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5 KEEP AMERICA SAFE AND BEAUTIFUL

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION

10
11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 RASHMAN CORPORATION.; and DOES 1-30,
inclusive,

15 Defendants.
16

Case No. CGC-21-596440

CONSENT JUDGMENT

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

1 **INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful, a California nonprofit corporation ("**KASB**"), and defendant Rashman Corporation
4 ("**Rashman**"), with KASB and Rashman each individually referred to as a "Party" and, collectively,
5 as the "Parties" to resolve the allegations in the November 18, 2020 60-Day Notice of Violation in
6 compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
7 § 25249.6 *et seq.* ("Proposition 65").

8 **1.1 The Parties**

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

15 **1.2 Consumer Product Allegations**

16 KASB alleges Rashman manufactures, imports, sells or distributes for sale
17 sphygmomanometers with vinyl tubing containing diisononyl phthalate ("**DINP**") without the
18 health hazard warning KASB alleges is required by California Health & Safety Code § 25249.6.
19 On December 20, 2013, the State of California listed DINP as a chemical known to cause cancer.
20 The consumer products covered by this Agreement are aneroid sphygmomanometers with vinyl
21 tubing, such as the *Prestige Medical Basic Aneroid Sphygmomanometer, Model 70-BLK, UPC #7*
22 *86511 00070 7* that were manufactured, imported, sold or distributed for sale by Rashman prior to
23 the Effective Date, referred to hereinafter as the "**Products.**"

24 **1.3 Notice of Violation**

25 On November 18, 2020, KASB served Rashman, the California Attorney General and the
26 requisite public enforcement agencies with a 60-Day Notice of Violation ("**Notice**"), alleging
27 Rashman violated Proposition 65 when it failed to warn its customers and consumers in California the
28

1 Products can expose users to DINP. To the best of the Parties' knowledge, no public enforcer has
2 commenced or is prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.4 Complaint**

4 On November 18, 2021, KASB commenced the instant action ("Complaint"), naming
5 Rashman as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.5 No Admission**

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

14 **1.6 Jurisdiction**

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

19 **1.7 Execution Date**

20 The term "Execution Date" is defined as the date on which all parties to this Consent Judgment
21 execute the Agreement.

22 **1.8 Effective Date**

23 The term "Effective Date" shall mean the date on which the Court approves and enters this
24 Consent Judgment.

25 **INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date and continuing thereafter, Rashman shall only manufacture
28 or distribute for sale to consumers in California or to customers with either retail outlets in California

1 or e-commerce websites likely to ship to consumers in California, Products that are Reformulated
2 Products, as defined by Section 2.2, below, or Products bearing a compliant health hazard warning, in
3 accord with the following Sections 2.3 through 2.7.

4 **2.2 Reformulation Standard & Reformulated Products Defined**

5 For purposes of this Consent Judgment, "**Reformulated Products**" are defined as Products
6 containing butyl benzyl phthalate ("**BBP**"), di-isodecyl phthalate ("**DIDP**"), di-n-butyl phthalate
7 ("**DBP**"), di-n-hexyl phthalate ("**DnHP**"), di(2ethylhexyl phthalate ("**DEHP**"), and/or diisononyl
8 phthalate ("**DINP**") each in a maximum concentration of less than 0.1 percent (1,000 parts per million)
9 when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
10 recognized accrediting organization ("**Reformulation Standard**"). For purposes of compliance with
11 this reformulation standard, testing samples shall be prepared and extracted using Consumer Product
12 Safety Commission ("**CPSC**") methodology CPSC-CH-C1001.09.4 and analyzed using U.S.
13 Environmental Protection Agency ("**EPA**") methodologies 8270D, or other scientifically valid
14 methodologies utilized by federal or state government agencies to determine phthalate content in a
15 solid substance.

16 **2.3 Clear and Reasonable Warnings**

17 Commencing within thirty (30) days of the Effective Date, for Products that are not
18 Reformulated Products pursuant to Section 2.2, Rashman shall provide clear and reasonable warnings
19 in accordance with this Section and pursuant to Title 27 California Code of Regulations § 25600, *et*
20 *seq.* Each warning shall be prominently placed with such conspicuousness as compared with other
21 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary
22 individual under customary conditions before purchase or use and shall be provided in a manner such
23 that it is clearly associated with the specific Product to which the warning applies.

24 (a) **Warning.** The Warning shall consist of the following statement:

25 ⚠ **WARNING:** This product can expose you to DINP, which
26 is known to the State of California to cause cancer. For more
27 information go to www.P65Warnings.ca.gov.

28 (b) **Short-Form Warning.** Rashman may, but is not required to, use the following

1 short-form warning as set forth in this subsection 2.3(b) ("**Short-Form**"), and subject to the additional
2 requirements in Sections 2.5 and 2.6, as follows:

3 ▲ **WARNING:** Cancer - www.P65Warnings.ca.gov.

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

7 **2.4 Product Warnings**

8 Rashman shall affix or cause to be affixed a warning on the Product label or otherwise directly
9 on each of the Product provided for sale to customers with retail outlets in California or sold via mail
10 order catalog and/or the internet to customers located in California. For the purpose of this agreement,
11 "**Product label**" means a display of written, printed or graphic material that is printed on or affixed to
12 a Product or its immediate packaging, container or wrapper. A warning provided pursuant to section
13 2.3(a) or (b) must print the word "**WARNING:**" in all capital letters and in bold font. The warning
14 symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
15 triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol
16 may be in black and white. The entire warning shall appear in a type size of at least 6-point type and
17 no smaller than the largest type size used for other consumer information on the product. The warning
18 shall consist of either the Warning or the Short-Form described in subsection 2.3(a) or (b), respectively.

19 **2.5 Mail Order Catalog Warnings**

20 If, after the Effective Date, Rashman prints new catalogs and sells the Products through such
21 mail order catalogs to customers located in, or with retail outlets located, in California, Rashman shall
22 provide a warning for each of the Products both on the label in accordance with Section 2.4, and in the
23 catalog in a manner that clearly associates the warning with the *specific* item being purchased. Any
24 warning provided in a mail order catalog shall be in the same type size or larger than other consumer
25 information provided for the Products within the catalog and shall be provided on the same page and
26 in the same location as the display and/or description of the Products. The catalog warning may use the
27 Short-Form content described in Section 2.3(b) if the warning provided on the Products label also uses
28 the Short-Form Warning.

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3 **2.6 Internet Warnings**

4 If, after the Effective Date, Rashman sells Products via the Rashman company internet website
5 to customers located in California or sold directly by Rashman to websites such as Amazon.com,
6 Ebay.com or similar that sell in or into California ("non-Rashman Websites") , Rashman shall provide
7 warnings for each Product both on the label of the Product, in accordance with Section 2.4, and by
8 prominently displaying the warning to the customer prior to completing the purchase on the internet
9 website or during the internet purchase of the Products without requiring customers to seek out the
10 warning. The warning or a clearly marked hyperlink to the warning using the word "**WARNING**"
11 given in conjunction with the sale of the Products via the Rashman company internet website shall
12 appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page
13 as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or
14 more web pages displayed to a purchaser during the checkout process. The warning shall appear in
15 any of the above instances adjacent to or immediately following the display, description or price of the
16 Product for which it is given in the same type size or larger than other consumer information provided
17 for the Product. The internet warning may use the Short-Form content described in Section 2.3(b) if
18 the warning provided on the Product label also uses the Short-Form content. With respect to the non-
19 Rashman Websites such as Amazon.com or similar that sell in or into California, Rashman shall require
20 such websites as a condition of sale of Product to provide warnings for each Product both on the label
21 of the Product, in accordance with Section 2.4, and by prominently displaying the warning to the
22 customer prior to completing the internet purchase or during the internet purchase of the Products
23 without requiring customers to seek out the warning.

24 **2.7 Compliance with Warning Regulations**

25 Rashman may, however, elect to comply with the warning requirements of this Section 2 by any
26 other means authorized by Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe
27 harbor guidelines published by the Office of Environmental Health Hazard Assessment and set forth
28 in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et*

1 *seq.*, as may be amended from time to time. The Parties agree compliance with the injunctive terms of
2 this Consent Judgment and with Proposition 65 generally constitutes a significant benefit in the
3 public interest.

4 **MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code § 25249.7(b), Rashman agrees to pay \$2,500 in civil
3. 7 penalties as follows. Rashman shall cause to be made or shall make its payments under this Section
8 within six (6) business days after Written Notice of the occurrence of the Effective Date. The term
9 Written Notice, is defined in the following Section 3.4. Rashman shall allocate this civil penalty
10 payment according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
11 (75%) paid to the California Office of Environmental Health Hazard Assessment (OEHHA) and the
12 remaining twenty-five percent (25%) retained by KASB. Rashman or counsel for Rashman holding
13 client funds in trust shall issue two checks made payable as follows and delivered to the address listed
14 in Section 3.4: (1) "OEHHA" in the amount of \$1,875; and (2) "Keep America Safe and Beautiful"
15 in the amount of \$625. KASB's counsel shall promptly deliver to OEHHA and to KASB their
16 respective checks for their respective portions of the civil penalty payments.

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

18 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
19 reaching terms on the amount of reimbursement of their attorneys' fees and costs. Shortly after the
20 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
21 compensation to be paid to KASB's counsel, under general contract principles and the private attorney
22 general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed
23 through the mutual execution of this Consent Judgment and entry of Judgment pursuant to its terms,
24 but exclusive of fees and costs on appeal, if any. Within six (6) business days after the written
25 notification of the occurrence of the Effective Date, pursuant to Section 3.4, below, Rashman agrees
26 to issue a check in the amount of \$27,565 made payable to "Seven Hills LLP" for as payment in full
27 of all attorney fees and costs incurred investigating, bringing this matter to Rashman's attention,
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1 litigating, negotiating a settlement in the public interest, and obtaining the Court's approval of its terms
2 pursuant to Section 5.

3 **3.3 Payment Address**

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

5 Seven Hills LLP
6 Attn: Kimberly Gates Johnson
7 4 Embarcadero Center, Suite 1400
8 San Francisco, CA 94111

8 **3.4 Additional Payment Requirements; Written Notice**

9 Pursuant to this Section 3, counsel for KASB shall provide signed IRS Form W9s for all payees
10 under this Agreement at the time this Consent Judgment is fully executed by the Parties, or the
11 Execution Date. Payments under this Agreement are contingent on the provision of W9s allowing
12 Rashman to comply with Federal tax reporting requirements. Form W9s shall be provided in an email
13 by counsel for KASB to Rashman's counsel, and counsel for Rashman shall confirm receipt.

14 Additionally, Rashman shall be under no obligation to make any payments, irrespective of the
15 preceding payment schedules set forth, until counsel for Rashman receives "written notice" of the
16 Effective Date. "Written notice" means notice provided by counsel for KASB, including through
17 electronic mail, alerting counsel for Rashman the Court granted the motion filed in support of this
18 Consent Judgment. As used in this Section only, Written Notice does not require notice as that term is
19 defined in Section 8. The date written notice is provided shall cue the obligation to make payments in
20 conformity with the foregoing schedule.

21 **CLAIMS COVERED AND RELEASED**

22 **4.1 KASB's Release of Proposition 65 Claims**

23 KASB, acting on its own behalf and in the public interest, and on behalf of its past and current
24 agents, representatives, attorneys, successors and assignees ("**Releasors**") releases Rashman and its
25 past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
26 employees, and attorneys and each entity to whom Rashman directly or indirectly distributes or sells
27 the Products including, but not limited to, its downstream distributors, wholesalers, customers,
28 retailers, franchisers, cooperative members, licensors and licensees ("**Releasees**") for any violations

1 arising under Proposition 65 for unwarned exposures to DINP from Products manufactured or
2 distributed into the State of California by Rashman prior to the Effective Date, as set forth in the
3 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
4 65 by Rashman with respect to the alleged or actual failure to warn about exposures to DINP from
5 Products manufactured or distributed by Rashman and offered for sale in California after the Effective
6 Date.

7 **4.2 KASB's Individual Release of Claims**

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

16 **4.3 Rashman's Release of KASB**

17 Rashman, on its own behalf and on behalf of its past and current agents, representatives,
18 attorneys, successors and/or assignees, hereby waives and releases any and all claims against KASB,
19 its attorneys and other representatives, and Releasers, for any and all actions taken or statements made
20 (or those that could have been taken or made) by KASB and its attorneys and other representatives in
21 the course of investigating the claims alleged in the Notices, seeking to enforce Proposition 65 against
22 it in this matter, or with respect to the Products.

23 **4.4 Mutual Waiver of California Civil Code Section 1542**

24 The Parties each acknowledge familiarity with Section 1542 of the Civil Code, which
25 provides as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

1 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
3 DEBTOR OR RELEASED PARTY.

4 The Parties, each on its own behalf, and each on behalf of its past and current agents, representatives,
5 attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits
6 which it/they may have under, or which may be conferred upon it/them by the provisions of Civil
7 Code Section 1542 as well as under any other state or federal statute or common law principle of
8 similar effect, to the fullest extent it may lawfully waive such rights or benefits pertaining to the
9 released matters, as specifically defined by Sections 4.2 and 4.3, above. Nothing in this section shall
10 affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that
11 does not involve the Products.

12 **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 this agreement as a judgment and to
16 obtain judicial approval of their settlement in a timely manner. For purposes of this section, "best
17 efforts" shall include, at a minimum, supporting the motion for approval, responding to any third-party
18 objection, and appearing at the hearing before the Court if so requested.

19 **SEVERABILITY**

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

23 **GOVERNING LAW**

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

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Rashman
2 from its obligation to comply with any pertinent state or federal law or regulation.

3 **NOTICE**

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

7 For Rashman:

8 Richard Rashman, CEO
9 Rashman Corporation
10 8600 Wilbur Ave.
11 Northridge, CA 91324

For KASB:

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

12 With a Copy to:

13 Steve L. Feldman, Esq.
14 Lewitt Hackman, Shapiro, Marshall, Harlan
15 16633 Venture Blvd., 11th Floor
16 Encino, CA 91436-1865

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

19 **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

23 **COMPLIANCE WITH REPORTING REQUIREMENTS**

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

26 **ENTIRE AGREEMENT**

27 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
28 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

1 referred to in this Consent Judgment have been made by any Party hereto. No other agreements not
2 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
3 of the Parties hereto.

4 **MODIFICATION**

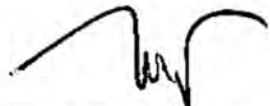
5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **AUTHORIZATION**

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

12
13 **AGREED TO:**

14 Date: 03/30/2022

15
16 
17 By: _____
18 Ngoc-Bich Hoang Vo, CEO
19 Keep America Safe and Beautiful

AGREED TO:

20 Date: MARCH 25, 2022

21 
22 By: _____
23 Richard Rashman, CEO
24 RASHMAN CORPORATION
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