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TCM Supply Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

KEEP AMERICA SAFE AND BEAUTIFUL,
INC., a California non-profit corporation,

Plaintiff,

v.

TCM SUPPLY CORPORATION, a
California Stock Corporation; and DOES 1 to
10,

Defendant.

Case No.: 23TRCV00885

[PROPOSED] STIPULATED
CONSENT JUDGMENT

(Health & Safety Code § 25249, et seq.)

Complaint filed: March 24, 2023
Trial Date: None

I. INTRODUCTION

1.1 The Parties. This Consent Judgment is entered into by and between Keep America Safe and Beautiful, Inc. (“KASB” or “Plaintiff”), a California non-profit corporation, and TCM Supply Corporation (“TCM” or “Defendant”), a California Stock Corporation (collectively, the “Parties”).

1.2 General Allegations. On March 24, 2023, KASB initiated this action by filing a Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”) against TCM. In this action, KASB alleges that TCM’s “Tat Tech Armrest Compact (UPC# Armrest-4)” (the “Covered Product”) contains Di(2-ethylhexyl) Phthalate (DEHP) which is a chemical listed under Proposition 65 as a carcinogen and reproductive toxin. KASB alleges that the Covered Product exposes consumers to DEHP at levels requiring a Proposition 65 warning. KASB alleges that TCM qualifies as a “Person” within the meaning of Proposition 65, and that TCM manufactures, distributes, and/or offers for sale in the State of California the Covered Product.

1.3 Notice of Violation. The Complaint is based on allegations contained in KASB’s Notice of Violation dated January 4, 2023 (the “Notice”), that was served on the California Attorney General, other public enforcers, and TCM. A true and correct copy of the Notice is attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed since the Notice was served on the Attorney General, public enforcers, and TCM; no designated governmental entity has filed a Complaint against TCM with regard to the Covered Product or the alleged violations.

1.4 KASB’s Notice and Complaint allege that the use of the Covered Product by California consumers exposes them to DEHP without first receiving a clear and reasonable warning from TCM, which is a violation of California Health & Safety Code § 25249.6. TCM denies all material allegations contained in the Notice and Complaint.

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1 **1.5** The Parties have entered into this Consent Judgment in order to settle,
2 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. TCM
3 denies the material, factual, and legal allegations in the Notice and Complaint and maintains that
4 all of the products, including the Covered Product, that it sold and/or distributed for sale in
5 California have been and are in compliance with all laws. Nothing in this Consent Judgment nor
6 compliance with this Consent Judgment shall constitute or be construed as an admission by TCM
7 or by any of their respective officers, directors, shareholders, employees, agents, parent
8 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
9 distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law, or violation
10 of law, such specifically denied by the TCM. This Section shall not, however, diminish or
11 otherwise affect TCM's obligations, responsibilities, and duties under this Consent Judgment.

12 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall
13 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
14 current or future legal proceeding unrelated to this proceeding.

15 **1.7 Effective Date.** For purposes of this Consent Judgment, the "Effective Date"
16 shall be the date the Consent Judgment has been approved and entered by the Court.

17 **II. JURISDICTION AND VENUE**

18 **2.1** For purposes of this Consent Judgment and any further court action that may
19 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
20 subject matter jurisdiction over the allegations of violations contained in the Complaint and
21 personal jurisdiction over TCM as to the acts alleged in the Complaint.

22 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
23 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
24 judgment as a full and final resolution of all claims up through and including the Effective Date
25 that were or could have been asserted in this action based on the facts alleged in the Notice and
26 Complaint.


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III. INJUNCTIVE RELIEF


3.1 Clear and Reasonable Warnings Beginning on the Effective Date, and continuing thereafter, TCM shall not sell in California, or distribute for sale in California, the Covered Product containing non-compliant levels of DEHP unless accompanied by warnings pursuant to Proposition 65 as generally described in Section 3.2. As used in this Section 3.1, “distribute for sale in California” means to directly ship the Covered Product into California, or to sell the Covered Product to a distributor TCM knows will sell in California. A non-compliant level shall be a level of DEHP in a maximum concentration which is equal to or greater than 0.1 percent (1,000.00 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization.

3.2 Warning Requirements. A clear and reasonable warning for the Covered Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Product Shipped for Sale in California by TCM that contains one of the following statements:

(A) **Warning.**

 **WARNING:** This product can expose you to Di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(B) **Short Form Warning.**

 **WARNING:** Cancer and Reproductive Harm—www.P65Warnings.ca.gov.

TCM shall affix a warning to the Covered Product label or otherwise directly on Covered Product or on the Covered Product’s immediate container, wrapper, or packaging for those Covered Products provided for sale to consumers located in California and, where appropriate to customers with retail outlets in California. For purposes of this Agreement, “Product label” means a display of written, printed or graphic material printed on or affixed to each of the Covered Products or its immediate container or wrapper. A warning provided pursuant to section

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3.2(a) or (b) 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, if the labeling does not use the color yellow, the symbol may be in black and white. 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 Covered Products. The warning shall consist of either the Warning or the Short Form Warning described in subsection 3.2(a) or (b), respectively.

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

3.3 Warnings for Internet Sales. For any Covered Product sold over the internet where it will be shipped to California, the warning shall be displayed as follows: (A) on the primary display page for the Covered Product; (B) as a clearly marked hyperlink using the word “**WARNING**” in all capital and bold letters on the Covered Product’s primary display page, so long as the hyperlink goes directly to a page prominently displaying the warning without content that detracts from the warning; (C) on the checkout page or any other page in the checkout process when a California delivery address is indicated for the purchase of the Covered Product and with the warning clearly associated with the Covered Product to indicate that the Covered Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the purchaser prior to completing the purchase of the Covered Product. The warning is not prominently displayed if the purchaser must search for it in the general content of the website.

3.4 Warning Prominence. TCM agrees that each warning shall be prominently placed with such conspicuousness, as compared with the other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

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1 **3.5 Compliance with Clear and Reasonable Warning.** TCM shall be deemed to be
2 in compliance with this Consent Judgment after the Effective Date by (A) adhering to Paragraphs
3 3.1 through 3.4, or (B) by complying with any future warning requirements adopted by the State
4 of California’s Office of Environmental Health Hazard Assessment (“OEHHA) applicable to the
5 Covered Product and chemical at issue.

6 **3.6 Grace Period of Existing Inventory.** The injunctive requirements of Section III
7 shall not apply to the Covered Product that is already in the stream of commerce as of the
8 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

9 **3.7 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
10 Parties, KASB shall notice a Motion for Court Approval and, within ten (10) days of approval
11 of the Consent Judgment by the Court, comply with the requirements set forth in California
12 Health & Safety Code § 25249.7(f).

13 **3.8 Attorney General Objection.** If the California Attorney General objects to any
14 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
15 timely manner, and if possible, prior to the hearing on the motion.

16 **3.9 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
17 shall be void and have no force or effect.

18 **IV. MONETARY TERMS**

19 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
20 additional settlement payments, attorney fees, and costs, TCM shall make a total payment of
21 Twenty Thousand Dollars (\$20,000.00) (the “Total Settlement Amount”), apportioned into a
22 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

23 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
24 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, TCM agrees
25 to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment will be
26 apportioned in accordance with California Health & Safety Code §§ 25249(c)(1), (d), with
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seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-five (25) percent of the funds retained by KASB. Within ten (10) days of the Effective Date, TCM shall issue a check to "OEHHA" in the amount of One Thousand Five Hundred Dollars (\$1,500.00), with "Prop 65 Penalties" written in the Memo Line; and TCM shall, pursuant to the instructions below, wire to KASB the amount of Five Hundred Dollars (\$500.00).

All payments made to OEHHA (EIN: 68-0284486) pursuant to this Paragraph shall be delivered directly to OEHHA at the following address:

For United States Postal Delivery Service:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

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

All penalty payments owed to KASB shall be sent via wire to:

Wire Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: J.P. Morgan Chase Bank, N.A.
Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612
Wire Routing / ABA Number: 021000021
Swift Code: CHASUS33
Account Number: 579068902
For further benefit of: Civil Penalty Payment Case No. 23TRCV00885

4.3 Attorney Fees and Costs. TCM agrees to pay Eighteen Thousand Dollars (\$18,000.00) to CalSafe and its counsel of record for all fees and costs incurred in investigating, bringing this matter to the attention of TCM, litigating, negotiation, and obtaining judicial

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approval of a settlement in the public interest. The payment shall be made in five (5) installment payments as follows:

- The first installment shall be in the amount of \$8,000.00 and shall be due within ten (10) days of the Effective Date.
- The second installment shall be in the amount of \$2,500.00 and shall be due within sixty (60) days of the Effective Date.
- The third installment shall be in the amount of \$2,500.00 and shall be due within ninety (90) days of the Effective Date.
- The fourth installment shall be in the amount of \$2,500.00 and shall be due within (120) days of the Effective Date.
- The fifth installment shall be in the amount of \$2,500.00 and shall be due within (150) days of the Effective Date.

Wire Instructions:

Account Name: The Law Offices of Joseph R. Manning

Bank Name: J.P. Morgan Chase Bank, N.A.

Bank Address: 2967 Michelson Dr, Ste A, Irvine, CA 92612

Wire Routing / ABA Number: 021000021

Swift Code: CHASUS33

Account Number: 579068902

For further benefit of: Attorney's Fees Case No. 23TRCV00885

4.4 In the event that TCM fails to remit the Total Settlement Amount or any portion thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date, TCM shall be deemed to be in material breach of its obligations under this Consent Judgment. KASB shall provide written notice of delinquency to TCM via electronic mail to TCM's counsel of record. If TCM fails to deliver any portion of or all of the Total Settlement Amount within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate provided in California Code of Civil Procedure § 685.010.

Additionally, TCM agrees to pay KASB's reasonable attorney fees and costs for any efforts to collect the payment due under this Consent Judgment.

V. RETENTION OF JURISDICTION

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1 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
2 this Consent Judgment.

3 **VI. MODIFICATION OF CONSENT JUDGMENT**

4 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
5 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
6 or (B) by motion of either Party pursuant to Paragraphs 6.2 or 6.3 and upon entry by the Court of
7 a modified consent judgment.

8 **6.2** If TCM seeks to modify this Consent Judgment under Paragraph 6.1, then TCM
9 must provide written notice to KASB of its intent (“Notice of Intent”). If KASB seeks to meet
10 and confer regarding the proposed modification in the Notice of Intent, then KASB shall provide
11 written notice of intent to meet and confer to TCM within thirty (30) days of receiving the Notice
12 of Intent. The Parties shall then meet and confer in good faith in person, via telephone, or via
13 video conference within thirty (30) days of KASB’s written notice of intent to meet and confer.
14 Within thirty (30) days of such a meeting, if KASB disputes the proposed modification, KASB
15 shall provide TCM a written basis for its opposition. The Parties shall continue to meet and confer
16 for an additional thirty (30) days in an effort to resolve any remaining disputes. Should it become
17 necessary, the Parties may agree in writing to different deadlines for the meet-and-confer period.

18 **6.3** In the event that TCM initiates or otherwise requests a modification under
19 Paragraph 5.1, and the meet and confer process leads to a joint motion or application for a
20 modification of the Consent Judgment, TCM shall reimburse KASB its costs and reasonable
21 attorney fees for the time spent in the meet-and-confer process and filing and arguing the motion.

22 **VII. BINDING EFFECT, CLAIMS COVERED, CLAIMS RELEASED**

23 **7.1** This Consent Judgment shall have no application to any Covered Product that is
24 distributed or sold exclusively outside the State of California and/or that is not used by California
25 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
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environmental exposures arising under Proposition 65, nor shall it apply to any other TCM products other than the Covered Product.

7.2 Binding Effect. This Consent Judgment is a full, final, and binding resolution between KASB, on behalf of itself and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public interest, and TCM and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product and the predecessors, successors, and assigns of any of them (collectively, “Released Parties”).

7.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the Covered Product as set forth in the Notice and Complaint.

7.4 KASB Release of TCM. KASB, on behalf of itself and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public interest fully releases and discharges Released Parties from any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties, fees costs, and expenses asserted, or that could have been asserted based on or related to the handling, use, sale, distribution, or consumption of the Covered Product in California, as to any alleged violation of Proposition 65 or its implementing regulations up through the Effective Date, based on a failure to provide Proposition 65 warning on the Covered Product with respect to DEHP as set forth in the Notice and Complaint.

7.5 KASB on its own behalf only, and TCM on its own behalf only, further waive and release any and all claims they, their attorneys, or their representatives may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice and Complaint up through and

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including the Effective Date, provided, however, that nothing in this Section shall affect or limit any Party's right to seek to enforce the terms of the Consent Judgment.

7.6 California Civil Code Section 1542. It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the Covered Product, will develop or be discovered. KASB on behalf of itself only, and TCM on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. KASB and TCM acknowledge that the claims released in Section VII above may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

VIII. SEVERABILITY

In the event that any of the provisions of this Consent Judgment are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

IX. GOVERNING LAW

The terms and conditions of this Consent Judgment shall be governed by and construed in accordance with the laws of the State of California.

X. PROVISION OF NOTICE

All notices required to be given to either Party to this Consent Judgment by the other shall be in writing and sent to the following agents listed below via first-class mail or electronic mail. Any Party may modify the person/entity or address to whom the notice is to be sent by sending

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the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notice for KASB shall be sent to:

Joseph R. Manning, Jr.
Manning Law, APC
26100 Towne Center Drive
Foothill Ranch, CA 92610
Tel: Office (949) 200-8757 Fax: (866) 843-8309
P65@manninglawoffice.com

Notice for TCM shall be sent to:

Darren M. Richie
DRE, APC
222 N. Canon Drive, Ste 201
Beverly Hills, CA 90210
Tel: (213) 265-7888
Darren@drelaw.com

XI. EXECUTED IN COUNTERPARTS

This Consent Judgment may be executed in counterparts, which taken together shall be deemed to constitute one document. A facsimile or .PDF signature page shall be construed to be as valid as the original signature.

XII. DRAFTING

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had the opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participate equally in the preparation and drafting of this Consent Judgment.

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XIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

If a dispute with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed with the Court in the absence of such a good faith attempt to resolve the dispute beforehand.

XIV. ENFORCEMENT

The Parties may, by motion or order to show cause before the Superior Court of Los Angeles County, enforce the terms and conditions of this Consent Judgment. In any successful action brought by KASB to enforce this Consent Judgment, KASB may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with this Consent Judgment.

XV. ENTIRE AGREEMENT, AUTHORIZATION

15.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, including any and all prior discussions, negotiations, commitments, and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

15.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment.

XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.

This Consent Judgment has come before the Court upon the request of the Parties. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, make the findings pursuant to California Health and Safety Code § 25249(f)(4) and approve this Consent Judgment.

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1 **IT IS SO STIPULATED.**

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4 **KEEP AMERICA SAFE AND BEAUTIFUL, INC.**

5 DATED: 12/12/2024, 2024

By:  Lance Nguyen

6 Keep America Safe and Beautiful, Inc.

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9 **TCM SUPPLY CORPORATION**

10 DATED: 12/10/2024, 2024

DocuSigned by:
By: 
54521B9B2ACC40E...

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12 TCM Supply Corporation

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15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to *Health & Safety*
16 *Code* § 25249.7(f)(4) and *Code of Civil Procedure* § 664.6, judgment is hereby entered.

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18 Dated: _____

JUDGE OF THE SUPERIOR COURT

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