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10 Attorneys for Defendant
 MFAC, LLC

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 12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 CITY AND COUNTY OF SAN FRANCISCO
 14 UNLIMITED CIVIL JURISDICTION
 15

16 KEEP AMERICA SAFE AND BEAUTIFUL,
 17
 Plaintiff,
 18
 v.
 19 MFAC, LLC,
 20
 Defendant.
 21

Case No. CGC-21-593483

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 MFAC, LLC (“MFAC”), with KASB and MFAC each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in
5 the February 18, 2021 60-Day Notice of Violation and the May 13, 2021 Supplemental Notice
6 KASB issued to MFAC in compliance with the Safe Drinking Water and Toxic Enforcement Act of
7 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 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 in or eliminated
12 from consumer products sold in California. MFAC 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 MFAC manufactures, imports, sells and distributes for sale in California
16 vinyl/PVC jump rope cords containing di(2-ethylhexyl) phthalate (“DEHP”) including, but not
17 limited to, *Perform Better First Place Speed Jump Rope, Item Model No. 1139*, and handle grips
18 containing di-n-butyl (“DBP”) including, but not limited to, *Perform Better Contour Rubber Cable*
19 *Handle (2 Pack, Item Model No. 5309*, without providing the health hazard warning that KASB
20 alleges is required by Proposition 65. Vinyl/PVC jump rope cords are referred to hereinafter as the
21 “Jump Ropes.” Handle grips are referred to hereinafter as the “Handle Grips.” Jump Ropes and
22 Handle Grips are collectively referred to herein as the “Products.” DEHP is listed pursuant to
23 Proposition 65 as a chemical known to the State of California to cause cancer. DEHP and DBP are
24 listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects
25 and other reproductive harm.

26 **1.3 Notices of Violation**

27 On February 18, 2021, KASB served MFAC, Amazon.com, Inc., the California Attorney
28 General, and the requisite public enforcement agencies with a 60-Day Notice of Violation

1 (“**Notice**”), alleging MFAC and Amazon.com, Inc. violated Proposition 65 by failing to warn their
2 customers and consumers in California that Jump Ropes can expose users to DEHP. On May 13,
3 2021, KASB served MFAC, Amazon.com, Inc., the California Attorney General, and the requisite
4 public enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental**
5 **Notice**”), alleging MFAC and Amazon.com, Inc. violated Proposition 65 by failing to warn their
6 customers and consumers in California that Handle Grips can expose users to DBP. The Notice and
7 Supplemental Notice are collectively referred to hereinafter as the “**Notices.**” No public enforcer
8 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
9 Notices. The Parties enter into this Consent Judgment for the purpose of resolving KASB’s claims
10 asserted in the Notices and to avoid prolonged and costly litigation.

11 **1.4 Complaint**

12 On July 23, 2021, KASB commenced the instant action (“**Complaint**”), naming MFAC,
13 LLC as a defendant for the alleged violations of Proposition 65 that are the subject of the Notices.

14 **1.5 No Admission**

15 MFAC denies the factual and legal allegations contained in the Notices and Complaint and
16 maintains that all products it has sold or distributed for sale in California, including the Products,
17 have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed
18 as, nor shall compliance with this Consent Judgment constitute or be construed as, an admission by
19 MFAC of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall
20 not, however, diminish or otherwise affect MFAC’s obligations, responsibilities, and duties under this
21 Consent Judgment.

22 **1.6 Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over MFAC as to the allegations contained in the Complaint, that venue is proper in the
25 County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of
26 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

1 **1.7 Effective Date**

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

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

5 **2.1 Reformulation Commitment**

6 Commencing on the Effective Date and continuing thereafter, each Product MFAC
7 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
8 one or more third party retailers or e-commerce marketplaces whom MFAC knows or has reason to
9 know offer the Products for sale in California, shall meet the Reformulation Standard for
10 Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable
11 warning pursuant to Section 2.3. No warnings shall be required for Products meeting the
12 Reformulation Standards set forth in Section 2.2 below.

13 **2.2 Reformulation Standard**


14 For purposes of this Consent Judgment, “**DEHP Free Products**” are defined as Products
15 which, if they contain DEHP, contain no more than 0.1 percent (1,000 parts per million) DEHP
16 when analyzed by an “**Accredited Lab**,” defined as a laboratory accredited by the State of
17 California, a federal agency, or a nationally recognized accrediting organization. For purposes of
18 this Consent Judgment, “**DBP Free Products**” are defined as Products which, if they contain DBP,
19 contain no more than 0.1 percent (1,000 parts per million) DBP when analyzed by an Accredited
20 Lab. For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
21 which, if they contain DEHP, DBP, diisononyl phthalate (“**DINP**”), di-isodecyl phthalate (“**DIDP**”),
22 butyl benzyl phthalate (“**BBP**”), or di-n-hexyl phthalate (“**DnHP**”), contain any or all such
23 chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) when
24 analyzed by an Accredited Lab. For purposes of compliance with this reformulation standard,
25 testing samples shall be prepared and extracted using Consumer Product Safety Commission
26 (“**CPSC**”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection
27 Agency methodology 8270D, or other methodologies utilized by federal or state government
28 agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings


For Products requiring a warning under this Consent Judgment, MFAC shall provide clear and reasonable warnings for such Products in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq., as such regulations may be amended from time to time. 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:


1. For Jump Ropes:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (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.

2. For Handle Grips:

 **WARNING:** This product can expose you to chemicals including di-n-butyl phthalate (DBP), which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. For Products:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (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.

(b) **Short-Form Warning.** As an alternative to the warnings set forth in subsection 2.3(a), MFAC may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), and subject to the additional requirements in Sections 2.4 and 2.5, as follows:

 **WARNING:** Cancer and 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

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

3 **2.4 Product Warnings**

4 For Products requiring a warning under this Consent Judgment, MFAC shall affix a warning
5 to the Product label or otherwise directly on each such Products provided for sale directly to
6 customers in California, or indirectly through customers with retail outlets in California and/or e-
7 commerce websites which MFAC knows or has reason to know offer the Products for sale into
8 California. For the purpose of this Consent Judgment, “**Product label**” means a display of written,
9 printed or graphic material that is printed on or affixed to a Product or its immediate container or
10 wrapper. A warning provided pursuant to section 2.3(a) or (b) must print the word “**WARNING:**” in
11 all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must
12 be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the
13 labeling does not use the color yellow, then the symbol may be in black and white. For the short
14 form warning, the entire warning shall appear in a type size of at least 6-point type and no smaller
15 than the largest type size used for other Consumer Information on the product label.

16 **2.5 Internet Warnings**

17 For Products requiring a warning under this Consent Judgment, if MFAC sells Products via
18 the internet directly to customers located in California, or indirectly through customers with
19 e-commerce websites which MFAC knows or has reason to know offer the Products to customers
20 located in California, MFAC shall provide warnings for each Product both on the Product label in
21 accordance with Sections 2.3 and 2.4, and for its own website or third-party websites through which it
22 sells Products and also is capable of directly providing warnings, by including either the warning or a
23 clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise
24 prominently displaying the warning to the purchaser prior to completing the purchase and without
25 requiring the purchaser to search for the warning in the general content of the website. If MFAC sells
26 Products directly to customers with e-commerce websites which MFAC knows or has reason to know
27 offer the Products to customers located in California, MFAC shall inform those customers in writing
28 of their obligation to provide online warnings consistent with Title 27 California Code of Regulations

1 § 25600.2(b) in conjunction with Products sold to customers located in California. The internet
2 warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided
3 on the Product label also uses the Short-Form Warning content.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Initial Civil Penalty**

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

14 **3.2 Second Waivable Civil Penalty**

15 MFAC shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be
16 waived in its entirety, if, within thirty-five (35) days of the Effective Date, an officer of MFAC
17 certifies, as of the Effective Date, and continuing thereafter, (a) any and all Jump Ropes
18 manufactured or imported by MFAC for sale to consumers in California directly including through
19 its own website, affiliated websites or a third party website (through which MFAC drop ships Jump
20 Ropes directly to consumers), to consumers located in California, and to customers whom MFAC
21 knows or has reason to know offer the Jump Ropes online to California customers, are DEHP Free
22 Products as defined by Section 2.2, and (b) any and all Handle Grips manufactured or imported by
23 MFAC for sale to consumers in California directly including through its own website, affiliated
24 websites or a third party website (through which MFAC drop ships Handle Grips directly to
25 consumers), to consumers located in California, and to customers whom MFAC knows or has reason
26 to know offer the Handle Grips online to California customers, are DBP Free Products as defined by
27 Section 2.2. Unless the second civil penalty is waived, on the thirty-fifth (35th) day after the
28

1 Effective Date, MFAC shall issue a check made payable to “OEHHA” in the amount of \$1,875 and a
2 check made payable to “Keep America Safe & Beautiful” in the amount of \$625.

3 **3.1 Third Waivable Civil Penalty**

4 MFAC shall pay a third civil penalty of \$2,000. However, the third civil penalty shall be
5 waived in its entirety, if, within thirty-five (35) days of the Effective Date, an officer of MFAC
6 certifies, as of the Effective Date, and continuing thereafter, any and all Products manufactured or
7 imported by MFAC for sale to consumers in California directly including through its own website,
8 affiliated websites or a third party website (through which MFAC drop ships Products directly to
9 consumers), to consumers located in California, and to customers whom MFAC knows or has reason
10 to know offer the Products for sale in California, are Reformulated Products as defined by Section
11 2.2. Unless the second civil penalty is waived, on the thirty-fifth (35th) day after the Effective Date,
12 MFAC shall issue a check made payable to “OEHHA” in the amount of \$1,500 and a check made
13 payable to “Keep America Safe & Beautiful” in the amount of \$500.

14 **3.2 Reimbursement of Attorneys’ Fees and Costs**

15 KASB and its counsel offered to resolve the allegations in the Notices and Complaint without
16 reaching terms on the amount of reimbursement of their attorneys’ fees and costs. Shortly after the
17 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
18 amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the
19 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
20 work performed through the mutual execution and reporting of this Consent Judgment to the Office
21 of the California Attorney General and to move the Court for approval of and entry of Judgment
22 pursuant to its terms, but exclusive of fees and costs on appeal, if any. Within five (5) business days
23 of the Effective Date, MFAC agrees to issue a check in the amount of \$31,500 payable to “Seven
24 Hills LLP” for all fees and costs incurred investigating, bringing this matter to MFAC’s attention,
25 litigating, negotiating a settlement in the public interest, complying with the Office of the California
26 Attorney General’s reporting requirements, and obtaining the Court’s approval of its terms pursuant
27 to Section 5.
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1 **3.3 Delivery Address**

2 All payments required by this Consent Judgment shall be delivered to the following address:

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

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 KASB's Release of Proposition 65 Claims**

8 This Consent Judgment is a full, final and binding resolution of the claims that were or could
9 have been asserted by KASB arising out of the allegations in the Notices and in the Complaint.
10 KASB, acting on its own behalf and in the public interest, and on behalf of its past and current
11 agents, representatives, attorneys, successors and assignees ("**Releasors**") releases MFAC, its past
12 and present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
13 employees, attorneys, and each entity to whom MFAC directly or indirectly distributes or sells
14 Products including Amazon.com, Inc., its downstream distributors, wholesalers, marketplace hosts,
15 customers, retailers, franchisees, cooperative members, and licensees, and the successors and assigns
16 of any of them ("**Releasees**"), based on the alleged failure to provide a clear and reasonable warning
17 about alleged exposures to DEHP contained in Jump Ropes and DBP contained in Handle grips that
18 were manufactured, processed, distributed, sold and/or offered for sale in California before the
19 Effective Date, as set forth in the Notices and Complaint. The Parties further agree that compliance
20 with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with
21 respect to alleged exposures to DEHP in Jump Ropes and DBP in Handle Grips.

22 **4.2 KASB's Individual Release of Claims**

23 KASB, in its individual capacity only and *not* in his representative capacity, also provides a
24 release to MFAC and Releasees which shall be effective as a full and final accord and satisfaction, as
25 a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
26 claims, liabilities and demands of KASB of any nature, character or kind, whether known or
27 unknown, suspected or unsuspected, arising out of alleged or actual failure to provide a clear and
28 reasonable warning about exposures to DEHP, DIDP, DBP, DINP, BBP, and DnHP, in Products

1 manufactured, processed, distributed or sold to consumers in California before the Effective Date.
2 Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute an action
3 under Proposition 65 against a Releasee that does not involve MFAC's Products.

4 **4.3 MFAC's Release of KASB**

5 MFAC, on behalf of itself, its past and current agents, representatives, attorneys, successors,
6 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) by KASB and its attorneys and other representatives in the course of investigating claims
9 or otherwise seeking to enforce Proposition 65 against it 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
13 best efforts, and those of their counsel, to support entry of a judgment pursuant to the terms of this
14 Consent Judgment, and to obtain judicial approval of their settlement in the form of this Consent
15 Judgment in a timely manner. For purposes of this section, "best efforts" shall include, at a
16 minimum, supporting the motion for approval, responding to any third-party objection, and
17 appearing at the hearing before the Court if so requested.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of California
24 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
25 rendered inapplicable by reason of law generally, or as to the Products, then MFAC may provide
26 KASB with written notice of any asserted change in the law, and shall have no further injunctive
27 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
28 are so affected. If OEHHA amends any of the Proposition 65 warning regulations (beginning at

1 Title 27, California Code of Regulations, Section 25600), MFAC may, at its sole discretion,
2 implement the applicable provisions of such amended regulations for the Products without being
3 deemed in violation of this Consent Judgment. Nothing in this Consent Judgment shall be
4 interpreted to relieve MFAC from its obligation to comply with any pertinent state or federal law or
5 regulation.

6 **8. NOTICE**

7 Unless specified herein, all correspondence and notice required by this Consent Judgment
8 shall be in writing and, in addition to being sent to the email addresses sent forth below, sent by:

9 (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight
10 courier to any Party by the other at the following addresses:

11 For MFAC:

For KASB:

12 Ann G. Grimaldi
13 Grimaldi Law Offices
14 75 Broadway Street, Suite 202
San Francisco, CA 94111
ann.grimaldi@grimaldilawoffices.com

Laralei Paras
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillsllp.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, FACSIMILE 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**

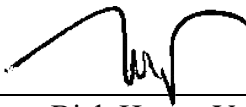

6 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
7 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
8 any party and the entry of a modified Consent Judgment by the Court thereon.

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 **AGREED TO:**

AGREED TO:

Date: <u>8/10/2021</u>	Date: <u>8/18/2021</u>
By:  Ngoc-Bich Hoang Vo, CEO Keep America Safe and Beautiful	DocuSigned by:  Robert Andersen, Manager MFAC, LLC

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