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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **COUNTY OF LOS ANGELES**

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

21 Plaintiff,

22 v.

23 VIKING CUE MANUFACTURING, a  
24 Wisconsin Limited Liability Company; and  
25 DOES 1 to 10,

26 Defendant.

Case No.: 23TRCV01082

[PROPOSED] STIPULATED  
CONSENT JUDGMENT

*(Health & Safety Code § 24249, et seq.)*

Complaint filed: April 7, 2023  
Trial Date: None

1 **I. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Keep  
3 America Safe and Beautiful, Inc. (“KASB” or “Plaintiff”), a California non-profit corporation,  
4 and Qco, LLC, a Delaware limited liability company and successor-in-interest to Viking Cue  
5 Manufacturing (“Viking” or “Defendant”), a Wisconsin Limited Liability Company  
6 (collectively, the “Parties”).

7 **1.2 General Allegations.** On April 7, 2023, KASB initiated this action by filing a  
8 Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to Health &  
9 Safety Code § 24249.5 *et seq.* (“Proposition 65”) against Viking. In this action, KASB alleges  
10 that Viking’s “Divider Case” (the “Covered Products”) contains Di(2-ethylhexyl) Phthalate  
11 (DEHP), diisononyl phthalate (DINP) and di-n-butyl phthalate (DBP), which are chemicals  
12 listed under Proposition 65 as carcinogens and reproductive toxins. KASB alleges that the  
13 Covered Products expose consumers to DEHP, DINP and DBP at levels requiring a Proposition  
14 65 warning. KASB alleges that Viking qualifies as a “Person” within the meaning of Proposition  
15 65, and that Viking manufactures, distributes, and/or offers for sale in the State of California the  
16 Covered Products.

17 **1.3 Notice of Violation.** The Complaint is based on allegations contained in KASB’s  
18 Notice of Violation dated January 11, 2022 (the “Notice”), that was served on the California  
19 attorney General, other public enforcers, and Viking. A true and correct copy of the Notice is  
20 attached hereto as **Exhibit A** and incorporated by reference. More than 60 days have passed  
21 since the Notice was served on the Attorney General, public enforcers, and Viking; no designated  
22 governmental entity has filed a Complaint against Viking with regard to the Covered Product or  
23 the alleged violations.

24 **1.4** KASB’s Notice and Complaint allege that the use of the Product by California  
25 consumers exposes them to DEHP, DINP and DBP without first receiving a clear and reasonable  
26 warning from Viking, which is a violation of California Health & Safety Code § 25249.6. Viking  
27 denies all material allegations contained in the Notice and Complaint.

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. Viking  
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  
7 Viking 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 Viking. This Section shall not, however, diminish or  
11 otherwise affect Viking’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 as a judgement of the  
17 Court.

## 18 **II.    JURISDICTION AND VENUE**

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


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

1 **III. INJUNCTIVE RELIEF**


2 **3.1 Clear and Reasonable Warnings.** Except as otherwise provided herein,  
3 beginning on the Effective Date, and continuing thereafter, Viking shall not sell in California, or  
4 distribute for sale in California, Covered Products containing non-compliant levels of DEHP,  
5 DINP and DBP, unless accompanied by warnings pursuant to Proposition 65 as generally  
6 described in Section 3.2. As used in this Section 3.1, “distribute for sale in California” means to  
7 directly ship any Covered Product into California, or to sell Covered Products to a distributor  
8 Viking knows will sell in California. A non-compliant level shall be a level of DEHP, DINP or  
9 DBP in a maximum concentration which is equal to or greater than 0.1 (1,000.00 parts per  
10 million) when analyzed by a laboratory accredited by the State of California, a federal agency,  
11 or a nationally recognized accrediting organization.

12 **3.2 Warning Requirements.** A clear and reasonable warning for any Covered  
13 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered  
14 Product shipped for Sale in California by Viking that contains one of the following statements:


15 (A)

16  
17  **WARNING:** This product can expose you to chemicals, including Di(2-ethylhexyl)  
18 phthalate (DEHP), diisononyl phthalate (DINP) and di-n-butyl phthalate (DBP) which  
19 are 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](http://www.P65Warnings.ca.gov).

20 (B)

21  **WARNING:** This product can expose you to chemicals, including Di(2-ethylhexyl)  
22 phthalate (DEHP), which are known to the State of California to cause cancer and birth  
23 defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24 (C)

25  **WARNING:** Cancer and Reproductive Harm—[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).  
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27  
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1 Viking shall affix a warning to the Covered Product label or otherwise directly on  
2 Covered Product or on the Covered Product’s immediate container, wrapper, or packaging for  
3 those Covered Products provided for sale to consumers located in California and, where  
4 appropriate to customers with retail outlets in California. For purposes of this Agreement,  
5 “Product label” means a display of written, printed or graphic material printed on or affixed to  
6 each of the Products or its immediate container or wrapper. A warning provided pursuant to  
7 section 3.2 must print the word “WARNING:” in all capital letters and in bold font. The warning  
8 symbol to the left of the word “WARNING:” must be a black exclamation point in a yellow  
9 equilateral triangle with a black outline, except, if the labeling does not use the color yellow, the  
10 symbol may be in black and white.

11 **3.4 Warnings for Internet Sales.** For any Covered Product sold over the internet  
12 where it will be shipped to California, the warning shall be displayed as follows: (A) on the  
13 primary display page for a Covered Product; (B) as a clearly marked hyperlink using the word  
14 “WARNING” in all capital and bold letters on the Covered Product’s primary display page, so  
15 long as the hyperlink goes directly to a page prominently displaying the warning; (C) on the  
16 checkout page or any other page in the checkout process when a California delivery address is  
17 indicated for the purchase of the Covered Product and with the warning clearly associated with the  
18 Covered Product to indicate that the Covered Product is subject to the warning; or (D) by  
19 otherwise prominently displaying the warning to the purchaser prior to completing the purchase  
20 of the Covered Product. The warning is not prominently displayed if the purchaser must search  
21 for it in the general content of the website.

22 **3.5 Warning Prominence.** Viking agrees that to the extent required by Proposition  
23 65, each warning shall be prominently placed with such conspicuousness, as compared with the  
24 other words, statements, designs, or devices, as to render it likely to be read and understood by  
25 an ordinary individual under customary conditions before purchase.

26 **3.6 Compliance with Clear and Reasonable Warning.** Viking shall be deemed to  
27 be in compliance with this Consent Judgment after the Effective Date by (A) adhering to  
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1 Paragraphs 3.1 through 3.5, or (B) by complying with any future warning requirements adopted  
2 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA). If  
3 regulations or legislation are enacted or issued providing that a Proposition 65 warning for the  
4 Covered Product is no longer required, a lack of warning as set forth in this Consent Judgment  
5 will not thereafter be a breach of this Consent Judgment.

6 **3.7 Sell-through Period for Existing Inventory.** The injunctive requirements of  
7 Section III shall not apply to any Covered Products placed into the stream of commerce on or  
8 before the 60th day following the Effective Date, which Covered Products are expressly subject  
9 to the releases provided in Section V.

10 **3.10 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the  
11 Parties, KASB shall notice a Motion for Court Approval and, within ten (10) days of approval  
12 of the Consent Judgment by the Court, comply with the requirements set forth in California  
13 Health & Safety Code § 25249.7(f).

14 **3.11 Attorney General Objection.** If the California Attorney General objects to any  
15 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a  
16 timely manner, and if possible, prior to the hearing on the motion.

17 **3.12 Void if Not Approved.** If this Consent Judgment is not entered as a judgement  
18 by the Court, it shall be void and have no force or effect.

19 **IV. MONETARY TERMS**

20 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,  
21 additional settlement payments, attorney fees, and costs, Viking shall make a total payment of  
22 Eighteen Thousand Dollars (\$18,000.00) (the “Total Settlement Amount”), apportioned into a  
23 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

24 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code  
25 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Viking  
26 agrees to pay One Thousand Eight Hundred Dollars (\$1,800.00) in Civil Penalties. The Civil  
27 Penalty payment will be apportioned in accordance with California Health & Safety Code §§  
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1 25249(c)(1), (d), with seventy-five (75) percent of these funds remitted to OEHHA, and the  
2 remaining twenty-five (25) percent of the funds retained by KASB. Within fourteen (14) days of  
3 the Effective Date, Viking shall issue a check to “OEHHA” in the amount of One Thousand  
4 Three Hundred and Fifty Dollars (\$1,350.00), with “Prop 65 Penalties” written in the Memo  
5 Line; and Viking shall, pursuant to the instructions below, wire to KASB the amount of Four  
6 Hundred and Fifty Dollars (\$450.00).

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

9 For United States Postal Delivery Service:

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

15 For Non-United States Postal Delivery Service:

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

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

22 **Wire & ACH Instructions:**

23 Account Name: The Law Offices of Joseph R. Manning

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

25 Bank Address: 270 Park Ave. New York, NY. 10017

26 ACH Routing / ABA Number: 322271627

27 Wire Routing / ABA Number: 021000021

28 Account Number: 802922919

For further benefit of: Civil Penalty Payment Case No. 23TRCV01082

1           **4.3 Attorney Fees and Costs.** Within fourteen (14) days of the Effective Date, Viking  
2 agrees to pay Sixteen Thousand Two Hundred Dollars (\$16,200.00) to KASB and its counsel of  
3 record for all fees and costs incurred in investigating, bringing this matter to the attention of  
4 Viking, litigating, negotiation, and obtaining judicial approval of a settlement in the public  
5 interest.

6           **Wire & ACH Instructions:**

7           Account Name: The Law Offices of Joseph R. Manning

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

9           Bank Address: 270 Park Ave. New York, NY. 10017

10          ACH Routing / ABA Number: 322271627

11          Wire Routing / ABA Number: 021000021

12          Account Number: 802922919

13          For further benefit of: Attorney's Fees Case No. 23TRCV01082

14           **4.4** In the event that Viking fails to remit the Total Settlement Amount or any portion  
15 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date,  
16 Viking shall be deemed to be in material breach of its obligations under this Consent Judgment.  
17 KASB shall provide written notice of delinquency to Viking via electronic mail to Viking's  
18 counsel of record. If Viking fails to deliver any portion of or all of the Total Settlement Amount  
19 within five (5) days from the written notice, the Total Settlement Amount shall accrue interest at  
20 the statutory judgment interest rate provided in California Code of Civil Procedure § 685.010.

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

23           **V. RETENTION OF JURISDICTION**

24           **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate  
25 this Consent Judgment.

26           **VI. BINDING EFFECT, CLAIMS COVERED, CLAIMS RELEASED**



1           **6.1**     This Consent Judgment shall have no application to any Covered Product that is  
2 distributed or sold exclusively outside the State of California. Nothing in this Consent Judgment  
3 is intended to apply to any occupational or environmental exposures arising under Proposition 65,  
4 nor shall it apply to any other Viking products other than the Covered Products.

5           **6.2     Binding Effect.** This Consent Judgment is a full, final, and binding resolution  
6 between KASB, on behalf of itself and its respective officers, directors, shareholders, employees,  
7 agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public  
8 interest, and Qco, LLC and its respective officers, directors, shareholders, employees, agents,  
9 parent companies (including without limitation Seybert’s Billiards Corporation), subsidiaries,  
10 divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or  
11 retailers, and all other upstream and downstream entities in the manufacture or distribution chain  
12 of the Covered Product and the predecessors, successors, and assigns of any of them (collectively,  
13 “Released Parties”).

14           **6.3**     Compliance with the terms of this Consent Judgment shall be deemed to constitute  
15 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the  
16 Covered Product.

17           **6.4     KASB Release of Viking.** KASB, on behalf of itself and its respective officers,  
18 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and  
19 affiliates and on behalf of the public interest fully releases and discharges Released Parties from  
20 any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties, fees  
21 costs, and expenses asserted, or that could have been asserted based on or related to the handling,  
22 use, sale, distribution, or consumption of the Covered Products in California, as to any alleged  
23 violation of Proposition 65 or its implementing regulations, based on a failure to provide  
24 Proposition 65 warning on the Covered Product with respect to DEHP, DINP and DBP as set  
25 forth in the Notice and Complaint.

26           **6.5**     KASB on its own behalf only, and Viking on its own behalf only, further waive  
27 and release any and all claims they, their attorneys, or their representatives may have against each  
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1 other for all actions or statements made or undertaken in the course of seeking or opposing  
2 enforcement of Proposition 65 in connection with the Notice and Complaint up through and  
3 including the Effective Date, provided, however, that nothing in this Section shall affect or limit  
4 any Party's right to seek to enforce the terms of the Consent Judgment.

5 **6.6 California Civil Code Section 1542.** It is possible that other claims not known to  
6 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the  
7 Covered Product, will develop or be discovered. KASB on behalf of itself only, and VIKING on  
8 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and  
9 include all Such claims up through and including the Effective Date, including all rights of action  
10 therefore. KASB and Viking acknowledge that the claims released in Section VII above may  
11 include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such  
12 unknown claims. California Civil Code § 1542 reads as follows:

13  
14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
16 EXIST IN HIS OR HER FAVOR, AT THE TIME OF EXECUTING THE  
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
18 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
19 DEBTOR OR RELEASED PARTY.

## 18 **VII SEVERABILITY**

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

## 22 **VIII. GOVERNING LAW**

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

## 25 **IX. PROVISION OF NOTICE**

26 All notices required to be given to either Party to this Consent Judgment by the other shall  
27 be in writing and sent to the following agents listed below via first-class mail or electronic mail.  
28

1 Any Party may modify the person/entity or address to whom the notice is to be sent by sending  
2 the other Party notice by certified mail, return receipt requested. Said change shall take effect on  
3 the date the return receipt is signed by the Party receiving the change.

4  
5 Notice for KASB shall be sent to:

6 Joseph R. Manning, Jr.  
7 26100 Towne Center Drive  
8 Foothill Ranch, CA 92610  
9 Tel: Office (949) 200-8757 Fax: (866) 843-8309  
10 [p65@manninglawoffice.com](mailto:p65@manninglawoffice.com)

11 Notice for Viking shall be sent to:

12 Kristin Larson  
13 Tellus Law Group  
14 351 Paseo Nuevo, 2nd Floor  
15 Santa Barbara, CA 93101  
16 Tel: 805-285-7758  
17 [klarson@telluslawgroup.com](mailto:klarson@telluslawgroup.com)

18  
19 **X. EXECUTED IN COUNTERPARTS**

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

23  
24 **XI. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for  
26 each Party prior to its signing, and each Party has had the opportunity to fully discuss the terms  
27 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
28 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.

1 **XII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

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

7 **XIII. ENTIRE AGREEMENT, AUTHORIZATION**

8 **15.1** This Consent Judgment contains the sole and entire agreement and understanding  
9 of the Parties with respect to the entire subject matter herein, including any and all prior  
10 discussions, negotiations, commitments, and understandings related thereto. No representations,  
11 oral or otherwise, express or implied, other than those contained herein have been made by any  
12 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be  
13 deemed to exist or to bind any Party.

14 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
15 by the Party he or she represents to stipulate to this Consent Judgment.

16 **XIV. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.**

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

21 **IT IS SO STIPULATED.**

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23  
24 DATED: September 8, 2023

**MANNING LAW, APC**

25 By:   
26 Joseph Manning, Jr.


27 Attorney for Plaintiff  
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Keep America Safe and Beautiful, Inc.


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

DATED: 09/07, 2023

By:   
My Nguyen, CEO  
Keep America Safe and Beautiful, Inc.

DATED: 9/7, 2023


**TELLUS LAW GROUP**

By:   
Kristin Larson

Attorney for Defendant  
Qco, LLC as successor-in-interest to  
Viking Cue Manufacturing, LLC

**QCO, LLC, AS SUCCESSOR-IN-  
INTEREST TO VIKING CUE  
MANUFACTURING, LLC**

DATED: September 7, 2023

By:   
Marko Nikolic, Chairman

Qco, LLC

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

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT