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KEEP AMERICA SAFE AND BEAUTIFUL

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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 KEEP AMERICA SAFE AND BEAUTIFUL,
17 Plaintiff,
18 v.
19 GOJA, LLC; and DOES 1-30, inclusive,
20 DEFENDANTS.
21

Case No. CGC-23-607009

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 GOJA, LLC, (“**GOJA**”), with KASB and GOJA each
4 individually referred to as a “**Party**” and, collectively, as the “**Parties**,” to resolve the allegations in
5 the August 24, 2022 60-Day Notice of Violation, in compliance with the Safe Drinking Water and
6 Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“**Proposition 65**”).

7 **1.1 The Parties**

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

13 **1.2 Consumer Product Description**

14 KASB alleges GOJA manufactures, processes, sells and/or distributes for sale, in or into
15 California, brass tire pressure gauges containing the heavy metal, Lead, including, but not limited to,
16 the *Alien 4x4 Tire Pressure Gauge 75 Psi, UPC# 6 02318 73838 7; ASIN B07PFF1WVN; UNSPC*
17 *25191800* without providing the compliant health hazard warning required by Proposition 65. All
18 such brass tire pressure gauges shall be referred to, collectively, hereinafter as the “**Product(s)**.” Lead
19 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer,
20 birth defects, reproductive and developmental harms.

21 **1.3 Notice of Violation**

22 On August 24, 2022, KASB served GOJA the California Attorney General, and the requisite
23 public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging that GOJA
24 violated Proposition 65 when it failed to provide compliant warnings to its customers and consumers
25 in California that its Products can expose users to Lead. No public enforcer has commenced and is
26 diligently prosecuting an action to enforce the allegations set forth in the Notice. The Parties enter
27 into this Consent Judgment for the purpose of resolving KASB’s claims asserted in the Notice and to
28 avoid prolonged and costly litigation.

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1.4 Complaint

On June 9, 2023, KASB commenced the instant action (“**Complaint**”), naming GOJA, LLC as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.5 No Admission

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

1.6 Jurisdiction

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

1.7 Execution Date

The term “Execution Date” shall mean the date on which all parties have signed this Consent Judgment.

1.8 Effective Date

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

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products GOJA manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through one or more third party retailers or e-commerce marketplaces shall be either: (a) Reformulated

1 Products, in compliance with and as defined by the Reformulation Standard set forth in Section 2.2;
2 or (b) Products bearing a clear and reasonable warning, pursuant to Sections 2.3 through 2.5.

3 **2.2 Reformulation Standard & Reformulated Products Defined**

4 For purposes of this Agreement, “**Reformulated Products**” are defined as those
5 Products: (a) containing no more than 0.009% or 90 parts per million (“ppm”) Lead on any exterior
6 surface when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing
7 methodologies 3050B and 6020A or equivalent methodologies utilized by federal or state agencies
8 for the purpose of determining Lead content in a solid substance; and (b) yielding a test result of no
9 more than 1.0 microgram of Lead on any exterior surface when sampled pursuant to the NIOSH
10 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A. (“**Reformulation**
11 **Standard**”).)

12 **2.3 Clear and Reasonable Warnings**

13 Commencing on or before the Effective Date, and continuing thereafter, GOJA shall
14 provide clear and reasonable health hazard warnings for all Products GOJA manufactures, imports,
15 distributes, sells or offers for sale, in or into California, that do not meet the Reformulation Standard
16 for Reformulated Products. For purposes of this Agreement, a warning shall be deemed clear and
17 reasonable, if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and
18 title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from
19 time to time.

20 Each warning shall be prominently placed with such conspicuousness, as compared with
21 other words, statements, designs, or devices, as to render it likely to be read and understood by an
22 ordinary individual under customary conditions prior to purchase or use. Each warning shall be
23 provided in a manner such that the consumer or user understands to which *specific* Product the
24 warning applies, so as to minimize the risk of consumer confusion.

25 (a) For purposes of this Agreement, the following warning shall be deemed clear and
26 reasonable:



27 **WARNING:** This product can expose you to chemicals,
28 including Lead, which is 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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2 (b) **Short Form Warning:** As an alternative to the preceding, GOJA may, but is not
3 required to, use the following applicable short-form warning (“**Short-Form** ”), subject to the
4 additional requirements in Sections 2.4 and 2.5 as follows:

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

6 The Parties agree, should GOJA determine additional chemical endpoints need to be included
7 in the above warnings, GOJA may modify the content of such warnings to address the new chemical,
8 provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

9 (c) **Foreign Language Requirement.** Where a consumer product sign, label or tag used
10 to provide a warning includes “consumer information”, as the term is defined in Title 27 California
11 Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then
12 the accompanying warnings must also be provided in those languages.

13 **2.4 On-Product Warning Requirements**

14 GOJA shall affix a warning on the Product Label, its packaging or directly on each Product
15 that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in
16 California. “**Product Label**” is defined as a display of written, printed or graphic material that is
17 printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall
18 appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for
19 other consumer information on the Product.

20 Warnings provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital
21 letters and in bold font, followed by a colon. The warning symbol to the left of the word
22 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline,
23 except, if the sign or label for the Products does not use the color yellow, then the symbol may be in
24 black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”.
25 The warning may be contained in the same section of the packaging, labeling, or instruction booklet
26 that states other safety warnings, if any, concerning the use of the Products and shall be at least the
27 same size as those other safety warnings.
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1 **2.5 Internet Product Warning Requirements**

2 For all Products manufactured, imported, distributed, sold or offered for sale after the
3 Effective Date via the internet to customers located in California, or sold in or into California, by
4 GOJA directly or through third-party websites over which GOJA has the ability to control the
5 application of warnings, GOJA shall provide warnings for each Product, both on the Product label, in
6 accordance with Section 2.4, and by prominently displaying the warning to customers prior to
7 purchase or during the checkout process such that the consumer does not have to seek out the
8 information being provided. The warning or a clearly marked hyperlink to the warning, using the
9 word “WARNING” and given in conjunction with the sale of Products via the internet, shall appear
10 on: (a) the same web page on which the Product is displayed; (b) the same web page as the order
11 form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web
12 pages displayed to a purchaser during the checkout process. The warning shall appear in any of the
13 above instances adjacent to or immediately following the display, description or price of the Product
14 for which it is given in the same type size or larger than other consumer information provided for the
15 Product. For third-party websites, as a term of sale, GOJA shall notify its commercial customers that
16 the Products must be accompanied by a warning, prior to and as a term of sale, in or into California,
17 and shall supply the warning requirements, pursuant to this Section 2.5.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty**

20 Pursuant to Health and Safety Code § 25249.7(b), GOJA agrees to pay a civil penalty of
21 \$2,000.00 within fifteen (15) business days of the Effective Date or on or before January 3, 2024,
22 whichever is later. GOJA’s civil penalty payment will be allocated according to Health and Safety
23 Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the
24 California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and the remaining
25 twenty-five percent (25%) retained by KASB. GOJA shall issue its payment in two checks made
26 payable to: (a) “**OEHHA**” in the amount of \$1,500.00; and (b) “**Keep America Safe and Beautiful**”
27 in the amount of \$500.00. KASB’s counsel shall deliver to OEHHA and KASB their respective
28 portion of the penalty payments.

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3.2 Reimbursement of Attorneys’ Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Within fifteen (15) business days of the Effective Date or on or before January 3, 2024, whichever is later, GOJA agrees to issue a check in the amount of \$24,000.00 payable to “Seven Hills LLP” for all fees and costs incurred in investigating, bringing this matter to GOJA’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 5.

3.3 Payments Due

All payments payable and due under this Consent Judgment shall be delivered to KASB’s counsel at the address listed in Section 3.4 within fifteen (15) business days of the Effective Date, or on or before January 3, 2024, whichever is later.

3.4 Delivery Address

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

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

Upon full execution of this Consent Judgment by the Parties, counsel for KASB shall deliver to counsel for GOJA Federal Form W9s for each payee under this Agreement, allowing GOJA to comply with its year-end tax reporting requirements.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 KASB's Release of GOJA**

3 This Consent Judgment is a full, final and binding resolution between KASB, on behalf of
4 itself and in the public interest, and GOJA, of any violation of Proposition 65 that was or could have
5 been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys,
6 successors, and/or assignees, against GOJA, its past and present directors, officers, shareholders,
7 employees, agents, subsidiaries, divisions, affiliates, assignees, attorneys, and each entity to whom
8 GOJA directly or indirectly distributes or sells Products, including, but not limited to, downstream
9 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
10 (collectively, "**Releasees**"), based on their failure to warn, arising under Proposition 65, about alleged
11 exposures to Lead contained in Products that were manufactured, distributed, sold and/or offered for
12 sale by GOJA in California before the Effective Date, as alleged in the Notice and Complaint. The
13 Parties further agree that compliance with Section 2 of this Consent Judgment shall be deemed
14 compliance with Proposition 65 with respect to alleged exposures to Lead in the Products.

15 In further consideration of the promises and agreements herein contained, KASB, on behalf
16 of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby
17 waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal
18 action and releases all claims that KASB may have, including, without limitation, all actions, and
19 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
20 penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and
21 attorneys' fees arising under Proposition 65 with respect to Lead in the Products manufactured,
22 distributed, sold and/or offered for sale by GOJA, before the Effective Date (collectively, "**Claims**"),
23 against GOJA and Releasees.

24 The Parties further understand and agree this Section 4.1 release shall not extend upstream to
25 any entities who manufactured the Products or any component parts thereof, nor to any distributors or
26 suppliers who sold the Products or any component parts thereof to GOJA. Nor shall this Section 4.1
27 release apply to any downstream, third-party websites that fail to communicate Product warnings, as
28 set forth in Section 2, after the Effective Date. Nothing in this Section affects KASB's right to

1 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
2 GOJA's Products.

3 **4.2 GOJA's Release of KASB**

4 GOJA, on behalf of itself, its past and current agents, representatives, attorneys, successors,
5 and assignees, hereby waives any and all claims against KASB and its attorneys and other
6 representatives, for any and all actions taken or statements made (or those that could have been taken
7 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
8 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
9 Products.

10 **4.3 Mutual Waiver of California Civil Code Section 1542**

11 The Parties each acknowledge familiarity with Section 1542 of the Civil Code, which
12 provides as follows:

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

19 The Parties, each on their own behalf, and each on behalf of their past and current agents,
20 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all
21 rights and benefits which it/they may have under, or which may be conferred upon it/them by the
22 provisions of Civil Code Section 1542, as well as under any other state or federal statute or common
23 law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits
24 pertaining to the released matters, as specifically defined by Sections 4.2 and 4.3, above. Nothing in
25 this section shall affect KASB's right to commence or prosecute an action under Proposition 65
26 against a Releasee that does not involve the Products.

27 **5. COURT APPROVAL**

28 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
best efforts, and those of their counsel, to support entry of a judgment pursuant to the terms of this

1 Consent Judgment, and to obtain judicial approval of their settlement in the form of this Consent
2 Judgment in a timely manner. For purposes of this section, “**best efforts**” shall include, at a
3 minimum, supporting the motion for approval, responding to any third-party objection, and
4 appearing at the hearing before the Court if so requested.

5 **6. SEVERABILITY**

6 If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed
7 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
8 affected.

9 **7. GOVERNING LAW**

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

17 **8. NOTICE**

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

21 For GOJA:

22 Walter Gonzalez, Jr., CEO & President
23 GOJA, LLC
24 8400 NW 36th St., Suite 500
Miami, FL 33166

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

25 With a Copy To:

26 Damon M. Pitt, Esq.
27 K & L Gates
28 1Park Plaza, 12th Floor
Irvine, CA 92614

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

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

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

7 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

10 **11. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
13 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
14 therein. There are no warranties, representations, or other agreements between the Parties except as
15 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
16 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
17 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
18 exist or to bind any of the Parties hereto.

19 **12. MODIFICATION**

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

23 **13. AUTHORIZATION**

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

27 **AGREED TO:**

AGREED TO:

1 Date: 09/25/2023

2 Date: 9/22/2023

3 By: 

4 By: 

5 My Nguyen, CFO
6 KEEP AMERICA SAFE AND
7 BEAUTIFUL

8 Walter Gonzales, CEO
9 GOJA, LLC

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