

FILED

Superior Court of California
County of San Francisco

JAN 08 2024

CLERK OF THE COURT

BY: Rosalie H. Hempel
Deputy Clerk

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Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

AMERICAN VALVE, INC.; and DOES 1-
30, inclusive,

Defendants.

Case No. CGC-23-603832

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: January 8, 2024

Time: 9:30 a.m.

Dept.: 302

Judge: Hon. Richard B. Ulmer, Jr.

Case Filed: January 5, 2023

Trial Date: Not set

1 In the captioned matter, plaintiff Keep America Safe and Beautiful, and defendant
2 American Valve, Inc., having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an Order approving the parties' Proposition 65 settlement and
5 Consent Judgment,

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

11
12 **IT IS SO ORDERED.**

13
14 Dated: 1/8/24

RL
SUPERIOR COURT JUDGE
RICHARD B. ULMER

EXHIBIT A

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Attorneys for Defendant
AMERICAN VALVE, INC.

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

AMERICAN VALVE, INC.; and DOES 1-
30, inclusive,

Defendants.

Case No. CGC-23-603832

[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
3 Beautiful (“KASB”) and defendant American Valve, Inc. (“American Valve”), with KASB and
4 American Valve each individually referred to as a “Party” and collectively, as the “Parties,” to resolve
5 the allegations in the December 3, 2021 60-Day Notice of Violation and the Complaint filed in this
6 action, in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health &
7 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

8 **1.1 The Parties**

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

14 **1.2 Consumer Product Description**

15 KASB alleges that American Valve manufactures, imports, sells, or distributes for sale in
16 California valves with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“DEHP”), including
17 but not limited to, the *Stainless Steel Quarter Turn Hose Bibb, 3/20/21, Model No. M71QTSS ¾*,
18 without providing the health hazard warning that KASB alleges is required by California Health &
19 Safety Code § 25249.5 *et seq.* (“Proposition 65”). Valves with vinyl/PVC grips are referred to
20 hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known to the
21 State of California to cause birth defects or other reproductive harm.

22 **1.3 Notice of Violation**

23 Plaintiff maintains that on December 3, 2021, KASB served American Valve, the California
24 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation
25 (“Notice”), alleging American Valve violated Proposition 65 by failing to warn its customers and
26 consumers in California that the Products can expose users to DEHP. No public enforcer has
27 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.
28

1 **1.4 Complaint**

2 On January 5, 2023, KASB commenced the instant action ("**Complaint**"), naming American
3 Valve as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.5 No Admission**

5 American Valve denies the factual and legal allegations contained in the Notice and
6 Complaint and maintains that all products it sold or distributed for sale in California, including the
7 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
8 be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
9 admission by American Valve of any fact, finding, conclusion of law, issue of law, or violation of
10 law. This section shall not, however, diminish or otherwise affect American Valve's obligations,
11 responsibilities, and duties under this Consent Judgment.

12 **1.6 Jurisdiction**

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

18 **1.7 Effective Date**

19 The term "Effective Date" means the date on which the Court approves this Consent
20 Judgment and enters Judgment pursuant to its terms.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 **2.1 Commitment to Reformulate**

23 Commencing on the Effective Date and continuing thereafter, all Products American Valve
24 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
25 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
26 for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“DEHP”), di-n-butyl phthalate (“DBP”), diisononyl phthalate (“DINP”), butyl benzyl phthalate (“BBP”), di-isodecyl phthalate (“DIDP”) and di-n-hexyl phthalate (“DnHP”), contain any or all such chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or accredited by the International Organization for Standardization (“ISO”), the State of California, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation (“ILAC”). For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance (“**Reformulation Standard**”).

2.3 Certification of Compliance with Reformulation Standard

On or before the thirtieth (30th) day after the Effective Date, an officer of American Valve shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by American Valve for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, and (b) customers with locations in California, nationwide distribution and e-commerce websites, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, American Valve shall provide a recent test result performed after the date of the Notice, showing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated Products. Failure to comply with this section shall render this agreement null and void.

2.4 Customer Notification

No later than the Effective Date, American Valve shall send a letter, electronic or otherwise (“**Notification Letter**”) to each customer that is a retailer or distributor with any inventory of Products American Valve supplied between January 5, 2022 and the Effective Date for sale to consumers in California that have not already been reformulated. The Notification Letter shall advise the recipient that the Products may contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall inform the recipient all Products must either be sold in or shipped to California with (a) an On-Product Warning and (b) an Internet Warning which states:

⚠WARNING: This product can expose you to di(2-ethylhexyl) phthalate (DEHP), 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.

2.4.1 On Product Warning. The Notification Letter shall advise that the On Product Warning must be attached to a label on the packaging of each Product expressly referring to the Product before it is sold in the California market or shipped to a customer in California and shall supply the warning requirements, pursuant to this Section 2.4.1 as follows. The warning must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing warning statement.

2.4.2 Internet Warning. The Notification Letter shall advise Products sold through e-commerce platforms must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, pursuant to this Section 2.4.2 as follows: The Internet Warning must be prominently displayed during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the

1 same web page as the virtual cart displaying the Products; (c) on the same page as the price for the
2 Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The
3 warning shall appear in any of the above instances adjacent to or immediately following the display,
4 description or price of the Products for which it is given in the same type size or larger than other
5 consumer information provided for the Products.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty**

8 Pursuant to Health and Safety Code § 25249.7(b), American Valve agrees to pay a civil
9 penalty of \$6,500 within five (5) days of the Effective Date. American Valve's civil penalty payment
10 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
11 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
12 Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. American
13 Valve shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of
14 \$4,875.00; and (b) "Seven Hills in Trust for Keep America Safe and Beautiful" in the amount of
15 \$1,625.00. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the
16 penalty payment.

17 **3.2 Reimbursement of Attorneys' Fees and Costs**

18 The Parties negotiated and reached an accord on the amount of reimbursement to be paid to
19 KASB's counsel, under general contract principles and the private attorney general doctrine,
20 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
21 execution and reporting of this Consent Judgment to the Office of the California Attorney General
22 and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any. Within
23 five (5) days of the Effective Date, American Valve shall issue a check in the amount of \$28,500
24 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing this matter
25 to American Valve's attention, litigating, negotiating a settlement in the public interest, obtaining the
26 Court's approval of its terms pursuant to Section 5, and reporting to the California Attorney General.

1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be delivered to KASB's
3 counsel at the following address: Seven Hills LLP
4 Attn: Laralei Paras
5 4 Embarcadero Center, Suite 1400
6 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 KASB's Release of Proposition 65 Claims**

9 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
10 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
11 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
12 representatives, attorneys, successors and assignees ("**Releasors**") releases American Valve, its past
13 and present directors, officers, employees, attorneys, and each entity to whom American Valve
14 directly or indirectly distributes or sells the Products including, but not limited to, its downstream
15 distributors, wholesalers, marketplace hosts, customers, retailers, including, without limitation,
16 Home Depot, franchisees, cooperative members, licensors and licensees ("**Releasees**") based on the
17 failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to
18 DEHP contained in the Products that were manufactured, processed, distributed, sold and/or offered
19 for sale in California before the Effective Date, as set forth in the Notice and Complaint. The Parties
20 further agree that compliance with Section 2 of this Consent Judgment shall be deemed compliance
21 with Proposition 65 with respect to alleged exposures to DEHP in the Products.

22 The Parties understand and agree this Section 4.1 release shall not extend to Releasees who
23 have been instructed by American Valve, pursuant to Section 2.4, to provide a warning on Products
24 that are not Reformulated Products and have failed to do so.

25 **4.2 KASB's Individual Release of Claims**

26 KASB, in its individual capacity only and not in its representative capacity, also hereby
27 provides a release to American Valve and the Releasees which shall be effective as a full and final
28 accord and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses,
attorneys' fees, damages, losses, claims, liabilities and demands of KASB of any nature, character, or

1 kind , whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to DEHP, DINP, DBP, BBP, DIDP, and DnHP in Products manufactured, imported, sold
3 or distributed for sale, in or into the State of California, by American Valve prior to the Effective
4 Date, as alleged in the Notice and Complaint.

5 **4.3 American Valve's Release of KASB**

6 American Valve, on behalf of itself, its past and current agents, representatives, attorneys,
7 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other
8 representatives, for any and all actions taken or statements made (or those that could have been taken
9 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
10 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
11 Products.

12 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of California
26 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
27 rendered inapplicable by reason of law generally, or as to the Products, then American Valve may
28 provide KASB with written notice of any asserted change in the law, and shall have no further

injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve American Valve from its obligation to comply with any pertinent state or federal law or regulation.

8. NOTICE

Unless specified herein, all correspondence and notice required by this Consent Judgment shall be in writing and sent by electronic mail:

For American Valve:

Ruben Castellón
RAF Law Group

rcastellon@raflawgroup.com

For KASB:

Laralei Paras
Seven Hills LLP

laralei@sevenhillsllp.com

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

9. COUNTERPARTS AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. ENTIRE AGREEMENT

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

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

10 Date: 11/15/2023

11 Date: 11/15/2023

12 By: 
13 My Nguyen, CFO
14 Keep America Safe and Beautiful

12 By: 
13 Seth Guterman, President
14 American Valve, Inc.