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KEEP AMERICA SAFE AND BEAUTIFUL

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

LIFETIME BRANDS, INC.; and DOES 1-
30, inclusive,

Defendants.

Case No. CGC-22-599578

[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 Lifetime Brands, Inc. (“Lifetime Brands”), with KASB and Lifetime Brands
4 each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in
5 the April 7, 2021 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 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. Lifetime Brands is a person in the course of doing business for
12 purposes of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 KASB alleges that Lifetime Brands manufactures, imports, sells, or distributes for sale in or
15 into California the following faux leather product containing di(2ethylhexyl) phthalate (“DEHP”): *Built*
16 *New York City Tote Neoprene Shoulder Bag (Black); Model# 5157664, ASIN# B00U3DFVVM, UPC#*
17 *8 44983 03875 5* (the “Products”), without providing the health hazard warning KASB alleges is
18 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State
19 of California to cause birth defects or other reproductive harm.

20 **1.3 Notices of Violation**

21 On April 7, 2021, KASB served Lifetime Brands, the California Attorney General, and the
22 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Lifetime
23 Brands violated Proposition 65 by failing to warn its customers and consumers in California the
24 Products can expose users to DEHP.

25 **1.4 Complaint**

26 On May 10, 2022, KASB commenced the instant action, naming Lifetime Brands as a
27 defendant for the alleged violation of Proposition 65 that is the subject of the Notice.
28

1 **1.5 No Admission**

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

9 **1.6 Jurisdiction**

10 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
11 over Lifetime Brands as to the allegations contained in the Complaint; venue is proper in San Francisco
12 County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment,
13 pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

14 **1.7 Execution Date**

15 The term "Execution Date" means the date all parties have signed this Consent Judgment.

16 **1.8 Effective Date**

17 The term "Effective Date" means the date on which the Court approves this Consent Judgment
18 and enters Judgment pursuant to its terms.

19 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

20 **2.1 Commitment to Reformulate or Warn**

21 Commencing on the Execution Date and continuing thereafter, all Products Lifetime Brands
22 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one
23 or more third party retailers or e-commerce marketplaces, shall either meet the Reformulation Standard
24 for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable
25 warning pursuant to the following Sections 2.3 through 2.5.

26 **2.2 Reformulation Standard**


27 For purposes of this Consent Judgment, "Reformulated Products" are defined as Products
28 containing di(2-ethylhexyl) phthalate ("DEHP") in a maximum concentration of less than 0.1 percent

(1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. 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 methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

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

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

 **WARNING:** This product can expose you to 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.

(b) Short-Form Warnings. Lifetime Brands may, but is not required to, use the following short-form warning (“Short-Form”), subject to the additional requirements set forth in Sections 2.4 and 2.5:

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

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

2.4 Product Warnings

Lifetime Brands shall affix a warning to the Product label or otherwise directly on each Product

provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For purposes of this Consent Judgment, “Product label” means a display of written, printed or graphic material that is printed on or affixed to each of a Product or its immediate container or wrapper. A warning provided pursuant to Section 2.3(a) must print the word “**WARNING:**” in all capital letters and in bold font. 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 labeling does not use the color yellow, then the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the Products.

2.5 Internet Warnings

If, after the Effective Date, Lifetime Brands sells Products via the internet, through its own website, affiliated websites, or a third-party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Lifetime Brands shall provide warnings for each Product both on the Product label, in accordance with Section 2.4, and by prominently displaying, or requiring the warning to be prominently displayed, on affiliated websites, third-party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING”, given in conjunction with the sale of the Products via the internet, shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; 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 Products for which it is given in the same type size or larger than other consumer information provided for the Products. For internet warnings, Lifetime Brands may use the Short-Form, supra at Section 2.3(b), if the warning provided on the Product label also uses the Short-Form. For third-party websites, as a condition of sale, Lifetime Brands shall notify sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), Lifetime Brands agrees to pay a civil penalty
4 of \$1,000 within fifteen (15) business days of the Effective Date. Lifetime Brands' civil penalty
5 payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-
6 five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
7 Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Lifetime
8 Brands shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$750;
9 and (b) "Seven Hills in Trust for Keep America Safe and Beautiful" in the amount of \$250. KASB's
10 counsel shall deliver to OEHHA 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 and Complaint without
13 reaching terms on the amount of reimbursement of attorneys' fees and costs. The Parties negotiated
14 and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general
15 contract principles and the private attorney general doctrine, codified at California Code of Civil
16 Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Consent
17 Judgment to the Office of the California Attorney General and entry of Judgment pursuant its terms,
18 but exclusive of fees and costs on appeal, if any. Within fifteen (15) business days of the Effective
19 Date, Lifetime Brands shall issue a check payable to "Seven Hills LLP" for \$15,000 for all fees and
20 costs incurred in investigating, bringing this matter to Lifetime Brands' attention, litigating,
21 negotiating a settlement in the public interest, obtaining the Court's approval of its terms pursuant to
22 Section 5, and reporting to the California Attorney General.

23 **3.3 Payments**

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

26 Seven Hills LLP
27 Attn: Kimberly Gates Johnson
28 4 Embarcadero Center, Suite 1400
 San Francisco, CA 94111

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 KASB's Release of Proposition 65 Claims**

3 This Consent Judgment is a full, final and binding resolution between KASB, on behalf
4 of itself and in the public interest, and Lifetime Brands, of any violation of Proposition 65 that was or
5 could have been asserted by KASB on behalf of itself, its past and current agents, representatives,
6 attorneys, successors, and/or assignees, against Lifetime Brands, its past and present directors, officers,
7 shareholders, employees, agents, subsidiaries, divisions, affiliates, assignees, attorneys, and each entity
8 to whom Lifetime Brands directly or indirectly distributes or sells Products, including, but not limited
9 to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and
10 licensees (collectively, "Releasees"), based on their failure to warn, arising under Proposition 65, about
11 alleged exposures to DEHP contained in Products that were manufactured, distributed, sold and/or
12 offered for sale by Lifetime Brands in California before the Effective Date, as alleged in the Notice
13 and Complaint. The Parties further agree that compliance with Section 2 of this Consent Judgment
14 shall be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP in the
15 Products.

16 In further consideration of the promises and agreements herein contained, KASB, on
17 behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees,
18 hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal
19 action and releases all claims that KASB may have, including, without limitation, all actions, and
20 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
21 penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and
22 attorneys' fees arising under Proposition 65 with respect to DEHP in the Products manufactured,
23 distributed, sold and/or offered for sale by Lifetime Brands, before the Effective Date (collectively,
24 "Claims"), against Lifetime Brands and Releasees.

25 The Parties further understand and agree this Section 4.1 release shall not extend
26 upstream to any entities who manufactured the Products or any component parts thereof, nor to any
27 distributors or suppliers who sold the Products or any component parts thereof to Lifetime Brands.
28 Nor shall this Section 4.1 release apply to any downstream, third-party websites that fail to

1 communicate Product warnings, as set forth in Section 2, after the Effective Date. Nothing in this
2 Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee
3 that does not involve Lifetime Brands' Products.

4 **4.2 Lifetime Brands' Release of KASB**

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

10 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
24 rendered inapplicable by reason of law generally, or as to the Products, then Lifetime Brands may
25 provide KASB with written notice of any asserted change in the law, and shall have no further
26 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
27 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Lifetime
28 Brands 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 shall
3 be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a
4 recognized overnight courier to any Party by the other at the following addresses:

5 For Lifetime Brands:

6 Robert B. Kay, Chief Executive Officer
7 Lifetime Brands, Inc.
8 1000 Stewart Avenue
Garden City, NY 11530-4814

For KASB:

Kimberly Gates Johnson, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

9 With a copy to:

10 William F. Tarantino
11 MORRISON & FOERSTER LLP
425 Market St.
San Francisco, CA 94105

12
13 Any Party may, from time to time, specify in writing to the other Party a change of address to which
14 all notices and other communications shall be sent.

15 **9. COUNTERPARTS AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

22 **11. ENTIRE AGREEMENT**

23 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
24 with respect to the entire subject matter hereof. There are no warranties, representations, or other
25 agreements between the Parties except as expressly set forth herein. No representations, oral or
26 otherwise, express or implied, other than those specifically referred to in this Consent Judgment have
27 been made by any Party hereto. No other agreements not specifically contained or referenced herein,
28 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**


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


8 **AGREED TO:**

AGREED TO:

9 Date: 07/04/2024

Date: May 30, 2024

10
11 
12 By: _____
13 Lance Nguyen, Chief Executive Officer
14 Keep America Safe and Beautiful

15
16 
17 By: _____
18 Robert Kay, CEO
19 Lifetime Brands, Inc.