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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 CENTER FOR ADVANCED PUBLIC
AWARENESS,

15 Plaintiff,

16 v.

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

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

1 Or, for Products manufactured and labeled prior to January 1, 2028:

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

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

8 **⚠️WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Risk of
9 reproductive harm from exposure to DEHP. See www.P65Warnings.ca.gov.

10 Or

11 **⚠️WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can
12 expose you to DEHP, a reproductive toxicant. See www.P65Warnings.ca.gov.

13 Or, for Covered Products manufactured and labeled prior to January 1, 2028,

14 **⚠️WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

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

19 **2.4 On-Product Warning Requirements**

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

27 Warnings provided pursuant to Section 2.3 must print the words “**WARNING:**”, “**CA**
28 **WARNING:**”, or “**CALIFORNIA WARNING:**” in all capital letters and in bold font, followed by
a colon. The warning symbol to the left of the warning must be a black exclamation point in a yellow

1 equilateral triangle with a black outline, except, if the sign or label for the Products does not use the
2 color yellow, then the symbol may be in black and white. The symbol must be in a size no smaller
3 than the height of the words “WARNING:”, “CA WARNING:”, or “CALIFORNIA WARNING:”
4 The warning may be contained in the same section of the packaging, labeling, or instruction booklet
5 that states other safety warnings, if any, concerning the use of the Products and shall be at least the
6 same size as those other safety warnings.

7 **2.5 Internet Product Warning Requirements**

8 For all Products manufactured, imported, distributed, sold or offered for sale via the internet
9 to customers located in California, or sold in or into California by A.N.S. or its customers, directly or
10 through third-party websites over which A.N.S. has the ability to control the application of warnings,
11 A.N.S. shall provide warnings for each Product, both on the Product label, in accordance with Section
12 2.4, and: (a) a warning on the Product display page; (b) a clearly marked hyperlink using the word
13 “WARNING” or words “CA WARNING” or “CALIFORNIA WARNING” on the product display
14 page that links to the Product warning; or (c) by an otherwise prominently displayed warning
15 provided to the purchaser prior to completing the purchase, such that the consumer does not have to
16 seek out the information being provided. If the warning is provided using the Short-Form content,
17 pursuant to Section 2.3(b), then the warning provided on the website may use the same content.
18 “Prominently displayed” is defined to mean the consumer does not have to search for it in the general
19 content of the website. For third-party websites, as a condition of sale, A.N.S. shall notify the sellers
20 the Products must be accompanied by a warning, prior to and as a condition of sale, in or into
21 California, and shall supply the warning requirements, as detailed above.

22 **3. MONETARY SETTLEMENT TERMS**

23 **3.1 Civil Penalty**

24 Pursuant to Health and Safety Code § 25249.7(b), A.N.S. agrees to pay a civil penalty of
25 \$2,000 within five (5) business days of the Effective Date. A.N.S.’s civil penalty payment will be
26 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
27 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
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1 (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. A.N.S. shall issue its
2 payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Seven Hills
3 in Trust for Keep America Safe and Beautiful” in the amount of \$500. KASB’s counsel shall remit
4 and disburse to OEHHA and KASB their respective portions of A.N.S.’s civil penalty payment.

5 **3.2 Reimbursement of Attorneys’ Fees and Costs**

6 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
7 reaching terms on the amount of reimbursement of attorneys’ fees and costs. After the Parties
8 finalized the other material settlement terms, they negotiated and reached an accord on the amount o
9 be paid to KASB’s counsel under general contract principles and the private attorney general
10 doctrine, codified at California Code of Civil Procedure § 1021.5. A.N.S. payment under this Section
11 covers all work performed through the mutual execution and reporting of this Consent Judgment to
12 the Office of the California Attorney General and entry of Judgment pursuant its terms, but exclusive
13 of fees and costs on appeal, if any. Within five (5) business days of the Effective Date, A.N.S. shall
14 issue a check in the amount of \$23,000, payable to “Seven Hills LLP” for all fees and other costs
15 incurred investigating, bringing this matter to A.N.S.’ attention, litigating, negotiating a settlement in
16 the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting
17 the settlement to the California Attorney General.

18 **3.3 Payments**

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

21 Seven Hills LLP
22 Attn: Kimberly Gates Johnson
23 4 Embarcadero Center, Suite 1400
24 San Francisco, CA 94111

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 KASB’s Public Release of Proposition 65 Claims**

26 This Consent Judgment is a full, final, and binding resolution of all claims KASB alleged or
27 could have alleged arising out of the allegations in the Notices and Complaint. KASB, acting on its
28 own behalf, in the public interest, and on behalf of its past and current agents, representatives,

1 attorneys, successors and assignees (“Releasers”) releases A.N.S., its past and present parents,
2 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
3 and each entity to whom A.N.S. directly or indirectly distributes or sells the Products including its
4 downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees,
5 cooperative members, and licensees (“Releasees”), if any, based on A.N.S. alleged failure to provide
6 a clear and reasonable warning, arising under Proposition 65, about alleged or actual exposures to
7 DEHP in Products manufactured, processed, distributed, sold and/or offered for sale in California
8 before the Effective Date, as set forth in the Notices and Complaint. The Parties further agree that
9 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition
10 65 with respect to alleged or actual exposures to DEHP in the Products. The Parties understand and
11 agree this Section 4.1 release shall not extend to Releasees who have been instructed by A.N.S.,
12 pursuant to Section 2.5 or to provide a warning on Products that are not Reformulated Products and
13 fail to do so.

14 **4.2 KASB’s Private Release of Proposition 65 Claims**

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

24 **4.3 A.N.S.’ Release of KASB**

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

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

9 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

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

1 **8. NOTICE**

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

5 For A.N.S.:

6 Peter Tchilingirian, CEO
7 ANSgear.com
8 41 Moreland Road
9 Simi Valley CA 93065

For KASB:

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

9 With a copy to:

10 Michael J. Gleason
11 HAHN LOESER & PARKS
12 600 West Broadway, Suite 1500
13 San Diego, CA 92101

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

16 **9. COUNTERPARTS AND PDF SIGNATURES**

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

20 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

23 **11. 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 hereof, and all prior discussions, negotiations,
26 commitments, or understandings related thereto, if any, are hereby merged herein. There are no
27 warranties, representations, or other agreements between the Parties except those expressly set forth
28 herein. No representations, oral or otherwise, express or implied, other than those specifically
referred to in this Consent Judgment have been made by either Party. No other agreement not

1 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
2 either of the Parties or those Releasees and Releasors identified herein.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Party and have read, understand, and agreed to all the terms and conditions of this
10 Consent Judgment.

11 ///

12 ///

13 ///

15 **AGREED TO**

16 Date: 3/3/2025

17
18 By: _____

19 Lance Nguyen, CEO
20 KEEP AMERICA SAFE AN
21 D BEAUTIFUL

AGREED TO:

16 Date: 02/26/25

17
18 By: _____

19 Peter Tchilingirian
20 A.N.S. Xtreme Performance, Inc.

22 **AGREED TO**

23 Date: 02/26/25

24
25 By: _____

26 Peter Tchilingirian
27 ANSGEAR.COM