

1 Laralei Paras, State Bar No. 203319
2 Rebecca M. Jackson, State Bar No. 221583
3 SEVEN HILLS LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 laralei@sevenhillsllp.com
8 rebecca@sevenhillsllp.com

9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO – UNLIMITED CIVIL JURISDICTION

14 KEEP AMERICA SAFE AND BEAUTIFUL,

15 Plaintiff,

16 v.

17 VALKEN, INC.; and DOES 1-30, inclusive,

18 Defendants.

Case No. CGC-23-604667

[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 defendant Valken, Inc. (“**Valken**”), with KASB and Valken each individually
4 referred to as a “**Party**” and collectively, as the “**Parties**,” to resolve the allegations in the September 13,
5 2022, 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement
6 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 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. Valken is a person in the course of doing business for purposes
12 of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 KASB alleges that Valken manufactures, imports, sells, or distributes for sale in California
15 valves including but not limited to the *Valken Mini CO2 Valve Full Station (61589)*, without
16 providing the health hazard warning that KASB alleges is required by California Health & Safety
17 Code § 25249.5 *et seq.* (“**Proposition 65**”). Valves are referred to hereinafter as the “**Products**.”

18 **1.3 Notice of Violation**

19 On September 13, 2022, KASB served Valken, the California Attorney General, and the
20 requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Valken
21 violated Proposition 65 by failing to warn its customers and consumers in California that the
22 Products can expose users to DEHP. No public enforcer has commenced and is diligently
23 prosecuting an action to enforce the allegations set forth in the Notice.

24 **1.4 Complaint**

25 On February 14, 2023, KASB commenced the instant action (“**Complaint**”), naming Valken
26 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1 **1.5 No Admission**

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

9 **1.6 Jurisdiction**

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

14 **1.7 Execution Date**

15 The term “Execution Date” is the date when the Agreement has been executed by all Parties.

16 **1.8 Effective Date**

17 The term “Effective Date” is the date on which the Court approves this Consent Judgment
18 and enters Judgment pursuant to its terms.

19 **2. INJUNCTIVE RELIEF: REFORMULATION**

20 **2.1 Commitment to Reformulate**

21 Commencing on the Execution Date and continuing thereafter, all Products Valken
22 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
23 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
24 for Reformulated Products, as defined by Section 2.2, or be accompanied by clear and reasonable
25 warnings set forth in section 2.3.

26 **2.2 Reformulation Standard**

27 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products
28 which, if they contain:

1 **(a)** “**Listed Phthalate Chemicals**” defined as di(2-ethylhexyl) phthalate (“DEHP”), di-n-
2 butyl phthalate (“DBP”), diisononyl phthalate (“DINP”), butyl benzyl phthalate (“BBP”), di-isodecyl
3 phthalate (“DIDP”), and di-n-hexyl phthalate (“DnHP”), contain any or all such Phthalate Chemicals
4 each in a maximum concentration of less than 0.1 percent (1,000 parts per million) in any and all
5 accessible components when analyzed by a laboratory certified or accredited by the International
6 Organization for Standardization (“ISO”), the State of California, the United States Food and Drug
7 Administration/Environmental Protection Agency, the National Environmental Laboratory
8 Accreditation Program, or a member accreditation body of the International Laboratory Accreditation
9 Cooperation (“ILAC”). For purposes of compliance with this reformulation standard, testing samples
10 shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology
11 CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology
12 8270D, or other methodologies utilized by federal or state government agencies to determine
13 phthalate content in a solid substance; and

14 **(b)** Lead in a total concentration of 0.009% or 90 ppm or less in all accessible components
15 when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies
16 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of
17 determining Lead content in a solid substance, and yielding a test result of no more than 1.0
18 microgram of Lead on the entire surface area of any and all accessible components when sampled
19 pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A.

20 **2.3 Clear and Reasonable Warnings**

21 In accordance with this Section pursuant to Title 27 California Code of Regulations § 25600,
22 *et seq.*, Valken shall provide clear and reasonable warnings for all Products that are provided for sale
23 to customers in California that are not Reformulated Products. Each warning shall be prominently
24 placed with such conspicuousness as compared with other words, statements, or designs as to render
25 it likely to be read and understood by an ordinary individual under customary conditions before
26 purchase or use and shall be provided in a manner such that it is clearly associated with the specific
27 Product to which the warning applies. Each warning shall consist of the Warning in 2.3 (a) as
28 follows:

1 **(a) Warnings.** The Warning for Products containing DEHP, DBP, DIDP, BBP, and/or
2 DnHP or Lead, chemicals known to cause birth defects or other reproductive harm, in excess of the
3 Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the
4 following statement:

5 Δ **WARNING:** This product can expose you to chemicals including
6 Lead which are known to the State of California to
7 cause birth defects or other reproductive harm. For
8 more information go to www.P65Warnings.ca.gov.

8 The bracketed language may be replaced with di(2-ethylhexyl) phthalate (“**DEHP**”)

9 **(b) Warnings for other Listed Phthalates.** For Products that are not Reformulated
10 Products as to DINP, Valken must provide, or cause to be provided, a warning for such Products
11 sold in California that is consistent with title 27, California Code of Regulations, section 25603.

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

16 **(d) On-Product Warnings.** Valken shall affix a warning to the Product label or otherwise
17 directly on each Product provided for sale to customers located in California, with locations in
18 California, nationwide distribution, or e-commerce websites. For the purpose of this Consent
19 Judgment, “Product label” means a display of written, printed or graphic material that is printed on or
20 affixed to each of a Product or its immediate packaging. A warning provided pursuant to Section 2.3(a)
21 or (b) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol
22 to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
23 triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol
24 may be in black and white. The entire warning shall appear in a type size of at least 6-point type and
25 no smaller than the largest type size used for other Consumer Information on the Products.

26 **(e) Internet Warnings.** If, after the Effective Date, Valken sells Products, that are not
27 Reformulated Products, via the internet, through its own website, affiliated websites or a third party
28 website, to customers located in California, with locations in California, nationwide distribution, or

1 e-commerce websites, Valken shall provide warnings for each Product both on the Product label in
2 accordance with Section 2.3(d), and by prominently displaying, or requiring the warning to be
3 prominently displayed on affiliated websites, third party websites or by retail customers, to consumers
4 during the purchase of the Products without requiring customers to seek out the warning. The warning
5 or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with
6 the sale of the Products via the internet shall appear either: (a) on the same web page on which the
7 Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the
8 same page as the price for the Products; 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 Products for which it is given in the
11 same type size or larger than other consumer information provided for the Products. For third-party
12 websites, as a condition of sale, Valken shall provide its customer with notices stating the Products
13 must be accompanied by a warning, prior to sale in or into California, and shall supply the warning
14 requirements, pursuant to Sections 2.3.

15 **2.4 Customer Notification**

16 No later than the Effective Date, Valken shall send a letter, electronic or otherwise
17 (“**Notification Letter**”) to each customer that is a retailer or distributor with any inventory of
18 Products Valken supplied between September 13, 2019, and the Effective Date for sale to consumers
19 in California. The Notification Letter shall advise the recipient that the Products contain DEHP and/or
20 Lead, chemicals known to the State of California to cause birth defects or other reproductive harm.
21 The Notification letter shall inform the recipient all Products must either be sold in or shipped to
22 California with (a) an On-Product Warning and (b) an Internet Warning which states:

23 **⚠WARNING:** This product can expose you to chemicals including Lead
24 which are known to the State of California to cause birth
25 defects or other reproductive harm. For more information
26 go to www.P65Warnings.ca.gov.

26 The bracketed language may be replaced with di(2-ethylhexyl) phthalate (“**DEHP**”).

27 **2.4.1 On Product Warning.** The Notification Letter shall advise that the On
28 Product Warning must be attached to a label on the packaging of each Product expressly referring to

1 the Product before it is sold in the California market or shipped to a customer in California and shall
2 supply the warning requirements, pursuant to this Section 2.4.1 as follows. The warning must print
3 the word "WARNING:" in all capital letters and in bold font. The warning symbol to the left of the
4 word "WARNING:" must be a black exclamation point in a yellow equilateral triangle with a black
5 outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type
6 size used for other consumer information on the Products. The Notification Letter shall include a
7 sheet of white background, adhesive stickers with the forgoing warning statement.

8 **2.4.2 Internet Warning.** The Notification Letter shall advise Products sold through
9 e-commerce platforms must be accompanied by a warning, prior to and as a condition of sale, in or
10 into California, and shall supply the warning requirements, pursuant to this Section 2.4.2 as follows:
11 The Internet Warning must be prominently displayed during the purchase of the Products without
12 requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the
13 warning using the word "WARNING" given in conjunction with the sale of the Products via the
14 internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the
15 same web page as the virtual cart displaying the Products; (c) on the same page as the price for the
16 Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The
17 warning shall appear in any of the above instances adjacent to or immediately following the display,
18 description or price of the Products for which it is given in the same type size or larger than other
19 consumer information provided for the Products.

20 **3. MONETARY SETTLEMENT TERMS**

21 **3.1 Civil Penalty**

22 Pursuant to Health and Safety Code § 25249.7(b), Valken agrees to pay a civil penalty of
23 \$5,000 within five (5) days of the Effective Date. Valken's civil penalty payment will be allocated
24 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
25 penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and
26 the remaining twenty-five percent (25%) retained by KASB. Valken shall issue its payment in two
27 checks made payable to: (a) "OEHHA" in the amount of \$3,750 ; and (b) "Seven Hills in Trust for
28

1 Keep America Safe and Beautiful” in the amount of \$1,250. KASB’s counsel shall deliver to
2 OEHHA and KASB their respective portions 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 Notice and Complaint without
5 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties
6 finalized the 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 Consent Judgment to the Office of the
10 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and
11 costs on appeal, if any. Within five (5) days of the Effective Date, Valken shall issue a check in the
12 amount of \$27,000 payable to “Seven Hills LLP” for all fees and other costs incurred investigating,
13 bringing this matter to Valken’s attention, litigating, negotiating a settlement in the public interest,
14 obtaining the Court’s approval of its terms pursuant to Section 5, and reporting to the California
15 Attorney General.

16 **3.3 Payments**

17 All payments payable and due under this Consent Judgment shall be delivered to KASB’s
18 counsel at the following address: Seven Hills LLP
19 Attn: Laralei Paras
20 4 Embarcadero Center, Suite 1400
21 San Francisco, CA 94111

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 KASB’s Release of Proposition 65 Claims**

24 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
25 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
26 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
27 representatives, attorneys, successors and assignees (“**Releasors**”) releases Valken, its past and
28 present directors, officers, employees, attorneys, and each entity to whom Valken directly or
indirectly distributes or sells the Products including, but not limited to, its downstream distributors,

1 wholesalers, marketplace hosts, customers, retailers, franchisees, cooperative members, and
2 licensees (“**Releasees**”) based on the failure to provide a clear and reasonable warning under
3 Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured,
4 processed, distributed, sold and/or offered for sale in California before the Effective Date, as set
5 forth in the Notice and Complaint. The Parties further agree that compliance with Section 2 of this
6 Consent Judgment shall be deemed compliance with Proposition 65 with respect to alleged
7 exposures to DEHP in the Products.

8 The Parties understand and agree this Section 4.1 release shall not extend (a) to upstream
9 entities that sold, supplied, or manufactured the Products or any component parts thereof, or any
10 distributors or suppliers who sold the Products or any component parts thereof to Valken nor (b) to
11 Releasees who have been instructed by Valken, pursuant to Sections 2.3 and 2.4 to provide a
12 warning on Products that are not Reformulated Products and have failed to do so.

13 **4.2 KASB’s Individual Release of Claims**

14 KASB, in its individual capacity only and not in its representative capacity, also hereby
15 provides a release to Valken and the Releasees which shall be effective as a full and final accord and
16 satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys’ fees,
17 damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out
18 of alleged or actual exposures to DEHP DINP, DIDP, DnHP, DBP, BBP, or Lead in Products
19 manufactured, imported, sold or distributed for sale, in or into the State of California, by Valken prior
20 to the Execution Date, as alleged in the Notice and Complaint. The Parties understand and agree this
21 Section 4.2 release shall not extend (a) to upstream entities that sold, supplied, or manufactured the
22 Products or any component parts thereof, or any distributors or suppliers who sold the Products or
23 any component parts thereof to Valken nor (b) to Releasees who have been instructed by Valken,
24 pursuant to Section 2.4 to provide a warning on Products that are not Reformulated Products and have
25 failed to do so. Nothing in this section shall affect KASB’s right to commence or prosecute an action
26 under Proposition 65 against a Releasee that does not involve Valken’s Products.

27 **4.3 Valken’s Release of KASB**

28 Valken, on behalf of itself, its past and current agents, representatives, attorneys, successors,

1 and assignees, hereby waives any and all claims against KASB and its attorneys and other
2 representatives, for any and all actions taken or statements made (or those that could have been taken
3 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
4 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
5 Products.

6 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

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

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California
19 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
20 rendered inapplicable by reason of law generally, or as to the Products, then Valken may provide
21 KASB with written notice of any asserted change in the law, and shall have no further injunctive
22 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
23 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Valken from its
24 obligation to comply with any pertinent state or federal law or regulation.

25 **8. NOTICE**

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

1 For Valken:
2 Jane Lorber
3 General Counsel
4 Valken, Inc.
5 1 Hawk Court
6 Swedesboro, NJ 08085

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

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

7 **9. COUNTERPARTS AND PDF SIGNATURES**

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

11 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

14 **11. ENTIRE AGREEMENT**

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

23 **12. MODIFICATION**


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

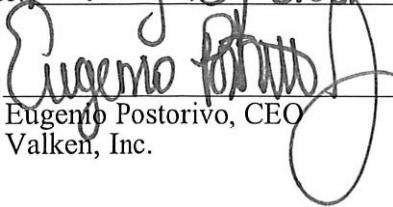
5 **AGREED TO:**

6 Date: May 15, 2024

7
8 By: 
9 Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

6 Date: May 15, 2024

7
8 By: 
9 Eugenio Postorivo, CEO
Valken, Inc.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28