

1 Laralei Schmohl Paras, State Bar No. 203319
2 Rebecca M. Jackson, State Bar No. 221583
3 SEVEN HILLS LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 laralei@sevenhillsllp.com
8 rebecca@sevenhillsllp.com

9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 Bao M. Vu, State Bar No. 277970
12 Alyssa Malinoski, State Bar No. 322794
13 STOEL RIVES LLP
14 3 Embarcadero Center, Suite 1120
15 San Francisco, CA 94111
16 Telephone: (415) 617-8900
17 bao.vu@stoel.com
18 alyssa.malinoski@stoel.com

19 Attorneys for Defendant
20 AFFORDABLE TOOLS, LLC

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

24 KEEP AMERICA SAFE AND BEAUTIFUL,

25 Plaintiff,

26 v.

27 AFFORDABLE TOOLS, LLC; and DOES
28 1-30, inclusive,

Defendants.

Case No. CGC-21-595116

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful
3 (“KASB”) and defendant Affordable Tools, LLC (“Affordable Tools”), with KASB and Affordable
4 Tools each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the
5 allegations in the February 3, 2021 60-Day Notice of Violation in compliance with the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

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

13 **1.2 Consumer Product Description**

14 KASB alleges that Affordable Tools manufactures, imports, sells, or distributes for sale in
15 California gloves with vinyl components containing di(2ethylhexyl) phthalate (“DEHP”), including
16 but not limited to, *Dragway Tools Rubber Sandblasting Gloves, No. FBA_LD-2420-GLV, ASIN*
17 *B004UC6O22*, without providing the health hazard warning that KASB alleges is required by
18 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). Gloves with vinyl components
19 are referred to hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical
20 known to the State of California to cause birth defects and other reproductive harm.

21 **1.3 Notice of Violation**

22 On February 3, 2021, KASB served Affordable Tools, Amazon.com, Inc., the California
23 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation
24 (“Notice”), alleging Affordable Tools violated Proposition 65 by failing to warn its customers and
25 consumers in California that the Products can expose users to DEHP. No public enforcer has
26 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On September 8, 2021, KASB commenced the instant action (“**Complaint**”), naming
3 Affordable Tools as a defendant for the alleged violations of Proposition 65 that are the subject of the
4 Notice.

5 **1.5 No Admission**

6 Affordable Tools denies the material, factual and legal allegations contained in the Notice and
7 Complaint and maintains that all products it sold or distributed for sale in California, including the
8 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be
9 construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
10 admission by Affordable Tools of any fact, finding, conclusion of law, issue of law, or violation of
11 law. This section shall not, however, diminish or otherwise affect Affordable Tools’ obligations,
12 responsibilities, and duties under this Consent Judgment. Affordable Tools maintains that it has not
13 knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation
14 of Proposition 65.

15 **1.6 Jurisdiction**

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

20 **1.7 Effective Date**

21 The term “Effective Date” means the date on which the Court approves this Consent Judgment
22 and enters Judgment pursuant to its terms, and KASB has provided notice to Affordable Tools that it
23 has been entered in the Court’s records as a consent judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS AND NOTIFICATION**

25 **2.1 Reformulation Commitment**

26 Commencing on the Effective Date and continuing thereafter, all Products Affordable Tools
27 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one
28 or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for

1 Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable
2 warnings pursuant to Section 2.3.

3 **2.2 Reformulation Standard**

4 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
5 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl
6 phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) and di-n-hexyl
7 phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration of less than
8 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of
9 California, a federal agency, or a nationally recognized accrediting organization. For purposes of
10 compliance with this reformulation standard, testing samples shall be prepared and extracted using
11 Consumer Product Safety Commission (“**CPSC**”) methodology CPSC CH-C1001.09.3 and analyzed
12 using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by
13 federal or state government agencies to determine phthalate content in a solid substance.

14 **2.3 Clear and Reasonable Warnings**

15 Affordable Tools shall provide clear and reasonable warnings for all Products provided for sale
16 to customers in California in accordance with this Section pursuant to Title 27 California Code of
17 Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as
18 compared with other words, statements, or designs as to render it likely to be read and understood by
19 an ordinary individual under customary conditions before purchase or use and shall be provided in a
20 manner such that it is clearly associated with the specific Product to which the warning applies.

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

22 **⚠ WARNING:** This product can expose you to DEHP, which is
23 known to the State of California to cause birth
24 defects or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov.

25 **(b) Short-Form Warning.** As an alternative to the warning set forth in subsection
26 2.3(a) above, Affordable Tools may, but is not required to, use the following short-form warning
27 (“**Short-Form Warning**”), subject to the additional requirements in Sections 2.5 and 2.6, as follows:

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

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

5 (d) If Proposition 65 or its implementing regulations are changed from their terms
6 as they exist on the date the Parties stipulated to this Consent Judgment with respect to levels of DEHP
7 that trigger Proposition 65’s warning obligations or permissible safe-harbor warning language,
8 Affordable Tools may at its discretion comply with the provisions of this Consent Judgment or the
9 aforementioned changes in law or regulation.

10 **2.4 Product Warnings**

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

21 **2.5 Internet Warnings**

22 If, after the Effective Date, Affordable Tools sells Products via the internet directly, or indirectly
23 through customers with nationwide distribution or e-commerce websites, to customers located in
24 California, Affordable Tools shall provide warnings for each Product both on the Product label in
25 accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using
26 the word “**WARNING**” on the product display page, or by otherwise prominently displaying the
27 warning to the purchaser prior to completing the purchase and without requiring the purchaser to search
28 for the warning in the general content of the website.

1 **2.6 Customer Notification for Products Sold**

2 No later than sixty (60) days following the Effective Date, Affordable Tools shall send a letter,
3 electronic or otherwise (“**Notification Letter**”) to any retailer or distributor Affordable Tools
4 reasonably understands or believes has any inventory of Products, which Affordable Tools supplied
5 between February 3, 2018 and February 3, 2021, for sale to consumers in California. The Notification
6 Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of
7 California to cause birth defects or other reproductive harm. The Notification letter shall inform the
8 recipient (1) all Products must have a label attached to the packaging of each Product expressly referring
9 to the Product, which contains one of the warning statements in Section 2.3 (a) or Section 2.3 (b), before
10 it is sold in the California market or to a customer in California, and (2) each warning must be
11 prominently placed with such conspicuousness as compared with other words, statements, designs, or
12 devices as to render it likely to be read and understood by an ordinary individual under customary
13 conditions before purchase or use and shall be provided in a manner such that it is clearly associated
14 with the specific Product to which the warning applies.

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty**

17 Pursuant to Health and Safety Code § 25249.7(b), Affordable Tools agrees to pay a civil penalty
18 of \$2,000 within ten (10) business days of the Effective Date. Affordable Tools’ civil penalty payment
19 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
20 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
21 (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Affordable Tools shall
22 issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,500; and (b) “**Keep**
23 **America Safe & Beautiful**” in the amount of \$500. KASB’s counsel shall deliver to OEHHA and
24 KASB their respective portions of the penalty payment.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
27 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties
28 finalized the other material settlement terms, they negotiated and reached an accord on the amount of

1 reimbursement to be paid to KASB's counsel, under general contract principles and the private
2 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
3 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
4 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs
5 on appeal, if any. Within ten (10) business days of the Effective Date, Affordable Tools shall issue a
6 check in the amount of \$24,500 payable to "Seven Hills LLP" for all fees and other costs incurred
7 investigating, bringing this matter to Affordable Tools' attention, litigating, negotiating a settlement
8 in the public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting
9 to the California Attorney General.

10 3.3 Payments

11 All payments payable and due under this Consent Judgment shall be delivered to KASB's
12 counsel at the following address:

13 Seven Hills LLP
14 Attn: Laralei Paras
15 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

16 4. CLAIMS COVERED AND RELEASED

17 4.1 KASB's Release of Proposition 65 Claims

18 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
19 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB,
20 acting on its own behalf, in the public interest, and on behalf of its past and current officers, agents,
21 shareholders, employees, predecessors, representatives, attorneys, successors and assignees
22 ("Releasers") releases Affordable Tools, and its respective officers, directors, shareholders,
23 employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees,
24 customers (not including private label customers of Affordable Tools), distributors, wholesalers,
25 retailers, and all other downstream entities in the distribution chain of any of the Products, and the
26 predecessors, successors, and assigns of any of them (collectively, "Released Parties") based on the
27 failure to provide a clear and reasonable warning about alleged exposures to DEHP contained in the
28 Products that were manufactured, processed, distributed, sold and/or offered for sale in California

1 before the Effective Date, as set forth in the Notice and Complaint. The Parties further agree that
2 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65
3 with respect to alleged exposures to DEHP in the Products.

4 **4.2 Affordable Tools' Release of KASB**

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

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

16 **4.3 Mutual Waiver of California Civil Code § 1542**

17 KASB, on behalf of itself only and *not* in the public interest, on the one hand, and Affordable
18 Tools, on the other hand, each acknowledge that the claims in this Consent Judgment include all known
19 and unknown claims pertaining to DEHP contained in the Products that were sold in California before
20 the Effective Date, except as provided in Section 4.2 hereinabove, and each waive the provisions of
21 California Civil Code § 1542 as to any unknown claims pertaining to DEHP contained in the Products
22 that were sold in California that may have existed prior to and including the Effective Date, except as
23 provided in Section 4.2. California Civil Code § 1542 reads as follows:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
25 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
WITH THE DEBTOR OR RELEASED PARTY.

27 The Parties acknowledge and understand the significance and consequences of this specific waiver
28 of California Civil Code § 1542.

1 **5. COURT APPROVAL**

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

8 **6. SEVERABILITY**

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

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
15 rendered inapplicable by reason of law generally, or as to the Products or DEHP, then Affordable
16 Tools may provide KASB with written notice of any asserted change in the law, and shall have no
17 further injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent
18 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
19 Affordable Tools from its obligation to comply with any pertinent state or federal law or regulation.

20 **8. NOTICE**

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

24 For Affordable Tools:

25 Bao M. Vu, Partner
26 STOEL RIVES LLP
3 Embarcadero Center, Suite 1120
San Francisco, CA 94111

For KASB:

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

1 **9. COUNTERPARTS AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. ENTIRE AGREEMENT**

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

17 **12. MODIFICATION**

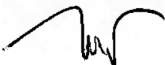
18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
19 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
20 any party and the entry of a modified Consent Judgment by the Court thereon.

21 **13. AUTHORIZATION**

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

24 **AGREED TO:**

25 Date: 06/02/2022

26 By: 
27 Ngoc-Bich Hoang Vo, CEO
28 Keep America Safe and Beautiful

AGREED TO:

Date: 5-16-2022

By: 
Craig R. Fall, CEO
Affordable Tools, LLC