

1 Kimberly Gates Johnson, State Bar No. 282369
2 Seven Hills LLP
3 4 Embarcadero Center, Suite 1400
4 San Francisco, CA 94111
5 Telephone: (415) 926-7247
6 laralei@sevenhillsllp.com

7 Attorneys for Plaintiff
8 KEEP AMERICA SAFE AND BEAUTIFUL

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

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 WOOD EXPRESSIONS, INC.; and DOES 1-30,
16 inclusive,

17 Defendants.

Case No. CGC-21-590521

[PROPOSED] CONSENT JUDGMENT

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

1. **INTRODUCTION**

This Consent Judgment is entered into by and between plaintiff Keep America Safe And Beautiful (“**KASB**”) and defendant Wood Expressions, Inc. (“**Wood Expressions**”), with KASB and Wood Expressions each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the October 21, 2020 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

1.1 **The Parties**

KASB is a California-based non-profit organization who seeks to protect the environment through the elimination or reduction of toxic chemicals utilized in the manufacture of consumer products and to increase public awareness of those chemicals by promoting environmentally sound practices and corporate responsibility. Wood Expressions employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, pursuant to Health & Safety Code § 25249.11(b).

1.2 **Consumer Product Allegations**

KASB alleges Wood Expressions manufactures, imports, sells or distributes for sale vinyl game boards containing di(2-ethylhexyl)phthalate (“**DEHP**”) including, but not limited to, the *WE Games Best Value Tournament Chess, P/N 101024, UPC #6 58956 01024 8*, in California without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”). All such vinyl games boards are collectively referred to herein as the “**Products**,” On October 24, 2003, DEHP was listed as a chemical known to the State of California to cause birth defects and reproductive toxicity.

1.3 **Notice of Violation**

On October 21, 2020, KASB served Wood Expressions, Amazon.com, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Wood Expressions violated Proposition 65 when it failed to warn its customers and consumers in California that its Products can expose users to DEHP. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 Complaint

On March 19, 2021, KASB commenced the instant action (“Complaint”), naming Wood Expressions as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.5 No Admission

Wood Expressions denies the material, factual, and legal allegations contained in the Notice and Complaint, and maintains all of the products it sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an admission by Wood Expressions of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Wood Expressions’ obligations, responsibilities, and duties under this Consent Judgment.

1.6 Jurisdiction

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

1.7 Execution Date

The term “Execution Date” shall mean the date on which all parties have signed this Consent Judgment.

1.8 Effective Date

The term “Effective Date” shall mean the date on which the Court approves and enters this Consent Judgment.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date and continuing thereafter, Wood Expressions shall only

manufacture or distribute for sale to consumers in California or to customers with either retail outlets in California or e-commerce websites shipping to consumers in California, Products that are either: (1) Reformulated Products, as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning.

2.2 Reformulation Standard Defined

For purposes of this Consent Judgment, “Reformulated Products” are defined as Products containing DEHP, butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”), di-n-butyl phthalate (“**DBP**”), di-n-hexyl phthalate (“**DnHP**”), and/or diisononyl phthalate (“**DINP**”) each in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Reformulation Standard**”). 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 (“**EPA**”) methodologies 8270D, or other scientifically valid methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Execution Date, for all Products that do not meet the Reformulation Standard or are otherwise not reformulated, pursuant to Section 2.2, Wood Expressions shall provide clear and reasonable warnings in accordance with this Section, in accordance with Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use, in a manner such that it is clearly associated with the specific Product to which the warning applies and such that the consumer does not have to search for it. For purposes of this Consent Judgment, either of the following warnings shall be deemed clear and reasonable:

(a) Warning:

⚠WARNING: This product can expose you to

chemicals, including di(2-ethylhexyl)phthalate (DEHP) which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

(b) Alternative Short-Form Warning:

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

The Parties agree, should Wood Expressions determine additional chemical endpoints need to be included in either of the above warnings, Wood Expressions may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

(c) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

2.4 On-Product Warning Requirements

Wood Expressions shall affix one of the warnings provided in Section 2.3 on the Product Label, packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. “**Product Label**” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

A Warning or Alternative Short-Form Warning provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. 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, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

For all Products imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date, Wood Expressions shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “**WARNING**” and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. Warnings provided in conjunction with the sale of Products via the internet may use the Alternative Short-Form Warning, described supra in Section 2.2(b), if the warning appearing on the Product Label also utilizes the Alternative Short Form Warning.

2.6 Compliance with Warning Regulations

Wood Expressions may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Wood Expressions agrees to pay \$2,000 within five (5) days of the Effective Date. Wood Expressions shall allocate this civil penalty payment according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) paid to the California Office of Environmental Health Hazard Assessment (OEHHA), and the

remaining twenty-five percent (25%) retained by KASB by issuing two checks made payable to: (1) “OEHHA” in the amount of \$1,500; and (2) “Keep America Safe and Beautiful” in the amount of \$500. KASB’s counsel shall deliver OEHHA’s and KASB’s respective penalty payments.

3.2 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice and Complaint without reaching terms on the amount of reimbursement of their attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the compensation to be paid to KASB’s counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this Consent Judgment and entry of Judgment pursuant to its terms, but exclusive of fees and costs on appeal, if any. The parties agree Wood Expressions shall pay a total of \$25,000 for all fees and costs incurred investigating, bringing this matter to Wood Expressions’ attention, litigating, negotiating a settlement in the public interest, and obtaining the Court’s approval of its terms pursuant to Section 5.

The Parties agree the sum payment of attorneys fees of \$25,000 shall be broken out into two installment payments, with all payments due at the time of the Effective Date and deposited according to the following schedule. The first attorneys’ fees and costs payment of \$12,500 shall be due and payable within five (5) days of the Effective Date, or the date upon which the Court grants the associated motion to approve, pursuant to Section 1.8, above. The remaining payment of \$12,500 shall be deposited forty-five (45) days after the Effective Date, or on October 15, 2021, whichever is later. Attorneys’ fees and costs payments shall be made in the form of two checks payable to “Seven Hills LLP” and delivered to the address below, in Section 3.3, within 5 days of the Effective Date.

3.3 Payment Address

All payments required by this Consent Judgment shall be delivered to the following address:

Seven Hills LLP
Attn: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Proposition 65 Claims

KASB, acting on its own behalf and in the public interest, and on behalf of its past and current agents, representatives, attorneys, successors and assignees (“**Releasors**”) releases Wood Expressions and its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys and each entity to whom Wood Expressions directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, including, without limitation, Amazon.com, Inc., franchisers, cooperative members, licensors and licensees (“**Releasees**”) for any violations arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured or distributed into the State of California by Wood Expressions prior to the Execution Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Wood Expressions with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured or distributed by Wood Expressions and offered for sale in California after the Execution Date.

4.2 KASB's Individual Release of Claims

KASB, in its individual capacity only and *not* in its representative capacity, also provides a release to Wood Expressions and Releasees which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of KASB of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP, in Products manufactured or distributed into the State of California by Wood Expressions prior to the Execution Date. Nothing in this section shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Wood Expressions' Products.

4.3 Wood Expressions' Release of KASB

Wood Expressions, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against KASB, its attorneys and other representatives, and Releasors, for any and all actions taken or

statements made (or those that could have been taken or made) by KASB and his attorneys and other representatives in the course of investigating the claims alleged in the Notices, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Wood Expressions may 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 Wood Expressions 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: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the following addresses:

For Wood Expressions:

Ron Reyes, President
Wood Expressions, Inc.
444 East Gardena Blvd., Bld. A
Gardena, CA 90248

For KASB:

Kimberly Gates Johnson, Esq.
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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, FACSIMILE 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.

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their

respective Parties and have read, understood, and agreed to all of the terms and conditions of this Consent Judgment.

AGREED TO:


Date: 6/24/2021

By: 

Ngoc-Bich Hoang Vo, CEO
KEEP AMERICA SAFE AND
BEAUTIFUL

AGREED TO:

Date: 6/24/2021

By: 

Ron Reyes, President
WOOD EXPRESSIONS, INC.