

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

9 Attorneys for Plaintiff  
10 KEEP AMERICA SAFE AND BEAUTIFUL

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

TRUE FABRICATIONS, INC.; and DOES  
1-30, inclusive,

Defendants.

Case No. CGC-21-595273

**[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 True Fabrications, Inc. (“True Fabrications”), with KASB and  
4 True Fabrications each individually referred to as a “Party” and collectively, as the “Parties,” to  
5 resolve the allegations in the October 21, 2020 60-Day Notice of Violation and the September 3, 2021,  
6 Supplemental 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic  
7 Enforcement Act of 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 or eliminated from  
12 consumer products sold in California. True Fabrications is a person in the course of doing business  
13 for purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that True Fabrications manufactures, imports, sells, or distributes for sale in  
16 California (a) wine boxes with vinyl straps containing di(2ethylhexyl) phthalate (“DEHP”), including  
17 but not limited to, *Twine Living Co 2 Bottle Antique Wooden Wine Box, Item: 0308*, and (b) faux  
18 leather totes containing diisononyl phthalate (“DINP”), including but not limited to, *Brown Faux*  
19 *Leather Double-Bottle Wine Tote by Viski, Item: 5220*, without providing the health hazard warning  
20 that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition  
21 65”). Wine boxes with vinyl straps and faux leather totes are collectively referred to hereinafter as  
22 the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of  
23 California to cause birth defects or other reproductive harm. DINP is listed pursuant to Proposition  
24 65 as a chemical known to the State of California to cause cancer.

25 **1.3 Notices of Violation**

26 On October 21, 2020, KASB served True Fabrications, the California Attorney General, and  
27 the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging  
28 True Fabrications violated Proposition 65 by failing to warn its customers and consumers in

1 California its wine boxes with vinyl straps can expose users to DEHP. On September 3, 2021,  
2 KASB served a True Fabrications, the California Attorney General, and the requisite public  
3 enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”),  
4 alleging True Fabrications violated Proposition 65 by failing to warn its customers and consumers in  
5 California that the Products can expose users to DEHP or DINP. The Notice and Supplemental  
6 Notice are collectively referred to hereinafter as the “**Notices.**”

#### 7 **1.4 Complaint**

8 On September 17, 2021, KASB commenced the instant action, naming True Fabrications as a  
9 defendant for the alleged violations of Proposition 65 that are the subject of the Notice. On February  
10 10, 2022, KASB filed a first amended complaint (“**Complaint**”), adding the alleged violations of  
11 Proposition 65 that are the subject of the Supplemental Notice.

#### 12 **1.5 No Admission**

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

#### 20 **1.6 Jurisdiction**

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

#### 25 **1.7 Execution Date**

26 The term “Execution Date” means the date all parties have signed this Consent Judgment.

27 ///

28 ///

1           **1.8     Effective Date**

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

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

5           **2.1     Reformulation Commitment**

6           Commencing on the Execution Date and continuing thereafter, all Products True Fabrications  
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, shall meet the Reformulation Standard  
9 for Reformulated Products.

10          **2.2     Reformulation Standard**

11          For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products  
12 which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”),  
13 diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) and  
14 di-n-hexyl phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration  
15 of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the  
16 State of California, a federal agency, or a nationally recognized accrediting organization  
17 (“**Accredited Lab**”). For purposes of compliance with this reformulation standard, testing samples  
18 shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”)  
19 methodology CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency  
20 methodology 8270D, or other methodologies utilized by federal or state government agencies to  
21 determine phthalate content in a solid substance.

22          **2.3     Certification to Compliance with Reformulation Standard**

23          On or before the Effective Date, an officer of True Fabrications shall provide Seven Hills LLP  
24 with a written attested declaration stating, as of the thirtieth (30<sup>th</sup>) day after the Execution Date, and  
25 continuing thereafter, any and all Products manufactured or imported by True Fabrications for sale to  
26 (a) consumers in California directly including through its own website, affiliated websites or a third  
27 party website, to consumers located in California, and (b) customers with nationwide distribution and  
28 e-commerce websites, are Reformulated Products as defined by Section 2.2. Along with its attested

1 declaration, True Fabrications shall provide recent test results performed after the date of the  
2 respective Notices by an Accredited Lab showing the Products were tested and analyzed according to  
3 the parameters set forth in Section 2.2 and are Reformulated Products. Failure to comply with this  
4 section shall render this agreement null and void.

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty**

7 Pursuant to Health and Safety Code § 25249.7(b), True Fabrications agrees to pay a civil  
8 penalty of \$2,500 within fifteen (15) days of the Effective Date. True Fabrications' civil penalty  
9 payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with  
10 seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health  
11 Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB.  
12 True Fabrications shall issue its payment in two checks made payable to: (a) "OEHHA" in the  
13 amount of \$1,875; and (b) "Keep America Safe and Beautiful" in the amount of \$625. KASB's  
14 counsel shall deliver to OEHHA and KASB their respective portions of the penalty payment.

15 **3.2 Reimbursement of Attorneys' Fees and Costs**

16 KASB and its counsel offered to resolve the allegations in the Notices and Complaint without  
17 reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties  
18 finalized the other material settlement terms, they negotiated and reached an accord on the amount of  
19 reimbursement to be paid to KASB's counsel, under general contract principles and the private  
20 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work  
21 performed through the mutual execution and reporting of this Consent Judgment to the California  
22 Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal,  
23 if any. Within fifteen (15) days of the Effective Date, True Fabrications shall issue two checks for a  
24 total amount of \$25,000, one check in the amount of \$555 payable to "Seven Hills LLP in trust for  
25 Keep America Safe and Beautiful" for case costs, and a second in the amount of \$24,445 payable to  
26 "Seven Hills LLP" for all fees and other costs incurred investigating, bringing this matter to True  
27 Fabrications' attention, litigating, negotiating a settlement in the public interest, obtaining Court  
28 approval of its terms pursuant to Section 5, and reporting to the California Attorney 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

7           **4.     CLAIMS COVERED AND RELEASED**

8                     **4.1     KASB’s Release of Proposition 65 Claims**

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

23                     **4.2     True Fabrications’ Release of KASB**

24           True Fabrications, on behalf of itself, its past and current agents, representatives, attorneys,  
25 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other  
26 representatives, for any and all actions taken or statements made (or those that could have been taken  
27 or made), whether in the course of investigating claims or otherwise seeking to enforce Proposition  
28 65 against them in this matter with respect to the Products.

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

5 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

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

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment  
26 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or  
27 (ii) a recognized overnight courier to any Party by the other at the following addresses:  
28

1 For True Fabrications:

2 Dhruv Agarwal, President  
3 True Fabrications, Inc.  
4 3668 Albion Pl. N  
5 Seattle, WA 98103-7904

For KASB:

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

6 With a copy to:

7 Margaret K. Cerrato-Blue  
8 Fox Rothschild LLP  
9 1001 Fourth Avenue, Suite 4500  
10 Seattle, WA 98154-1065

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

13 **9. COUNTERPARTS AND PDF SIGNATURES**

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

17 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

20 **11. ENTIRE AGREEMENT**

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

27 **12. MODIFICATION**

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



1 **13. AUTHORIZATION**

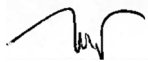
2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood, and agreed to all the terms and conditions of this  
4 Consent Judgment.


5 **AGREED TO:**

**AGREED TO:**

6 Date: 10-17-2022

Date: 10-13-2022

7  
8 By:   
9 Ngoc-Bich Hoang Vo, CEO  
Keep America Safe and Beautiful

By:   
Dhruv Agarwal, President  
True Fabrications, Inc.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28