

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

Attorneys for Plaintiff  
KEEP AMERICA SAFE AND BEAUTIFUL

Jeffrey R. Williams, State Bar No. 84156  
Riley Safer Holmes & Cancila LLP  
456 Montgomery Street, 16<sup>th</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 275-855  
mmcmeel@rshc-law.com

Attorneys for Defendant  
NORTHERN WHOLESALE SUPPLY, INC.  
DBA EXTREME MAX

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

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

NORTHERN WHOLESALE SUPPLY,  
INC. DBA EXTREME MAX; and DOES 1-  
30, inclusive,

Defendants.

Case No. CGC-21-596437

**[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 Northern Wholesale Supply, Inc. dba Extreme Max (“**NWS**”), with  
4     KASB and NWS each individually referred to as a “**Party**” and collectively, as the “**Parties**,” to resolve  
5     the allegations in the April 7, 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. NWS is a person in the course of doing business for purposes  
12    of California Health & Safety Code § 25249.11(b).

13            **1.2 Consumer Product Description**

14            KASB alleges that NWS manufactures, imports, sells, or distributes for sale in California  
15    coated anchor chains containing di(2ethylhexyl) phthalate (“**DEHP**”), including but not limited to,  
16    *Extreme Max BoatTector PVC-Coated Anchor Lead Chain-1/4" x 4', White, Model 3006.6587, UPC*  
17    *8 14166 02314 4, ASIN: B014HEXQFA*, without providing the health hazard warning that KASB  
18    alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Coated  
19    anchor chains are referred to hereinafter as the “**Products**.” DEHP is listed pursuant to Proposition  
20    65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

21            **1.3 Notice of Violation**

22            On April 7, 2021, KASB served NWS, the California Attorney General, and the requisite  
23    public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging NWS violated  
24    Proposition 65 by failing to warn its customers and consumers in California that the Products can  
25    expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to  
26    enforce the allegations set forth in the Notice.

1           **1.4     Complaint**

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

4           **1.5     No Admission**

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

12           **1.6     Jurisdiction**

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

17           **1.7     Effective Date**

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

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

21           **2.1     Reformulation Commitment**

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

## 2.2 Reformulation Standard

For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“**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) 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-C1001.09.3 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

NWS 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 for DEHP, DINP, DIDP, DBP or BBP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of one of the following statements:

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

- or -

⚠ **WARNING:** This product can expose you to chemicals including [DEHP], which are known to the State of California to cause [cancer] [and] [birth defects or other reproductive harm]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The bracketed language in the proceeding warning must be changed according to the listed phthalate chemical(s) in the product and the harms associated with exposure to the listed chemical(s). DEHP may be replaced with DINP, DBP, BBP and/or DnHP according to the harms caused by each chemical and whether one or more than one phthalate is contained in the Product.

(b) **Short-Form Warning.** As an alternative to the warnings set forth in subsection 2.3(a) and (b) above, NWS may, but is not required to, use one of the following applicable short-form warning ("**Short-Form Warning**"), subject to the additional requirements in Sections 2.5 and 2.6, as follows:

⚠ **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

⚠ **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://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, the warning must also be provided in those languages in addition to English.

## **2.4 Product Warnings**

NWS 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 the purpose 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) or (b) 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 that 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.

1           **2.5     Internet Warnings**

2           If, after the Effective Date, NWS sells Products via the internet directly, or indirectly through  
3 customers with nationwide distribution or e-commerce websites, to customers located in California,  
4 NWS shall provide warnings for each Product both on the Product label in accordance with Section  
5 2.4, and by including either the warning or a clearly marked hyperlink using the word “**WARNING**”  
6 on the product display page, or by otherwise prominently displaying the warning to the purchaser  
7 prior to completing the purchase and without requiring the purchaser to search for the warning in the  
8 general content of the website. If NWS sells Products directly to consumers with e-commerce  
9 websites, NWS shall inform those customers in writing of their obligation to provide online warnings  
10 consistent with Title 27 California Code of Regulations § 25602(b). The internet warning may use  
11 the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product  
12 label also uses the Short-Form Warning content.

13           **2.6     Customer Notification for Products Sold**

14           No later than the Effective Date, NWS shall send a letter, electronic or otherwise  
15 (“**Notification Letter**”) to: (1) each customer in California to which it sold Products between April 7,  
16 2020 and April 7, 2021; and (2) any retailer or distributor NWS reasonably understands or believes  
17 has any inventory of Products, which NWS supplied between April 7, 2018 and April 7, 2021, for  
18 sale to consumers in California. The Notification Letter shall advise the recipient that the Products  
19 contain DEHP, a chemical known to the State of California to cause birth defects or other  
20 reproductive harm. The Notification letter shall inform the recipient (1) all Products must have a  
21 label attached to the packaging of each Product expressly referring to the Product, which contains one  
22 of the warning statements in Section 2.3 (a) or Section 2.3 (b), before it is sold in the California  
23 market or to a customer in California, and (2) each warning must be prominently placed with such  
24 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
25 to be read and understood by an ordinary individual under customary conditions before purchase or  
26 use and shall be provided in a manner such that it is clearly associated with the specific Product to  
27 which the warning applies.

1     **3.     MONETARY SETTLEMENT TERMS**

2             **3.1     Civil Penalty**

3             Pursuant to Health and Safety Code § 25249.7(b), NWS agrees to pay a civil penalty of  
4     \$1,000 within five (5) days of the Effective Date. NWS's civil penalty payment will be allocated  
5     according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the  
6     penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and  
7     the remaining twenty-five percent (25%) retained by KASB. NWS shall issue its payment in two  
8     checks made payable to: (a) "OEHHA" in the amount of \$750; and (b) "Keep America Safe and  
9     Beautiful" in the amount of \$250. KASB's counsel shall deliver to OEHHA and KASB their  
10    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. Shortly after the  
14    Parties finalized the other material settlement terms, they negotiated and reached an accord on the  
15    amount of reimbursement to be paid to KASB's counsel, under general contract principles and the  
16    private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all  
17    work performed through the mutual execution and reporting of this Consent Judgment to the Office  
18    of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees  
19    and costs on appeal, if any. Within five (5) days of the Effective Date, NWS shall issue two check  
20    for a total amount of \$24,000, with one check in the amount of \$555.00 payable to "Seven Hills LLP  
21    in trust for Keep America Safe and Beautiful" for case costs and a second check in the amount of  
22    \$23,445 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing  
23    this matter to NWS's attention, litigating, negotiating a settlement in the public interest, obtaining  
24    the Court's approval of its terms pursuant to Section 5, and reporting to the California Attorney  
25    General.

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

8           **4.     CLAIMS COVERED AND RELEASED**

9           **4.1     KASB's Public Release of Proposition 65 Claims**

10          This Consent Judgment is a full, final, and binding resolution of the claims that were or could  
11 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.  
12 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,  
13 representatives, attorneys, successors and assignees ("**Releasors**") releases NWS, its past and  
14 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
15 employees, attorneys, and each entity to whom NWS directly or indirectly distributes or sells the  
16 Products including, but not limited to, Amazon.com, Inc., its downstream distributors, wholesalers,  
17 marketplace hosts, customers, retailers, franchisees, cooperative members, and licensees  
18 ("**Releasees**") based on the failure to provide a clear and reasonable warning under Proposition 65  
19 about alleged exposures to DEHP contained in the Products that were manufactured, processed,  
20 distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the  
21 Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent  
22 Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to  
23 DEHP in the Products. The Parties further understand and agree this Section 4.1 release shall not  
24 extend to Releasees who have been instructed by NWS, pursuant to Section 2.6, to provide a  
25 warning on Products that are not Reformulated Products and have failed to do so.

26           **4.2     KASB's Private Release of Proposition 65 Claims**

27          In further consideration of the promises and agreements herein contained, KASB as an  
28 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,  
representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to

1 institute or participate in, directly or indirectly, any form of legal action and releases all claims that  
2 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,  
3 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including,  
4 but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65  
5 with respect to DEHP, DINP, DIDP, DBP, BBP and/or DnHP in the Products manufactured,  
6 distributed, sold and/or offered for sale by Studio Designs and sold in or into California, before the  
7 Effective Date, against Studio Designs and Releasees.

#### 8 **4.3 NWS's Release of KASB**

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

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

#### 19 **5. COURT APPROVAL**

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

1     **6. SEVERABILITY**

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

5     **7. GOVERNING LAW**

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

13    **8. NOTICE**

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

17    For NWS:

18    Nick Gargaro, CEO  
19    Northern Wholesale Supply, Inc.  
20    dba Extreme Max  
21    6800 Otter Lake Road  
22    Hugo, MN 55038

For KASB:

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

23    With a copy to:

24    Jeffrey R. Williams, Esq.  
25    Riley Safer Holmes & Cancila LLP  
26    456 Montgomery Street, 16<sup>th</sup> Floor  
27    San Francisco, CA 94104

28            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.

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

22     ///

23     ///

24     ///

25     ///

26     ///

27     ///

28     ///

1 **13. AUTHORIZATION**

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

5 **AGREED TO:**

6 Date: 09/29/2022

7 By: 

8 Ngoc-Bich Hoang Vo, CEO  
9 Keep America Safe and Beautiful

5 **AGREED TO:**

6 Date: 9/28/2022

7 By: 

8 Nick Gargaro, CEO  
9 Northern Wholesale Supply, Inc.  
10 dba Extreme Max  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28