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4 Attorneys for Plaintiff Keep America Safe and Beautiful
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO

10 Keep America Safe and Beautiful,

11 Plaintiff,

12 v.

13 The L.S. Starrett Company,

14 Defendants,
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Case No. XXX

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT THE L.S. STARRETT
COMPANY**

141 **1. INTRODUCTION**

4 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
19 Keep America Safe and Beautiful ("KASAB") acting on behalf of the public interest (hereinafter
20 "KASAB"), and Defendant The L.S. Starrett Company ("Starrett"), with KASAB and Starrett
21 collectively referred to as the "Parties" and each of them as a "Party." KASAB is a California
22 Nonprofit Corporation seeking to promote awareness of exposures to toxic chemicals and
23 improve human health by reducing or eliminating hazardous substances contained in consumer
24 products. Starrett is a person in the course of doing business for purposes of Proposition 65, Cal.
25 Health & Safety Code §§ 25249.6 *et seq.*

26 1.2 **Allegations and Representations.** KASAB alleges that Starrett has offered for
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1 sale in the State of California and has sold in California, the "530-100 3/8'x100' Closed Reel
2 Steel Long Tape ("Closed Reel Steel Long Tape") that contains DEHP (Di-[2-Ethylehyl]
3 Phthalate) ("DEHP"), and that such sales have not been accompanied by Proposition 65 warnings.
4 DEHP is listed under Proposition 65 as chemicals known to the State of California to cause
5 cancer and reproductive harm.

6 **1.3 Notices of Violation/Complaint.** On or about March 19, 2021, KASAB served
7 Starrett, Amazon.com, Inc., Amazon.com Services, Inc., and various public enforcement agencies
8 with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code
9 §25249.7(d) (the "Notice"), alleging that Starrett, Amazon.com, Inc., and Amazon.com Services,
10 Inc., were in violation of Proposition 65 for failing to warn consumers and customers that the
11 Closed Reel Steel Long Tape users in California to DEHP. No public enforcer diligently
12 prosecuted the claims threatened in the Notice within sixty days plus service time relative to the
13 provision of the Notice to them by KASAB.

14 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court
15 has jurisdiction over Starrett as to the allegations contained in the complaint filed in this matter,
16 that venue is proper in the County of San Diego, and that this Court has jurisdiction to approve,
17 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
141 of all claims which were or could have been raised in the Complaint based on the facts alleged
4 therein and/or in the Notices.

19 **1.5** Starrett denies the material allegations contained in KASAB's Notice and
20 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent
21 Judgment shall be construed as an admission by Starrett of any fact, finding, issue of law, or
22 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as
23 an admission by Starrett of any fact, finding, conclusion, issue of law, or violation of law, such
24 being specifically denied by Starrett. However, this section shall not diminish or otherwise effect
25 the obligations, responsibilities, and duties of Starrett under this Consent Judgment.
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1 **2. DEFINITIONS**

2 **2.1 Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

3 **2.2 Covered Product.** The term "Covered Product" means "Closed Reel Steel
4 Long Tapes" including the Starrett 530-100 3/8" x 100'
5 Closed Reel Steel Long Tape, (UPC 049659659467) designed, manufactured, sold, distributed or
6 otherwise made available to, by or for Starrett.

7 **2.3 Effective Date.** The term "Effective Date" shall mean the date this Consent
8 Judgment is entered as a Judgment of the Court.

9 **2.4 Listed Chemicals:** The term "Listed Chemicals" shall mean DEHP.

10 **2.5 Notice.** The term "Notice" shall have the meaning given in Section 1.3.

11 **2.6 Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
12 Releasees" shall have the meanings given in Section 5.1.

13 **2.7 Execution Date.** The term "Execution Date" shall mean the date this Consent
14 Judgment is signed by the parties

15 **3. INJUNCTIVE RELIEF: WARNINGS**

16 **3.1** Commencing on the Effective Date, Starrett shall not sell, offer for sale, or ship for
17 sale into California any Covered Product, unless the Covered Product is accompanied by the
18 following on-product warning or other warning authorized under Prop 65:



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

21 Or



25 **WARNING:** The use of this product can expose you to DEHP, which is a
26 chemical known to the State of California to cause cancer and birth defects or other
27 reproductive harm. For more information go to www.P65Warnings.ca.gov.

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2 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
3 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
4 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
5 words, statements, or designs as to render it likely to be read and understood by an ordinary
6 individual under customary conditions of purchase or use. A warning may be contained in the
7 same section of the packaging or labeling that states other safety warnings, if any, concerning the
8 use of the product and shall be at least the same size as those other safety warnings, but no less
9 than 6 point font. This section is not intended to exclude other methods of providing the warning
10 that are otherwise in compliance with Proposition 65.
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12 **4. MONETARY TERMS**

13 4.1 **Penalty.** Starrett shall pay a civil penalty of \$1,000.00 pursuant to Health and
14 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
15 Code § 25192, with 75% of these funds remitted to the State of California's Office of
16 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
17 KASAB, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be
141 made by Starrett's Counsel from their trust fund on behalf of Starrett to KASAB's Counsel within
4 14 days of the Effective Date.

19 4.2 **Attorney's Fees.** Starrett agrees to pay reasonable attorney fees, inclusive of all
20 expenses and costs incurred as a result of investigating, bringing this matter to Starrett's attention,
21 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
22 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$25,000.00. Starrett shall
23 transmit the total sum of \$26,000.00 representing the civil penalty and attorney fees in Sections
24 4.1 and 4.2 to its Counsel, Coleman & Horowitt, within 14 days following Execution Date.
25 Coleman & Horowitt will provide notice to KASAB's Counsel of the receipt of those funds.
26 Within 14 days of the Effective Date, Coleman & Horowitt will transfer those funds by wire to
27 KASAB's Counsel based on wire instruction information from KASAB's counsel.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This consent judgment is a full, final, and binding resolution between KASAB
3 acting in the public interest, and Starrett, its owners, investors employees, directors, officers,
4 managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister
5 companies, and affiliates, and their successors and assigns ("Defendant Releasees"), and all
6 entities from whom they obtain and to whom they directly or indirectly distribute or sell Covered
7 Products, including but not limited to manufacturers, suppliers, distributors, including
8 Amazon.com, Inc., and Amazon.com Services, Inc., wholesalers, customers, licensors, licensees,
9 retailers, franchisees, and cooperative members, and their successors and assigns ("Downstream
10 Defendant Releasees"). Upon full execution and approval by the Court of this Consent Judgment,
11 KASAB, on behalf of herself, her agents, successors, heirs, and assigns, hereby fully and
12 irrevocably releases and discharges Starrett, the Defendant Releasees, and the Downstream
13 Defendant Releasees from all claims for violations of Proposition 65 that were, or which could
14 have been, asserted in the Complaint based on exposure to and/or failure to warn about Listed
15 Chemicals from Covered Products as set forth in the Notice, with respect to any Covered
16 Products manufactured, distributed, or sold by Starrett, the Defendant Releasees, and/or the
17 Downstream Defendant Releasees in or into California prior to the Effective Date. Compliance
141 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard
4 to the Covered Products.

19 5.2 In addition to the foregoing, KASAB, on behalf of itself, its past and current
20 agents, representatives, attorneys, and successors and/or assignees, and not in its representative
21 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
22 legal action and releases Starrett, Defendant Releasees, and Downstream Defendant Releasees
23 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
24 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
25 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
26 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
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1 or arising from Covered Products manufactured distributed or sold by Starrett or Defendant
2 Releasees in or into California prior to the effective date With respect to the foregoing waivers
3 and releases in this paragraph, KASAB hereby specifically waives any and all rights and benefits
4 which it now has, or in the future may have, conferred by virtue of the provisions of Section 1542
5 of the California Civil Code, which provides as follows:
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7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
9 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
10 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
11 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

12 5.3 Starrett waives any and all claims against KASAB, its attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been
14 taken or made) by KASAB and its attorneys and other representatives, whether in the course of
15 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
16 and/or with respect to Covered Products.

17 **6. INTEGRATION**

18 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
19 any and all prior negotiations and understandings related hereto shall be deemed to have been
20 merged within it. No representations or terms of agreement other than those contained herein
21 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

22 **7. GOVERNING LAW**

23 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and apply within the State of California. In the event that Proposition 65 is repealed or
25 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
26 Starrett shall provide written notice to KASAB of any asserted change in the law, and shall have
27 no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
Covered Products are so affected.

1 **8. ENFORCEMENT**

2 8.1 KASAB may, by motion or application for an order to show cause before the
3 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
4 Judgment. Prior to bringing any motion or application to enforce the requirements of this
5 Consent Judgment, KASAB shall provide Starrett with a proposed Notice of Violation, and a
6 copy of any documentary evidence which purportedly supports KASAB's Notice of Violation.
7 The Parties shall then meet and confer in good faith for a period of at least sixty (60) days
8 regarding the basis for KASAB's anticipated motion or application in an attempt to resolve it
9 informally. Should such attempts at informal resolution fail, KASAB may file her enforcement
10 motion or application. This Consent Judgment may only be enforced by the Parties.

11 **9. NOTICES**

12 9.1 Unless specified herein, all correspondence and notices required to be provided
13 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
14 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
15 party by the other party at the following addresses:

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17 For Starrett:

141 Craig A. Tristao, Esq.
4 Coleman & Horowitz, LLP
19 499 W. Shaw Ave, Suite 116
 Fresno, CA 93704

20 And

21 For KASAB:

22 Stephanie Sy, Esq.
23 Sy and Smith LP
24 2834 La Mirada Dr., Suite E
 Vista, CA 92081

25 Any party, from time to time, may specify in writing to the other party a change of address to
26 which all notices and other communications shall be sent.
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1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

5 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
6 **APPROVAL**

7 11.1 KASAB agrees to comply with the requirements set forth in California Health &
8 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
9 and Starrett agrees it shall support approval of such Motion.

10 11.2 This Consent Judgment shall not be effective until it is approved and entered by
11 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
12 within eighteen months after it has been fully executed by the Parties. In such a scenario, the
13 Parties agree to meet and confer on how to proceed and if such agreement is not reached within
14 30-days, any monies that may have been paid pursuant to Section 4 shall be refunded and the case
15 shall proceed on its normal course.

16 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
141 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
4 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
19 trial court, and the case shall proceed on its normal course on the trial court's calendar.

20 **12. MODIFICATION**

21 12.1 This Consent Judgment may be modified only by express written agreement of the
22 Parties and the approval of the Court or upon the granting of a motion brought to the Court by
23 either Party.

24 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
25 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.
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1 **13. ATTORNEY'S FEES**

2 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs
4 unless the unsuccessful party has acted with substantial justification. For purposes of this
5 Consent Judgment, the term substantial justification shall carry the same meaning as used in the
6 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

7 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
8 own attorneys' fees and costs.

9 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
10 pursuant to law.

11 **14. RETENTION OF JURISDICTION**

12 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
13 Consent Judgment.

14 **15. AUTHORIZATION**


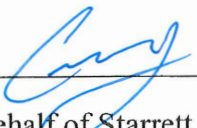
15 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of
16 their respective Parties and have read, understood and agree to all of the terms and conditions of
17 this document and certifies that he or she is fully authorized by the Party he or she represents to
141 execute the Consent Judgment on behalf of the Party represented and legally bind that Party.
4 Except as explicitly provided herein each Party is to bear its own fees and costs.

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1 **APPROVED AS TO FORM:**

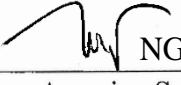
3 AGREED TO:	3 AGREED TO:
4 Date : <u>August 19, 2021</u> , 2021	4 Date: <u>August 18</u> , 2021
5 By: 	5 By: 
6 On Behalf of KASAB	6 On Behalf of Starrett
7 Stephanie Sy	7 Craig A. Tristao Esq.
8 Sy and Smith LP	8 Coleman & Horowitz, LLP
9	9

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11 **IT IS HEREBY SO STIPULATED:**

12 **AGREED TO:**

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14 Date: 8/19/2021

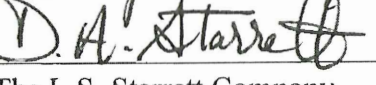
15 By:  NGOC-BICH HOANG VO

16 Keep America Safe And Beautiful

12 **AGREED TO:**

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14 Date: August 17, 2021

15 By:  D.A. Starrett

16 The L.S. Starrett Company