

1 Laralei Paras, State Bar No. 203319
2 Seven Hills LLP
3 4 Embarcadero Center, Suite 1400
4 San Francisco, CA 94111
5 Telephone: (415) 926-7247
6 laralei@sevenhillslp.com

7 Attorneys for Plaintiff
8 KEEP AMERICA SAFE AND BEAUTIFUL

9 Erik K. Swanholt, State Bar No. 198042
10 Foley & Lardner LLP
11 555 South Flower Street, Suite 3300
12 Los Angeles, CA 90071-2418
13 Telephone: (213) 972-4614
14 eswanholt@foley.com

15 Attorneys for Defendant
16 CORTINA TOOL & MOLDING CO. D.B.A.
17 CORTINA SAFETY PRODUCTS GROUP

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

CORTINA TOOL & MOLDING CO. D.B.A.
CORTINA SAFETY PRODUCTS GROUP;
and DOES 1-30, inclusive,

Defendants.

Case No. CGC-23-606476

[PROPOSED]
CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 This Consent Judgment (“Agreement”) is entered into by and between plaintiff Keep America
3 Safe and Beautiful (“KASB”) and defendant Cortina Tool & Molding Co. (“Cortina”), with KASB
4 and Cortina each individually referred to as a “Party” and, collectively, the “Parties” to resolve the
5 allegations in the complaint filed in this matter based on the March 12, 2021, 60-Day Notice of
6 Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health &
7 Safety Code § 25249.6 *et seq.* (“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 in or eliminated
12 from consumer products sold in California. Cortina is a person in the course of doing business for
13 purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that Cortina manufactures, imports, sells, and distributes for sale in California
16 vinyl flags (“**Products**”) containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited
17 to, *Vinyl Handheld Warning Flag, 18” x 18” Red on Orange Model No. 03-229-3417*, and *Cortina*
18 *24” x 24” Hi-Viz Orange Reinforced Vinyl Heavy Duty Warning Flag With 36” Wood Dowel, Model*
19 *No. 03-229-3418*, without providing the health hazard warning that KASB alleges is required by
20 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
21 California to cause cancer and birth defects or other reproductive harm.

22 **1.3 Notices of Violation**

23 On March 12, 2021, KASB served Cortina, the California Attorney General and the requisite
24 public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Cortina violated
25 Proposition 65 by failing to warn its customers and consumers in California that its Products can
26 expose users to DEHP. On September 13, 2022, KASB served Cortina, the California Attorney
27 General and the requisite public enforcement agencies with a Supplemental 60-Day Notice of
28 Violation (“**Supplemental Notice**”), alleging Cortina violated Proposition 65 by failing to warn its

1 customers and consumers in California that its Products can expose users to DEHP. The Notice and
2 Supplemental Notice are collectively referred to herein as the “Notices.” No public enforcer has
3 commenced and is diligently prosecuting an action to enforce the allegations in the Notices.

4 **1.4 Complaint**

5 On May 11, 2023, KASB commenced the instant action (“**Complaint**”), naming Cortina, as a
6 defendant for the alleged violations of Proposition 65 that are the subject of the Notices.

7 **1.5 No Admission**

8 Cortina denies the factual and legal allegations contained in the Notices and Complaint and
9 maintains that all products it has sold or distributed for sale in California, including the Products,
10 have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be
11 construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by
12 Cortina of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall
13 not, however, diminish or otherwise affect Cortina’s obligations, responsibilities, and duties herein.

14 **1.6 Jurisdiction**

15 For purposes of this Agreement only, the Parties stipulate this Court has jurisdiction over
16 Cortina as to the allegations contained in the Complaint, venue is proper in the County of San
17 Francisco, and the Court has jurisdiction to enter and enforce the provisions of this Agreement
18 pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

19 **1.7 Effective Date**

20 For purposes of this Agreement, “**Effective Date**” shall mean the date on which the Court
21 approves this Agreement and enters judgment pursuant to its terms, or September 10, 2024, whichever
22 date is later.

23 **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

24 **2.1** Commencing on the Effective Date and continuing thereafter, all Products Cortina
25 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one
26 or more third party retailers or e-commerce marketplaces, shall (a) meet the Reformulation Standard
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1 for Reformulated Products, as defined by Section 2.2, or (b) provide clear and reasonable warnings,
2 as defined by Section 2.3.

3 **2.2 Reformulation Standard**

4 For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if
5 they contain di(2-ethylhexyl) phthalate (“DEHP”), contain DEHP in a maximum concentration of less
6 than 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or accredited by the
7 State of California, the United States Food and Drug Administration/Environmental Protection
8 Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation
9 body of the International Laboratory Accreditation Cooperation (“ILAC”). For purposes of
10 compliance with this reformulation standard, testing samples shall be prepared and extracted using
11 Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed
12 using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized
13 by federal or state government agencies to determine phthalate content in a solid substance.

14 **2.3 Clear and Reasonable Warnings**

15 Cortina shall provide clear and reasonable warnings for all Products, that are not
16 Reformulated Products, provided for sale to customers in California in accordance with this Section
17 pursuant to Cal. Code Regs., tit. 27, § 25600, et seq. There shall be no obligation for Cortina to
18 provide any further warning for Products that entered the stream of commerce prior to the Effective
19 Date. Each warning shall be prominently placed with such conspicuousness as compared with other
20 words, statements, or designs as to render it likely to be read and understood by an ordinary
21 individual under customary conditions before purchase or use and shall be provided in a manner such
22 that it is clearly associated with the specific Product to which the warning applies. The warning shall
23 consist of either the **Long-Form Warning** or **Short-Form Warning** (collectively referred to
24 hereinafter as “**Warning**”) described in §§ 2.3(a) or (b), respectively:

25 **(a) Long-Form Warning.** The “Long-Form Warning” shall consist of the statement:

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

1 **(b) Short-Form Warning:** Cortina may, but is not required to, use the alternative
2 short-form warning as set forth in this § 2.3(b) (“**Short-Form Warning**”) as follows:

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

4
5 **(c) Foreign Language Requirement.** Where a consumer product sign, label or shelf
6 tag used to provide a warning includes consumer information, as that term is defined in Cal. Code
7 Regs., tit. 27, § 25600.1(c) (“**Consumer Information**”), in languages other than English, the warning
8 must also be provided in those languages in addition to English.

9 **2.4 Product Warnings.** Cortina shall affix any Warning provided pursuant to Section
10 2.3 to the Product label or otherwise directly on each Product. For the purpose of this Agreement,
11 “Product label” means a display of written, printed or graphic material that is printed on or affixed to
12 each of a Product or its immediate wrapper. A Warning provided pursuant to Section 2.3(a)-(b) must
13 print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of
14 the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a
15 black outline, except that if the labeling does not use the color yellow, then the symbol may be in
16 black and white. The entire warning shall appear in a type size no smaller than the largest type size
17 used for other Consumer Information on the Products.

18 **2.5 Catalog Warnings.** If, after the Effective Date, Cortina prints new catalogs and sells
19 Products through such catalogs to customers located in California or with nationwide distribution,
20 Cortina shall provide a Warning for each Product both on the Product label in accordance with
21 Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific*
22 Product being purchased. Any Warning provided in a mail order catalog shall be in the same type size
23 or larger than other Consumer Information provided for the Product within the catalog and shall be
24 provided on the same page and in the same location as (a) the display and/or description of the
25 Product, or (b) where other Consumer Information is located.

26 **2.6 Internet Warnings.** If, after the Effective Date, Cortina sells Products via the internet
27 on websites over which it has control, Cortina shall provide warnings for each Product both on the
28 Product label in accordance with Section 2.4, and by prominently displaying the Warning to

1 consumers in California during the purchase of the Products without requiring customers to seek out
2 the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING”
3 given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same
4 web page on which the Products are displayed; (b) on the same web page as the virtual cart
5 displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web
6 pages displayed to a purchaser during the checkout process. The warning shall appear adjacent to or
7 immediately following the display, description, or price of the Products for which it is given in the
8 same type size or larger than other consumer information provided for the Products.

9 To comply with this Section, Cortina shall (a) post the **Warning** on its own website and, if it
10 has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the
11 ability to post the **Warning** on the websites of its third-party internet sellers, provide such sellers with
12 written notice in accordance with Title 27, California Code of Regulations, § 25600.2(d). Third-party
13 internet sellers of the Products that have been provided with written notice in accordance with Title 27,
14 California Code of Regulations, § 25600.2(d) are not released in Section 4 of this Agreement if they
15 fail to meet the warning requirements in Section 2.6.

16 **2.7 Compliance with Warning Regulations.** After the Effective Date, Cortina shall be
17 deemed to be in compliance with this Agreement by either adhering to Section 2.3, Section 2.4,
18 Section 2.5, and Section 2.6 of this Agreement or by complying with any warning requirements
19 adopted by OEHHA after the Effective Date which are applicable to the Products.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty**

22 Cortina shall pay \$3,750.00 as a civil penalty pursuant to Health & Safety Code §25249.7(b),
23 to be apportioned in accordance with California Health & Safety Code § 25192, with 75% of these
24 funds remitted to OEHHA and the remaining 25% of the Civil Penalty remitted to KASB, as provided
25 by California Health & Safety Code § 25249.12(d).

26 Within ten (10) days of the Effective Date, Cortina shall issue two separate checks for the civil
27 penalty payment to (a) “OEHHA” in the amount of \$2,812.50 (Memo Line “Prop 65 Penalties”) and
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1 (b) "Seven Hills LLP in trust for Keep America Safe and Beautiful" in the amount of \$937.50. KASB's
2 counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3 **3.2 Reimbursement of Attorneys' Fees and Costs**

4 KASB and its counsel offered to resolve the allegations in the Notices without reaching terms
5 on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the
6 other material settlement terms, they negotiated and reached an accord on the amount of
7 reimbursement to be paid to KASB's counsel, under general contract principles and the private
8 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
9 performed through the mutual execution and reporting of this Agreement to the Office of the
10 California Attorney General. Within ten (10) days of the Effective Date, Cortina agrees to issue a
11 check in the amount of \$28,500 payable to "Seven Hills LLP" for all fees and costs incurred
12 investigating, bringing this matter to Cortina's attention, negotiating a settlement in the public
13 interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

14 **3.3 Payments**

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

Seven Hills LLP
Attn: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 KASB's Public Release of Cortina**

21 This Agreement is a full, final and binding resolution between KASB, acting in the public
22 interest, and Cortina, its members, directors, officers, managers, employees, representatives, agents,
23 attorneys, divisions, subdivisions, and their predecessors, successors and assigns ("**Defendant**
24 **Releasees**"), of any violation of Proposition 65 that was or could have been asserted by KASB on
25 behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees,
26 against (a) Defendant Releasees and (b) each entity to whom Defendant Releasees directly or
27 indirectly distribute or sell Products, including, but not limited to, downstream distributors,
28 wholesalers, customers, retailers, franchisees, cooperative members, licensors, licensees, dealers,

1 vendors, owners, shareholders, purchasers, and users (collectively, “**Downstream Releasees**”)
2 (Defendant Releasees and Downstream Releasees collectively referred to as “**Releasees**”) from all
3 claims for violations of Proposition 65, based on alleged exposure to DEHP contained in the
4 Products that were manufactured, distributed, or sold by Cortina before the Effective Date, as
5 alleged in the Notices. It is the Parties’ intention that this Agreement shall have preclusive effect
6 such that no other actions by private enforcers, whether purporting to act in his, her, or its interests
7 or the public interest shall be permitted to pursue and take any action with respect to any violation of
8 Proposition 65 based on exposure to DEHP from use of the Products that was alleged in the
9 Complaint, or that could have been brought pursuant to the Notices against Releasees (“**Proposition**
10 **65 Claims**”). Compliance with the terms of this Agreement constitutes compliance with Proposition
11 65 with regard to exposure to DEHP from use of the Products except for Releasees who have been
12 instructed by Cortina pursuant to Section 2.6 to provide a warning for Products that are not
13 Reformulated Products and have failed to do so.

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

15 In further consideration of the promises and agreements herein contained, KASB as an
16 individual on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
17 assignees, and *not* on behalf of the public, hereby waives all of KASB’s rights to institute or
18 participate in, directly or indirectly, any form of legal action and releases all claims that KASB may
19 have brought, including, without limitation, all actions, and causes of action, in law or in equity, suits,
20 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but
21 not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with
22 respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Cortina,
23 Releasees before the Effective Date (collectively, “**Claims**”), against Cortina and Releasees. The
24 Parties understand and agree this Section 4.2 release shall not extend to Downstream Releasees who
25 have been instructed by Cortina pursuant to Sections 2.3 to provide a warning related to the Products
26 and have failed to do so.

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1 **4.3 Cortina’s Release of KASB**

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

7 **5. COURT APPROVAL**

8 Pursuant to California Health and Safety Code § 25249.7(f)(4), plaintiff shall promptly file
9 and serve a noticed motion for judicial approval of this Agreement. The Parties agree to mutually
10 employ their best efforts, and those of their counsel, to support entry of a judgment pursuant to the
11 terms of this Agreement, and to obtain judicial approval of their settlement in the form of this
12 Agreement in a timely manner. For purposes of this section, “best efforts” shall include, at a
13 minimum, supporting the motion for approval, responding to any third-party objection, and appearing
14 at the hearing before the Court if so requested.

15 **6. SEVERABILITY**

16 If, after the execution of this Agreement, any provision of this Agreement is deemed by a
17 court as unenforceable, the validity of the remaining provisions shall not be adversely affected.

18 **7. GOVERNING LAW**

19 The terms of this Agreement shall be governed by the laws of the State of California and
20 apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
21 rendered inapplicable by reason of law generally, or as to the Products, then Cortina may seek to a
22 modification pursuant to Section 12. Nothing in this Agreement shall be interpreted to relieve Cortina
23 from its obligation to comply with any pertinent state or federal law or regulation.

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1 **8. NOTICE**

2 Unless specified herein, all correspondence and notice required by this Agreement shall be in
3 writing and, in addition to being sent to the email addresses set forth below, where applicable, sent
4 by: (i) first-class registered or certified mail, return receipt requested; or (ii) a recognized overnight
5 courier to any Party by the other at the following addresses:

6 For Cortina:

7 Jeffrey Giannelli, President
8 Cortina Tool & Molding Co.
9 d.b.a. Cortina Safety Products Group
10 10706 West Grand Avenue
11 Franklin Park, IL 60131

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.com

11 With a copy to:

12 Erik K. Swanholt, Esq.
13 Foley & Lardner LLP
14 555 South Flower Street, Suite 3300
15 Los Angeles, CA 90071-2418

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

18 **9. COUNTERPARTS AND PDF SIGNATURES**

19 This Agreement may be executed in counterparts and by portable document format (pdf)
20 signature, each of which shall be deemed an original and, all of which, when taken together, shall
21 constitute one and the same document.

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

25 **11. ENTIRE AGREEMENT**

26 This Agreement contains the sole and entire agreement and understanding of the Parties with
27 respect to the entire subject matter hereof, and all prior discussions, negotiations, commitments, or
28 understandings related thereto, if any, are hereby merged herein. There are no warranties,
representations, or other agreements between the Parties except as expressly set forth herein. No

1 representations, oral or otherwise, express or implied, other than those specifically referred to in this
2 Agreement have been made by any Party hereto. No other agreements not specifically contained or
3 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

4 **12. MODIFICATION**

5 This Agreement may be modified only by: (i) a written agreement of the Parties and the entry
6 of a modified Agreement by the Court thereon; or (ii) upon a successful motion of any party and the
7 entry of a modified Agreement by the Court thereon. No action to modify this Agreement may be
8 commenced or maintained, unless the Party seeking modification notifies the other Party of the
9 specific basis for the modification at least 90 days before filing any action. The Parties shall meet and
10 confer in good faith to resolve any dispute for at least 60 days after written notice is provided. Should
11 the Parties be unable to resolve such a dispute, either Party may file an action in the San Francisco
12 County Superior Court to modify the terms and conditions contained herein.

13 **13. RETENTION OF JURISDICTION**

14 This Court shall retain jurisdiction of this matter to implement or modify the Agreement.

15 **14. AUTHORIZATION**

16 The undersigned are authorized to execute this Agreement on behalf of their respective Parties
17 and have read, understood, and agreed to all of the terms and conditions of this Agreement.

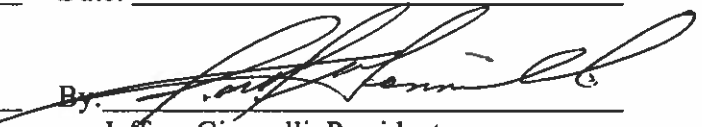
18
19 **AGREED TO:**

20 Date: _____

AGREED TO:

20 Date: 3-27-24

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22 By: _____
23 Lance Nguyen, CEO
24 Keep America Safe and Beautiful

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22 By: 
23 Jeffrey Giannelli, President
24 Cortina Tool & Molding Co.

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1 representations, oral or otherwise, express or implied, other than those specifically referred to in this
2 Agreement have been made by any Party hereto. No other agreements not specifically contained or
3 referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

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8 commenced or maintained, unless the Party seeking modification notifies the other Party of the
9 specific basis for the modification at least 90 days before filing any action. The Parties shall meet and
10 confer in good faith to resolve any dispute for at least 60 days after written notice is provided. Should
11 the Parties be unable to resolve such a dispute, either Party may file an action in the San Francisco
12 County Superior Court to modify the terms and conditions contained herein.

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17 and have read, understood, and agreed to all of the terms and conditions of this Agreement.

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19 **AGREED TO:**

AGREED TO:

20 Date: 08/26/2024

Date: _____

21
22 By:  _____

By: _____

23 Lance Nguyen, CEO
Keep America Safe and Beautiful

Jeffrey Giannelli, President
Cortina Tool & Molding Co.