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KEEP AMERICA SAFE AND BEAUTIFUL

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF LOS ANGELES**

11 **KEEP AMERICA SAFE AND BEAUTIFUL,**

Case No.: 24STCV02929

12 Plaintiff,

13 v.

**[PROPOSED] CONSENT JUDGMENT AS
TO VOYAGE FOODS, INC.**

14 Voyage Foods, Inc.; and DOES 1 through 100,
inclusive,

(Health & Safety Code § 25249.6 *et. seq.* and
Code Civ. Proc. § 664.6)

15 Defendant.
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KJT LAWGROUP LLP
jivalagian | Thomassian

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This [Proposed] Consent Judgment is hereby entered into by and between KEEP AMERICA
4 SAFE AND BEAUTIFUL, acting on behalf of the public interest (hereinafter “KASB”) and
5 VOYAGE FOODS, INC. (hereinafter “VOYAGE” or “Defendant”). Collectively KASB and
6 VOYAGE shall be referred to hereafter as the “Parties” and each of them as a “Party.” KASB is a
7 non-profit corporation organized under the laws of California, and acting in the interest of the general
8 public dedicated to protecting the health of California citizens and the environment through the
9 elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to
10 increasing public awareness of those chemicals through the promotion of sound environmental
11 practices and corporate responsibility. Voyage is a person in the course of doing business for
12 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

13 **1.2 Allegations and Representations**

14 KASB alleges that Voyage has offered for sale in the State of California, and has sold in
15 California, products, which contain cadmium, and that such sales have not been accompanied by
16 Proposition 65 warnings. The State of California has listed cadmium as a chemical known to cause
17 cancer, developmental toxicity and reproductive harm. Voyage denies the allegations and contends
18 that there is no exposure and no violation under Proposition 65 for an alleged failure to warn.

19 **1.3 Covered Product Description**

20 The product that is covered by this Consent Judgment is identified as Voyage - Peanut-Free
21 Spread - Roasted Seed Spread - UPC #: 8 60007 88390 3. All such items shall be referred to herein
22 as the “Covered Product.”

1 1.4 Notices of Violation/Complaint

2 1.4.1 On or about September 13, 2023, KASB served VOYAGE and various public
3 enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health &
4 Safety Code §25249.7(d) (the "Notice"), alleging that VOYAGE was in violation of Proposition 65 for
5 failing to warn consumers and customers that the Covered Product can expose users in California to
6 cadmium. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty
7 days plus service time relative to the provision of the Notice to them by KASB.

8 1.4.2 On February 5, 2024, KASB, acting in the interest of the general public in the State of
9 California, filed a complaint in the Superior Court of Los Angeles County alleging violations of
10 Health & Safety Code §25249.6 (the "Complaint") based on the alleged failure to warn of exposures
11 to cadmium contained in the Covered Product manufactured, distributed, or sold by Voyage.

12 1.5 No Admission

13 The Parties enter into this Agreement to settle disputed claims between them as set forth
14 herein and in the Notice concerning Voyage's compliance with Proposition 65. Voyage denies the
15 factual and legal allegations contained in the Notice and Complaint and maintains that all products it
16 has sold or distributed for sale in California, including the Products, have been, and are, in
17 compliance with Proposition 65 and any other statutory, regulatory, common law, or equitable
18 doctrine. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this
19 Agreement constitute or be construed as, an admission by Voyage of any fact, finding, conclusion of
20 law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect
21 Voyage's obligations, responsibilities, and duties under this Agreement.

22 1.6 Effective Date/Compliance Date

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
24 Consent Judgment is entered as a judgment of the Court.

1 For purposes of this Consent Judgment, the term "Compliance Date" shall mean the date that
2 is 90 days after the Effective Date.

3 **2. STIPULATION TO JURISDICTION**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Defendant as to the allegations contained in the complaint filed in this matter, that
6 venue is proper in the County of Los Angeles, and that this Court has jurisdiction to approve, enter,
7 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
8 claims which were or could have been raised in the Complaint based on the facts alleged therein
9 and/or in the Notice.

10 **3. INJUNCTIVE RELIEF**

11 **3.1** Beginning on the Compliance Date, VOYAGE shall be permanently enjoined from
12 manufacturing for sale in the State of California, "Distributing into the State of California," or directly
13 selling in the State of California, any Covered Product that exposes a person to a "Daily Cadmium
14 Exposure Level" of more than 4.1 micrograms of cadmium per day, or a level permissible by
15 Proposition 65 or its implementing regulations in effect on or after the Effective Date, unless it meets
16 the warning requirements under Section 3.2.

17 **3.1.1** As used in this Consent Judgment, the term "Distributing into the State of California"
18 shall mean to directly ship a Covered Product into California for sale in California or to sell a
19 Covered Product to a distributor that VOYAGE knows or has reason to know will sell the Covered
20 Product in California. The injunctive relief in Section 3 does not apply to any Covered Product that
21 has left the possession, and is no longer under the control of VOYAGE prior to the Compliance
22 Date and all claims as to such Covered Product are released in this Consent Judgment.

23 **3.1.2** For purposes of this Consent Judgment, the "Daily Cadmium Exposure Level" shall be
24 measured in micrograms, and shall be calculated using the following formula: micrograms of
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1 cadmium per gram of product, multiplied by grams of product per serving of the product as stated on
2 the label, multiplied by servings of the product per day stated on the label, which equals micrograms
3 of cadmium exposure per day. If the label contains no recommended daily servings, then the number
4 of recommended daily servings shall be one.

5
6 **3.2 Clear and Reasonable Warnings**

7 If VOYAGE is required to provide a warning pursuant to Section 3.1, one of the following
8 warnings must be utilized pursuant to California Code of Regulations ("CCR") title 27, sections 25603
9 and 25607.2 ("Warning"):

10 **Option 1:**



WARNING: Consuming this product can expose you to chemicals including cadmium, 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/food.

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15 **Option 2:**



WARNING: Cancer and Reproductive Harm <http://www.p65warnings.ca.gov/food>

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19 The Warning shall be securely affixed to or printed upon the label of each Covered Product
20 and it must be set off from other surrounding information. In addition, for any Covered Product sold
21 over the internet, the Warning shall appear on the checkout page, or prominently displayed to the
22 purchaser prior to completing the purchase, in full text or through a clearly marked hyperlink using
23 the word "WARNING" in all capital and bold letters when a California delivery address is indicated
24 for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a
25 page prominently displaying the Warning without content that detracts from the Warning.
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1 California Code of Regulations title 27, section 25603(a) specifies the Warning elements,
2 unless otherwise specified in Section 25607.1 et seq. (Food Exposure Warnings). Thus, the Warning
3 shall contain the following elements:

4 (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle with a
5 bold black outline. Where the sign, label or shelf tag for the product is not printed using the color
6 yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the
7 text of the warning, in a size no smaller than the height of the word “WARNING”.

8 (2) The word “WARNING” in all capital letters and bold print, and:

9 (A) For exposures to listed carcinogens, the words, “Consuming this product can
10 expose you to chemicals including [name of one or more chemicals], which is [are] known to
11 the State of California to cause cancer. For more information go to
12 www.P65Warnings.ca.gov/food.”

13 (B) For exposures to listed reproductive toxicants, the words, “Consuming this
14 product can expose you to chemicals including [name of one or more chemicals], which is
15 [are] known to the State of California to cause birth defects or other reproductive harm. For
16 more information go to www.P65Warnings.ca.gov/food.”

17 (C) For exposures to both listed carcinogens and reproductive toxicants, the words,
18 “Consuming this product can expose you to chemicals including [name of one or more
19 chemicals], which is [are] known to the State of California to cause cancer and [name of one
20 or more chemicals], which is [are] known to the State of California to cause birth defects or
21 other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.”

22 (D) For exposures to a chemical that is listed as both a carcinogen and a reproductive
23 toxicant, the words, “Consuming this product can expose you to chemicals including [name of
24 one or more chemicals], which is [are] known to the State of California to cause cancer and
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1 birth defects or other reproductive harm. For more information go to
2 www.P65Warnings.ca.gov/food.”

3 (E) Where a warning is being provided for an exposure to a single chemical the words
4 “chemicals including” may be deleted from the warning content set out in subsections (A), (B), (C)
5 and (D). Pursuant to California Code of Regulations title 27, section 25603(b), A short-form warning
6 may be provided on the product label using all the following elements:
7

8 (1) The symbol required in subsection (a)(1).

9 (2) The word “WARNING:” in all capital letters, in bold print.

10 (A) For exposures to listed carcinogens, the words, “Cancer –
11 www.P65Warnings.ca.gov/food.”

12 (B) For exposures to listed reproductive toxicants, the words, “Reproductive Harm –
13 www.P65Warnings.ca.gov/food.”

14 (C) For exposures to both listed carcinogens and reproductive toxicants, the words,
15 “Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.”

16 Pursuant to 27 CCR § 25603(c), if providing a short-form warning on the product label
17 pursuant to 27 CCR § 25603(b), it is not required to include within the text of the warning the name
18 or names of a listed chemical.
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20 The Warning shall be at least the same size as the largest of any other health or safety
21 warnings. No statements intended to or likely to have the effect of diminishing the impact of the
22 Warning on the average lay person shall accompany the Warning. Further, no statements may
23 accompany the Warning that state or imply that the source of the listed chemical has an impact on or
24 results in a less harmful effect of the listed chemical. VOYAGE must display the above Warning with
25 such conspicuousness, as compared with other words, statements or designs on the label, or on its
26 website, if applicable, to render the Warning likely to be read and understood by an ordinary
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1 individual under customary conditions of purchase or use of the product. For purposes of this
2 Consent Judgment, the term "label" means a display of written, printed or graphic material that is
3 printed on or affixed to a Covered Product or its immediate container or wrapper. Where the
4 warning is provided on the food product label, the Warning must be set off from other surrounding
5 information, enclosed in a box and comply with the content requirements specified in Section
6 25607.2. If consumer information on the package is in a foreign language, the warning must also be
7 provided in the foreign language.
8

9 Notwithstanding the foregoing, Defendant may comply with this Section 3 by providing
10 warnings as specified in Proposition 65 or its implementing regulations applicable to the Covered
11 Product and chemical at issue, in effect as of the Effective Date, or as such regulations may be
12 modified or amended in the future.

13 **4. PAYMENTS PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

14 With regard to all claims that have been raised or which could be raised with respect to failure
15 to warn pursuant to Proposition 65 with regard to cadmium in the Covered Product, Defendant shall
16 pay a civil penalty of \$7,500.00 pursuant to Health and Safety Code section 25249.7(b), to be
17 apportioned in accordance with California Health & Safety Code § 25192, with 75% of these funds
18 remitted to the State of California's Office of Environmental Health Hazard Assessment and the
19 remaining 25% of the penalty remitted to KASB, as provided by California Health & Safety Code
20 § 25249.12(d) and the instructions directly below.
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23 Defendant shall issue two separate checks for the penalty payment: (a) one check made
24 payable to "OEHHA" (tax identification number: 68-0284486) in an amount representing 75% of the
25 total penalty (i.e., \$5,625.00) and (b) wire transfer in an amount representing 25% of the total penalty
26 (i.e., \$1,875.00) to the Plaintiff's payment address below. Defendant shall make these payments
27 within ten (10) days following the Effective Date, at which time such payments shall be made to the
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1 following addresses respectively:

2 All payments owed to Plaintiff shall be delivered to the following payment address:

3 Beneficiary: Keep America Safe and Beautiful
4 Wells Fargo Bank Routing Number: 121000248
5 Wells Fargo Bank Account Number: 6767279471
6 Beneficiary Address: 10512 Sycamore Avenue, Stanton, CA 90680

7 All payments owed to OEHHA shall be delivered directly to OEHHA at the following
8 addresses:

9 For United States Postal Delivery:

10 Mike Gyurics
11 Senior Accounting Officer – MS 19-B
12 Office of Environmental Health Hazard Assessment
13 P.O. Box 4010
14 Sacramento, CA. 95812-0410

15 For Non-United States Postal Service Delivery:

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

21 **5. REIMBURSEMENT OF FEES AND COSTS**

22 The parties reached an accord on the compensation due to KASB and its counsel under the
23 private attorney general doctrine and principles of contract law. Under these legal principles,
24 Defendant shall reimburse KASB’s counsel for fees and costs, incurred as a result of investigating,
25 bringing this matter to Defendant attention, and negotiating a settlement in the public interest.
26 Defendant shall pay KASB’s counsel \$40,000.00 for all attorneys’ fees, expert and investigation fees
27 and related costs associated with this matter and the Notice. Defendant shall make this payment
28 within thirty (30) days following the Effective Date. Defendant shall mail a check payable to “KJT
Law Group,” via certified mail to the address for KASB's counsel referenced above.

Other than the payment required hereunder, each side is to bear its own attorneys’ fees and costs.

1 **6. RELEASE OF ALL CLAIMS**

2 **6.1 KASB’s Release of Defendant, Releasees, and Downstream Releasees**

3 As to those matters raised in the Complaint and in the Notice of Violation, KASB, on behalf
 4 of itself, *and on behalf of the public interest*, hereby waives and releases any and all claims against
 5 Defendant, its parent companies, corporate affiliates, subsidiaries, predecessors, successors and
 6 assigns (collectively “Releasees”) and each of its distributors, wholesalers, licensors, licensees,
 7 auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users (collectively
 8 “Downstream Releasees”) and their respective officers, directors, attorneys, representatives,
 9 shareholders, agents, and employees, and sister and parent entities for injunctive relief or damages,
 10 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
 11 expenses, or any other sum incurred or claimed, for the alleged failure of Defendant, Releasees or
 12 Downstream Releasees to provide clear, accurate and reasonable warnings under Proposition 65.
 13 about exposure to cadmium arising from the sale, distribution, or use of any Covered Product sold,
 14 manufactured or distributed by Defendant, Releasees or Downstream Releasees in California, up
 15 through the Compliance Date. Compliance with the Consent Judgment by Defendant or a Releasee
 16 shall constitute compliance with Proposition 65 by that Defendant, Releasee, or Downstream
 17 Releasee with respect to the presence of cadmium in the Covered Product. Plaintiff agrees that any
 18 and all claims in the Complaint are resolved with prejudice by this Consent Judgment.

19 In addition to the foregoing, KASB, on behalf of itself, past and current agents,
 20 representatives, officers, directors, employees, attorneys, and successors and/or assignees, and *not* in
 21 its representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
 22 any form of legal action and releases any other Claims that it could make against Defendant,
 23 Releasees or Downstream Releasees with respect to violations of Proposition 65 based upon the
 24 Covered Product. With respect to the foregoing waivers and releases in this paragraph, KASB
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1 hereby specifically waives any and all rights and benefits which it now has, or in the future may have,
2 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides as
3 follows:

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

10
11 **6.2 Defendant's Release of KASB**

12 Defendant waives any and all claims against KASB, its attorneys and other representatives, for
13 any and all actions taken or statements made by KASB and its attorneys and other representatives, in
14 the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in
15 this matter, and/or with respect to the Covered Product.

16
17 **7. SEVERABILITY AND MERGER**

18 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
19 document are held by a court to be unenforceable, the validity of the enforceable provisions
20 remaining shall not be adversely affected.

21 This Consent Judgment contains the sole and entire agreement of the Parties and any and all
22 prior negotiations and understandings related hereto shall be deemed to have been merged within it.
23 No representations or terms of agreement other than those contained herein exist or have been made
24 by any Party with respect to the other Party or the subject matter hereof.

25
26 **8. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within the State of California. Compliance with the terms of this Consent Judgment
resolves any issue, now or in the future, as to the requirements of Proposition 65 with respect to
alleged exposures to cadmium arising from the Covered Product. In the event that Proposition 65 is

1 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered
2 Product, then Defendant shall provide written notice to KASB of any asserted change in the law, and
3 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
4 that, the Covered Product is so affected.

5
6 **9. NOTICES**

7 Unless specified herein, all correspondence and notices required to be provided pursuant to
8 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
9 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
10 other party at the following addresses:

11 For VOYAGE:

12
13 Jessica P. O'Connell
14 **COVINGTON & BURLING LLP**
15 One CityCenter, 850 Tenth Street, NW
16 Washington, DC 20001-4956
17 Phone: 202-662-5180
18 Email: JPOConnell@cov.com

19 and

20 For KASB:

21 Tro Krikorian, Esq.
22 **KJT LAW GROUP, LLP**
23 230 N. Maryland Ave. Suite 306
24 Glendale, CA 91206
25 Phone: 818-507-8528
26 Email: Tro@KJTLawGroup.com

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

10. 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 an opportunity to fully discuss the terms and
conditions with legal counsel. The Parties agree that, in any subsequent interpretation and

1 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
2 and no provision of this Consent Judgment shall be construed against any Party, based on the fact that
3 one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion
4 of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the
5 preparation and drafting of this Consent Judgment.
6

7 **11. COUNTERPARTS; EMAIL OR FACSIMILE SIGNATURES**

8 This Consent Judgment may be executed in counterparts and by email or facsimile, each of
9 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
10 same document.

11 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL**

12 KASB agrees to comply with the requirements set forth in California Health & Safety Code
13 §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and Defendants
14 shall support approval of such Motion.
15

16 This Consent Judgment shall not be effective until it is approved and entered by the Court
17 and shall be null and void if, for any reason, it is not approved and entered by the Court.

18 **13. MODIFICATION**

19 This Consent Judgment may be modified only by further stipulation of the Parties and the
20 approval of the Court or upon the granting of a motion brought to the Court by either Party.
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22 **14. ATTORNEY'S FEES**

23 A party who unsuccessfully brings or contests an action arising out of this Consent Judgment
24 shall be required to pay the prevailing party's reasonable attorney's fees and costs unless the
25 unsuccessful party has acted with substantial justification. For purposes of this Consent Judgment, the
26 term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986,
27 Code of Civil Procedure Section 2016, et seq.
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1 **15. RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to implement or modify the Consent
3 Judgment.

4 **16. AUTHORIZATION**

5 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party
6 he or she represents to stipulate to this Consent Judgment.
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9 **STIPULATED AND AGREED TO:**

10 Date: 06/09/2024

Date: 6/5/2024

11 By:  Lance Nguyen

By: 

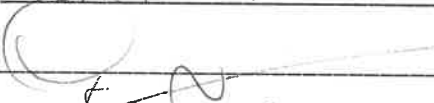
12 **KEEP AMERICA SAFE AND
13 BEAUTIFUL**

VOYAGE FOODS, INC.

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15 **APPROVED AS TO FORM:**

16 Date: 6/10/2024

Date: 5/30/24

17 By: 

By: 

18 **TRO KRİKORIAN, ESQ.**
19 **ATTORNEY FOR PLAINTIFF,**
20 **KEEP AMERICA SAFE AND BEAUTIFUL**

CORTLIN H. LANNIN, ESQ.
ATTORNEY FOR DEFENDANT,
VOYAGE FOODS, INC.

21 **IT IS SO ORDERED, ADJUDGED, AND DECREED:**

22 Dated: _____

23 Judge of the Superior Court