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A.N.S. XTREME PERFORMANCE and ANSGEAR.COM

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO
13

14 KEEP AMERICA SAFE AND
BEAUTIFUL,

15 Plaintiff,

16 v.

17 A.N.S. XTREME PERFORMANCE, INC.,
18 ANSGEAR.COM; and DOES 1-30,
inclusive,
19

20 Defendants.

Case No. CGC-23-607199

[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 defendants A.N.S. Xtreme Performance, Inc. and ANSgear.com (“A.N.S.”),
4 with KASB and A.N.S. each individually referred to as a “Party” and collectively, as the “Parties,” to
5 resolve the allegations in the June 23, 2022, 60-Day Notices of Violation in compliance with the Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.*
7 (“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. A.N.S. is a person in the course of doing business for purposes
13 of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges A.N.S. manufactures, imports, sells, or distributes for sale, in or into California,
16 Vinyl/PVC Handles containing di(2ethylhexyl) phthalate (“DEHP”), including, but not limited to, the
17 handle component of the *Warrior Professional Co2 Fill Station W/ 40" Steel Braided Hose; Item*
18 *MS58/30WOGMS58/30WOG*, and that A.N.S. does so without providing the warning required by
19 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). DEHP is listed pursuant to
20 Proposition 65 as a chemical known to the State of California to cause birth defects and other
21 reproductive harm. All such Vinyl/PVC Handles containing DEHP shall be referred to individually as
22 a “Product” and collectively as the “Products.”

23 **1.3 Notice of Violation**

24 On June 23, 2022, KASB served A.N.S., the California Attorney General, and the requisite
25 public enforcement agencies with a 60-Day Notices of Violation (“Notice”). The Notice alleges
26 A.N.S. violated Proposition 65 by failing to warn its customers and consumers in California that the
27 Product expose users to DEHP and the risks of harm associated with exposures to DEHP. The
28

1 Parties are informed and believe no public enforcer has commenced and is diligently prosecuting an
2 action to enforce the allegations set forth in either of the Notices.

3 **1.4 Complaint**

4 On June 22, 2023, KASB filed the captioned lawsuit (“Complaint”). The Complaint names
5 A.N.S. as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.5 No Admission**

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

14 **1.6 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate this Court has jurisdiction
16 over A.N.S. as to the allegations in the Complaint. Venue is proper in the County of San Francisco,
17 and the Court has jurisdiction to enter and enforce the terms and provisions of this Consent
18 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

19 **1.7 Effective Date**

20 The term “Effective Date” means the date on which the Court approves this Consent
21 Judgment and enters Judgment in accordance with its terms.

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

23 **2.1 Commitment to Reformulate or Warn**

24 Within sixty (60) days of the Effective Date and continuing thereafter, all Products A.N.S.
25 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
26 one or more third party retailers or online via e-commerce marketplaces, shall meet the
27 Reformulation Standard for Reformulated Products, as defined by Section 2.2, below, or be
28

1 accompanied by a clear and reasonable warning pursuant to Sections 2.3 through 2.5, below.

2 **2.2 Reformulation Standard & Reformulated Products Defined**


3 For purposes of this Consent Judgment, “Reformulated Products” are defined as products
4 with Vinyl/PVC Handle components containing DEHP in a maximum concentration of less than 0.1
5 percent (1,000 parts per million) in any “accessible component” (i.e., any component that may be
6 touched or handled during a reasonably foreseeable use) when analyzed by a laboratory accredited
7 by the State of California, a federal agency, or a nationally recognized accrediting organization. For
8 purposes of compliance with this reformulation standard, testing samples shall be prepared and
9 extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC CH-
10 C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or
11 other methodologies utilized by federal or state government agencies to determine phthalate content
12 in a solid substance (the “Reformulation Standard”).

13 **2.3 Clear and Reasonable Warnings**

14 For purposes of this Consent Judgment, a “clear and reasonable warning” shall mean a
15 warning in accordance with this Section and pursuant to California Health & Safety Code § 25249.5
16 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be
17 amended from time to time.

18 Each warning provided shall be prominently placed with such conspicuousness, when
19 compared with other words, statements, designs, or devices, as to render it likely to be read and
20 understood by an ordinary individual under customary conditions prior to purchase or use. Each
21 warning shall be provided in a manner such that the consumer or user understands to which *specific*
22 Product the warning applies, to minimize the risk of consumer confusion. For purposes of this
23 Agreement, the following warnings shall be deemed clear and reasonable:

24 **(a) Warnings:**

25  **WARNING:** This product can expose you to chemicals, including di(2-
26 ethylhexyl)phthalate [DEHP], which is known to the State of California to cause
27 birth defects or other reproductive harm. For more information go to
28 www.P65Warnings.ca.gov.

1 (b) **Short-Form Warning:** As an alternative to the warning set forth in the preceding
2 subsection (a), A.N.S. may, but is not required to, use the following short-form warning (“Short-
3 Form”), subject to the additional requirements set forth in the following Sections 2.4 and 2.5:



4 **WARNING:** Reproductive Harm-[www. P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5 (c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag
6 used to provide a warning includes consumer information, as that term is defined in Title 27
7 California Code of Regulations § 25600.1(c) (“Consumer Information”), in languages other than
8 English, then the warning must also be provided in those languages in addition to English.

9 **2.4 On-Product Warning Requirements**

10 A.N.S. shall affix one of the foregoing warnings on the “Product Label”, its immediate
11 packaging or labeling, or directly on each Product manufactured, imported, distributed, sold or
12 otherwise provided or intended to be provided for sale to consumers in or into California and does
13 not meet the Reformulation Standard. “Product Label” is defined as a display of written, printed or
14 graphic material printed on or affixed to a Product or its immediate container or wrapper. The entire
15 warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type
16 size used for other consumer information on the Product.

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

25 **2.5 Internet Product Warning Requirements**

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

15 **3. MONETARY SETTLEMENT TERMS**

16 **3.1 Civil Penalty**

17 Pursuant to Health and Safety Code § 25249.7(b), A.N.S. agrees to pay a civil penalty of
18 \$2,000 within five (5) business days of the Effective Date. A.N.S.’s civil penalty payment will be
19 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
20 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
21 (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. A.N.S. shall issue its
22 payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Seven Hills
23 in Trust for Keep America Safe and Beautiful” in the amount of \$500. KASB’s counsel shall remit
24 and disburse to OEHHA and KASB their respective portions of A.N.S.’s civil penalty payment.

25 **3.2 Reimbursement of Attorneys’ Fees and Costs**

26 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
27 reaching terms on the amount of reimbursement of attorneys’ fees and costs. After the Parties
28

1 finalized the other material settlement terms, they negotiated and reached an accord on the amount o
2 be paid to KASB’s counsel under general contract principles and the private attorney general
3 doctrine, codified at California Code of Civil Procedure § 1021.5. A.N.S. payment under this Section
4 covers all work performed through the mutual execution and reporting of this Consent Judgment to
5 the Office of the California Attorney General and entry of Judgment pursuant its terms, but exclusive
6 of fees and costs on appeal, if any. Within five (5) business days of the Effective Date, A.N.S. shall
7 issue a check in the amount of \$23,000, payable to “Seven Hills LLP” for all fees and other costs
8 incurred investigating, bringing this matter to A.N.S.’ attention, litigating, negotiating a settlement in
9 the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting
10 the settlement to the California Attorney General.

11 **3.3 Payments**

12 All payments due under this Consent Judgment shall be delivered to KASB’s counsel at the
13 following address:

14 Seven Hills LLP
15 Attn: Kimberly Gates Johnson
16 4 Embarcadero Center, Suite 1400
17 San Francisco, CA 94111

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 KASB’s Public Release of Proposition 65 Claims**

20 This Consent Judgment is a full, final, and binding resolution of all claims KASB alleged or
21 could have alleged arising out of the allegations in the Notices and Complaint. KASB, acting on its
22 own behalf, in the public interest, and on behalf of its past and current agents, representatives,
23 attorneys, successors and assignees (“Releasers”) releases A.N.S., its past and present parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
25 and each entity to whom A.N.S. directly or indirectly distributes or sells the Products including its
26 downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees,
27 cooperative members, and licensees (“Releasees”), if any, based on A.N.S. alleged failure to provide
28 a clear and reasonable warning, arising under Proposition 65, about alleged or actual exposures to
DEHP in Products manufactured, processed, distributed, sold and/or offered for sale in California

1 before the Effective Date, as set forth in the Notices and Complaint. The Parties further agree that
2 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition
3 65 with respect to alleged or actual exposures to DEHP in the Products. The Parties understand and
4 agree this Section 4.1 release shall not extend to Releasees who have been instructed by A.N.S.,
5 pursuant to Section 2.5 or to provide a warning on Products that are not Reformulated Products and
6 fail to do so.

7 **4.2 KASB's Private Release of Proposition 65 Claims**

8 In further consideration of the promises and agreements set forth herein, KASB as an
9 individual and *not* on behalf of the public, on its own behalf and on behalf of its past and current
10 agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights KASB may
11 have to institute or participate, directly or indirectly, in any form of legal action, and it releases all
12 claims it may have, including, without limitation, all actions, and causes of action, in law or in
13 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses
14 including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under
15 Proposition 65 with respect to DEHP in Products manufactured, distributed, sold and/or offered for
16 sale by A.N.S. and/or Releasees prior to the Effective Date.

17 **4.3 A.N.S.' Release of KASB**

18 A.N.S., on its own behalf and on behalf of its past and current agents, representatives,
19 attorneys, successors, and assignees, hereby waives any claim against KASB and its attorneys and
20 other representatives, for any action taken or statement made (or those that could have been taken or
21 made) by KASB and its attorneys and other representatives, whether in the course of investigating
22 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
23 Products.

24 The Parties further agree these Section 4 releases shall not extend upstream to any entity who
25 manufactured, imported, distributed, sold or otherwise supplied the Products or any component part
26 of the Products to A.N.S. Nothing in these Section 4 releases shall affect KASB's right to commence
27 or prosecute an action under Proposition 65 against a Releasee that does not involve the Products sold
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1 and/or offered for sale by A.N.S.

2 **5. COURT APPROVAL**

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

10 **6. SEVERABILITY**

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

14 **7. GOVERNING LAW**

15 The terms of this Consent Judgment shall be governed by the laws of the State of California
16 and apply within California. In the event Proposition 65 is repealed, preempted, or otherwise
17 rendered inapplicable by reason of law generally, or as to the Products, then A.N.S. may seek to
18 modify this Consent Judgment pursuant to Section 12. Nothing in this Consent Judgment shall be
19 interpreted to relieve A.N.S. from its obligation to comply with any pertinent state or federal law or
20 regulation.

21 **8. NOTICE**

22 Unless specified herein, all correspondence and notice required by this Consent Judgment 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 A.N.S.:

26 Peter Tchilingirian, CEO
27 ANSgear.com
28 41 Moreland Road

For KASB:

Kimberly Gates Johnson, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

1 Simi Valley CA 93065

2 With a copy to:

3 Michael J. Gleason
4 HAHN LOESER & PARKS
5 600 West Broadway, Suite 1500
6 San Diego, CA 92101

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

9 **9. COUNTERPARTS AND PDF SIGNATURES**

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

13 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

16 **11. ENTIRE AGREEMENT**

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

25 **12. MODIFICATION**

26 This Consent Judgment may only be modified by: (i) a written agreement of the Parties and
27 entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any
28 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 Party and have read, understand, and agreed to all the terms and conditions of this
4 Consent Judgment.

5 ///

6 ///

7 ///

9 **AGREED TO**

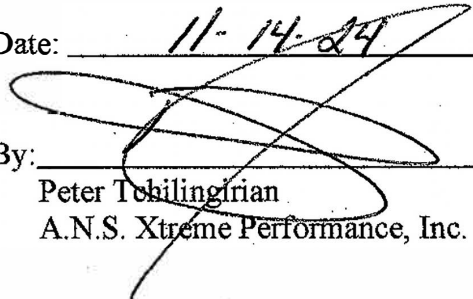
10 Date: 11/21/2024

11
12 By: 

13 Lance Nguyen, CEO
14 KEEP AMERICA SAFE AND
15 BEAUTIFUL

AGREED TO:

10 Date: 11-14-24

11
12 By: 

13 Peter Tchilingirian
14 A.N.S. Xtreme Performance, Inc.

16 **AGREED TO**

17 Date: 11-14-24

18
19 By: 

20 Peter Tchilingirian
21 ANSGEAR.COM