on one or more web pages displayed to a
16 purchaser during the checkout process. The warning shall appear in any of the above instances
17 adjacent to or immediately following the display, description, or price of the Products for which
18 it is given in the same type size or larger than other consumer information provided for the
19 Products. To the extent that the current Proposition 65 requirements for Internet Warnings are
20 changed, Kenne may elect to adhere to any such changes in lieu of that which is set forth herein.
21 Where Kenne sells, ships, or distributes Products to third-party retailers or e-commerce
22 marketplaces, Kenne will advise them, in writing, of the internet Warning requirements under this
23 Agreement as a condition of sale of the Products.

24 **3. SETTLEMENT PAYMENTS**

25 **3.1 Civil Penalties**

26 In settlement of all the claims referred to in this Settlement, Kenne shall pay \$2,500 as a civil
27 penalty, allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d),
28 with 75% of the penalty to be remitted to the California Office of Environmental Health Hazard

1 Assessment (“OEHHA”) and the remaining 25% of the Penalty remitted to Blue Water no later than
2 ten (10) business days following the Effective Date. More specifically, Kenne shall issue two
3 separate checks for the civil penalty payment to (a) “Office of Environmental Health Hazard
4 Assessment” in the amount of \$1,875(75%); and to (b) “Blue Water Cosaint, LLC” in the amount
5 of \$625 (25%). These Payments shall be delivered as follows:

6
7 (i) The penalty payment owed to Blue Water shall be delivered to the following
8 address:

9
10 George Rikos
11 Law Offices of George Rikos
12 555 West Beech, Suite 500
13 San Diego, CA 92101

14
15 (ii) The penalty payment owed to OEHHA (EIN: 68-0284486) shall be delivered

16 directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following address:

17 Mike Gyurics
18 Fiscal Operations Branch Chief
19 Office of Environmental Health Hazard Assessment
20 Attn. Prop 65 Penalties – Blue Water v. Kenne Settlement
21 1001 I Street
22 Sacramento, CA 95814

23 Kenne shall provide Blue Water’s counsel with a copy of the check it sends to OEHHA with its
24 penalty payment to Blue Water. Late payments by Kenne shall be subject to additional penalties of
25 \$50/day to be allocated between OEHHA and Blue Water in the same ratio as set forth above. Blue
26 Water’s counsel shall provide Kenne with an IRS W-9 form for its firm and trust account for Blue
27 Water within three (3) days of the Effective Date and Kenne’s payment deadlines under this
28 Agreement shall be tolled pending its receipt of the W-9 form. In association with the issuance of
the payments under this Settlement, Kenne will issue IRS 1099 forms as appropriate given the
payees.

1 **3.2 Attorneys' Fees and Litigation Costs**

2 Kenne shall reimburse Blue Water's counsel \$10,000 for fees and costs incurred as a result
3 of investigating and bringing this matter to Kenne's attention, negotiating a settlement in the
4 public interest, and obtaining the Court's approval of the Settlement and its entry as a consent
5 judgment. The Attorneys' Fees and litigation costs shall be paid on the first day of each month
6 following the effective date as follows:

- 7 \$500 per month for the initial six months following the Effective Date;
- 8 \$800 per month commencing on the seventh month following the Effective Date for six
9 months;
- 10 \$1200 for the final payment on the thirteenth month following the Effective Date.

11 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

12 **4.1 Release of Kenne and Downstream Customers and Entities**

13 This Settlement is a full, final and binding resolution between Blue Water, acting on their
14 own behalf and in the public interest, and Kenne, of any violation of Proposition 65 that was or
15 could have been asserted by Blue Water or on behalf of his past and current agents, representatives,
16 attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged
17 exposures to Wood Dust contained in the Products, and Releasers hereby release any such claims
18 against Kenne and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors,
19 officers, agents, employees, attorneys, successors and assignees, and each entity to whom Kenne
20 directly or indirectly distributes or sells the Products, including but not limited to, downstream
21 distributors, wholesalers, customers, retailers, and its respective subsidiaries, affiliates and parents,
22 franchisees, cooperative members and licensees (collectively, the "Releasees"), from all claims for
23 violations of Proposition 65 through the Effective Date based on their failure to warn of alleged
24 exposure to the substance Wood Dust from use of the Products.

25 In further consideration of the promises and agreements herein contained, and for the
26 payments to be made pursuant to Section 3 above, Blue Water, on behalf of itself, its past and current
27 agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and
28 waives any right to institute, participate in, directly or indirectly, any form of legal action and

1 releases all claims that he may have, including without limitation, all actions and causes of action
2 in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert
3 fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the
4 Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected,
5 limited to and arising out of the alleged or actual exposure to substances contained in Kenne's
6 Products.

7 **4.2 Kenne's Release of Blue Water.** Kenne, on behalf of themselves, their past and
8 current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all
9 claims against Blue Water, his attorneys and other representatives, for any and all actions taken or
10 statements made by Blue Water and/or his attorneys and other representatives, whether in the course
11 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

12 **4.3 California Civil Code Section 1542.** It is possible that other claims not known to
13 the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or
14 be discovered. Blue Water on behalf of himself only, on one hand, and Kenne, on the other hand,
15 acknowledge that this Agreement is expressly intended to cover and include all such claims up
16 through the Effective Date, including all rights of action therefor. The Parties acknowledge that the
17 claims released in Sections 4.1 and 4.2, above, may include unknown claims, and nevertheless waive
18 California Civil Code Section 1542 as to any such unknown claims. California Civil Code Section
19 1542 reads as follows:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
21 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
22 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**
23 **THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD**
24 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**
25 **THE DEBTOR OR RELEASED PARTY.**

26 Blue Water and Kenne each acknowledge and understand the significance and consequences of this
27 specific waiver of California Civil Code Section 1542.

28 ///

1 **4.4 Deemed Compliance with Proposition 65.** Compliance by Kenne with this
2 Settlement following the Effective Date constitutes compliance with Proposition 65 with respect to
3 exposure to WOOD DUST from the Products. Products distributed by Kenne prior to the Effective
4 Date may be sold through as previously manufactured and labeled.

5 **5. ENTRY OF CONSENT JUDGMENT**

6 The Parties hereby request that the Court promptly enter this Settlement as a consent
7 judgment based on the motion for its approval Blue Water will be making pursuant to Section 10
8 below. Upon entry of the Settlement as consent judgment, Blue Water and Kennes waive their
9 respective rights to a hearing or trial on the allegations contained in the Complaint.

10 **6. SEVERABILITY**

11 If, subsequent to the execution of this Settlement, any of the provisions of this Settlement
12 are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall
13 not be adversely affected but only to the extent the deletion of the provision deemed unenforceable
14 does not materially affect, or otherwise result in the effect of the Settlement being contrary to the
15 intent of the Parties in entering into this Settlement.

16 **7. GOVERNING LAW/ENFORCEMENT**

17 The terms of this Settlement shall be governed by the law of the State of California and apply
18 within the State of California. The rights to enforce the terms of this Settlement are exclusively
19 conferred on the Parties hereto and this Court shall retain jurisdiction over any enforcement actions
20 , including but not limited to, any failure by Kenne to make the payments identified above. Any
21 Party may, after providing sixty (60) days written notice and meeting and conferring within a
22 reasonable time thereafter to attempt to resolve any issues, by motion or application for an order to
23 show cause before this Court, enforce the terms and conditions contained in this Settlement. In the
24 event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of
25 law generally, due to federal preemption or the First Amendment commercial speech rights of the
26 U.S. Constitution, or as to the Products, Kennes shall provide written notice to Blue Water of any
27 asserted change in the law, and shall have no further obligations pursuant to this Settlement
28 Agreement with respect to, and to the extent that, a Product is so affected.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class
4 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
5 party by the other party to the following addresses:

6
7

8 For Kenne Services, Inc
9 Steven P. Hayes, Esq.
10 P.O. Box 4929
11 Clearwater, Florida 33758
12 steve@hayesadvisoryservices.com

13

For Blue Water Cosaint, LLC:

14 George Rikos, Esq.
15 Law Offices of George Rikos
16 555 West Beech Street, Suite 500
17 San Diego, CA 92101

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

21 **9. COUNTERPARTS: SIGNATURES**

22 This Settlement may be executed in counterparts and by facsimile or .pdf signature, each of
23 which shall be deemed an original, and all of which, when taken together, shall constitute one and
24 the same document.

25 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

26 Blue Water agrees to comply with the reporting requirements referenced in Health & Safety
27 Code Section 25249.7(f) and to seek, by formal and properly noticed motion (including with service
28 to the Office of the California Attorney General being fully effectuated at least 45 days prior to a
requested hearing thereon), approval of this Settlement's terms pursuant to Proposition 65 and its

1 associated entry as a consent judgment by the Court.

2 **11. MODIFICATION**

3 This Settlement may be modified only by a written agreement of the Parties and the approval
4 of the Court or upon a duly noticed motion of either Party for good cause shown. A showing of
5 technical infeasibility or commercial unreasonableness in meeting the requirements of Section 2
6 with respect to the Products shall be deemed to constitute good cause for a modification to substitute
7 an alternative no significant risk level on the basis of 27 Cal. Code Regs. § 25703(b) in place of the
8 cancer risk level and presumptive part per billion average concentration threshold set forth in
9 Sections 2.1 and 2.2, and such a modification shall not be opposed by Blue Water. Any proposed
10 modification shall be sent to the Office of the California Attorney General in advance of its
11 submission to the Court such that the Attorney General has a reasonable opportunity to review and
12 comment thereon.

13 **12. ENTIRE AGREEMENT**

14 This Settlement contains the sole and entire agreement of the Parties and any and all prior
15 negotiations and understandings related hereto shall be deemed to have been merged within it. No
16 representations or terms of agreement other than those contained herein exist or have been made by
17 any Party with respect to the other Party or the subject matter hereof. This Settlement shall have no
18 effect if it is not approved by the Court and entered as a consent judgment.

19 **13. AUTHORIZATION**

20 The undersigned are authorized to execute this Settlement and have read, understood and
21 agree to all of the terms and conditions contained of this Settlement.

22 **14. COURT TO RETAIN JURISDICTION**

23
24 The Parties hereby consent to the Court maintaining jurisdiction of this matter pursuant to
25 Code of Civil Procedure section 664.6, for purposes of addressing: (i) the interpretation and
26 enforcement of the terms of the consent judgment, (ii), and such post-Judgment matters, including
27 a breach of the terms of the consent judgment (i.e. failure to make the scheduled payments) as may
28 be appropriate. The Judgment shall provide that the Court retains jurisdiction for such purposes.

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AGREED TO:

Date: _____
By: _____
Blue Water Cosaint, LLC

AGREED TO:

Date: 11/01/2023
By: Jarvis Kenne
Kenne Services, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE SETTLEMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY THIS COURT:

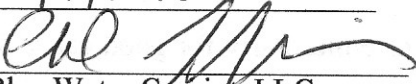
DATED: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: 11/2/23

By: 
Blue Water Cosaint, LLC

AGREED TO:

Date: _____

By: _____
Kenne Services, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED THAT THE SETTLEMENT SET FORTH ABOVE SHALL PROMPTLY BE ENTERED AS A CONSENT JUDGMENT BY THIS COURT:

DATED: _____

JUDGE OF THE SUPERIOR COURT