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18 *Memebox Corporation*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **COUNTY OF LOS ANGELES**

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

23 Plaintiff,

24 v.

25 MEMEBOX CORPORATION, a Delaware
26 stock corporation; and DOES 1 to 10,

27 Defendants.

Case No.: 23TRCV01165

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: April 14, 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 Memebox Corporation (“Memebox” or “Defendant”), a Delaware stock corporation
5 (collectively, the “Parties”).

6 **1.2 General Allegations.** On April 14, 2023, KASB initiated this action by filing a
7 Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to Health &
8 Safety Code § 24249.5 *et seq.* (“Proposition 65”) against Memebox. In this action, KASB alleges
9 that Memebox’s “Mini Makeup Brush Set products” (the “Covered Product”) contains Di(2-
10 ethylhexyl) Phthalate (DEHP), a chemical listed under Proposition 65 as a carcinogen and
11 reproductive toxin. KASB alleges that the Covered Product exposes consumers to DEHP at a
12 level requiring a Proposition 65 warning. KASB alleges that Memebox qualifies as a “Person”
13 within the meaning of Proposition 65, and that Memebox manufactures, distributes, and/or offers
14 for sale in the State of California the Covered Product.

15 **1.3 Notice of Violation.** The Complaint is based on allegations contained in KASB’s
16 Notice of Violation dated January 20, 2022, and later amended on January 31, 2022 (collectively
17 the “Notice”), that was served on the California Attorney General, other public enforcers, and
18 Memebox. A true and correct copy of the Notice is attached hereto as **Exhibit A** and incorporated
19 by reference. More than 60 days have passed since the Notice was served on the Attorney
20 General, public enforcers, and Memebox; no designated governmental entity has filed a
21 Complaint against Memebox with regard to the Covered Product or the alleged violations.

22 **1.4** KASB’s Notice and Complaint allege that the use of the Product by California
23 consumers exposes them to DEHP without first receiving a clear and reasonable warning from
24 Memebox, which is a violation of California Health & Safety Code § 25249.6. Memebox denies
25 all material allegations contained in the Notice and Complaint.

26 **1.5** The Parties have entered into this Consent Judgment in order to settle,
27 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
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1 Memebox denies the material, factual, and legal allegations in the Notice and Complaint and
2 maintains that all of the products, including the Covered Product, that it sold and/or distributed
3 for sale in California have been and are in compliance with all laws, including Proposition 65.
4 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
5 or be construed as an admission by Memebox or by any of their respective officers, directors,
6 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates,
7 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
8 finding, conclusion, issue of law, or violation of law, such specifically denied by the Memebox.
9 This Section shall not, however, diminish or otherwise affect Memebox’s obligations,
10 responsibilities, and duties under this Consent Judgment.

11 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall
12 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
13 current or future legal proceeding unrelated to this proceeding.

14 **1.7 Effective Date.** For purposes of this Consent Judgment, the “Effective Date”
15 shall be the date the Consent Judgment has been approved and entered by the Court.

16 **II. JURISDICTION AND VENUE**

17 **2.1** For purposes of this Consent Judgment and any further court action that may
18 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
19 subject matter jurisdiction over the allegations of violations contained in the Complaint and
20 personal jurisdiction over Memebox as to the acts alleged in the Complaint.

21 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
22 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
23 judgment as a full and final resolution of all claims up through and including the Effective Date
24 that were or could have been asserted in this action based on the facts alleged in the Notice and
25 Complaint.

26 **III. INJUNCTIVE RELIEF**

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1 **3.1 DEHP Warning Level.** For Covered Product manufactured after the Effective
2 Date, and Shipped for Sale in California, such Covered Product shall either bear a warning as set
3 forth in Paragraphs 3.3 through 3.6 or have a maximum concentration of less than 0.1 (1,000.00
4 parts per million) DEHP when analyzed by a laboratory accredited by the State of California, a
5 federal agency, or a nationally recognized accrediting organization. For purposes of compliance
6 with this reformulation standard, testing samples shall be performed by using a laboratory
7 method that is approved by the Consumer Product Safety Commission (“CPSC”), U.S.
8 Environmental Protection Agency (“USEPA”), or other federal or state government agency
9 approved testing method.

10 **3.2 Shipped for Sale in California.** “Shipped for Sale in California” means the
11 Covered Product that Memebox either directly ships to California for sale in California, or that
12 it sells to a distributor or retailer who Memebox knows will sell the Covered Product to
13 consumers in California.

14 **3.3 Clear and Reasonable Warnings, When Required.** Memebox agrees by the
15 Effective Date to only manufacture for sale Covered Product that will be Shipped for Sale in
16 California that contains a warning as provided for in Paragraphs 3.4 through 3.6, except as
17 provided in Paragraph 3.1.

18 **3.4 Warning Requirements.** A clear and reasonable warning for the Covered
19 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered
20 Product Shipped for Sale in California by Memebox that contains one of the following
21 statements:

22 (A)

23
24  **WARNING:** This product can expose you to chemicals including DEHP, which
25 are known to the State of California to cause cancer and birth defects or other
26 reproductive harm. For more information go to www.P65Warnings.ca.gov.

26 (B)

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

2 Memebox shall affix a warning to the Covered Product label or otherwise directly on
3 Covered Product or on the Covered Product’s immediate container, wrapper, or packaging for
4 those Covered Products provided for sale to consumers located in California and, where
5 appropriate to customers with retail outlets in California. For purposes of this Agreement,
6 “Product label” means a display of written, printed or graphic material printed on or affixed to
7 each of the Covered Products or its immediate container or wrapper. A warning provided
8 pursuant to section 3.4(a) or (b) must print the word “WARNING:” in all capital letters and in
9 bold font. The warning symbol to the left of the word “WARNING:” must be a black
10 exclamation point in a yellow equilateral triangle with a black outline, except, if the labeling
11 does not use the color yellow, the symbol may be in black and white. The entire warning shall
12 appear in at least 6-point type and no smaller than the largest type size used for other consumer
13 information on the Covered Products.

14 **3.5 Warnings for Internet Sales.** For any Covered Product sold over the internet
15 where it will be shipped to a consumer in California, the warning shall be displayed as follows:
16 (A) on the primary display page for the Covered Product; (B) as a clearly marked hyperlink using
17 the word “WARNING” in all capital and bold letters on the Covered Product’s primary display
18 page, so long as the hyperlink goes directly to a page prominently displaying the warning without
19 content that detracts from the warning; (C) on the checkout page or any other page in the
20 checkout process when a California delivery address is indicated for the purchase of the Covered
21 Product and with the warning clearly associated with the Covered Product to indicate that the
22 Covered Product is subject to the warning; or (D) by otherwise prominently displaying the
23 warning to the purchaser prior to completing the purchase of the Covered Product. The warning
24 is not prominently displayed if the purchaser must search for it in the general content of the
25 website.

26 **3.6 Warning Prominence.** Memebox agrees that each warning shall be prominently
27 placed with such conspicuousness, as compared with the other words, statements, designs, or
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1 devices, as to render it likely to be read and understood by an ordinary individual under
2 customary conditions before purchase or use.

3 **3.7 Compliance with Clear and Reasonable Warning.** Memebox shall be deemed
4 to be in compliance with this Consent Judgment after the Effective Date by (A) adhering to
5 Paragraphs 3.1 through 3.6, or (B) by complying with any future warning requirements adopted
6 by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA). If
7 regulations, legislation, or judicial rulings are enacted or issued providing that a Proposition 65
8 warning for the Covered Product is no longer required, a lack of warning as set forth in this
9 Consent Judgment will not thereafter be a breach of this Consent Judgment.

10 **3.8 Grace Period of Existing Inventory.** The injunctive requirements of Section III
11 shall not apply to the Covered Product that is already in the stream of commerce as of the
12 Effective Date, which Covered Product is expressly subject to the releases provided in Section V.

13 **3.9 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
14 Parties, KASB shall notice a Motion for Court Approval and, within ten (10) days of approval
15 of the Consent Judgment by the Court, comply with the requirements set forth in California
16 Health & Safety Code § 25249.7(f).

17 **3.10 Attorney General Objection.** If the California Attorney General objects to any
18 term in this Consent Judgment, the Parties shall use their best reasonable efforts to resolve the
19 concern in a timely manner, and if possible, prior to the hearing on the motion.

20 **3.11 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
21 shall be void and have no force or effect.

22 **IV. MONETARY TERMS**

23 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
24 additional settlement payments, attorney fees, and costs, Memebox shall make a total payment
25 of Twenty Thousand Dollars (\$20,000.00) (the “Total Settlement Amount”), apportioned into a
26 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.
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1 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
2 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Memebox
3 agrees to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment
4 will be apportioned in accordance with California Health & Safety Code §§ 25249(c)(1), (d),
5 with seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-
6 five (25) percent of the funds retained by KASB. Accordingly, OEHHA shall receive One
7 Thousand Five Hundred Dollars (\$1,500.00) in penalties and KASB shall receive Five Hundred
8 Dollars (\$500.00) in penalties.

9 All penalty payments shall be sent via wire from Memebox to KASB within ten (10)
10 business days of the Effective Date, and KASB shall provide OEHHA with its portion of the
11 penalty thereafter.

12 **Wire & ACH Instructions:**

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14 Account Name: The Law Offices of Joseph R. Manning
15 Bank Name: J.P. Morgan Chase Bank, N.A.
16 Bank Address: 270 Park Ave. New York, NY. 10017
17 ACH Routing / ABA Number: 322271627
18 Wire Routing / ABA Number: 021000021
19 Account Number: 802922919

20 For further benefit of: Civil Penalty Payment Case No. 23TRCV01165

21 **4.3 Attorney Fees and Costs.** Within ten (10) business days of the Effective Date,
22 Memebox agrees to pay Eighteen Thousand Dollars (\$18,000.00) to KASB and its counsel of
23 record for all fees and costs incurred in investigating, bringing this matter to the attention of
24 Memebox, litigating, negotiation, and obtaining judicial approval of a settlement in the public
25 interest.

26 **Wire & ACH Instructions:**

27 Account Name: The Law Offices of Joseph R. Manning
28 Bank Name: J.P. Morgan Chase Bank, N.A.

1 Bank Address: 270 Park Ave. New York, NY. 10017
2 ACH Routing / ABA Number: 322271627
3 Wire Routing / ABA Number: 021000021
4 Account Number: 802922919

5 For further benefit of: Attorney's Fees Case No. 23TRCV01165

6 **4.4** In the event that Memebox fails to remit the Total Settlement Amount or any
7 portion thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due
8 date, Memebox shall be deemed to be in material breach of its obligations under this Consent
9 Judgment. KASB shall provide written notice of delinquency to Memebox via electronic mail to
10 Memebox's counsel of record. If Memebox fails to deliver any portion of or all of the Total
11 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
12 shall accrue interest at the statutory judgment interest rate provided in California Code of Civil
13 Procedure § 685.010.

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

16 **V. RETENTION OF JURISDICTION**

17 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
18 this Consent Judgment.

19 **VI. MODIFICATION OF CONSENT JUDGMENT**

20 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
21 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
22 or (B) by motion of either Party pursuant to Paragraph 6.3 and upon entry by the Court of a
23 modified consent judgment.

24 **6.2** If Memebox seeks to modify this Consent Judgment under Paragraph 6.1, then
25 Memebox must provide written notice to KASB of its intent ("Notice of Intent"). If KASB seeks
26 to meet and confer regarding the proposed modification in the Notice of Intent, then KASB shall
27 provide written notice of intent to meet and confer to Memebox within thirty (30) days of
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1 receiving the Notice of Intent. The Parties shall then meet and confer in good faith in person, via
2 telephone, or via video conference within thirty (30) days of KASB's written notice of intent to
3 meet and confer. Within thirty (30) days of such a meeting, if KASB disputes the proposed
4 modification, KASB shall provide Memebox a written basis for its opposition. The Parties shall
5 continue to meet and confer for an additional thirty (30) days in an effort to resolve any remaining
6 disputes. Should it become necessary, the Parties may agree in writing to different deadlines for
7 the meet-and-confer period.

8 **6.3** In the event that Memebox initiates or otherwise requests a modification under
9 Paragraph 6.1, and the meet and confer process leads to a joint motion or application for a
10 modification of the Consent Judgment, Memebox shall reimburse KASB its costs and reasonable
11 attorney fees for the time spent in the process, unless the modification successfully invalidates
12 the warning provision of this Consent Judgment.

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

14 **7.1** This Consent Judgment shall have no application to any Covered Product that is
15 distributed or sold exclusively outside the State of California and/or that is not used by California
16 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
17 environmental exposures arising under Proposition 65, nor shall it apply to any other Memebox
18 products other than the Covered Product.

19 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
20 between KASB, on behalf of itself and its respective members, owners, principals, officers,
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, successors,
22 assigns, legal representatives, and affiliates and on behalf of the public interest, and Memebox
23 and (a) its respective equity owners, officers, directors, shareholders, employees, agents, parent
24 companies, subsidiaries, divisions, affiliates, and related companies, (b) its upstream suppliers
25 and downstream entities in the stream of commerce including, but not limited to franchisees,
26 licensees, customers, suppliers, distributors, wholesalers, cooperative members and retailers, and
27 (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers,
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1 attorneys, predecessors, successors, and assigns of any of the entities in subsections (a) and (b),
2 above (the entities identified in subsections (a), (b), and (c), above, are collectively referred to as
3 “Released Parties”) as to the Covered Product and DEHP under Proposition 65.

4 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
5 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
6 Covered Product as set forth in the Notice and Complaint.

7 **7.4 KASB Release of Memebox.** KASB, on behalf of itself and its respective
8 members, owners, principals, officers, directors, shareholders, employees, agents, parent
9 companies, subsidiaries, divisions, successors, assigns, legal representatives, and affiliates and on
10 behalf of the public interest fully releases and discharges Released Parties from any and all claims,
11 actions, cause of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses
12 asserted, or that could have been asserted based on or related to the handling, use, sale,
13 distribution, or consumption of the Covered Product in California, as to any alleged violation of
14 Proposition 65 or its implementing regulations up through the Effective Date, based on a failure
15 to provide Proposition 65 warning on any Covered Product manufactured on or before the
16 Effective Date with respect to DEHP as set forth in the Notice and Complaint.

17 **7.5** KASB on its own behalf only, and Memebox on its own behalf only, further waive
18 and release any and all claims they, their attorneys, or their representatives may have against each
19 other for all actions or statements made or undertaken in the course of seeking or opposing
20 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
21 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
22 any Party’s right to seek to enforce the terms of the Consent Judgment.

23 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
24 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
25 Covered Product, will develop or be discovered. KASB on behalf of itself only, and MEMEBOX
26 on behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover
27 and include all Such claims up through and including the Effective Date, including all rights of
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1 action therefore. KASB and Memebox acknowledge that the claims released in Section VII above
2 may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
3 unknown claims. California Civil Code § 1542 reads as follows:

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

9 **VIII. SEVERABILITY**

10 **8.1** In the event that any of the provisions of this Consent Judgment are held by a court
11 of competent jurisdiction to be unenforceable, the validity of the remaining enforceable
12 provisions shall not be adversely affected.

13 **IX. GOVERNING LAW**

14 **9.1** The terms and conditions of this Consent Judgment shall be governed by and
15 construed in accordance with the laws of the State of California.

16 **X. PROVISION OF NOTICE**

17 **10.1** All notices required to be given to either Party to this Consent Judgment by the
18 other shall be in writing and sent to the following agents listed below via first-class mail or
19 electronic mail. Any Party may modify the person/entity or address to whom the notice is to be
20 sent by sending the other Party notice by certified mail, return receipt requested. Said change shall
21 take effect on the date the return receipt is signed by the Party receiving the change.

22 Notice for KASB shall be sent to:

23 Joseph R. Manning, Jr.
24 26100 Towne Center Drive
25 Foothill Ranch, CA 92610
26 Tel: Office (949) 200-8757 Fax: (866) 843-8309
p65@manninglawoffice.com

27 Notice for Memebox shall be sent to:
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1 Will Wagner
2 ARNOLD & PORTER KAYE SCHOLER LLP
3 Three Embarcadero Center, 10th Floor
4 San Francisco, CA 94111
5 Tel: (415) 471-3100
6 Fax: (415) 471-3400
7 Will.wagner@arnoldporter.com

8 **XI. EXECUTED IN COUNTERPARTS**

9 **11.1** This Consent Judgment may be executed in counterparts, which taken together
10 shall be deemed to constitute one document. A facsimile or .PDF signature page shall be
11 construed to be as valid as the original signature.

12 **XII. DRAFTING**

13 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
14 for each Party prior to its signing, and each Party has had the opportunity to fully discuss the
15 terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation
16 and construction of this Consent Judgment, no inference, assumption, or presumption shall be
17 drawn, and no provision of this Consent Judgment shall be construed against any Party, based
18 on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted
19 all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties
20 participate equally in the preparation and drafting of this Consent Judgment.

21 **XIII. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

22 **13.1** If a dispute with respect to either Party's compliance with the terms of this
23 Consent Judgment entered by the Court, the Parties shall meet and confer in person, by
24 telephone, by video conference, and/or in writing and endeavor to resolve the dispute in an
25 amicable manner. No action or motion may be filed with the Court in the absence of such a good
26 faith attempt to resolve the dispute beforehand.

27 **XIV. ENFORCEMENT**

28 **14.1** The Parties may, by motion or order to show cause before the Superior Court of
Orange County, enforce the terms and conditions of this Consent Judgment. The terms of this

1 Consent Judgment can only be enforced by a Party. The prevailing Party in an enforcement is
2 entitled to reasonable attorneys' fees and costs.

3 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

4 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
5 of the Parties with respect to the entire subject matter herein, including any and all prior
6 discussions, negotiations, commitments, and understandings related thereto. No representations,
7 oral or otherwise, express or implied, other than those contained herein have been made by any
8 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
9 deemed to exist or to bind any Party.

10 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment.

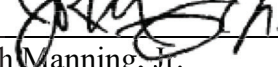
12 **XVI. REQUEST FOR FINDINGS, APPROVAL, AND ENTRY.**

13 **16.1** This Consent Judgment has come before the Court upon the request of the Parties.
14 The Parties request the Court to fully review this Consent Judgment and, being fully informed
15 regarding the matters which are the subject of this action, make the findings pursuant to
16 California Health and Safety Code § 25249(f)(4) and approve this Consent Judgment.

17
18 **IT IS SO STIPULATED.**

19
20 DATED: August 31, 2023

MANNING LAW, APC

21 By: 
22 Joseph Manning, Jr.

23 *Attorney for Plaintiff*
24 *KASB Research Center, Inc.*

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


26 DATED: Aug 30, 2023

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

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DATED: August 29, 2023

ARNOLD & PORTER KAYE SCHOLER LLP


By: 

Will Wagner

*Attorney for Defendant
Memebox Corporation*

MEMEBOX CORPORATION

DATED: August 30, 2023

By: 

Jun Hee Choi
General Counsel
Memebox Corporation

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