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Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

FILED
San Francisco County Superior Court
JUL 20 2022
CLERK OF THE COURT
[Signature]
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,
Plaintiff,
v.
AFFORDABLE TOOLS, LLC; and DOES
1-30, inclusive,
Defendants.

Case No. CGC-21-595116
BY CONSENT (um)
~~[PROPOSED]~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65
~~SETTLEMENT AND CONSENT (um)~~
~~JUDGMENT~~

Date: July 20, 2022
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Richard B. Ulmer, Jr.

Complaint Filed: September 8, 2021
Trial Date: None set.

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In the above-entitled action, Plaintiff Keep America Safe and Beautiful and Defendant Affordable Tools, LLC, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 7/20/22

lh

JUDGE OF THE SUPERIOR COURT
RICHARD B. ULMER

EXHIBIT A

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14 3 Embarcadero Center, Suite 1120
15 San Francisco, CA 94111
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19 Attorneys for Defendant
20 AFFORDABLE TOOLS, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 COUNTY OF SAN FRANCISCO
23 UNLIMITED CIVIL JURISDICTION

24 KEEP AMERICA SAFE AND BEAUTIFUL,

25 Plaintiff,

26 v.

27 AFFORDABLE TOOLS, LLC; and DOES
28 1-30, inclusive,

Defendants.

Case No. CGC-21-595116

~~[PROPOSED]~~ CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful
3 (“KASB”) and defendant Affordable Tools, LLC (“Affordable Tools”), with KASB and Affordable
4 Tools each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the
5 allegations in the February 3, 2021 60-Day Notice of Violation in compliance with the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

8 KASB is a California-based non-profit organization proceeding in the public interest pursuant
9 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
10 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
11 consumer products sold in California. Affordable Tools is a person in the course of doing business
12 for purposes of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 KASB alleges that Affordable Tools manufactures, imports, sells, or distributes for sale in
15 California gloves with vinyl components containing di(2ethylhexyl) phthalate (“DEHP”), including
16 but not limited to, *Dragway Tools Rubber Sandblasting Gloves, No. FBA_LD-2420-GLV, ASIN*
17 *B004UC6O22*, without providing the health hazard warning that KASB alleges is required by
18 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). Gloves with vinyl components
19 are referred to hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical
20 known to the State of California to cause birth defects and other reproductive harm.

21 **1.3 Notice of Violation**

22 On February 3, 2021, KASB served Affordable Tools, Amazon.com, Inc., the California
23 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation
24 (“Notice”), alleging Affordable Tools violated Proposition 65 by failing to warn its customers and
25 consumers in California that the Products can expose users to DEHP. No public enforcer has
26 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On September 8, 2021, KASB commenced the instant action (“**Complaint**”), naming
3 Affordable Tools as a defendant for the alleged violations of Proposition 65 that are the subject of the
4 Notice.

5 **1.5 No Admission**

6 Affordable Tools denies the material, factual and legal allegations contained in the Notice and
7 Complaint and maintains that all products it sold or distributed for sale in California, including the
8 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
9 construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
10 admission by Affordable Tools of any fact, finding, conclusion of law, issue of law, or violation of
11 law. This section shall not, however, diminish or otherwise affect Affordable Tools’ obligations,
12 responsibilities, and duties under this Consent Judgment. Affordable Tools maintains that it has not
13 knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation
14 of Proposition 65.

15 **1.6 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
17 over Affordable Tools as to the allegations contained in the Complaint; that venue is proper in San
18 Francisco County; and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

20 **1.7 Effective Date**

21 The term “Effective Date” means the date on which the Court approves this Consent Judgment
22 and enters Judgment pursuant to its terms, and KASB has provided notice to Affordable Tools that it
23 has been entered in the Court’s records as a consent judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS AND NOTIFICATION**

25 **2.1 Reformulation Commitment**

26 Commencing on the Effective Date and continuing thereafter, all Products Affordable Tools
27 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one
28 or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for

1 Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable
2 warnings pursuant to Section 2.3.

3 **2.2 Reformulation Standard**

4 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
5 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl
6 phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) and di-n-hexyl
7 phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration of less than
8 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of
9 California, a federal agency, or a nationally recognized accrediting organization. For purposes of
10 compliance with this reformulation standard, testing samples shall be prepared and extracted using
11 Consumer Product Safety Commission (“**CPSC**”) methodology CPSC CH-C1001.09.3 and analyzed
12 using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by
13 federal or state government agencies to determine phthalate content in a solid substance.

14 **2.3 Clear and Reasonable Warnings**

15 Affordable Tools shall provide clear and reasonable warnings for all Products provided for sale
16 to customers in California in accordance with this Section pursuant to Title 27 California Code of
17 Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as
18 compared with other words, statements, or designs as to render it likely to be read and understood by
19 an ordinary individual under customary conditions before purchase or use and shall be provided in a
20 manner such that it is clearly associated with the specific Product to which the warning applies.

21 (a) **DEHP Warnings.** The Warning for Products containing DEHP, a phthalate chemical
22 known to cause cancer and birth defects or other reproductive harm, in excess of the Reformulation
23 Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

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

27 (b) **Warnings for DEHP and DINP.** The Warning for Products containing DEHP
28 and the phthalate chemical only known to cause cancer, DINP, each in excess of the

1 The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as
2 appropriate, at Affordable Tools' option.

3 (l) **Short-Form Warnings.** As an alternative to the warnings set forth in subsection
4 2.3(a)-(k) above, Affordable Tools may, but is not required to, use the short-form warning ("**Short-**
5 **Form Warning**") corresponding to phthalate content, subject to the additional requirements in
6 Sections 2.4 and 2.5, as follows:

7 For DEHP or DINP and DEHP, DIDP, DBP, BBP or DnHP:

8 **⚠ WARNING:** Cancer and Reproductive Harm- www.P65Warnings.ca.gov.

9 For DIDP, DBP, BBP or DnHP:

10 **⚠ WARNING:** Reproductive Harm- www.P65Warnings.ca.gov.

11 For DINP:

12 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

13 (m) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag
14 used to provide a warning includes consumer information, as that term is defined in Title 27 California
15 Code of Regulations § 25600.1(c) ("**Consumer Information**"), in languages other than English, the
16 warning must also be provided in those languages in addition to English.

17 (n) If Proposition 65 or its implementing regulations are changed from their terms as they
18 exist on the date the Parties stipulated to this Consent Judgment with respect to levels of DEHP that
19 trigger Proposition 65's warning obligations or permissible safe-harbor warning language, Affordable
20 Tools may at its discretion comply with the provisions of this Consent Judgment or the aforementioned
21 changes in law or regulation.

22 **2.4 Product Warnings**

23 Affordable Tools shall affix a warning to the Product label or otherwise directly on each Product
24 provided for sale to consumers located in California and to customers with retail outlets in California
25 or nationwide distribution. For the purpose of this Consent Judgment, "**Product label**" means a display
26 of written, printed or graphic material that is printed on or affixed to each of a Product or its immediate
27 container or wrapper. A warning provided pursuant to Section 2.3(a)-(l) must print the word
28 "**WARNING:**" in all capital letters and in bold font. The warning symbol to the left of the word

1 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline,
2 except that if the labeling does not use the color yellow, then the symbol may be in black and white.
3 The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest
4 type size used for other Consumer Information on the Products.

5 **2.5 Internet Warnings**

6 If, after the Effective Date, Affordable Tools sells Products via the internet directly, or indirectly
7 through customers with nationwide distribution or e-commerce websites, to customers located in
8 California, Affordable Tools shall provide warnings for each Product both on the Product label in
9 accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using
10 the word “**WARNING**” on the product display page, or by otherwise prominently displaying the
11 warning to the purchaser prior to completing the purchase and without requiring the purchaser to search
12 for the warning in the general content of the website.

13 **2.6 Customer Notification for Products Sold**

14 No later than sixty (60) days following the Effective Date, Affordable Tools shall send a letter,
15 electronic or otherwise (“**Notification Letter**”) to any retailer or distributor Affordable Tools
16 reasonably understands or believes has any inventory of Products, which Affordable Tools supplied
17 between February 3, 2018 and February 3, 2021, for sale to consumers in California. The Notification
18 Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of
19 California to cause birth defects or other reproductive harm. The Notification letter shall inform the
20 recipient (1) all Products must have a label attached to the packaging of each Product expressly referring
21 to the Product, which contains one of the warning statements in Section 2.3 (a)-(l) before it is sold in
22 the California market or to a customer in California, and (2) each warning must be prominently placed
23 with such conspicuousness as compared with other words, statements, designs, or devices as to render
24 it likely to be read and understood by an ordinary individual under customary conditions before
25 purchase or use and shall be provided in a manner such that it is clearly associated with the specific
26 Product to which the warning applies.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), Affordable Tools agrees to pay a civil penalty
4 of \$2,000 within ten (10) business days of the Effective Date. Affordable Tools' civil penalty payment
5 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
6 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
7 ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Affordable Tools shall
8 issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Keep
9 America Safe & Beautiful" in the amount of \$500. KASB's counsel shall deliver to OEHHA and
10 KASB their respective portions of the penalty payment.

11 **3.2 Reimbursement of Attorneys' Fees and Costs**

12 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
13 reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties
14 finalized the other material settlement terms, they negotiated and reached an accord on the amount of
15 reimbursement to be paid to KASB's counsel, under general contract principles and the private
16 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
17 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
18 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs
19 on appeal, if any. Within ten (10) business days of the Effective Date, Affordable Tools shall issue a
20 check in the amount of \$24,500 payable to "Seven Hills LLP" for all fees and other costs incurred
21 investigating, bringing this matter to Affordable Tools' attention, litigating, negotiating a settlement
22 in the public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting
23 to the California Attorney General.

24 **3.3 Payments**

25 All payments payable and due under this Consent Judgment shall be delivered to KASB's
26 counsel at the following address:

27 Seven Hills LLP
28 Attn: Laralei Paras
4 Embarcadero Center, Suite 1400

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2 **4. CLAIMS COVERED AND RELEASED**

3 **4.1 KASB's Release of Proposition 65 Claims**

4 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
5 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB,
6 acting on its own behalf, in the public interest, and on behalf of its past and current officers, agents,
7 shareholders, employees, predecessors, representatives, attorneys, successors and assignees
8 ("Releasers") releases Affordable Tools, and its respective officers, directors, shareholders,
9 employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees,
10 customers (not including private label customers of Affordable Tools), distributors, wholesalers,
11 retailers, and all other downstream entities in the distribution chain of any of the Products, and the
12 predecessors, successors, and assigns of any of them (collectively, "Released Parties") based on the
13 failure to provide a clear and reasonable warning about alleged exposures to DEHP contained in the
14 Products that were manufactured, processed, distributed, sold and/or offered for sale in California
15 before the Effective Date, as set forth in the Notice and Complaint. The Parties further agree that
16 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65
17 with respect to alleged exposures to DEHP in the Products.

18 **4.2 Affordable Tools' Release of KASB**

19 Affordable Tools, on behalf of itself, its past and current officers, agents, shareholders,
20 employees, predecessors, representatives, attorneys, successors, and assignees, hereby waives any and
21 all claims against KASB and its attorneys and other representatives, for any and all actions taken or
22 statements made (or those that could have been taken or made) by KASB and its attorneys and other
23 representatives, whether in the course of investigating claims or otherwise seeking to enforce
24 Proposition 65 against him in this matter with respect to the Products.

25 The Parties further understand and agree Section 4 releases shall not extend upstream to any
26 entities who sold, supplied, or manufactured the Products, or any component parts thereof, to
27 Affordable Tools. Nothing in these Section 4 releases shall affect KASB's right to commence or
28 prosecute an action under Proposition 65 against a Releasee that does not involve Affordable Tools'

1 Products.

2 **4.3 Mutual Waiver of California Civil Code § 1542**

3 KASB, on behalf of itself only and *not* in the public interest, on the one hand, and Affordable
4 Tools, on the other hand, each acknowledge that the claims in this Consent Judgment include all known
5 and unknown claims pertaining to DEHP contained in the Products that were sold in California before
6 the Effective Date, except as provided in Section 4.2 hereinabove, and each waive the provisions of
7 California Civil Code § 1542 as to any unknown claims pertaining to DEHP contained in the Products
8 that were sold in California that may have existed prior to and including the Effective Date, except as
9 provided in Section 4.2. California Civil Code § 1542 reads as follows:

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

13 The Parties acknowledge and understand the significance and consequences of this specific waiver
14 of California Civil Code § 1542.

15 **5. COURT APPROVAL**

16 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
17 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their best
18 efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
19 Consent Judgment, and to judicial approval of their settlement in a timely manner. For purposes of this
20 section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to
21 any third-party objection, and appearing at the hearing before the Court if so requested.

22 **6. SEVERABILITY**

23 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
24 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
25 remaining provisions shall not be adversely affected.

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise

1 rendered inapplicable by reason of law generally, or as to the Products or DEHP, then Affordable
2 Tools may provide KASB with written notice of any asserted change in the law, and shall have no
3 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
4 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
5 Affordable Tools from its obligation to comply with any pertinent state or federal law or regulation.

6 **8. NOTICE**

7 Unless specified herein, all correspondence and notice required by this Consent Judgment shall
8 be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a
9 recognized overnight courier to any Party by the other at the following addresses:

10 For Affordable Tools:

11 Bao M. Vu, Partner
12 STOEL RIVES LLP
3 Embarcadero Center, Suite 1120
San Francisco, CA 94111

For KASB:

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

15 **9. COUNTERPARTS AND PDF SIGNATURES**

16 This Consent Judgment may be executed in counterparts and by portable document format
17 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall
18 constitute one and the same document.

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

20 KASB and its counsel agree to comply with the reporting form requirements referenced in
21 California Health and Safety Code § 25249.7(f).

22 **11. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
24 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
25 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
26 are no warranties, representations, or other agreements between the Parties except as expressly set
27 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
28 referred to in this Consent Judgment have been made by any Party hereto. No other agreements not

1 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
2 of the Parties hereto.

3 **12. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
5 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
6 any party and the entry of a modified Consent Judgment by the Court thereon.

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
9 Parties and have read, understood, and agreed to all the terms and conditions of this Consent Judgment.

10 **AGREED TO:**

AGREED TO:

11 Date: Jun 29, 2022

Date: June 28, 2022

12 By: 
13 _____

By: 
14 _____

15 Ngoc-Bich Hoang Vo, CEO
16 Keep America Safe and Beautiful

17 Craig R. Fall, CEO
18 Affordable Tools, LLC