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10 Attorneys for Defendant
11 ADFA INCORPORATED

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

14
15 KEEP AMERICA SAFE AND BEAUTIFUL,

16 Plaintiff,

17 v.

18 ADFA INCORPORATED; A&A
JEWELRY SUPPLY; and DOES 1-30,
19 inclusive,

20 Defendants.

Case No. CGC-23-607505

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

Case filed: July 7, 2023
Trial: Not set

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CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and Beautiful
3 (“KASB”) and defendant ADFA, Incorporated dba A&A Jewelry Supply (“ADFA”), with KASB and
4 ADFA each individually referred to as a “Party” and collectively, the “Parties,” to resolve the allegations
5 in the July 8, 2022 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, Health & Safety Code section 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 that chemicals known to the State of
10 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
11 consumer products sold in California. KASB alleges ADFA is a person in the course of doing business
12 for purposes of California Health & Safety Code section 25249.11(a)-(b).

13 **1.2 Consumer Product Description**

14 KASB alleges ADFA manufactures, imports, sells, or distributes for sale in California tools
15 with vinyl/PVC handles containing diisononyl phthalate (“DINP”), including but not limited to, *ADFA*
16 *Tapered Jaw Side Cutter; Item No. 60-018; Length 5 1/4"*, without providing the health hazard
17 warning that KASB alleges is required by California Health & Safety Code section 25249.5 *et seq.*
18 (“Proposition 65”). Tools with vinyl/PVC handles are referred to hereinafter as the “Products.” DINP
19 is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

20 **1.3 Notice of Violation**

21 On July 8, 2022, KASB served ADFA, the California Attorney General, and the requisite
22 public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging ADFA violated
23 Proposition 65 by failing to warn its customers and consumers in California the Products can expose
24 users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce
25 the allegations set forth in the Notice.

26 **1.4 Complaint**

27 On July 7, 2023, KASB commenced the instant action (“Complaint”), naming ADFA as a
28 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1 **1.5 No Admission**

2 ADFA denies the material, factual and legal allegations contained in the Notice and Complaint
3 and maintains that all products it sold or distributed for sale in California, including the Products,
4 comply with all laws. Nothing in this Consent Judgment shall be construed as, nor shall compliance
5 with this Consent Judgment constitute or be construed as, an admission by ADFA of any fact, finding,
6 conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or
7 otherwise affect ADFA’s obligations, responsibilities, and duties under this Consent Judgment. ADFA
8 maintains that it has not knowingly manufactured, supplied, distributed, sold, or caused to be
9 manufactured, distributed, or sold the Products for sale in California in violation of Proposition 65.

10 **1.6 Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction
12 over ADFA as to the allegations in the Complaint; that venue is proper in San Francisco County; and
13 that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant
14 to Proposition 65 and Code of Civil Procedure section 664.6.

15 **1.7 Effective Date**

16 The term “Effective Date” means the date on which the Court approves this Consent Judgment
17 and enters Judgment pursuant to its terms, and ADFA receives notice from KASB (including by email)
18 that it has been entered in the Court’s records as a consent judgment.

19 **2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS AND NOTIFICATION**

20 **2.1 Reformulation Commitment**

21 Commencing thirty (30) days after the Effective Date and continuing thereafter, all Products
22 ADFA manufactures, imports, packages, sells, ships, provides, or distributes for sale in or into
23 California, directly or indirectly through one or more third party retailers or e-commerce marketplaces,
24 shall either qualify as Reformulated Products, as defined by Section 2.2, or be accompanied by a clear
25 and reasonable warning pursuant to Section 2.3.

26 **2.2 Reformulation Standard**

27 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products
28 containing DINP in a maximum concentration of no more than 0.1 percent (1,000 parts per million)

1 in any “accessible component” (i.e., any component that may be touched during a reasonably
2 foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal
3 agency, or a nationally recognized accrediting organization. For purposes of compliance with this
4 reformulation standard, testing samples shall be prepared and extracted using either (i) Consumer
5 Product Safety Commission (“CPSC”) methodology CPSC CH-C1001.09.4 and analyzed using U.S.
6 Environmental Protection Agency methodology 8270D, or (ii) other appropriate methodologies
7 utilized to accurately determine phthalate content in a solid substance.

8 **2.3 Clear and Reasonable Warnings**

9 Commencing thirty (30) days after the Effective Date and continuing thereafter, ADFA shall
10 provide clear and reasonable warnings for all Products provided for sale to customers in California in
11 accordance with this Section. Each warning shall be prominently placed with such conspicuousness as
12 compared with other words, statements, or designs as to render it likely to be read and understood by
13 an ordinary individual under customary conditions before purchase or use and shall be provided in a
14 manner such that it is clearly associated with the specific Product to which the warning applies. The
15 warning for Products containing DINP in amounts greater than 1,000 ppm (0.1%) shall consist of one
16 of the following statements:

17 **⚠ WARNING:** This product can expose you to chemicals
18 including diisononyl phthalate [DINP], which is known to the State
19 of California to cause cancer. For more information go to
20 www.P65Warnings.ca.gov.

21 (Long-Form Warning)

22 Or

23 **⚠ WARNING:** Cancer -- www.P65Warnings.ca.gov.

24 (Short-Form Warning)

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

28 **2.4 Product Warnings**

1 ADFA shall affix a warning to the Product label or otherwise directly on each Product sold or
2 offered for sale to consumers in California and to customers with known retail outlets in California or
3 customers with known nationwide distribution which includes California. For the purposes of this
4 Consent Judgment, “Product label” means a display of written, printed or graphic material that is
5 printed on or affixed to each of a Product or its immediate container or wrapper. A warning provided
6 pursuant to Section 2.3 must print the word “**WARNING:**” in all capital letters and in bold font. The
7 warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow
8 equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then
9 the symbol may be in black and white. If using the Short-Form Warning option set forth above, the
10 entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type
11 size used for other Consumer Information on the Products.

12 **2.5 Internet Warnings**

13 For all Products ADFA manufactures, imports, distributes, sells or offers for sale commencing
14 thirty (30) days after the Effective Date via the internet to customers located in California, or sold into
15 California by ADFA, directly or through third-party websites over which ADFA has the ability to
16 control the application of warnings, ADFA shall provide warnings for each Product, both on the Product
17 label in accordance with Section 2.3-2.4 and by prominently displaying, or requiring the warning to be
18 prominently displayed on affiliated websites, third party websites or by retail customers, to consumers
19 in California during the purchase of the Products. The warning or a clearly marked hyperlink to the
20 warning using the word “WARNING” given in conjunction with the sale of the Products via the internet
21 shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web
22 page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or
23 (d) on one or more web pages displayed to a purchaser during the checkout process, in accordance with
24 Cal. Code Regs., tit.27, § 25602(b). The warning shall appear in a manner consistent with the
25 aforementioned (a)-(d) and in the same type size the same as or larger than other Consumer Information
26 provided for the Products. For purposes of this Consent Judgment, a warning is not prominently
27 displayed if the purchaser must search for it in the general content of the website. For customers with
28 third-party websites that ADFA reasonably believes sell products into California, as a condition of sale,

1 ADFa shall notify the sellers that the Products must be accompanied by a warning, prior to and as a
2 condition of sale in or into California and shall supply the warning requirements as detailed in this
3 Section.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty**

6 Pursuant to Health and Safety Code section 25249.7(b), ADFa agrees to pay a civil penalty of
7 \$2,000 within fifteen (15) days of the Effective Date. ADFa’s civil penalty payment will be allocated
8 according to Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%)
9 of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”),
10 and the remaining twenty-five percent (25%) retained by KASB. ADFa shall issue its payment in two
11 checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Keep America Safe &
12 Beautiful” in the amount of \$500. KASB’s counsel shall deliver to OEHHA and KASB their respective
13 portions of the penalty payment.

14 **3.2 Reimbursement of Attorneys’ Fees and Costs**

15 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
16 reaching terms on the amount of reimbursement of attorneys’ fees and costs. After the Parties finalized
17 all other material settlement terms, they negotiated the amount of reimbursement to be paid to KASB’s
18 counsel, under general contract principles and the private attorney general doctrine, codified at
19 California Code of Civil Procedure section 1021.5, for all work performed through the mutual
20 execution and reporting of this Consent Judgment to the Office of the California Attorney General and
21 entry of Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any. Within fifteen
22 (15) days of the Effective Date, ADFa shall issue a check in the amount of \$10,000 payable to “Seven
23 Hills LLP” for the fees and costs incurred investigating, bringing this matter to ADFa’s attention,
24 litigating, negotiating a settlement in the public interest, obtaining the Court’s approval of its terms
25 pursuant to Section 5, and reporting to the California Attorney General.

1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be sent to KASB’s counsel
3 at the following address:

4 Seven Hills LLP
5 c/o Kimberly Gates Johnson
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

8 KASB shall provide a W-9 to ADFA upon request to facilitate payment.

9 **4. CLAIMS COVERED AND RELEASED**

10 **4.1 KASB’s Release of Proposition 65 Claims**

11 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
12 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB,
13 acting on its own behalf, in the public interest, and on behalf of its past and current officers, agents,
14 shareholders, employees, predecessors, representatives, attorneys, successors and assignees
15 (“Releasors”) releases ADFA, and its respective officers, directors, shareholders, employees, agents,
16 parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers, manufacturers,
17 suppliers, distributors, wholesalers, retailers (including Amazon.com Inc.), and all other downstream
18 persons or entities in the distribution chain of any of the Products, and the predecessors, successors,
19 and assigns of any of them (collectively, “Released Parties”) based on the alleged or actual failure to
20 provide a clear and reasonable warning about exposures to DINP contained in the Products
21 manufactured, processed, distributed, sold and/or offered for sale in California before thirty (30) days
22 after the Effective Date, as set forth in the Notice and Complaint. The Parties further agree that
23 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65
24 with respect to alleged exposures to DINP in the Products.

25 **4.2 ADFA’s Release of KASB**

26 ADFA, on its own behalf and on behalf of its past and current officers, agents, shareholders,
27 employees, predecessors, representatives, attorneys, successors, and assignees, hereby waives any and
28 all claims against KASB and its attorneys and other representatives, for any and all actions taken or
statements made (or those that could have been taken or made) by KASB and its attorneys and other

1 representatives, whether in the course of investigating claims or otherwise seeking to enforce
2 Proposition 65 against it in this matter with respect to the Products.

3 The Parties further understand and agree these Section 4 releases shall not extend upstream to
4 any entity who sold, supplied, or manufactured the Products, or any component parts thereof, to ADFA.
5 Nothing in the releases provided under this Section 4 shall affect KASB's right to commence or
6 prosecute an action under Proposition 65 against a Releasee that does not involve ADFA's Products.

7 **4.3 Mutual Waiver of California Civil Code § 1542**

8 KASB on its own behalf as a nonprofit corporation, and *not* in the public interest, on the one
9 hand, and ADFA, on the other hand, each acknowledge that the claims in this Consent Judgment include
10 all known and unknown claims pertaining to the failure to warn of exposures to DINP in Products sold
11 in California before the Effective Date, except as provided herein in Section 4.2, and each waives the
12 provisions of California Civil Code section 1542 as to any unknown claims pertaining to the failure to
13 warn of exposures to DINP in the Products sold in California that may have existed prior to and
14 including the Effective Date, except as provided in Section 4.2. California Civil Code section 1542
15 reads as follows:

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

19 The Parties acknowledge and understand the significance and consequences of this specific waiver
20 of California Civil Code section 1542 and agree to waive the same as well as any statute of similar
21 import or meaning of any other jurisdiction.

22 **5. COURT APPROVAL**

23 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
24 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their best
25 efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
26 Consent Judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes
27 of this section, "best efforts" shall include, at a minimum, supporting the motion for approval,
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1 responding to third-party objections, if any, and appearing at the hearing before the Court if so
2 requested.

3 **6. SEVERABILITY**

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

7 **7. GOVERNING LAW**

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

15 **8. NOTICE**

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

19 For ADFA:

20 Robert Adem, President
21 Adfa, Incorporated
319 W. 6th Street
Los Angeles, CA 90014

For KASB:

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

22 *With a copy to:*

23 Sherry E. Jackman, Esq.
24 Sedina L. Banks, Esq.
GREENBERG GLUSKER LLP
2049 Century Park East, Suite 2600
25 Los Angeles, CA 90067

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

1 **9. COUNTERPARTS AND PDF SIGNATURES**

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

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

8 **11. ENTIRE AGREEMENT**

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

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties (which
19 agreement shall not be unreasonably withheld) and the entry of a modified Consent Judgment by the
20 Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent
21 Judgment by the Court thereon. This Court shall retain jurisdiction over this matter to enforce, modify,
22 or terminate this Consent Judgment pursuant to the Parties' agreement and Code of Civil Procedure
23 section 664.6.

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1 **13. AUTHORIZATION**

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

4 **AGREED TO:**

AGREED TO:

5 Date: February 06, 2024

Date: 2/7/2024

6
7 By: 

Lance Nguyen, CEO
KEEP AMERICA SAFE AND
BEAUTIFUL

By: 

Robert Adem, President
ADFA, INCORPORATED DBA A&A
JEWELRY SUPPLY