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

16 KEEP AMERICA SAFE AND BEAUTIFUL,

17 Plaintiff,

18 v.

19 ZURN INDUSTRIES, LLC ; and DOES 1-30,
20 inclusive,

21 Defendants.

Case No. CGC-22-601811

**CONSENT JUDGMENT AS TO
ZURN INDUSTRIES, LLC**

Violation of Proposition 65, The Safe
Drinking Water and Toxic Enforcement Act
of 1986 (Health & Safety Code § 25249.5 *et*
seq.)

UNLIMITED CIVIL

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment (“**Agreement**” or “**Consent Judgment**”) is entered into by and
4 between Keep America Safe and Beautiful (“**KASB**”) on the one hand, and Zurn Industries, LLC
5 (“**Zurn**”) on the other hand, with each individually referred to as a “**Party**” and, collectively, the
6 “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest
7 pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State
8 of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated
9 from consumer products sold in California. KASB alleges Zurn is a person in the course of doing
10 business for purposes of California Health & Safety Code § 25249.11(b).

11 **1.2 Consumer Product Description**

12 KASB alleges that Zurn manufactures, imports, sells, and distributes for sale, in California,
13 valves with vinyl components containing di(2-ethylhexyl) phthalate (“**DEHP**”), an example of which
14 is the *Zurn-Wilkins Lead-Free Bronze Full Port Ball Valve, Model 1-850TXL, Product ID# 203371406*
15 (the “**Products**”), without providing the health hazard warning KASB alleges is required by California
16 Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). DEHP is listed pursuant to Proposition
17 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive
18 harm.

19 **1.3 Notice of Violation**

20 On October 8, 2021, KASB served Zurn Industries, LLC, Rexnord Corporation, The Home
21 Depot, the California Attorney General, and the requisite public enforcement agencies with a 60-Day
22 Notice of Violation (“**Notice**”) alleging Zurn Industries LLC, Rexnord Corporation, and The Home
23 Depot violated Proposition 65 by failing to warn customers and consumers in California that the
24 Products can expose users to DEHP. The Parties note that Zurn Industries, LLC is the manufacturer
25 of the Products; that Rexnord Corporation changed its name to Zurn Water Solutions Corporation
26 (now known as Zurn Elkay Water Solutions Corporation) on October 4, 2021; and that Zurn
27 Industries, LLC is a subsidiary of Zurn Elkay Water Solutions Corporation. Zurn does not contest the
28

1 validity of the Notice insofar as its use of the prior corporate names. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

3 **1.4 Complaint**

4 On September 12, 2022, KASB commenced the instant action, naming Zurn as a defendant
5 for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.5 No Admission**

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

14 **1.6 Effective Date**

15 For purposes of this Agreement, “**Effective Date**” shall mean that date on which the Court
16 approves this Consent Judgment and enters judgment pursuant to its terms.

17 **1.7 Jurisdiction**

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

22 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

23 **2.1 Commitment to Reformulate or Warn**

24 Commencing on or before March 1, 2023 (“**Commencement Date**”) and continuing
25 thereafter, all Products Zurn manufactures, imports or ships for sale, in or into California, shall either
26 be: (a) reformulated in accordance with the following Reformulation Standard for Reformulated
27 Products, detailed in Section 2.2; or (b) accompanied by a clear and reasonable warning, pursuant to
28 Section 2.3, below. Additionally, commencing on the Effective Date and continuing thereafter, all

1 Products Zurn sells or distributes for sale, in or into California, that do not meet the Reformulation
2 Standard shall be accompanied by a clear and reasonable warning, in accord with Sections 2.3
3 through 2.5.

4 **2.2 Reformulation Standard Defined**

5 For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if
6 they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl
7 phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) or di-n-hexyl
8 phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration of less than
9 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of
10 California, a federal agency, or a nationally-recognized accrediting organization. For purposes of
11 compliance with this reformulation standard, testing samples shall be prepared and extracted using
12 Consumer Product Safety Commission (“**CPSC**”) methodology CPSC-CH-C1001.09.3 and analyzed
13 using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by
14 federal or state government agencies to determine phthalate content in a solid substance.

15 **2.3 Clear and Reasonable Warnings**

16 Zurn shall provide clear and reasonable warnings for all Products in accordance with this
17 Section and pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall
18 be prominently placed with such conspicuousness as compared with other words, statements, or
19 designs as to render it likely to be read and understood by an ordinary individual under customary
20 conditions before purchase or use and shall be provided in a manner such that it is clearly associated
21 with the specific Product to which the warning applies.
22


23 **(a) Warning.** The Warning shall consist of one of the following statements:

24 **1. For Products containing DEHP:**


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

27 Or


28 **2. For Products containing any other phthalate chemical(s):**

1  **WARNING:** This product can expose you to chemicals including
2 [name of chemical or chemicals] which [is/are] known to the State of
3 California to cause [cancer] [and] [birth defects or other reproductive
4 harm.]For more information go to www.P65Warnings.ca.gov.

5 **(b) Short-Form Warnings.** Zurn may, but is not required to, use one of the following short-
6 form warnings, in lieu of the warnings set forth in subsection 2.3(a) (“**Short-Form**”),
7 subject to the additional requirements in Sections 2.4 and 2.5, and modified to reflect the
8 correct chemical endpoint, as follows:

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

10  **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

11  **WARNING:** Cancer - www.P65Warnings.ca.gov.

12 **(c) Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used
13 to provide a warning includes consumer information in language(s) other than English, the
14 warning must also be provided in the other language(s) in addition to English.

15 **2.4 Product Warnings**

16 Zurn shall affix a warning to the Product label or otherwise directly on Products or on the
17 Product’s immediate container, wrapper, or packaging for those Products provided for sale to
18 consumers located in California and to customers with retail outlets in California. For purposes of this
19 Agreement, “**Product label**” means a display of written, printed or graphic material printed on or
20 affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to
21 section 2.3(a) or (b) must print the word “**WARNING:**” in all capital letters and in bold font. The
22 warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
23 equilateral triangle with a black outline, except, if the labeling does not use the color yellow, the
24 symbol may be in black and white. The entire warning shall appear in at least 6-point type and no
25 smaller than the largest type size used for other consumer information on the Products. The warning
26 shall consist of either the Warning or the Short Form described in subsection 2.3(a) or (b),
27 respectively.

1 **2.5 Internet Warnings**

2 If, after the Commencement Date, Zurn sells Products to consumers located in California or to
3 customers with retail outlets in California, in each case via the internet on websites it controls (“**Zurn-**
4 **controlled websites**”), then Zurn shall in each case provide warnings for each Product both on the
5 Product label, in accordance with Section 2.4, and by prominently displaying the warning or a clearly
6 marked hyperlink to the warning using the word “**WARNING**” to the consumer or customer prior to
7 completing the purchase such that the consumer or customer does not have to search for the warning.
8 The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in
9 conjunction with the sale of the Products via the Zurn-controlled website shall appear either: (a) on the
10 same web page on which the Products are displayed; (b) on the same web page as the virtual cart
11 displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web
12 pages displayed to a purchaser prior to or during the checkout process. The warning shall appear in
13 any of the above instances adjacent to or immediately following the display, description, or price of
14 the Products for which it is given in the same type size or larger than other consumer information
15 provided for the Products and shall not require customers or customers to seek out the warning. The
16 internet warning may use the Short-Form described in Section 2.3(b) if the warning provided on the
17 Product label also uses the Short-Form. For all other internet warnings, with respect to third-party
18 controlled websites that sell Products in or into California, Zurn shall, after the Effective Date, provide
19 Products to those third-party websites that bear the warning as set forth in Section 2.4 and shall, where
20 available, provide a warning on the website, if the option to warn is available.

21 **3. MONETARY SETTLEMENT TERMS**

22 **3.1 Civil Penalties**

23 Pursuant to Health and Safety Code § 25249.7(b), Zurn agrees to pay a civil penalty of \$2,500
24 within ten (10) business days of the Effective Date. Zurn’s civil penalty payment will be allocated
25 according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of
26 the penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”),
27 and the remaining twenty-five percent (25%) retained by KASB. Zurn shall issue its payments in two
28 checks made payable to: (a) OEHHA in the amount of \$1,875; and (b) Keep America Safe and

1 Beautiful in the amount of \$625. KASB's counsel shall deliver to OEHHA and KASB their
2 respective portion of the penalty payments.

3 **3.2 Reimbursement of Attorneys' Fees and Costs**

4 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms
5 on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the
6 other material settlement terms, they negotiated and reached an accord on the amount of
7 reimbursement to be paid to KASB's counsel, under general contract principles and the private
8 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
9 performed through the mutual execution and reporting of this Agreement to the Office of the
10 California Attorney General. Within ten (10) business days of the Effective Date, Zurn agrees to
11 issue a check in the amount of \$27,500 and payable to Seven Hills LLP for all fees and costs incurred
12 investigating, bringing this matter to Zurn's attention, negotiating a settlement in the public interest,
13 and reporting its terms to Office of the California Attorney General pursuant to Section 10.

14 **3.3 Payments**

15 All payments payable and due under this Agreement shall be delivered to KASB's counsel at
16 following address:

17 Seven Hills LLP
18 Attn: Kimberly Gates Johnson
19 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 KASB's Public Release of Proposition 65 Claims**

22 KASB, acting on its own behalf and in the public interest, and on behalf of its past and current
23 agents, representatives, attorneys, successors an assignees ("**Releasors**") releases Zurn and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees and attorneys
25 ("**Releasees**"), and each entity to whom it directly or indirectly distributes or sells Products, including,
26 but not limited to, downstream distributors, wholesalers, sales representatives, customers, retailers,
27 including The Home Depot, franchisees, cooperative members, licensors and licensees (collectively,
28 "**Downstream Releasees**"), for any actual or alleged violation arising under Proposition 65 for

1 unwarned exposures to DEHP (including use of any intended or purported Proposition 65 warning
2 other than those listed in Sections 2.3, 2.4 and 2.5) from Products manufactured, distributed, imported,
3 sold and/or offered for sale, distributed for sale or purchased for resale in California by Zurn, before
4 the Commencement Date, as alleged in the Notice and Complaint. Compliance with the terms of this
5 Consent Judgment constitutes compliance with Proposition 65 by Zurn with respect to the alleged or
6 actual failure to warn about exposures to DEHP from Products manufactured, distributed or sold by
7 Zurn after the Commencement Date.

8 **4.2 KASB's Individual Release of Claims**

9 In further consideration of the promises and agreements herein contained, KASB as an
10 individual and *not* in its representative capacity, on behalf of itself, its past and current agents,
11 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to institute
12 or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may
13 have against Zurn, Releasees, and Downstream Releasees, including, without limitation, all actions,
14 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
15 penalties, losses, or expenses of any nature, character or kind, investigation fees, expert fees, and
16 attorneys' fees arising under Proposition 65 (collectively, "**Claims**") with respect to Proposition 65-
17 listed phthalates in Products manufactured, distributed, sold and/or offered for sale by Zurn before the
18 Commencement Date.

19 The Parties further understand and agree that this Section 4 release shall not extend upstream to
20 any entities that manufactured the Products or any component parts thereof, or any distributors or
21 suppliers who sold the Products or any component parts thereof to Zurn. Nothing in this Section
22 affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that
23 does not involve Zurn's Products.

24 **4.3 Zurn's Release of KASB**

25 Zurn, on behalf of itself, its past and current agents, representatives, attorneys, successors, and
26 assignees, hereby waives any and all Claims against KASB and its attorneys and other representatives,
27 for any and all actions taken or statements made (or those that could have been taken or made) by
28 KASB and its attorneys and other representatives, whether in the course of investigating claims or

1 otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

2 **5. COURT APPROVAL**

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

10 **6. SEVERABILITY**

11 If, after the execution of this Agreement, any provision of this Agreement is deemed by a
12 court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

13 **7. GOVERNING LAW**

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

21 **8. NOTICE**

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

25 For Zurn Industries, LLC:

26
27 Mr. Chris Corral
28 Zurn Water Industries, LLC
1747 Commerce Way

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400

1 Paso Robles, CA 93446

San Francisco, CA 94111

2 With a copy to:

3 Attention: General Counsel
4 Zurn Industries, LLC
5 511 Freshwater Way
6 Milwaukee, WI 53204

6 With a copy to:

7 Robert S. Nicksin, Esq.
8 Law Office of Robert S. Nicksin
9 1629 Idlewood Rd.
Glendale, CA 91202

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

12 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

19 **11. ENTIRE AGREEMENT**

20 This Agreement contains the sole and entire agreement and understanding of the Parties with
21 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
22 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
23 are no warranties, representations, or other agreements between the Parties except as expressly set
24 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
25 referred to in this Agreement have been made by any Party hereto. No other agreements not
26 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
27 of the Parties hereto.

28

1 **12. MODIFICATION**

2 This Agreement may be modified only by: (a) a written agreement of the Parties and entry of
3 a modified consent judgment by the Court; or (b) a successful motion or application of any Party, and
4 entry of a modified consent judgment by the Court.

5 **13. ENFORCEMENT**

6 Any Party may, after meeting and conferring, for a period no longer than sixty (60) days, by
7 motion or application for an order to show cause before this Court, enforce the terms and conditions
8 contained in this Consent Judgment. The Court shall retain jurisdiction to implement or modify the
9 Consent Judgment.

10 **14. AUTHORIZATION**


11 The undersigned are authorized to execute this Agreement on behalf of their respective Parties
12 and have read, understood, and agreed to all of the terms and conditions of this Agreement.

13 **AGREED TO:**


AGREED TO:

14 Date: 10/13/2022

Date: 10/11/2022

15
16
17
18 By:  _____

19 Ngoc-Bich Hoang Vo, CEO
20 Keep America Safe and Beautiful

15
16
17
18 By:  _____

19 Jeffrey LaValle, Vice President – General
20 Counsel & Secretary
21 Zurn Industries, LLC

