

1 Kimberly Gates Johnson, State Bar No. 282369
Seven Hills LLP
2 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
3 Telephone: (415) 926-7247
kimberly@sevenhillslp.com
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Attorneys for Plaintiff
5 KEEP AMERICA SAFE AND BEAUTIFUL
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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO
9 UNLIMITED CIVIL JURISDICTION
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11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 FORZA BOXING, LLC; FORZA SPORTS; and
DOES 1-30, inclusive,

15 Defendants.
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Case No. CGC-21-592635

[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 Forza Boxing, LLC d/b/a Forza Sports (“**Forza Sports**”), with KASB and Forza Sports each individually referred to as a “Party” and, collectively, as the “Parties,” to resolve the allegations in the December 2, 2020 60-Day Notice of Violation and in the January 29, 2021 Supplemental 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. Forza Sports 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 Forza Sports manufactures, imports, sells or distributes for sale in California: (1) boxing and training gloves containing di(2-ethylhexyl)phthalate (“**DEHP¹**”), including, but not limited to, (a) the *Vinyl Boxing Training Glove, FZ93005-RDBK-120Z, UPC #6 19169 29300 5* and (b) the *Forza Sports Mini Boxing Gloves, FZ67126 RD, UPC #6 19159 36712 6* and (2) vinyl mini boxing glove accessories, including, but not limited to, the *Mini Boxing Glove Keychain, FZ66976BK, UPC #6 19159 36697 6*, without providing the health hazard warning KASB alleges is required by Proposition 65. All such boxing and training gloves, mini boxing gloves, and all such vinyl mini boxing glove accessories are, collectively, referred to hereinafter as the “**Products**.” and a full and complete list of such Products, as used and defined collectively, is attached hereto as **Exhibit A**.

¹ 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 December 2, 2020, KASB served Forza Sports, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Forza Sports violated Proposition 65 when it failed to warn its customers and consumers in California its vinyl boxing gloves can expose users to DEHP. Thereafter, on January 29, 2021, KASB served Forza Sports, the California Attorney General, and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”) (collectively, with Notice, the “**Notices**”), alleging additional violations of Proposition 65 by Forza Sports, based on the failure to warn consumers and customers in California its vinyl mini boxing glove accessories 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 Notices.

1.4 Complaint

On or about June 14, 2021, KASB commenced the instant action (“**Complaint**”), naming Forza Sports as a defendant for the alleged violations of Proposition 65 that are the subject of the Notices.

1.5 No Admission

Forza Sports denies the material, factual, and legal allegations contained in the Notices and Complaint, and maintains all 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 Forza Sports of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Forza Sports’ 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 Forza Sports 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, all Products Forza Sports manufactures, imports, sells, ships or distributes for sale, in or into California, directly or indirectly through one or more third-party retailers or e-commerce marketplaces, shall be either: (1) Reformulated Products, as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, in compliance with Sections 2.3 through 2.6.

2.2 Reformulation Standard and Reformulated Products Defined

For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products which, if they contain 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) in any “**accessible component**” (i.e. any component that may be touched during a reasonably foreseeable use) 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-C1001.09.4 and analyzed using U.S. Environmental Protection Agency (“**EPA**”) methodology 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, Forza Sports shall provide clear and reasonable warnings for all Products provided for sale to consumers in California, in accordance with this Section and 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

Or

⚠WARNING: This product can expose you to 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) Short-Form Warning:

Forza Sports may, but is not required to, use the following short-form warning, as set forth herein (“**Short-Form Warning**”), subject to the additional requirements set forth in Sections 2.4 through 2.6.

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

(c) Foreign Language Requirement:

Where a consumer product sign, label or shelf tag is used to provide a warning and includes information in a language(s) other than English, then the Product warning must also include those

additional language(s).

2.4 On-Product Warnings

Commencing on or before the Execution Date, for all non-reformulated Products, Forza Sports shall affix one of the warnings provided in the foregoing Section 2.3 to the Product Label, packaging or otherwise directly on each Product provided for sale to consumers in California, to customers with retail outlets in California, to e-commerce websites selling in or into California, or to vendors with nationwide distribution. For purposes of this Consent Judgment, “**Product Label**” is defined as a display of written, printed or graphic material printed on or affixed to each 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 Products.

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, if the sign or label for the Products does not use the color yellow, then 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 where it 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 Warnings

If, after the Execution date, Forza Sports sells Products via the internet, through its own website, an affiliated website or a third-party website, to consumers or customers located in California or to customers with nationwide distribution and/or e-commerce websites, then Forza Sports shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying, or requiring affiliated or e-commerce websites to display, 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 Short-Form Warning, described supra in Section 2.3(b), if the warning appearing on the Product Label also utilizes the Short-Form Warning content.

2.6 Compliance with Warning Regulations

Forza Sports may also comply with its duty to warn and 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 and 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.

Should Forza Sports determine additional chemical endpoints need to be included in either of the above warnings, Forza Sports may modify the content of such warnings to address the new chemical, provided the revised warnings also comply with title 27 Cal. Code Regs. § 25600 *et seq.*

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Forza Sports agrees to pay \$1,000 within five (5) days of the Effective Date. Forza Sports 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 \$750; and (2) “Keep America Safe and Beautiful” in the amount of \$250.

3.2 Final Waivable Civil Penalty

Forza Sports shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be waived in its entirety, if, on or before October 1, 2021, an officer of Forza Sports certifies, in a declaration, that, as of the Effective Date and continuing thereafter, any and all Products manufactured or imported by Forza Sports and provided for distribution, through e-commerce websites or affiliated websites, or distributed for sale or sold directly, including through its own website, to consumers or other customers located in California are Reformulated Products in accordance with the Reformulation Standard set forth in Section 2.2. Along with its attested declaration, Forza Sports shall provide a recent test result, or a result performed after the date of the Notices, showing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated.

If Forza Sports does not provide the attested declaration and test results by October 1, 2021, then Forza Sports agreed to remit two checks to the address listed in Section 3.4, below, and payable as follows: “OEHHA” in the amount of \$1,875 and “Keep America Safe and Beautiful” in the amount of \$625, pursuant to Health and Safety Code § 25249.7(b) and allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d).

3.3 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notices 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. Within five (5) days of the Effective Date, Forza Sports shall issue a check in the amount of \$25,000 made payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Forza Sports’ attention, litigating, negotiating a settlement in the public interest, and obtaining the Court’s approval of its terms pursuant to Section 5.

3.4 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 Forza Boxing, LLC d/b/a Forza Sports and its past and present members, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys and each entity to whom Forza Sports 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 Forza Sports prior to the Execution Date, as set forth in the Notice and Supplemental Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Forza Sports with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured or distributed by Forza Sports 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 Forza Boxing, LLC d/b/a Forza Sports 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 Forza Sports 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 Forza Sports' Products.

4.3 Forza Sports' Release of KASB

Forza Boxing, LLC d/b/a Forza Sports, 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 Forza Sports 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 Forza Sports 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 Forza Sports:

Jason Glime, Owner
Forza Boxing, LLC d.b.a. Forza Sports
636 Pen Argyl Street
Pen Argyl, PA 18072

For KASB:

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

With a Copy to:

Christopher P. Coval, Esq.
Fenningham, Depmster, & Coval LLP
Five Neshaminy Interplex, Suite 315
Trevose, PA 19053-6941

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 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: 6/22/21

By: 

Jason Glime, CEO
FORZA BOXING, LLC
D/B/A FORZA SPORTS