

1 Laralei 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@sevenhillslp.com
8 rebecca@sevenhillslp.com

9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 Lynn R. Fiorentino, State Bar No. 226691
12 ARENTFOX SCHIFF LLP
13 44 Montgomery Street, 38th Floor
14 San Francisco, CA 94104
15 Telephone: (415) 757-5500
16 lynn.fiorentino@afslaw.com

17 Attorneys for Defendant
18 NATIONAL HANGER COMPANY INC.

19
20
21
22
23
24
25
26
27
28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

NATIONAL HANGER COMPANY INC.; and
DOES 1-30, inclusive,

Defendants.

Case No. CGC-21-593431

[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
3 Beautiful (“KASB”) and defendant National Hanger Company Inc. (“NAHANCO”), with KASB and
4 NAHANCO each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the
5 allegations in the March 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**
7 **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. NAHANCO is a person in the course of doing business for
13 purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that NAHANCO manufactures, imports, sells, or distributes for sale in
16 California hangers with vinyl components containing di(2-ethylhexyl) phthalate (“DEHP”), including
17 but not limited to, *Rubberized Metal Legging, Scarf, Tie Hanger, Gunmetal Finish w Black Non-Slip*
18 *(Pack of 12) Item Model No. 2MINI12 ASIN B07C947MGR*, without providing the health hazard
19 warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.*
20 (“**Proposition 65**”). Hangers with vinyl components are referred to hereinafter as the “Products.”
21 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
22 cancer and birth defects or other reproductive harm.

23 **1.3 Notice of Violation**

24 On March 3, 2021, KASB served NAHANCO, the California Attorney General, and the
25 requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging
26 NAHANCO violated Proposition 65 by failing to warn its customers and consumers in California
27 that the Products can expose users to DEHP. No public enforcer has commenced and is diligently
28 prosecuting an action to enforce the allegations set forth in the Notice. The Parties enter into this

1 Consent Judgment for the purpose of resolving KASB’s claims asserted in the Notice and to avoid
2 prolonged and costly litigation.

3 **1.4 Complaint**

4 On July 12, 2021, KASB commenced the instant action (“**Complaint**”), naming NAHANCO
5 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.5 No Admission**

7 NAHANCO denies the factual and legal allegations contained in the Notice and Complaint
8 and maintains that all products it sold or distributed for sale in California, including the Products,
9 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 NAHANCO of any fact, finding, conclusion of law, issue of law, or violation of law.
12 This section shall not, however, diminish or otherwise affect NAHANCO’s obligations,
13 responsibilities, and duties under this Consent Judgment.

14 **1.6 Jurisdiction**

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

19 **1.7 Effective Date**

20 The term “Effective Date” shall mean the date on which the Court approves this Consent
21 Judgment and enters Judgment pursuant to its terms.

22 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION OR WARNINGS**

23 **2.1 Reformulation Commitment**

24 Commencing 30 days after the Effective Date and continuing thereafter, all Products
25 NAHANCO manufactures, imports, sells, ships, or distributes for sale in or into California, directly
26 or through one or more third party retailers or e-commerce marketplaces, shall meet the
27 Reformulation Standard for Reformulated Products, as defined by Section 2.2, or be accompanied by
28 clear and reasonable warnings pursuant to Section 2.3.

1 **2.2 Reformulation Standard**

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

10 **2.3 Clear and Reasonable Warnings**

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

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

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

22 **(b) Short-Form Warning.** As an alternative to the warning set forth in subsection 2.3(a)
23 above, NAHANCO may, but is not required to, use the following short-form warning (“**Short-Form**
24 **Warning**”), subject to the additional requirements in Section 2.3, as follows:

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

26 **(c) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag
27 used to provide a warning includes consumer information, as that term is defined in Title 27
28

1 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than
2 English, the warning must also be provided in those languages in addition to English.

3 **2.4 Product Warnings**

4 NAHANCO 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 (b) must print the
9 word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the
10 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
11 outline, except that if the labeling does not use the color yellow, then the symbol may be in black and
12 white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the
13 largest type size used for other Consumer Information on the Products.

14 **2.5 Internet Warnings**

15 If, after the Effective Date, NAHANCO sells Products via the internet directly, or indirectly
16 through customers with nationwide distribution or e-commerce websites, to customers located in
17 California, NAHANCO 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 NAHANCO sells Products directly to
22 consumers with e-commerce websites, NAHANCO shall inform those customers in writing of their
23 obligation to provide online warnings consistent with Title 27 California Code of Regulations
24 § 25602(b). The internet warning may use the Short-Form Warning content described in Section
25 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), NAHANCO agrees to pay a civil penalty of
4 \$2,000 within ten (10) days of the Effective Date. NAHANCO's civil penalty payment will be
5 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
6 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
7 ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. NAHANCO shall
8 issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b)
9 "Keep America Safe and Beautiful" in the amount of \$500. KASB's counsel shall deliver to OEHHA
10 and KASB their respective portions of the penalty payment.

11 **3.2 Reimbursement of Attorneys' Fees and Costs**

12 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms
13 on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the
14 other material settlement terms, they negotiated and reached an accord on the amount of
15 reimbursement to be paid to KASB's counsel, under general contract principles and the private
16 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
17 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
18 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and
19 costs on appeal, if any. Within ten (10) days of the Effective Date, NAHANCO shall issue two
20 checks for a total amount of \$21,500, with one check in the amount of \$450 payable to "Seven Hills
21 LLP in Trust for Keep America Safe and Beautiful" for case costs and a second check in the amount
22 of \$21,050 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing
23 this matter to NAHANCO's attention, litigating, negotiating a settlement in the public interest,
24 reporting to Office of the California Attorney General, and obtaining the Court's approval of its
25 terms pursuant to Section 5.

1 **3.3 Payments**

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

4 Seven Hills LLP
5 Attn: Laralei Paras
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 KASB's Release of Proposition 65 Claims**

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

23 **4.2 NAHANCO's Release of KASB**

24 NAHANCO, on behalf of itself, its past and current agents, representatives, attorneys,
25 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other
26 representatives, for any and all actions taken or statements made (or those that could have been taken
27 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
28

1 claims or otherwise seeking to enforce Proposition 65 against him in this matter with respect to the
2 Products.

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

8 **5. COURT APPROVAL**

9 Pursuant to California Health and Safety Code § 25249.7(f)(4), NAHANCO shall file and
10 serve a noticed motion for judicial approval of this Consent Judgment within ninety (90) days of the
11 date this agreement is fully executed. The Parties agree to mutually employ their best efforts, and
12 those of their counsel, to support the entry of a judgment pursuant to the terms of this Consent
13 Judgment, and to seek judicial approval of their settlement in a timely manner. For purposes of this
14 section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
15 any third-party objection, and appearing at the hearing before the Court if so requested.

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
23 rendered inapplicable by reason of law generally, or as to the Products, then NAHANCO may
24 provide KASB with written notice of any asserted change in the law, and shall have no further
25 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
26 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
27 NAHANCO from its obligation to comply with any pertinent state or federal law or regulation.

1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Consent Judgment
3 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
4 (ii) a recognized overnight courier to any Party by the other at the following addresses with an
5 additional copy to be sent to the below individuals by email:

6 For NAHANCO:

7 Alexander Porter
8 Senior Vice President of Operations
9 National Hanger Company Inc.
10 276 Water Street
11 North Bennington, VT 05257
12 aporter@nahanco.com

For KASB:

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillsllp.com

11 *With a copy to:*

12 Lynn R. Fiorentino, Esq.
13 ArentFox Schiff LLP
14 44 Montgomery Street, 38th Floor
15 San Francisco, CA 94104
16 lynn.fiorentino@afslaw.com

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

17 **9. COUNTERPARTS AND PDF SIGNATURES**

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

21 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

24 **11. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
28 therein. There are no warranties, representations, or other agreements between the Parties except as

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

5 **12. MODIFICATION**

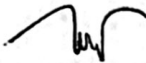
6 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
7 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
8 any party and the entry of a modified Consent Judgment by the Court thereon.

9 **13. AUTHORIZATION**

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


13
14 **AGREED TO:**

15 Date: 07/21/2022

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

AGREED TO:

15 Date: 6-30-22

16 By: 
17 Alexander Porter, SVP of Operations
18 National Hanger Company Inc.