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11 BYMM CORPORATION DBA KLEANCOLOR

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SANTA CLARA
14 UNLIMITED CIVIL JURISDICTION
15

16 CENTER FOR ADVANCED PUBLIC
17 AWARENESS,

18 Plaintiff,

19 v.

20 BYMM CORPORATION DBA
21 KLEANCOLOR, et al.

22 Defendant.

Case No. 23CV419667

[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 Center for Advanced Public
3 Awareness (“CAPA”) and defendant Bymm Corporation dba Kleancolor (“Kleancolor”), with CAPA
4 and Kleancolor each individually referred to as a “Party” and collectively, as the “Parties,” to resolve
5 the allegations in the September 19, 2022 60-Day Notice of Violation in compliance with the Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.*
7 (“Proposition 65”).

8 **1.1 The Parties**

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

14 **1.2 Consumer Product Description**

15 CAPA alleges that Kleancolor manufactures, imports, sells, and distributes for sale in
16 California glass bottles with exterior decoration containing the heavy metal, Lead, including, but not
17 limited to, *KLEANCOLOR Nail Lacquer, 204 Neon Lime, #DGTT25FM*, without providing the health
18 hazard warning that CAPA alleges is required by California Health & Safety Code § 25249.5 *et seq.*
19 (“Proposition 65”). Glass bottles with exterior decoration are referred to hereinafter as the
20 “Products.” Lead is listed pursuant to Proposition 65 as a chemical known to the State of California
21 to cause birth defects and other reproductive harm.

22 **1.3 Notice of Violation**

23 On September 19, 2022, CAPA served Kleancolor, the California Attorney General, and the
24 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging
25 Kleancolor violated Proposition 65 by failing to warn its customers and consumers in California that
26 its Products can expose users to Lead. No public enforcer has commenced and is diligently
27 prosecuting an action to enforce the allegations in the Notice.

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1 **1.4 Commencement of Litigation**

2 On July 24, 2023, CAPA filed a complaint against Kleancolor in the Superior Court of the
3 State of California, County of Santa Clara ("Court"), bearing case number 23CV419667, for the
4 alleged violations subject of the Notice (the "Action").

5 **1.5 No Admission**

6 Kleancolor denies the 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 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall constitute
9 or be construed as, nor shall compliance with this Consent Judgment constitute or be construed as,
10 an admission by Kleancolor of any fact, finding, conclusion of law, issue of law, or violation of law.
11 This section shall not, however, diminish or otherwise affect Kleancolor'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 to approve and enforce the provisions of this Consent Judgment, pursuant to Proposition
16 65 and Code of Civil Procedure § 664.6.

17 **1.7 Effective Date**

18 For purposes of this Agreement, "Effective Date" shall mean the date on which the Court
19 approves this Consent Judgment and enters Judgment pursuant to its terms.

20 **2. INJUNCTIVE RELIEF: REFORMULATION**

21 **2.1 Remediation and Compliance**

22 Commencing upon the Effective Date and continuing thereafter, all Products Kleancolor
23 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
24 one or more third party retailers or e-commerce marketplaces, shall either (a) meet the
25 Reformulation Standard as defined by Section 2.2, or (b) comply with the Warning Label
26 Requirements as defined by Section 2.3.

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1 **2.2 Reformulation Standard**

2 For purposes of this Agreement, “**Reformulated Products**” are defined as those Products:

3 **2.2.1** containing no more than 0.009% or 90 parts per million Lead in any
4 decoration, description, artwork and/or design on the exterior surface when analyzed pursuant to
5 U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6020A or
6 equivalent methodologies utilized by federal or state agencies for the purpose of determining Lead
7 content in a solid substance; and

8 **2.2.2** yielding a test result of no more than 1.0 microgram of Lead on any exterior
9 surface covered with a decoration, description, artwork and/or design when sampled pursuant to the
10 NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A.

11 If the decoration is tested after it is affixed to the Product, the percentage of the Lead by
12 weight must relate only to the decorating materials and must not include any quantity of Lead
13 attributable to non-decorating material, e.g., glass substrate.

14 **2.3 Interim Clear and Reasonable Warnings**

15 Kleancolor shall provide clear and reasonable warnings for all Products that are not
16 Reformulated Products for sale to customers in California in accordance with this Section pursuant to
17 Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed
18 with such conspicuousness as compared with other words, statements, or designs as to render it likely
19 to be read and understood by an ordinary individual under customary conditions before purchase or
20 use and shall be provided in a manner such that it is clearly associated with the specific Product to
21 which the warning applies. The Warning for Lead in excess of the Reformulation Standard for set
22 forth in Section 2.2 shall consist of the following statement:

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

26 **2.3.1 Product Warnings**

27 Kleancolor shall affix a warning to the Product label or otherwise directly on Products, that
28 are not Reformulated Products, provided for sale to consumers located in California and to customers

1 with retail outlets in California, e-commerce platforms or nationwide distribution. For the purpose of
2 this agreement, “**Product label**” means a display of written, printed or graphic material printed on or
3 affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to
4 section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font. The warning
5 symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
6 equilateral triangle with a black outline, except if the labeling does not use the color yellow, the
7 symbol may be in black and white. The entire warning shall appear in at least 6-point type and no
8 smaller than the largest type size used for other consumer information on the Products. Where a
9 consumer product label used to provide a warning includes consumer information in language(s)
10 other than English, the warning must also be provided in the other language(s) in addition to English.

11 **2.3.2 Internet Warnings**

12 If, after the Effective Date, Kleancolor sells Products, that are not Reformulated Products, via
13 the internet, through its own website, affiliated websites or a third party website, to consumers
14 located in California or to customers with nationwide distribution and e-commerce websites,
15 Kleancolor shall provide warnings for each Product both on the Product label in accordance with
16 Section 2.3.1, and by prominently displaying, or requiring the warning to be prominently displayed
17 on affiliated websites, third party websites or by retail customers, to the consumer during the
18 purchase of the Products without requiring customers to seek out the warning. The warning or a
19 clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the
20 sale of the Products via the internet shall appear either: (a) on the same web page on which the
21 Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on
22 the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser
23 during the checkout process. The warning shall appear in any of the above instances adjacent to or
24 immediately following the display, description, or price of the Products for which it is given in the
25 same type size or larger than other consumer information provided for the Products. For third-party
26 websites, as a condition of sale, Kleancolor shall notify the sellers the Products must be accompanied
27 by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning
28 requirements, pursuant to this Section 2.

1 **2.4 Customer Notification**

2 Within five (5) business days of Effective Date, Kleancolor shall send a letter, electronic or
3 otherwise (“**Notification Letter**”) to: (a) each customer in California to which it supplied Products
4 that are not Reformulated Products between September 19, 2021 and January 1, 2022; and (b) any
5 other customer that is a retailer or distributor that has any inventory of Products that are not
6 Reformulated Products, which Kleancolor supplied between September 19, 2019 and January 1,
7 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the
8 Products contain Lead, a chemical known to the State of California to cause birth defects or other
9 reproductive harm. The Notification letter shall inform the recipient that all Products must either (a)
10 be returned to Kleancolor for a full refund or (b) have a label compliant Warning Label Requirement
11 as defined by Section 2.3 If the customer is a retailer or distributor of the Products, the Notification
12 Letter shall include a sheet of white background, adhesive stickers with the forgoing warning
13 statement.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty**

16 Pursuant to Health and Safety Code § 25249.7(b), Kleancolor agrees to pay a civil penalty of
17 \$10,000 within five (5) business days of the Effective Date. Kleancolor’s civil penalty payment will
18 be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five
19 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
20 Assessment (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by CAPA.
21 Kleancolor shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of
22 \$7,500; and (b) “**Center for Advanced Public Awareness**” in the amount of \$2,500. CAPA’s counsel
23 shall deliver to OEHHA and CAPA their respective portion of the penalty payment.

24 **3.2 Reimbursement of Attorneys’ Fees and Costs**

25 CAPA and its counsel offered to resolve the allegations in the Notice without reaching terms
26 on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the
27 other material settlement terms, they negotiated and reached an accord on the amount of
28 reimbursement to be paid to CAPA’s counsel, under general contract principles and the private

1 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
2 performed through the mutual execution and reporting of this Agreement to the Office of the
3 California Attorney General pursuant to Section 9. Within five (5) days of the Effective Date,
4 Kleancolor agrees to reimburse CAPA and its counsel \$28,500 of the fees and costs incurred in
5 investigating this matter to, filing the Action, and negotiating a settlement in the public interest in the
6 form of a check payable to “Seven Hills LLP.”

7 **3.3 Payments**

8 Within five (5) business days of the Effective Date, Kleancolor shall remit all payments due
9 and payable under this Consent Judgment (“Payment”) to CAPA’s counsel at the following address:

10 Seven Hills LLP
11 Attn: Laralei Paras
12 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 CAPA’s Release of Proposition 65 Claims**

15 This Consent Judgment is a full, final and binding resolution between CAPA, acting on its
16 own behalf and in the public interest, and Kleancolor, of any violation of Proposition 65 that was or
17 could have been asserted by CAPA on behalf of itself, its past and current agents, representatives,
18 attorneys, successors, and/or assignees, against Kleancolor, its directors, officers, employees,
19 attorneys, and each entity to whom Kleancolor directly or indirectly distributes or sells Products,
20 including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,
21 cooperative members, and licensees (collectively, “**Releasees**”), from all claims for violations of
22 Proposition 65 based on their failure to warn about alleged exposures to the heavy metal, Lead,
23 contained in the Products that were manufactured, distributed, sold and/or offered for sale by
24 Kleancolor in California before the Effective Date, as alleged in the Notice.

25 **4.2 CAPA’s Individual Release of Claims**

26 In further consideration of the promises and agreements herein contained, CAPA as an
27 individual and not in its representative capacity, on behalf of itself, its past and current agents,
28 representatives, attorneys, successors, and/or assignees, hereby waives all of CAPA’s rights to

1 institute or participate in, directly or indirectly, any form of legal action and releases all claims that
2 CAPA may have, including, without limitation, all actions, and causes of action, in law or in equity,
3 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including,
4 but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65
5 with respect to Lead in the Products manufactured, distributed, sold and/or offered for sale by
6 Kleancolor, before the Effective Date (collectively, "Claims"), against Kleancolor and Releasees.

7 The Parties understand and agree these Sections 4.1 and 4.2 releases shall neither extend
8 upstream to any entities that sold, supplied, or manufactured the Products or any component parts
9 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to
10 Kleancolor nor extend to Releasees who have been instructed by Kleancolor pursuant to Section
11 2.3.2 or Section 2.4 to provide a warning on Products that are not Reformulated Products and have
12 failed to do so.

13 **4.3 Kleancolor's Release of CAPA**

14 Kleancolor, on behalf of itself, its past and current agents, representatives, attorneys,
15 successors, and assignees, hereby waives any and all claims against CAPA and its attorneys and other
16 representatives, for any and all actions taken or statements made (or those that could have been taken
17 or made) by CAPA and its attorneys and other representatives, whether in the course of investigating
18 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
19 Products.

20 **4.3 Waiver of Rights Under Section 1542**

21 The Parties expressly understand and acknowledge that it is possible that unknown losses or
22 claims exist or that present losses may have been underestimated in amount or severity. The Parties
23 explicitly took that possibility into account in entering into this Consent Judgment, and a portion of
24 the consideration and the mutual covenants contained in this Consent Judgment, having been
25 bargained for between the Parties with the knowledge of the possibility of such losses or claims, was
26 given in exchange for a full accord satisfaction, and discharge of all such losses or claims.
27 Consequently, the Parties expressly waive all rights under California Civil Code section 1542, which
28 provides that:

1 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
2 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY
4 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
5 WITH THE DEBTOR OR RELEASED PARTY.”

6 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. MODIFICATION**

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

21 **8. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
24 rendered inapplicable by reason of law generally, or as to the Products, then Kleancolor may provide
25 CAPA with written notice of any asserted change in the law, and shall have no further injunctive
26 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
27 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Kleancolor from its
28 obligation to comply with any pertinent state or federal law or regulation.

1 **9. NOTICE**

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

6 For Kleancolor:

7 Brandon Kim, CEO
8 Bymm Corporation dba Kleancolor
9 1380 W. Mission Blvd.
10 Ontario, CA 91762

11 *With a copy to:*

12 Eric J. Goodman, Esq.
13 Goodman Mooney LLP
14 18012 Cowan, 2nd Floor
15 Irvine, CA 92614

For CAPA:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
Email: laralei@sevenhillsllp.com

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

18 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

21 **11. ENTIRE AGREEMENT**

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

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1 **12. COUNTERPARTS AND PDF SIGNATURES**

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

5 **13. AUTHORIZATION**


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

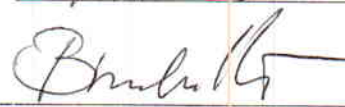
9 **AGREED TO:**

AGREED TO:

10 Date: September 1, 2023

Date: 9/1/2023

11 By: 
12 Linda DeRose-Droubay, Executive Director
13 Center for Advanced Public Awareness

By: 
Brandon Kim, CEO
Bymm Corporation dba Kleancolor