

1 Joseph R. Manning, Jr., Esq. (Bar No. 223381)
2 p65@manninglawoffice.com
3 **MANNING LAW, APC**
4 26100 Towne Center Drive
5 Foothill Ranch, CA 92610
6 *Tel: (949) 200-8755*
7 *Fax:(866) 843-8308*

8 *Attorney for Plaintiff*
9 *Keep America Safe and Beautiful, Inc.*

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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF LOS ANGELES**

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

20 Plaintiff,

21 v.

22 JANICO, INC., a New Jersey Corporation;
23 ARAMSCO, INC., a Delaware Stock
24 Corporation; and DOES 1 to 10,

25 Defendant.

Case No.: 23TRCV01684

[PROPOSED] STIPULATED
CONSENT JUDGMENT

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

Complaint filed: May 26, 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 Janico, Inc. (“Janico”), a New Jersey Corporation (collectively, the “Parties”).

5 **1.2 General Allegations.** On May 26, 2023, KASB initiated this action by filing a
6 Complaint for Civil Penalties and Injunctive Relief (the “Complaint”) pursuant to Health &
7 Safety Code § 24249.5 *et seq.* (“Proposition 65”) against Janico and Aramsco, Inc.
8 (“Defendants”). In this action, KASB alleges that a Janico-branded Replacement Vinyl Bag”
9 (the “Covered Product”) contains Di(2-ethylhexyl) Phthalate (DEHP) which is a chemical listed
10 under Proposition 65 as a carcinogen and reproductive toxin. KASB alleges that the Covered
11 Product exposes consumers to DEHP at levels requiring a Proposition 65 warning. KASB alleges
12 that Defendants qualify as “Persons” within the meaning of Proposition 65, and that Defendants
13 manufacture, distribute, and/or offer for sale in the State of California the Covered Product.

14 **1.3 Notice of Violation.** The Complaint is based on allegations contained in KASB’s
15 Notice of Violation dated March 10, 2023 (the “Notice”), that was served on the California
16 attorney General, other public enforcers, and Defendants. A true and correct copy of the Notice
17 is attached hereto as **Exhibit A** and incorporated by reference. More than sixty (60) days have
18 passed since the Notice was served on the Attorney General, public enforcers, and Defendants;
19 no designated governmental entity has filed a Complaint against Janico with regard to the
20 Covered Product or the alleged violations.

21 **1.4** KASB’s Notice and Complaint allege that the use of the Product by California
22 consumers exposes them to DEHP without first receiving a clear and reasonable warning from
23 Defendants, which is a violation of California Health & Safety Code § 25249.6. Janico denies
24 all material allegations contained in the Notice and Complaint.

25 **1.5** The Parties have entered into this Consent Judgment in order to settle,
26 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation. Janico

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

10 **1.6** Except as expressly set forth herein, nothing in this Consent Judgment shall
11 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
12 current or future legal proceeding unrelated to this proceeding.

13 **1.7 Effective Date.** For purposes of this Consent Judgment, the “Effective Date”
14 shall be the date the Consent Judgment has been approved and entered by the Court.

15 **II. JURISDICTION AND VENUE**

16 **2.1** For purposes of this Consent Judgment and any further court action that may
17 become necessary to enforce this Consent Judgment only, the Parties stipulate that this Court has
18 subject matter jurisdiction over the allegations of violations contained in the Complaint and
19 personal jurisdiction over Janico but only as to the acts alleged in the Complaint.

20 **2.2** For purposes of this Consent Judgment, the Parties stipulate that venue is proper
21 in Los Angeles County, California, and that this Court has jurisdiction to enter this Consent
22 judgment as a full and final resolution of all claims up through and including the Effective Date
23 that were or could have been asserted in this action based on the facts alleged in the Notice and
24 Complaint.

25 **III. INJUNCTIVE RELIEF**

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1 **3.1 Clear and Reasonable Warnings** Beginning ninety (90) calendar days from the
2 Effective Date, and continuing thereafter, Janico shall not sell in California, or distribute for sale
3 in California, the Covered Product containing non-compliant levels of DEHP unless
4 accompanied by warnings pursuant to Proposition 65 as generally described in Section 3.2. As
5 used in this Section 3.1, “distribute for sale in California” means to directly ship the Covered
6 Product into California, or to sell the Covered Product to a distributor Janico knows will sell in
7 California. A non-compliant level shall be a level of DEHP that exceeds the applicable Safe
8 Harbor Levels for DEHP.

9 **3.2 Warning Requirements.** A clear and reasonable warning for the Covered
10 Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered
11 Product Shipped for Sale in California by Janico that contains one of the following statements:

12 (A)

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

17 (B)

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

19 Janico shall cause to be affixed a warning to the Covered Product label or otherwise
20 directly on Covered Product or on the Covered Product’s immediate container, wrapper, or
21 packaging for those Covered Products provided for sale to consumers located in California and,
22 where appropriate, to customers with retail outlets in California. For purposes of this Agreement,
23 “Product label” means a display of written, printed or graphic material printed on or affixed to
24 each of the Products or its immediate container or wrapper. A warning provided pursuant to
25 section 3.2(A) or (B) must print the word “WARNING:” in all capital letters and in bold font.
26 The warning symbol to the left of the word “WARNING:” must be a black exclamation point in
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1 a yellow equilateral triangle with a black outline, except, if the labeling does not use the color
2 yellow, the symbol may be in black and white. If using the Short-Form Warning option set forth
3 in Section 3.2(B), the entire warning shall appear in at least 6-point type and no smaller than the
4 largest type size used for other consumer information on the Products. The warning shall consist
5 of either the Long-Form Warning or the Short-Form Warning set forth in Section 3.2(A) or (B),
6 respectively. The warning shall also comply with 27 C.C.R. § 25602 (d). Specifically, where
7 the product sign or label used to provide the warning includes consumer information in a
8 language other than English, the warning must also be provided in that language in addition to
9 English.

10 **3.3 Intentionally Omitted.**

11 **3.4 Warnings for Internet Sales.** For any Covered Product sold over the internet
12 which Janico ships to California, the warning shall be displayed as follows: (A) on the primary
13 display page for the 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 without content
16 that detracts from the warning; (C) on the checkout page or any other page in the checkout
17 process when a California delivery address is indicated for the purchase of the Covered Product
18 and with the warning clearly associated with the Covered Product to indicate that the Covered
19 Product is subject to the warning; or (D) by otherwise prominently displaying the warning to the
20 purchaser prior to completing the purchase of the Covered Product. The warning is not
21 prominently displayed if the purchaser must search for it in the general content of the website.

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

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

10 **3.7 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 or in
12 Defendants’ existing inventory as of the Effective Date, which Covered Product is expressly
13 subject to the releases provided in Section VII.

14 **3.10 Entry of Consent Judgment.** Upon execution of this Consent Judgment by the
15 Parties, KASB shall notice a Motion for Court Approval (“Motion for Approval”) and, within
16 ten (10) days of approval of the Consent Judgment by the Court, comply with the requirements
17 set forth in California Health & Safety Code § 25249.7(f).

18 **3.11 Attorney General Objection.** If the California Attorney General objects to any
19 term in this Consent Judgment, the Parties shall use their best efforts to resolve the concern in a
20 timely manner, and if possible, prior to the hearing on the Motion for Approval.

21 **3.12 Void if Not Approved.** If this Consent Judgment is not approved by the Court, it
22 shall be void and have no force or effect.

23 **IV. MONETARY TERMS**

24 **4.1 Total Settlement Amount.** In full satisfaction of all potential civil penalties,
25 additional settlement payments, attorney fees, and costs, Janico shall make a total payment of
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1 Twenty Thousand Dollars (\$20,000.00) (the “Total Settlement Amount”), apportioned into a
2 Civil Penalty, and Attorney Fees and Costs as set forth in Paragraphs 4.2 and 4.3, below.

3 **4.2 Civil Penalty Payment.** Pursuant to California Health & Safety Code
4 § 25249.7(b)(2) and in settlement of all claims alleged in the Notice and Complaint, Janico
5 agrees to pay Two Thousand Dollars (\$2,000.00) in Civil Penalties. The Civil Penalty payment
6 will be apportioned in accordance with California Health & Safety Code §§ 25249(c)(1), (d),
7 with seventy-five (75) percent of these funds remitted to OEHHA, and the remaining twenty-
8 five (25) percent of the funds retained by KASB. Within thirty (30) days of the Effective Date,
9 Janico shall issue a check to “OEHHA” in the amount of One Thousand Five Hundred Dollars
10 (\$1,500.00), with “Prop 65 Penalties” written in the Memo Line; and Janico shall, pursuant to
11 the instructions below, send a check or wire to KASB the amount of Five Hundred Dollars
12 (\$500.00).

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

15 For United States Postal Delivery Service:

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

21 For Non-United States Postal Delivery Service:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 1001 I Street MS #19B
26 Sacramento, CA 95814

27 All penalty payments owed to KASB shall be sent via check or wire to KASB. Wire
28 information is as follows:

Wire & ACH Instructions:

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1 Account Name: The Law Offices of Joseph R. Manning
2 Bank Name: J.P. Morgan Chase Bank, N.A.
3 Bank Address: 270 Park Ave. New York, NY. 10017
4 ACH Routing / ABA Number: 322271627
5 Wire Routing / ABA Number: 021000021
6 Account Number: 802922919
7 For further benefit of: Civil Penalty Payment Case No. 23TRCV01684

8 **4.3 Attorney Fees and Costs.** Within thirty (30) days of the Effective Date, Janico
9 agrees to pay Eighteen Thousand Dollars (\$18,000.00) to KASB and its counsel of record for all
10 fees and costs incurred in investigating, bringing this matter to the attention of Janico, litigating,
11 negotiation, and obtaining judicial approval of a settlement in the public interest.

12 All payments owed to KASB and its counsel of record shall be sent via check or wire to
13 KASB. Wire information is as follows:

14 **Wire & ACH Instructions:**

15 Account Name: The Law Offices of Joseph R. Manning
16 Bank Name: J.P. Morgan Chase Bank, N.A.
17 Bank Address: 270 Park Ave. New York, NY. 10017
18 ACH Routing / ABA Number: 322271627
19 Wire Routing / ABA Number: 021000021
20 Account Number: 802922919
21 For further benefit of: Attorney's Fees Case No. 23TRCV01684

22 **4.4** In the event that Janico fails to remit the Total Settlement Amount or any portion
23 thereof owed under Paragraphs 4.1 through 4.3 of this Consent Judgment before the due date,
24 Janico shall be deemed to be in material breach of its obligations under this Consent Judgment.
25 KASB shall provide written notice of delinquency to Janico via electronic mail to Janico's counsel
26 of record. If Janico fails to deliver any portion of or all of the Total Settlement Amount within
27 five (5) business days from receipt of the written notice, the Total Settlement Amount shall accrue

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1 interest at the statutory judgment interest rate provided in California Code of Civil Procedure §
2 685.010.

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

5 **V. RETENTION OF JURISDICTION**

6 **5.1** This Court shall retain jurisdiction over this matter to enforce, modify, or terminate
7 this Consent Judgment.

8 **VI. MODIFICATION OF CONSENT JUDGMENT**

9 **6.1** This Consent Judgment may be modified only as to the injunctive terms by
10 (A) written stipulation of the Parties and upon entry by the Court of a modified consent judgment,
11 or (B) by motion of either Party pursuant to Paragraph 6.1-6.3 and upon entry by the Court of a
12 modified consent judgment.

13 **6.2** If Janico seeks to modify this Consent Judgment under Paragraph 6.1-6.3, then
14 Janico must provide written notice to KASB of its intent (“Notice of Intent”). If KASB seeks to
15 meet and confer regarding the proposed modification in the Notice of Intent, then KASB shall
16 provide written notice of intent to meet and confer to Janico within seven (7) days of receiving
17 the Notice of Intent. The Parties shall then meet and confer in good faith in person, via telephone,
18 or via video conference within seven (7) days of KASB’s written notice of intent to meet and
19 confer. Within seven (7) days of such a meeting, if KASB disputes the proposed modification,
20 KASB shall provide Janico a written basis for its opposition. The Parties shall continue to meet
21 and confer for an additional seven (7) days in an effort to resolve any remaining disputes. Should
22 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
23 confer period.

24 **6.3** In the event that Janico initiates or otherwise requests a modification under
25 Paragraph 6.1-6.3, and the meet and confer process leads to a joint motion or application for a
26 modification of the Consent Judgment, Janico shall reimburse KASB for its reasonable costs and

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1 reasonable attorney fees for the time spent in the meet-and-confer process and filing and arguing
2 the motion.

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

4 **7.1** This Consent Judgment shall have no application to any Covered Product that is
5 distributed or sold exclusively outside the State of California and/or that is not used by California
6 consumers. Nothing in this Consent Judgment is intended to apply to any occupational or
7 environmental exposures arising under Proposition 65, nor shall it apply to any other Janico
8 products other than the Covered Product.

9 **7.2 Binding Effect.** This Consent Judgment is a full, final, and binding resolution
10 between KASB, on behalf of itself and its respective officers, directors, shareholders, employees,
11 agents, parent companies, subsidiaries, divisions, and affiliates and on behalf of the public
12 interest, and Janico and its respective officers, directors, shareholders, employees, agents, parent
13 companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
14 distributors, wholesalers, or retailers (including but not limited to Aramsco, Inc.), and all other
15 upstream and downstream entities in the distribution chain of the Covered Product and the
16 predecessors, successors, and assigns of any of them (collectively, “Released Parties”).

17 **7.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
18 compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to the
19 Covered Product as set forth in the Notice and Complaint.

20 **7.4 KASB Release of Janico.** KASB, on behalf of itself and its respective officers,
21 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, and
22 affiliates and on behalf of the public interest fully releases and discharges Released Parties from
23 any and all claims, actions, cause of action, suits, demands, liabilities, damages, penalties, fees
24 costs, and expenses asserted, or that could have been asserted based on or related to the handling,
25 use, sale, distribution, or consumption of the Covered Product in California, as to any alleged
26 violation of Proposition 65 or its implementing regulations up through the Effective Date, based

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1 on a failure to provide Proposition 65 warning on the Covered Product with respect to DEHP as
2 set forth in the Notice and Complaint.

3 **7.5** KASB on its own behalf only, and Janico on its own behalf only, further waive
4 and release any and all claims they, their attorneys, or their representatives may have against each
5 other for all actions or statements made or undertaken in the course of seeking or opposing
6 enforcement of Proposition 65 in connection with the Notice and Complaint up through and
7 including the Effective Date, provided, however, that nothing in this Section shall affect or limit
8 any Party's right to seek to enforce the terms of the Consent Judgment.

9 **7.6 California Civil Code Section 1542.** It is possible that other claims not known to
10 the Parties, arising out of the facts alleged in the Notice and Complaint, and relating to the
11 Covered Product, will develop or be discovered. KASB on behalf of itself only, and JANICO on
12 behalf of itself only, acknowledge that this Consent Judgment is expressly intended to cover and
13 include all such claims up through and including the Effective Date, including all rights of action
14 therefore. KASB and Janico acknowledge that the claims released in Section VII above may
15 include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such
16 unknown claims. California Civil Code § 1542 reads as follows:

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

24 **VIII. SEVERABILITY**

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

28 **IX. GOVERNING LAW**

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

3 **X. PROVISION OF NOTICE**

4 All notices required to be given to either Party to this Consent Judgment by the other shall
5 be in writing and sent to the following agents listed below via first-class mail or electronic mail.
6 Any Party may modify the person/entity or address to whom the notice is to be sent by sending
7 the other Party notice by certified mail, return receipt requested. Said change shall take effect on
8 the date the return receipt is received by the Party requesting the return receipt.

9 Notice or checks for KASB shall be sent to:

10 Joseph R. Manning, Jr.
11 Manning Law, APC
12 26100 Towne Center Drive
13 Foothill Ranch, CA 92610
14 Tel: Office (949) 200-8757 Fax: (866) 843-8309
15 P65@manninglawoffice.com

16 Notice for Janico shall be sent to:

17 Sherry E. Jackman
18 Sedina L. Banks
19 Greenberg Glusker LLP
20 2049 Century Park East, Suite 2600
21 Los Angeles, CA 90067
22 Tel: (310) 201-7526
23 sjackman@greenbergglusker.com; sbanks@greenbergglusker.com

24 **XI. EXECUTED IN COUNTERPARTS**

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

28 **XII. DRAFTING**

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

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

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

15 **XIV. ENFORCEMENT**

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

20 **XV. ENTIRE AGREEMENT, AUTHORIZATION**

21 **15.1** This Consent Judgment contains the sole and entire agreement and understanding
22 of the Parties with respect to the entire subject matter herein, including any and all prior
23 discussions, negotiations, commitments, and understandings related thereto. No representations,
24 oral or otherwise, express or implied, other than those contained herein have been made by any
25 party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be
26 deemed to exist or to bind any Party.

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1 **15.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
2 by the Party he or she represents to stipulate to this Consent Judgment.


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

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

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9 **IT IS SO STIPULATED.**

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

13 DATED: September 19, 2023

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

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18 **JANICO, INC.**

19 DATED: _____, 2023

20 By: 

21 Janico, Inc.

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

3 Dated: _____

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JUDGE OF THE SUPERIOR COURT

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