

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S)			
	Keep America Safe and Beautiful			
DEFENDANT(S) INVOLVED IN SETTLEMENT				
Patagonia Provisions, Inc.				
CASE INFO	COURT DOCKET NUMBER 23STCV13686		COURT NAME Los Angeles Superior Court	
	SHORT CASE NAME KASB v. Patagonia Provisions, Inc.			
REPORT INFO	INJUNCTIVE RELIEF See Section 2 of Attached Proposed Consent Judgment.			
	PAYMENT: CIVIL PENALTY \$1000.00		PAYMENT: ATTORNEYS FEES \$19,000.00	
	PAYMENT: OTHER		For Internal Use Only	
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL		
COPY OF SETTLEMENT MUST BE ATTACHED				
FILER INFO	NAME OF CONTACT Arturo Padilla			
	ORGANIZATION AVJustice		TELEPHONE NUMBER (323) 744-1671	
	ADDRESS 12155 Mora Drive, Suite 17		FAX NUMBER ()	
	CITY Sante Fe Springs	STATE CA	ZIP 90015	E-MAIL ADDRESS padilla@avjustice.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AVJustice Law Firm
Arturo Padilla (SBN 188902)
714 W. Olympic Blvd Suite #450
Los Angeles, CA 90015
Tel: (323) 744-1671
Email: padilla@avjustice.com

Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

KEEP AMERICA SAFE AND BEAUTIFUL

Plaintiff,

v.

PATAGONIA PROVISIONS, INC., a California
corporation, and DOES 1 through 100, inclusive

Defendants.

Case No.:
[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment is entered by and between Plaintiff Keep America Safe and Beautiful
3 (“KASB”) and Defendant Patagonia Provisions, Inc. (“Patagonia”), with KASB and Patagonia each
4 individually referred to as a “Party” and collectively as the “Parties,” to resolve the allegations in
5 KASB’s February 9, 2022 60-Day Notice of Violation of the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, California Health & Safety Code section 25249.6 *et seq.* (“Proposition
7 65”).

8 **1.1 The Parties**

9 KASB is a California-based non-profit organization proceeding in the public interest
10 pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the
11 State of California to cause cancer, birth defects, or other reproductive harm are disclosed or
12 eliminated from consumer products sold in California. Patagonia is a person in the course of doing
13 business for purposes of California Health & Safety Code section 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that Patagonia manufactures, imports, sells, or distributes for sale in California
16 Patagonia Provisions Organic Savory Grains, Green Kale + Kamut Khorasan Wheat products (the
17 “Covered Product”), without providing the health hazard warning for exposures to lead and lead
18 compounds (“Lead”) that KASB alleges is required by Proposition 65. Lead is listed pursuant to
19 Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or
20 other reproductive harm.

21 **1.3 Notice of Violation**

22 On February 9, 2022, KASB served Patagonia, Recreational Equipment, Inc., the California
23 Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation
24 (“Notice”), alleging that Patagonia violated Proposition 65 by failing to warn its customers and
25 consumers in California that the Covered Product can expose individuals to Lead. No public
26 enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in
27 the Notice.

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.4 Complaint

On June 14, 2023, KASB commenced the instant action by filing a complaint (“Complaint”) naming Patagonia as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.5 No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice and Complaint concerning Patagonia’s compliance with Proposition 65. Patagonia denies the material factual and legal allegations contained in KASB’s Notice and Complaint and maintains that all products that it has manufactured for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Consent Judgment shall be construed as an admission by Patagonia of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Patagonia of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Patagonia on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Patagonia under this Settlement Agreement.

1.6 Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Patagonia as to the allegations contained in the Complaint; that venue is proper in Los Angeles County; and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1.7 Effective Date

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

//
//
//

1 **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

2 **2.1 Reformulation of the Covered Products**

3 Beginning on the Effective Date, Patagonia shall be permanently enjoined from
4 manufacturing, distributing, or directly selling in the State of California any Covered Product that
5 exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of Lead based
6 on a single serving per day, unless such Covered Product complies with the warning requirements
7 of Section 2.2. The “Daily Lead Exposure Level” shall be calculated by multiplying the
8 recommended serving size in the Covered Product by the concentration of Lead in the Covered
9 Product. As used in this Section 2, “distributing for sale in the State of California” means to
10 directly ship a Covered Product into California or to sell a Covered Product to a distributor that
11 Patagonia knows will sell the Covered Product in California.

12 **2.2 Clear and Reasonable Warnings**

13 As of the Effective Date, and continuing thereafter, if the Daily Lead Exposure Level in the
14 Covered Product is more than 0.5 micrograms of Lead, a clear and reasonable Proposition 65
15 warning as set forth below must be provided for the Covered Product that Patagonia sells in
16 California.

17 If required, Patagonia shall provide one of the following warnings statements:

- 18 1) **WARNING:** Consuming this product can expose you to chemicals including lead,
19 which are known to the State of California to cause cancer and birth defects or other
20 reproductive harm. For more information go to www.P65Warnings.ca.gov/food.
- 21 2) **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov/food.

22 This warning statement shall be prominently displayed on the Covered Product, on the
23 packaging of the Covered Product, or on a placard, shelf tag, or sign provided that the statement is
24 displayed with such conspicuousness, as compared with other words, statements, or designs as to
25 render it likely to be read and understood by an ordinary individual prior to sale. If the warning
26 statement is displayed on the Covered Product’s packaging, it must be in a type size no smaller
27 than the largest type size used for other consumer information on the Covered Product. In no case
28 shall a warning statement displayed on the Covered Product’s packaging appear in a type size
smaller than 6-point type. The same warning shall be posted on any websites under the exclusive

1 control of Patagonia where the Covered Product is sold into California. Patagonia shall instruct
2 any third-party website to which it sells the Covered Product to include the same warning as a
3 condition of selling the Covered Product.

4 The warning shall be provided to California consumers in a manner that complies with
5 Title 27 California Code of Regulations section 25607.1(b). Specifically, for internet purchases, a
6 warning must also be provided by including either the warning or a clearly marked hyperlink
7 using the word "**WARNING**" on the display page for the Covered Product, or by otherwise
8 prominently displaying the warning to the purchaser prior to completing the purchase.

9 **2.3 Sell-Through Period**

10 Notwithstanding anything else in this Consent Judgment, any unit of the Covered Product
11 that is manufactured on or prior to the Effective Date shall be subject to the release of liability
12 pursuant to this Consent Judgment, without regard to when such Covered Products were, or are in
13 the future, distributed or sold to customers. As a result, the obligations of Patagonia, or any
14 Releasees (if applicable), do not apply to units of the Covered Product manufactured on or prior to
15 the Effective Date.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Settlement Amount**

18 Patagonia shall pay twenty thousand dollars (\$20,000) in settlement and total satisfaction of
19 all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes
20 civil penalties in the amount of \$1,000.00 pursuant to Health and Safety Code section 25249.7(b)
21 and attorney fees and costs in the amount of \$19,000.00 pursuant to Code of Civil Procedure
22 section 1021.5.

23 **3.2 Civil Penalties**

24 In settlement of all the claims referred to in the Notice, the Complaint, and this Consent
25 Judgment, Patagonia shall pay a total of \$1,000.00 in accordance with this Section. The penalty
26 payment will be allocated in accordance with California Health & Safety Code section
27 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
28 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to KASB.

1 KASB's counsel shall be responsible for delivering OEHHA's portion and KASB's portion of the
2 penalty payment made under this Settlement Agreement.

3 **3.3 Attorney Fees and Costs**

4 The Parties reached an accord on the compensation due to KASB and its counsel under the
5 private attorney general doctrine and principles of contract law. Under these legal principles,
6 Patagonia shall reimburse KASB's counsel for fees and costs incurred as a result of investigating
7 and prosecuting this matter. Patagonia shall pay KASB's counsel \$19,000.00 for all attorney fees,
8 expert and investigation fees, and related costs associated with the Notice, the Complaint, and this
9 Consent Judgment.

10 **4. PAYMENT INFORMATION**

11 Within thirty (30) days of the Effective Date, Patagonia shall make a total payment of
12 twenty thousand dollars (\$20,000) for the civil penalties and attorney fees and costs by wire
13 transfer to KASB's counsel AVJUSTICE LAW FIRM as provided below:

14 Bank: Wells Fargo Bank, N.A.

15 Routing No.: 121000248

16 Account No.: 8685506365

17 Beneficiary: AVJustice, PLC

18 Other than these payments, each side is to bear its own attorney fees and costs.

19 **5. CLAIMS COVERED AND RELEASED**

20 **5.1 KASB's Public Release of Proposition 65 Claims**

21 KASB, acting on its own behalf and in the public interest, releases Patagonia, and its
22 parents, subsidiaries, affiliated entities under common ownership, its directors, officers, principals,
23 agents, employees, attorneys, insurers, accountants, predecessors, successors and assigns, each
24 entity to whom Patagonia directly or indirectly distributes, ships, or sells the Covered Products,
25 including but not limited to downstream distributors, wholesalers, customers, and retailers
26 (including but not limited to Recreational Equipment, Inc.), franchisees, franchisors, cooperative
27 members, suppliers, licensees, and licensors, and all of the foregoing entities' owners, directors,
28 officers, agents, principals, employees, attorneys, insurers, accountants, representatives,

1 predecessors, successors, and assigns (collectively referred to as the “Releasees”) from all claims
2 for violation of Proposition 65 up through the Effective Date based on alleged exposures to Lead
3 from the Covered Product as set forth in the Notice. Compliance with the terms of this Consent
4 Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from the
5 Covered Product as set forth in the Notice. This Consent Judgment is a full, final, and binding
6 resolution of all claims under Proposition 65 that were or could have been asserted against
7 Patagonia and/or Releasees for failure to provide warnings required under Proposition 65 for
8 alleged exposures to Lead through reasonably foreseeable use of the Covered Product. This
9 release does not extend to any third-party retailers selling the product on a website who, after
10 receiving instruction from Patagonia to include a warning as set forth above in Section 2.2, do not
11 include such a warning.

12 **5.2 KASB’s Individual Release of Claims**

13 KASB, in its individual capacity, also provides a release to Patagonia and/or Releasees,
14 which shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of
15 action, obligations, costs, expenses, attorney fees, damages, losses, claims, liabilities, and
16 demands of every nature, character, and kind, whether known or unknown, suspected or
17 unsuspected, arising out of alleged or actual exposures to Lead in units of the Covered Product
18 manufactured, imported, sold, or distributed by Patagonia before the Effective Date.

19 **5.3 Patagonia’s Release of KASB**

20 Patagonia, on its own behalf, and on behalf of Releasees as well as its past and current
21 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims
22 against KASB and its attorneys and other representatives, for any and all actions taken or
23 statements made by KASB and its attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking to enforce Proposition 65 against them, in this matter or
25 with respect to the Covered Product.

26 **5.4 California Civil Code Section 1542**

27 It is possible that other claims not known to the Parties arising out of the facts alleged in the
28 Notice and Complaint and related to the Covered Product will develop or be discovered. KASB

1 on behalf of itself only, on one hand, and Patagonia on behalf of itself only, on the other hand,
2 acknowledge that this Consent Judgment is expressly intended to cover and include all such
3 claims up through and including the Effective Date, including all rights of action therefore.
4 KASB and Patagonia acknowledge that the claims released in Sections 5.1 through 5.3 may
5 include unknown claims and nevertheless waive California Civil Code section 1542 and any
6 federal or state law of similar effect as to any such unknown claims. California Civil Code section
7 1542 reads as follows:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
9 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
10 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE**
11 **AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY**
12 **AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED**
13 **PARTY.**

14 KASB, on behalf of itself only, and Patagonia, on behalf of itself only, acknowledge and
15 understand the significance and consequences of this specific waiver of California Civil Code
16 Section 1542.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved by the Court and shall be null
19 and void if it is not approved by the Court within one year after it has been fully executed by the
20 Parties or such additional time as the Parties may agree to in writing.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of California
23 as applied within the state of California. In the event that Proposition 65 is repealed, or is
24 otherwise rendered inapplicable for reasons, including but not limited to changes in the law, then
25 Patagonia may provide written notice to KASB of any asserted change, and shall have no further
26 injunctive relief obligations pursuant to this Consent Judgment with respect to, and to the extent
27 that, the Covered Product is so affected.

28 In the event the California Office of Environmental Health Hazard Assessment adopts a
regulation or safe use determination, or issues an interpretative guideline that exempts the Covered
Product from meeting the requirements of Proposition 65; or if Lead claims under Proposition 65
are permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined

1 by a court of competent jurisdiction to be preempted by a federal law or a burden on First
2 Amendment rights with respect to Lead in the Covered Product or products substantially similar to
3 the Covered Product, then Patagonia shall be relieved of its obligation to comply with Section 2
4 herein.

5 **8. ENFORCEMENT**

6 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be
7 entitled to its reasonable attorney fees and costs.

8 **9. NOTICE**

9 Unless otherwise specified herein, all correspondence and notice required by this Consent
10 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or
11 certified mail, return receipt requested; or (iii) a recognized overnight courier to the following
12 addresses:

13 For Patagonia: David M. Barnes, Esq.
14 HOGAN LOVELLS US LLP
15 Four Embarcadero Center, 10th Floor
San Francisco, CA 94111

16 Patagonia Legal Department
17 259 W. Santa Clara Street
Ventura, CA 93001

18 For KASB: Arturo Padilla, Esq.
19 AVJUSTICE LAW FIRM
20 12155 Mora Drive
Suite 17
21 Santa Fe Springs, CA 90670

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

24 **10. COUNTERPARTS; DIGITAL SIGNATURES**

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

28 //

1 **11. POST EXECUTION ACTIVITIES**

2 KASB agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
4 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
5 settlement, which motion KASB shall draft and file. In furtherance of obtaining such approval,
6 the Parties agree to mutually employ their best efforts, including those of their counsel, to support
7 the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a
8 timely manner. For purposes of this Section, “best efforts” shall include, at a minimum,
9 supporting the motion for approval, responding to any object that any third party may make, and
10 appearing at the hearing before the Court if so requested.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry
13 of a modified Consent Judgment thereon by the Court; or (ii) a successful motion or application of
14 any Party, and the entry of a modified consent judgment thereon by the Court.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and acknowledge that
17 they have read, understand, and agree to all of the terms and conditions contained herein.

18 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

19 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
20 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone,
21 and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion
22 may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

23 **15. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the
25 Parties with respect to the entire subject matter herein. No representations, oral or otherwise,
26 express or implied, other than those contained herein have been made by any Party. No other
27 agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to
28 bind any Party.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 06/21/2023

By:  My Chi Nguyen

KEEP AMERICA SAFE AND BEAUTIFUL

AGREED TO:

6/20/2023

Date: DocuSigned by:

By: 

9E77FB2E4C9648B...

PATAGONIA PROVISIONS, INC.