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3 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 v.

12 PRO SPORTS INC. D/B/A CHAMPION
13 SPORTS, AND
DOES 1-25 INCLUSIVE,

14 Defendants.

Case No.37-2022-00015495-CU-NP-CTL

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT CHAMPION SPORTS
PRODUCTS CO.**

15 Dept.: C-65
16 Judge: RONALD F. FRAZIERXXX

17 Date:

141 Date Action Filed: April 26, 2022

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23 **1. INTRODUCTION**

24 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff
25 Keep America Safe and Beautiful ("KASAB") acting on behalf of the public interest, and
26 Defendants Pro Sports Inc. d/b/a Champion Sports ("Defendant" or "Champion Sports") with
27

1 KASAB, Champion Sports referred to as the "Parties" and each of them as a "Party." KASAB is
2 a California resident seeking to promote awareness of exposures to toxic chemicals and improve
3 human health by reducing or eliminating hazardous substances produced by consumer products.
4 Champion Sports is a person in the course of doing business for purposes of Proposition 65, Cal.
5 Health & Safety Code §§ 25249.6 *et seq.*

6 1.2 **Allegations and Representations.** KASAB alleges that Defendants have offered
7 for sale in the State of California and has sold in California, the "Champion Sports Closed Reel
8 Measuring Tape" that when used as intended exposes consumers/users to DEHP (Di-[2-
9 Ethylhexyl] Phthalate) and that such sales have not been accompanied by Proposition 65
10 warnings. DEHP (Di-[2-Ethylhexyl] Phthalate) is listed under Proposition 65 as a chemical
11 known to the State of California to cause cancer and reproductive harm respectively.

12 1.3 **Notices of Violation/Complaint.** On or about May 21, 2021 KASAB served
13 Champion Sports, Amazon.com, Inc, Amazon.com Services, Inc and various
14 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
15 Health & Safety Code §25249.7(d) (the "Notice"), alleging that Champion Sports, Amazon.com,
16 Inc, and Amazon.com Services, Inc were in violation of Proposition 65 for failing to warn
17 consumers and customers that the Champion Sports Closed Reel Measuring Tape exposed users
141 in California to DEHP (Di-[2-Ethylhexyl] Phthalate). No public enforcer diligently prosecuted
4 the claims threatened in the Notices within sixty days plus service time relative to the provision of
19 the Notice to them by KASAB.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
21 has jurisdiction over Defendants as to the allegations contained in the complaint filed in this
22 matter, that venue is proper in the County of San Diego, and that this Court has jurisdiction to
23 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
24 resolution of all claims which were or could have been raised in the Complaint based on the facts
25 alleged therein and/or in the Notices.

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1.5 Defendants deny the material allegations contained in KASAB's Notice and Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendants. However, this section shall not diminish or otherwise effect the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

2. DEFINITIONS

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

2.2 **Covered Product.** The term "Covered Product" means "Champion Sports Closed Reel Measuring Tape" having the model numbers and UPC codes identified below, designed, manufactured, sold, distributed or otherwise made available by or for Defendants.

- F50: 710858003800
- F100: 710858003763
- F165: 710858003770
- F200: 710858003787
- F250: 710858003794

- R100: 710858007570
- R165: 710858007587
- R200: 710858007594
- R250: 710858007600
- R300: 710858007617
- R330: 710858007624
- R400: 710858007631

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

2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean DEHP (Di-[2-Ethylhexyl] Phthalate).

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

2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant

1 Releasees" shall have the meanings given in Section 5.1.

2 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent
3 Judgment is signed by the parties

4 **3. INJUNCTIVE RELIEF: WARNINGS**

5 3.1 Commencing on the Effective Date, Defendants shall not sell, offer for sale, or
6 ship for sale into California any Covered Product, unless the Covered Product is accompanied by
7 the following on-product warning or other warning authorized under Prop 65:



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

10

11 Or



15 **WARNING:** The use of this product can expose you to DEHP (Di-[2-Ethylhexyl]
16 Phthalate), which is a chemical known to the State of California to cause cancer and birth
17 defects or other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

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4 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
19 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
20 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
21 words, statements, or designs as to render it likely to be read and understood by an ordinary
22 individual under customary conditions of purchase or use. A warning may be contained in the
23 same section of the packaging or labeling that states other safety warnings, if any, concerning the
24 use of the product and shall be at least the same size as those other safety warnings, but no less
25 than 6 point font.

1 **4. MONETARY TERMS**

2 4.1. **Penalty.** Defendants shall pay a civil penalty of \$100.00 pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
6 KASAB, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be
7 made to KASAB's Counsel within 20 days of the Effective Date. KASAB's Counsel shall
8 provide Defendants' counsel with a copy of the check it sends to OEHHA within 20 days of
9 receiving the penalty funds from Defendants.

10 4.2 **Attorney's Fees.** Defendants agrees to pay reasonable attorney fees, inclusive of
11 all expenses and costs incurred as a result of investigating, bringing this matter to Defendant's
12 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
13 interest, pursuant to Code of Civil Procedure section 1021.5, in an amount of \$15,400.00
14 Defendants shall transmit via bank wire the total sum of \$15,500 representing the civil penalty
15 and attorney fees within 20 days of the Effective Date to KASAB's Counsel.

16 **5. RELEASE OF ALL CLAIMS**

17 5.1 This consent judgment is a full, final, and binding resolution between KASAB
18 acting in the public interest, and Defendant, its owners, investors employees, directors, officers,
19 managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners,
20 licensors, sister companies, and affiliates, and their successors and assigns ("Defendant
21 Releasees"), and all entities from whom they obtain and to whom they directly or indirectly
22 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
23 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
24 members, and their successors and assigns ("Downstream Defendant Releasees").

25 5.2 Upon full execution and approval by the Court of this Consent Judgment, KASAB,
26 on behalf of herself, her agents, successors, heirs, assigns, and in the public interest, hereby fully
27 and irrevocably releases and discharges Defendants, the Defendant Releasees, and the

1 Downstream Defendant Releasees from all claims for violations of Proposition 65 that were, or
2 which could have been, asserted in the Complaint based on exposure to and/or failure to warn
3 about Listed Chemicals, including DEHP (Di-[2-Ethylhexyl] Phthalate), from Covered Products,
4 including Champion Sports Closed Reel Measuring Tape", as set forth in the Notice, with respect
5 to any Covered Products, including Champion Sports Closed Reel Measuring Tape",
6 manufactured, distributed, or sold by Defendants, the Defendant Releasees, and/or the
7 Downstream Defendant Releasees in or into California prior to the Effective Date. Compliance
8 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard
9 to the Covered Products as set forth in the Notice.

10 5.3 In addition to the foregoing, KASAB, on behalf of itself, its past and current
11 agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative
12 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
13 legal action and releases Defendants, Defendant Releasees, and Downstream Defendant
14 Releasees from any and all manner of actions, causes of action, claims, demands, rights, suits,
15 obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,
16 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity,
17 fixed or contingent, now or in the future, with respect to any alleged violations of Proposition 65
141 related to or arising from Covered Products manufactured distributed or sold by Defendants or
4 Defendant Releasees in or into California prior to the effective date. With respect to the
19 foregoing waivers and releases in this paragraph, KASAB hereby specifically waives any and all
20 rights and benefits which she now has, or in the future may have, conferred by virtue of the
21 provisions of Section 1542 of the California Civil Code, which provides as follows:
22

23 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
24 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST
25 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
26 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
27 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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2 5.4 Defendants waive any and all claims against KASAB, its attorneys and other
3 representatives, for any and all actions taken or statements made (or those that could have been
4 taken or made) by KASAB and her attorneys and other representatives, whether in the course of
5 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
6 and/or with respect to Covered Products.

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8 **6. INTEGRATION**

9 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
10 any and all prior negotiations and understandings related hereto shall be deemed to have been
11 merged within it. No representations or terms of agreement other than those contained herein
12 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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14 **7. GOVERNING LAW**

15 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California and apply within the State of California. In the event that Proposition 65 is repealed or
17 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
18 Defendants shall provide written notice to KASAB of any asserted change in the law, and shall
19 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
20 that, Covered Products are so affected.

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22 **8. ENFORCEMENT**

23 8.1 KASAB may, by motion or application for an order to show cause before the
24 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
25 Judgment. Prior to bringing any motion or application to enforce the requirements of this
26 Consent Judgment, KASAB shall provide Defendants with a proposed Notice of Violation, and a
27 copy of any documentary evidence which purportedly supports KASAB's Notice of Violation.
The Parties shall then meet and confer in good faith for a period of at least thirty (30) days
regarding the basis for KASAB's anticipated motion or application in an attempt to resolve it
informally. Should such attempts at informal resolution fail, KASAB may file her enforcement
motion or application. This Consent Judgment may only be enforced by the Parties.

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9. NOTICES

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

For Defendant:

Scott E. Charney, Esq.
Charney IP Law LLC
233 Mount Airy Road, Suite 100
Basking Ridge, New Jersey 07920

And

For KASAB:

Stephanie Sy, Esq.
Law Office of Stephanie Sy
11622 El Camino Real, Suite 100
San Diego, CA 92130

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

1 11.2 This Consent Judgment shall not be effective until it is approved and entered by
2 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
3 within eighteen months after it has been fully executed by the Parties. In such a scenario, the
4 Parties agree to meet and confer on how to proceed and if such agreement is not reached within
5 30-days, any monies that may have been paid pursuant to Section 4 shall be refunded and the case
6 shall proceed on its normal course.

7 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
8 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
9 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
10 that have been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the
11 trial court, and the case shall proceed on its normal course on the trial court's calendar.

12 **12. MODIFICATION**

13 12.1 This Consent Judgment may be modified only by express written agreement of the
14 Parties and the approval of the Court or upon the granting of a motion brought to the Court by
15 either Party.

16 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
17 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

141 **13. ATTORNEY'S FEES**

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

23 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its
24 own attorneys' fees and costs.

25 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
26 pursuant to law.
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14. **RETENTION OF JURISDICTION**

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

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15. AUTHORIZATION

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

APPROVED AS TO FORM:

<p>AGREED TO: Date : <u>07/25/2022</u>, 2022</p> <p>By: <u>[Signature]</u></p> <p>On Behalf of KASAB Stephanie Sy, Esq Law Offices Of Stephanie Sy</p>	<p>AGREED TO: Date: <u>7-15</u>, 2022</p> <p>By: <u>[Signature]</u></p> <p>On Behalf of Defendants Scott E. Charney, Esq. Charney IP Law LLC</p>
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IT IS HEREBY SO STIPULATED:

<p>AGREED TO:</p> <p>Date: <u>07/21/2022</u></p> <p>By: <u>[Signature]</u> KASAB NGOC-BICH HOANG VO, CEO</p>	<p>AGREED TO:</p> <p>Date: <u>7/15/22</u></p> <p>By: <u>[Signature]</u> Champion Sports Co.</p>
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