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Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

FILED
Superior Court of California
County of San Francisco

AUG 21 2023

CLERK OF THE COURT
BY: 
Deputy Clerk

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

KEEP AMERICA SAFE AND BEAUTIFUL,
Plaintiff,
v.
QUILT IN A DAY, INC.; and DOES 1-30,
inclusive,
Defendants.

Case No. CGC-23-604422

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT

Date: August 21, 2023
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Richard B. Ulmer, Jr.

Complaint Filed: February 2, 2023
Trial Date: None set.

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In the above-entitled action, Plaintiff Keep America Safe and Beautiful and Defendant Quilt in a Day, Inc., 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: 8/21/23

Cal
JUDGE OF THE SUPERIOR COURT

RICHARD B. ULMER

EXHIBIT A

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QUILT IN A DAY, INC.
12
13

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO
16 UNLIMITED CIVIL JURISDICTION
17

18 KEEP AMERICA SAFE AND BEAUTIFUL,
19 Plaintiff,
20 v.
21 QUILT IN A DAY, INC.; and DOES 1-30,
inclusive,
22 Defendants.
23

Case No. CGC-23-604422
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful
3 (“KASB”) and defendant Quilt in a Day, Inc. (“Quilt in a Day”), with KASB and Quilt in a Day each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 July 8, 2022, 60-Day Notice of Violation and November 4, 2022, Supplemental 60-Day Notice of
6 Violation 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. KASB alleges that Quilt in a Day is a person in the course of
13 doing business for purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that Quilt in a Day manufactures, imports, sells, and distributes for sale in
16 California vinyl/PVC bags containing di(2ethylhexyl) phthalate (“DEHP”) including, but not limited
17 to, *Project Bag-Quilt in a Day-Medium, 12.5 x 14.5, Item#: 3060NO*, and adhesive craft tape
18 containing diisononyl phthalate (“DINP”) including but not limited to, *Thread Wrap & Ruler Stick by*
19 *Quilt in a Day, Item# 2900, Barcode: 735272029007*, without providing the health hazard warnings
20 that KASB alleges are required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition
21 65”). Vinyl/PVC bags and adhesive craft tape are referred to collectively hereinafter as the
22 “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
23 California to cause birth defects and other reproductive harm. DINP is listed pursuant to Proposition
24 65 as a chemical known to the State of California to cause cancer.

25 **1.3 Notices of Violation**

26 On July 8, 2022, KASB served Quilt in a Day, the California Attorney General, and the
27 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Quilt
28 in a Day violated Proposition 65 by failing to warn its customers and consumers in California that its

1 vinyl/PVC bags can expose users to DEHP. On November 4, 2022, KASB served the same parties
2 and entities with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”), alleging
3 Quilt in a Day violated Proposition 65 by failing to warn its customers and consumers in California
4 that its adhesive craft tape can expose users to DINP. The Notice and Supplemental Notice are
5 referred to collectively hereinafter as the “**Notices.**” No public enforcer has commenced and is
6 diligently prosecuting an action to enforce the allegations in the Notices.

7 **1.4 Complaint**

8 On February 2, 2023, KASB commenced the instant action (“**Complaint**”), naming Quilt in a
9 Day as a defendant for the alleged violations of Proposition 65 that are the subject of the Notices.

10 **1.5 No Admission**

11 Quilt in a Day denies the material, factual and legal allegations contained in the Notices and
12 Complaint and maintains that all products it sold or distributed for sale in California, including the
13 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
14 be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
15 admission by Quilt in a Day of any fact, finding, conclusion of law, issue of law, or violation of law.
16 This section shall not, however, diminish or otherwise affect Quilt in a Day’s obligations,
17 responsibilities, and duties under this Consent Judgment.

18 **1.6 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Quilt in a Day as to the allegations contained in the Complaint; that venue is proper
21 in San Francisco County; and that the Court has jurisdiction to enter and enforce the provisions of
22 this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.7 Execution Date**

24 The term “Execution Date” means the date all parties have signed this Consent Judgment.

25 **1.8 Effective Date**

26 The term “Effective Date” means the date on which the Court approves this Consent
27 Judgment and enters Judgment pursuant to its terms.
28

1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing on the Effective Date and continuing thereafter, all Products Quilt in a Day
4 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
5 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
6 for Reformulated Products, as defined by Section 2.2, or be accompanied by clear and reasonable
7 warnings pursuant to Section 2.3.

8 **2.2 Reformulation Standard**

9 For purposes of this Consent Judgment, "**Reformulated Products**" are defined as Products
10 which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), di-n-butyl phthalate ("DBP"), diisononyl
11 phthalate ("DINP"), butyl benzyl phthalate ("BBP"), di-isodecyl phthalate ("DIDP") and di-n-hexyl
12 phthalate ("DnHP"), contain any or all such chemicals each in a maximum concentration of less than
13 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or accredited by the
14 State of California, the United States Food and Drug Administration/Environmental Protection
15 Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation
16 body of the International Laboratory Accreditation Cooperation ("ILAC").

17 For purposes of compliance with this reformulation standard, testing samples shall be
18 prepared and extracted using Consumer Product Safety Commission ("CPSC") methodology CPSC
19 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or
20 other methodologies utilized by federal or state government agencies to determine phthalate content
21 in a solid substance. ("**Reformulation Standard**".)

22 **2.3 Clear and Reasonable Warnings**

23 Quilt in a Day shall provide clear and reasonable warnings for all Products, that are not
24 Reformulated Products, provided for sale to customers in California in accordance with this Section
25 pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be
26 prominently placed with such conspicuousness as compared with other words, statements, or designs
27 as to render it likely to be read and understood by an ordinary individual under customary conditions
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1 before purchase or use and shall be provided in a manner such that it is clearly associated with the
2 specific Product to which the warning applies.

3 **(a) Warnings**

4 The Warning shall consist of one of the following statements:

5 1. For Products containing DEHP:

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

9 2. For Products containing DINP:

10 **⚠WARNING:** This product can expose you to diisononyl phthalate (DINP),
11 which is known to the State of California to cause cancer. For
12 more information go to www.P65Warnings.ca.gov.

13 3. For Products containing any other phthalate chemical(s):

14 **⚠WARNING:** This product can expose you to chemicals including
15 [name of chemical or chemicals], which [is/are] are
16 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.

17 **(b) Short-Form Warnings.**

18 Quilt in a Day may, but is not required to, use one of the following short-form warnings (“**Short-**
19 **Form**”), in lieu of the warnings set forth in subsection 2.3(a) subject to the additional requirements in
20 Sections 2.3 through 2.5 and modified to reflect the correct chemical endpoint, as follows:

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

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

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

24 **(c) Foreign Language Requirement**

25 Where a consumer product sign, label or shelf tag used to provide a warning includes
26 consumer information, as that term is defined in Title 27 California Code of Regulations § 25600.1(c)
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1 (“Consumer Information”), in languages other than English, the warning must also be provided in
2 those languages in addition to English.

3 **2.4 Product Warnings**

4 Quilt in a Day shall affix a warning to the Product label or otherwise directly on each Product
5 provided for sale to consumers located in California and to customers with retail outlets in California
6 or nationwide distribution. For the purpose of this Consent Judgment, “Product label” means a
7 display of written, printed or graphic material that is printed on or affixed to each of a Product or its
8 immediate container or wrapper. A warning provided pursuant to Section 2.3(a) or Section 2.3(b)
9 must print the word “WARNING:” in all capital letters and in bold font. The warning symbol to the
10 left of the word “WARNING:” must be a black exclamation point in a yellow equilateral triangle
11 with a black outline, except that if the labeling does not use the color yellow, then the symbol may be
12 in black and white. The entire warning shall appear in a type size of at least 6-point type and no
13 smaller than the largest type size used for other Consumer Information on the Products.

14 **2.5 Internet Warnings**

15 If, after the Effective Date, Quilt in a Day sells Products, via the internet directly, or indirectly
16 through customers with nationwide distribution or e-commerce websites, to customers located in
17 California, Quilt in a Day shall provide warnings for each Product both on the Product label in
18 accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using
19 the word “WARNING” on the product display page, or by otherwise prominently displaying the
20 warning to the purchaser prior to completing the purchase and without requiring the purchaser to
21 search for the warning in the general content of the website. If Quilt in a Day sells Products directly
22 to customers with e-commerce websites, Quilt in a Day shall inform those customers in writing of
23 their obligation to provide online warnings consistent with Title 27 California Code of Regulations
24 § 25602(b) as a condition of sale of the Products.

25 **3. MONETARY SETTLEMENT TERMS**

26 **3.1 Civil Penalty**

27 Pursuant to Health and Safety Code § 25249.7(b), Quilt in a Day agrees to pay a civil penalty
28 of \$4,000 within ten (10) business days of the Effective Date. Quilt in a Day’s civil penalty payment

1 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
2 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
3 Assessment (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Quilt in a
4 Day shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$3,000;
5 and (b) “Seven Hills in Trust for KASB” in the amount of \$1,000. KASB’s counsel shall deliver to
6 OEHHA and KASB their respective portions of the penalty payment.

7 **3.2 Reimbursement of Attorneys’ Fees and Costs**

8 KASB and its counsel offered to resolve the allegations in the Notices and Complaint without
9 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the
10 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
11 amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the
12 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
13 work performed through the mutual execution and reporting of this Consent Judgment to the Office
14 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees
15 and costs on appeal, if any. Within ten (10) business days of the Effective Date, Quilt in a Day shall
16 issue a check in the amount of \$25,750 payable to “Seven Hills LLP” for all fees and other costs
17 incurred investigating, bringing this matter to Quilt in a Day’s attention, litigating, negotiating a
18 settlement in the public interest, obtaining the Court’s approval of its terms pursuant to Section 5,
19 and reporting to the California Attorney General.

20 **3.3 Payments**

21 All payments payable and due under this Consent Judgment shall be delivered to KASB’s
22 counsel at the following address:

23 Seven Hills LLP
24 Attn: Laralei Paras
25 4 Embarcadero Center, Suite 1400
26 San Francisco, CA 94111
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1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 KASB's Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
4 have been asserted by KASB arising out of the allegations in the Notices and in the Complaint.
5 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
6 representatives, attorneys, successors and assignees ("Releasors") releases Quilt in a Day, its past
7 and present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
8 employees, attorneys, and each entity to whom Quilt in a Day directly or indirectly distributes or
9 sells the Products including, but not limited to, its downstream distributors, wholesalers, marketplace
10 hosts, customers, retailers, franchisees, cooperative members, and licensees ("Releasees") based on
11 the failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures
12 to DEHP and DINP contained in the Products that were manufactured, processed, distributed, sold
13 and/or offered for sale in California before the Effective Date, as set forth in the Notices and
14 Complaint. The Parties further agree that compliance with Section 2 of this Consent Judgment shall
15 be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP and DINP in
16 the Products.

17 The Parties understand and agree this Section 4.1 release shall not extend (a) to upstream
18 entities that sold, supplied, or manufactured the Products or any component parts thereof, or any
19 distributors or suppliers who sold the Products or any component parts thereof to Quilt in a Day nor
20 (b) to Releasees who have been instructed by Quilt in a Day, pursuant to Section 2.5, to provide a
21 warning on Products that are not Reformulated Products and have failed to do so.

22 **4.2 KASB's Individual Release of Claims**

23 In further consideration of the promises and agreements herein contained, KASB, as an
24 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,
25 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to
26 institute or participate in, directly or indirectly, any form of legal action and releases all claims that
27 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,
28 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including,

1 but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65
2 with respect to DEHP and DINP in the Products manufactured, distributed, sold and/or offered for
3 sale by Quilt in a Day and sold in or into California before the Effective Date, against Quilt in a Day
4 and Releasees.

5 **4.3 Quilt in a Day's Release of KASB**

6 Quilt in a Day, 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 The Parties further understand and agree Section 4 releases shall not extend upstream to any
13 entities that sold, supplied or manufactured the Products or any component parts thereof, to Quilt in a
14 Day. Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute an action
15 under Proposition 65 against a Releasee that does not involve Quilt in a Day's Products.

16 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

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1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California
3 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
4 rendered inapplicable by reason of law generally, or as to the Products, then Quilt in a Day may
5 provide KASB with written notice of any asserted change in the law, and shall have no further
6 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Quilt in a
8 Day from its obligation to comply with any pertinent state or federal law or regulation.

9 **8. NOTICE**

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

13 For Quilt in a Day:

14 Orion Burns, General Manager
15 Quilt in a Day, Inc.
16 1955 Diamond Street
17 San Marcos, CA 92078

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

18 With a copy to:

19 Michael Gleason, Esq.
20 Hahn Loeser & Parks LLP
21 One America Plaza
22 600 West Broadway, Suite 1500
23 San Diego, CA 92101

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

26 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. ENTIRE AGREEMENT**

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

13 **12. MODIFICATION**

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

17 **13. AUTHORIZATION**

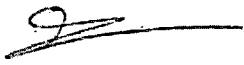
18 The undersigned are authorized to execute this Consent Judgment on behalf of their
19 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
20 Consent Judgment.

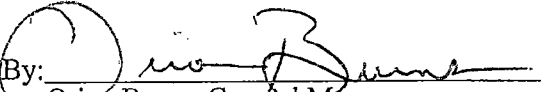
21 **AGREED TO:**

AGREED TO:

22 Date: 06/29/2023

22 Date: 6-26-23

23
24 By: 

23
24 By: 

25 My Nguyen, COO
26 Keep America Safe and Beautiful

25 Orion Burns, General Manager
26 Quilt in a Day, Inc.