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20 KTM SERVICES, INC.

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KEEP AMERICA SAFE AND BEAUTIFUL,  
Plaintiff,  
v.  
KTM SERVICES, INC.; and DOES 1-30,  
inclusive,  
Defendants.

Case No. CGC-23-604905

**[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 by and between plaintiff Keep America Safe and Beautiful  
3 (“KASB”) and defendant KTM Services, Inc (“KTM”), with KASB and KTM each individually  
4 referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in KASB’s  
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 to consumers and  
11 end-users in California, or eliminated from food and consumer products sold in California. KTM is a  
12 person in the course of doing business for purposes of California Health & Safety Code §  
13 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that KTM manufactures, imports, sells, or distributes for sale in California  
16 dried plums containing the heavy metal, Lead (Pb), including but not limited to, *Enjoy Hawaii*  
17 *Premium Sweet Li Hing Mui Dried Plums, Best By: 11 JUN 2022, UPC: 6 79757 17834 0, ASIN:*  
18 *B01CENTIR6*, without providing the health hazard warning KASB alleges is required by California  
19 Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). “KTM Enjoy Brand Dried Plums  
20 distributed by KTM Services, Inc. referred to hereinafter as the “Products.” Lead (Pb) is listed  
21 pursuant to Proposition 65 as a chemical known to the State of California to cancer and birth defects  
22 or other reproductive harm.

23 **1.3 Notice of Violation**

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

1 the Notice.

2 **1.4 Complaint**

3 On May 30, 2023, KASB commenced the instant action (“Complaint”), naming KTM as a  
4 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

5 **1.5 No Admission**

6 KTM denies the material, factual and legal allegations contained in the Notice and Complaint  
7 and maintains that all products it sold or distributed for sale in California, including the Products,  
8 comply with all laws. Neither any term of this Consent Judgment nor KTM’s compliance with its  
9 terms shall be deemed an admission by KTM of any fact, finding, legal issue or conclusion, or  
10 violation of law. This section shall not, however, diminish or otherwise affect KTM’s 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 KTM as to the allegations in the Complaint; that venue is proper in San Francisco  
15 County Superior Court; 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**

21 **2.1 Commitment to Compliance with Proposition 65**

22 Commencing on the Effective Date and continuing thereafter, all Products KTM  
23 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one  
24 or more third-party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for  
25 Lead Free Products defined by Section 2.2, below, or be accompanied by a clear and reasonable  
26 warning pursuant to Section 2.3, below.



1                   **2.3.2 Short-Form Warning.** KTM may, but is not required to, use the following  
2 short-form warning as set forth in this subsection 2.3(b) (“Short-Form Warning”), and subject to the  
3 additional requirements in Sections 2.3.3, 2.3.4 and 2.3.5, below, as follows:

4                   ⚠**WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food)

5                   **2.3.3 Foreign Language Requirement.** Where a consumer product sign, label or  
6 shelf tag used to provide a warning includes consumer information in language(s) other than English,  
7 the warning must also be provided in the other language(s) in addition to English.

8                   **2.3.4 On-Product Warnings.** A warning provided pursuant to section 2.3.1 must  
9 print the word “**WARNING:**” in all capital letters and in bold font. The entire warning shall be set  
10 off from other surrounding information, enclosed in a box and appear in at least 6-point type but no  
11 smaller than the largest type size used for other consumer information on the Products. KTM shall not  
12 make any statement likely to have the effect of diminishing the impact of the Warning on the average  
13 lay person.

14                   **2.3.5 Internet Warnings.** If, after the Effective Date, KTM sells Products other than  
15 Reformulated Products via the internet, through their own website(s), affiliated websites or a third-  
16 party website, to consumers located in California or to customers with retail outlets in California,  
17 nationwide distribution or e-commerce websites, KTM shall provide warnings for each Product both  
18 on the Product label in accordance with this Section 2.3.4, and by prominently displaying, or  
19 requiring the warning to be prominently displayed on affiliated websites, third-party websites or by  
20 retail customers, to the consumer during the purchase of the Product without requiring customers to  
21 seek out the warning. The warning or a clearly marked hyperlink to the warning using the word  
22 “**WARNING**” given in conjunction with the sale of Products via the internet shall appear either: (a)  
23 on the same web page on which Products are displayed; (b) on the same web page as the virtual cart  
24 displaying the Products; (c) on the same page as the price for Products; or (d) on one or more web  
25 pages displayed to a purchaser during the checkout process. The warning shall appear in any of the  
26 above instances adjacent to or immediately following the display, description or price of the Product  
27 for which it is given in the same type size or larger than other consumer information provided for the  
28 Product. For third-party websites, as a condition of sale, KTM shall notify the sellers the Products

1 must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall  
2 supply the warning requirements, pursuant to this Section 2.3.

### 3 **2.3.6 Customer Notification**

4 No later than the Effective Date, KTM shall send a letter, electronic or otherwise  
5 (“Notification Letter”) to: (i) each customer in California to which it sold any Products between  
6 within the one-year period prior to the Effective Date; and (ii) any retailer or distributor KTM  
7 reasonably understands or believes has inventory of Products KTM supplied during the one-year  
8 period preceding the Effective Date and are intended for sale to Consumers in California, or which  
9 KTM reasonably believes sells or offers its Products for sale in California. The Notification Letter  
10 shall advise recipients the Products contain Lead (Pb), a chemical known to cause cancer and birth  
11 defects or other reproductive harm. The Notification Letter shall inform the recipient all Products  
12 must have a label attached to the packaging of each Product or directly on the Product itself expressly  
13 referring to the Product, and containing the warning statement(s) provided in this Section 2.3. If the  
14 customer is a business establishment, the Notification Letter shall include a sheet of white  
15 background, adhesive stickers with the forgoing warning statement in Section 2.3.1.

16 The Notification Letter shall advise the recipient: (i) the aforementioned labels must be  
17 attached to Products prior to sale in or into the California market or to a customer in California; and  
18 (ii) each warning must be prominently placed with such conspicuousness when compared with other  
19 words, statements, designs, or devices that it is likely to be read and understood by an ordinary  
20 individual under customary conditions before purchase or use and shall be provided in a manner that  
21 it clearly associates the warning with the specific Product to which the warning applies.

## 22 **3. MONETARY SETTLEMENT TERMS**

### 23 **3.1 Civil Penalty**

24 Pursuant to Health and Safety Code § 25249.7(b), KTM agrees to pay a civil penalty of  
25 \$8,000 within ten (10) days of the Effective Date. KTM’s civil penalty payment will be allocated  
26 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
27 penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and  
28 the remaining twenty-five percent (25%) retained by KASB. KTM shall issue its payment in two

1 checks made payable to: (a) “OEHHA” in the amount of \$6,000; and (b) “Seven Hills LLP in trust for  
2 Keep America Safe and Beautiful” in the amount of \$2,000. KASB’s counsel shall deliver to  
3 OEHHA and KASB their respective portions of the penalty payment.

4 **3.2 Reimbursement of Attorneys’ Fees and Costs**

5 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without  
6 reaching terms on the amount of reimbursement of attorneys’ fees and costs. After the Parties  
7 finalized the injunctive and civil penalty settlement terms, they negotiated KTM’s reimbursement of  
8 KASB’s attorneys’ fees and costs under general contract principles and the private attorney general  
9 doctrine, codified at California Code of Civil Procedure § 1021.5. The negotiated reimbursement  
10 includes all work performed through the mutual execution and reporting of this Consent Judgment to  
11 the Office of the California Attorney General and obtaining an entry of Judgment by the Court  
12 pursuant its terms, but exclusive of fees and costs on appeal, if any. Within ten (10) days of the  
13 Effective Date, KTM shall issue a check for \$44,500, payable to “Seven Hills LLP” for all fees and  
14 costs incurred investigating, bringing this matter to KTM’s attention, litigating, negotiating a  
15 settlement in the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and  
16 reporting the Parties’ settlement to the Office of the Attorney General.

17 **3.3 Payments**

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

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

23 **4. CLAIMS COVERED 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 that were or could  
26 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.  
27 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,  
28 representatives, attorneys, successors and assignees (“Releasers”) releases KTM, its past and present

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

10 The Parties further understand and agree this Section 4.1 release shall not extend (i) upstream  
11 to any entity who supplied the Products, or any ingredient or component part thereof, to KTM or (ii)  
12 to Releasees who have been instructed by KTM, pursuant to Section 2.3, to cease offering the  
13 Products for sale to consumers in California or provide a clear and reasonable warning in conjunction  
14 with those sales and have failed to do so. Nothing in these Section 4 releases shall affect KASB’s  
15 right to commence or prosecute an action under Proposition 65 against a Releasee that does not  
16 involve KTM’s Products.

#### 17 **4.2 KASB’s Individual Release of Claims**

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

#### 26 **4.3 KTM’s Release of KASB**

27 KTM, on its own behalf and on behalf of its past and current agents, representatives,  
28 attorneys, successors, and assignees, hereby waives all claims against KASB and its attorneys and



1 other representatives, for any actions taken or statements made (or those that could have been taken  
2 or made) by KASB and its attorneys and other representatives, whether in the course of investigating  
3 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the  
4 Products.

5 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California  
18 and apply within California. If Proposition 65 is repealed, preempted, or otherwise rendered  
19 inapplicable by reason of law generally, or as to the Products, then KTM may seek to a modification  
20 pursuant to Section 12, below. Nothing in this Consent Judgment shall be interpreted to relieve KTM  
21 from its obligation to comply with any state or federal law or regulation.

22 **8. NOTICE**

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

26 ///

27 ///

28 ///

1 For KTM:

2 Thanh Lac, President  
3 KTM Services, Inc.  
4 2111 Wilcox Lane, Unit A  
Honolulu, HI 96797

For KASB:

Brian C. Johnson, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

5 With a copy to:

6 George Salmas, Esq.  
7 Michael Hambly, Esq.  
8 The Food Lawyers  
9 1880 Century Park East, Suite 611  
Los Angeles, CA 90064

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

12 **9. COUNTERPARTS AND ELECTRONIC SIGNATURES**

13 This Consent Judgment may be executed in counterparts and by electronic or facsimile  
14 signature(s), each of which shall be deemed an original and, all of which, when taken together, shall  
15 constitute one and the same document.

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

19 **11. ENTIRE AGREEMENT**

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

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of  
4 any party and the entry of a modified Consent Judgment by the Court thereon. No Party shall seek  
5 modification of this Consent Judgment without first providing written notice to the other Party of the  
6 basis for the modification sought and meeting and conferring in good faith prior to moving the Court  
7 for an order modifying the Consent Judgment. In the event the Parties or either Party seek(s)  
8 modification of this Consent Judgment by written agreement or on noticed motion by the Court, the  
9 Party or Parties shall provide the OAG with no less than 45 days' notice of their intended revision(s)  
10 to the Consent Judgment prior to reporting the revised agreement to the OAG or the date of any  
11 hearing by the Court on a motion for such modification.

12 **13. AUTHORIZATION**

13 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
14 Party and have read, understand, and agree to all the terms and conditions of this Consent Judgment.

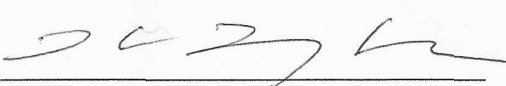
15 **AGREED TO:**

**AGREED TO:**

16 Date: 07/30/2024

Date: July 25, 2024

17 By: 

18 By: 

19 Lance Nguyen, CEO  
20 KEEP AMERICA SAFE AND  
21 BEAUTIFUL

22 Thanh Lac, President  
23 KTM SERVICES, INC.