

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

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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,

Case No.37-2022-00015480-CU-NP-CTL

11 v.

12 POSSE PRODUCTS, INC., a Florida corporation
13 d.ba. PIT POSSE MOTORSPORTS (erroneously
14 sued as PIT POSSE MOTORSPORTS), AND
DOES 1-25 INCLUSIVE,

**STIPULATION FOR ENTRY OF
CONSENT JUDGMENT AS TO
DEFENDANT POSSE PRODUCTS,
INC. d.b.a. POSSE MOTORSPORTS
PRODUCTS CO.**

15 Defendants.

16 Dept.: C-75
17 Judge: JAMES A. MANGIONE

141 Date Action Filed: April 26, 2022

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20 **1. INTRODUCTION**

21 1.1 **The Parties.** This Consent Judgment is entered into by and between Plaintiff Keep
22 America Safe and Beautiful ("KASAB") acting on behalf of the public interest, and Defendant
23 Posse Products, Inc. d.b.a. Pit Posse Motorsports ("Defendant(s)" or "Posse Motorsports") with
24 KASAB, Pit Posse Motorsports referred to as the "Parties" and each of them as a "Party." KASAB
25 is a California resident seeking to promote awareness of exposures to toxic chemicals and improve
26 human health by reducing or eliminating hazardous substances produced by consumer products.
27

1 Posse Products, Inc. is a Florida corporation doing business as Pit Posse Motorsports and is a person
2 in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§
3 25249.6 *et seq.*

4 1.2 **Allegations and Representations.** KASAB alleges that Defendants have offered
5 for sale in the State of California and has sold in California, the “Pit Posse Motorsports PP182-2
6 Fuel Jug Hose Filler Racing Utility Gas Can MX Delux Kit (Set of 2)” that when used as intended
7 exposes consumers/users to DEHP (Di-[2-Ethylhexyl] Phthalate) and that such sales have not been
8 accompanied by Proposition 65 warnings. DEHP (Di-[2-Ethylhexyl] Phthalate) is listed under
9 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
10 harm respectively.

11 1.3 **Notices of Violation/Complaint.** On or about May 21, 2021 KASAB alleges it
12 served Pit Posse Motorsports, Amazon.com, Inc, Amazon.com Services, Inc. and various public
13 enforcement agencies with a document entitled “60-Day Notice of Violation” pursuant to Health &
14 Safety Code §25249.7(d) (the “Notice”), alleging that Pit Posse Motorsports, Amazon.com, Inc,
15 and Amazon.com Services, Inc were in violation of Proposition 65 for failing to warn consumers
16 and customers that the Pit Posse Motorsports “PP182-2 Fuel Jug Hose Filler Racing Utility Gas
17 Can MX Delux Kit (Set of 2)” exposed users in California to DEHP (Di-[2-Ethylhexyl] Phthalate).
141 On or about April 26, 2022, KASAB filed a Complaint against Defendants for Civil Penalties and
4 Injunctive Relief in the Superior Court of the State of California, County of San Diego, Case No.
19 37-2022-00015480. No public enforcer diligently prosecuted the claims threatened in the Notices
20 within sixty days plus service time relative to the provision of the Notice to them by KASAB.

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

1 1.5 Defendants deny the material allegations contained in KASAB's Notice and
2 Complaint and maintain that they have not violated Proposition 65. Nothing in this Consent
3 Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or
4 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
5 admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, such
6 being specifically denied by Defendants. However, this section shall not diminish or otherwise
7 effect the obligations, responsibilities, and duties of Defendants under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Complaint.** The term "Complaint" shall refer to the lawsuit described in Section
10 1.3.

11 2.2 **Covered Product.** The term "Covered Product" means "Pit Posse Motorsports "PP182-2
12 Fuel Jug Hose Filler Racing Utility Gas Can MX Delux Kit (Set of 2)" designed, manufactured,
13 sold, distributed or otherwise made available by or for Defendants.

14 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent Judgment
15 is entered as a Judgment of the Court.

16 2.4 **Listed Chemicals:** The term "Listed Chemicals" shall mean DEHP (Di-[2-
17 Ethylhexyl] Phthalate).


141 2.5 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

4 2.6 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
19 Releasees" shall have the meanings given in Section 5.1.


20 2.7 **Execution Date.** The term "Execution Date" shall mean the date this Consent
21 Judgment is signed by the parties

22 **3. INJUNCTIVE RELIEF: WARNINGS**

23 3.1 Commencing on the Effective Date, Defendants shall not sell, offer for sale, or ship
24 for sale into California any Covered Product, unless the Covered Product is accompanied by the
25 following on-product warning or other warning authorized under Prop 65:
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1  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

2
3 Or

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6  **WARNING:** The use of this product can expose you to DEHP (Di-[2-Ethylhexyl] Phthalate), which is a chemical 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.

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11 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
12 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
13 on the packaging or labeling, and displayed with such conspicuousness, as compared with other
14 words, statements, or designs as to render it likely to be read and understood by an ordinary
15 individual under customary conditions of purchase or use. A warning may be contained in the same
16 section of the packaging or labeling that states other safety warnings, if any, concerning the use of
17 the product and shall be at least the same size as those other safety warnings, but no less than 6
141 point font.

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19 **4. MONETARY TERMS**

20 4.1 **Penalty.** Defendants shall pay a civil penalty of \$100.00 pursuant to Health and
21 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
22 Code § 25192, with 75% of these funds remitted to the State of California's Office of
23 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
24 KASAB, as provided by California Health & Safety Code § 25249.12(d). Such payment shall be
25 made to KASAB's Counsel in accordance with payment terms below.

26 **Attorney's Fees.** Defendants agrees to pay reasonable attorney fees, inclusive of all expenses and
27 costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating

1 and negotiating and obtaining judicial approval of a settlement in the public interest, pursuant to
2 Code of Civil Procedure section 1021.5, in an amount of \$17,900.00 Defendants shall transmit via
3 bank wire the total sum of \$18,000 to Law Office of Stephanie Sy representing the civil penalty
4 and attorney fees in the manner described on the following dates: August 24, 2022 - \$3,600.00;
5 September 15, 2022 - \$3,600.00; October 14, 2022 - \$3,600.00; November 15, 2022 - \$3,600.00;
6 and, December 15, 2022 - \$3,600.00.

7 **5. RELEASE OF ALL CLAIMS**

8 5.1 This consent judgment is a full, final, and binding resolution between KASAB
9 acting in the public interest, and Defendants, Amazon.com, Inc, Amazon.com Services, Inc, its
10 owners, investors employees, directors, officers, managers, attorneys, parents, shareholders,
11 divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors
12 and assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they
13 directly or indirectly distribute or sell Covered Products, including but not limited to manufacturers,
14 suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and
15 cooperative members, and their successors and assigns ("Downstream Defendant Releasees").

16 5.2 Upon full execution and approval by the Court of this Consent Judgment, KASAB,
17 on behalf of herself, her agents, successors, heirs, assigns, and in the public interest, hereby fully
18 and irrevocably releases and discharges Defendants, the Defendant Releasees, and the Downstream
19 Defendant Releasees from all claims for violations of Proposition 65 that were, or which could have
20 been, asserted in the Notice and/or Complaint based on exposure to and/or failure to warn about
21 Listed Chemicals, including DEHP (Di-[2-Ethylhexyl] Phthalate), from Covered Products, as set
22 forth in the Notice and/or Complaint, with respect to any Covered Products, including Pit Posse
23 Motorsports "PP182-2 Fuel Jug Hose Filler Racing Utility Gas Can MX Delux Kit (Set of 2)"
24 manufactured, distributed, or sold by Defendants, the Defendant Releasees, and/or the Downstream
25 Defendant Releasees in or into California prior to the Effective Date. Compliance with the terms
26 of this Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered
27 Products as set forth in the Notice.

1 5.3 In addition to the foregoing, KASAB, on behalf of itself, its past and current agents,
2 representatives, attorneys, and successors and/or assignees, and not in its representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
4 and releases Defendants, Defendant Releasees, and Downstream Defendant Releasees from any
5 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
6 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
7 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
8 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
9 from Covered Products manufactured distributed or sold by Defendants or Defendant Releasees in
10 or into California prior to the effective date. With respect to the foregoing waivers and releases in
11 this paragraph, KASAB hereby specifically waives any and all rights and benefits which she now
12 has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
13 California Civil Code, which provides as follows:
14

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

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

23 **6. INTEGRATION**

24 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
25 any and all prior negotiations and understandings related hereto shall be deemed to have been
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1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendants shall provide written notice to KASAB of any asserted change in the law, and shall
8 have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
9 that, Covered Products are so affected.

10 **8. ENFORCEMENT**

11 8.1 Either Party may, by motion or application for an order to show cause before the
12 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
13 Judgment. Prior to bringing any motion or application to enforce the requirements of this Consent
14 Judgment, the enforcing party shall provide the other party with a proposed Notice of Violation,
15 and a copy of any documentary evidence which purportedly supports the enforcing party's Notice
16 of Violation. The Parties shall then meet and confer in good faith for a period of at least thirty (30)
17 days regarding the basis for the anticipated motion or application in an attempt to resolve it
141 informally. Should such attempts at informal resolution fail, the enforcing party may file the
4 enforcement motion or application. This Consent Judgment may only be enforced by the Parties.

19 **9. NOTICES**

20 9.1 Unless specified herein, all correspondence and notices required to be provided
21 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
22 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
23 by the other party at the following addresses:
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1 For Defendant:

2 Posse Products, Inc.
3 Attn: Richard Maynard
4 3901 48 Avenue North
5 St. Petersburg, 33714

6 Edward Dutkiewicz, Esq.
7 PO Box 937
8 Dade City, FL 33526-0937

9 With a copy to Steven A. Elia (which shall not constitute notice)

10 ELIA LAW FIRM, APC
11 Steven A. Ela, Esq.
12 2221 Camino Del Rio South, Suite 207
13 San Diego, CA 92108
14 Email: steve@elialaw.com

15 And

16 For KASAB:

17 Stephanie Sy, Esq.
18 Law Office of Stephanie Sy
19 11622 El Camino Real, Suite 100
20 San Diego, CA 92130

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

23 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

24 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and
26 the same document. Either party may sign this Consent Judgment by electronic means such as
27 DocuSign and such signature shall be deemed an original signature.

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

30 11.1 KASAB agrees to comply with the requirements set forth in California Health &
31 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
32 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 the
2 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 Parties
4 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days,
5 any monies that may have been paid pursuant to Section 4 shall be refunded and the case shall
6 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 Consent
9 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have
10 been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court,
11 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 either
15 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 unless
20 the unsuccessful party has acted with substantial justification. For purposes of this Consent
21 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
22 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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1 **14. RETENTION OF JURISDICTION**

2 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment.

4 **15. AUTHORIZATION**

5 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood and agree to all of the terms and conditions of this
7 document and certifies that he or she is fully authorized by the Party he or she represents to execute
8 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
9 explicitly provided herein each Party is to bear its own fees and costs.
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12 **APPROVED AS TO FORM ONLY:**

13 14 15 16 17 18 19 20	AGREED TO: Date : _____, 2022 By: _____ On Behalf of KASAB Stephanie Sy, Esq Law Offices Of Stephanie Sy	AGREED TO: Date: <u>8/24/2022</u> , 2022 By: <u>[Signature]</u> On Behalf of Defendants Steven A. Elia, Esq. Elia Law Firm, APC
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21 **IT IS HEREBY SO STIPULATED:**
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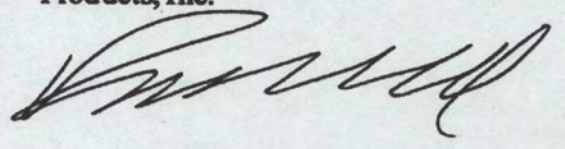
AGREED TO:

Date: _____


Date: 8-24-22

By: _____
KASAB

By: Richard Maynard, its President Posse
Products, Inc.



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<p>AGREED TO:</p> <p>Date : <u>8/25/2022</u>, 2022</p> <p>By: </p> <p>On Behalf of KASAB Stephanie Sy, Esq Law Offices Of Stephanie Sy</p>	<p>AGREED TO:</p> <p>Date: _____, 2022</p> <p>By: _____</p> <p>On Behalf of Defendants Steven A. Elia, Esq. Elia Law Firm, APC</p>
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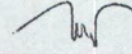
IT IS HEREBY SO STIPULATED:

AGREED TO:

AGREED TO:

Date: 08/25/2022

Date: _____

By: 
KASAB, Ngoc-Bich Hoang Vo, CEO

By: Richard Maynard, its President Posse
Products, Inc.