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10 KEEP AMERICA SAFE AND BEAUTIFUL

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

13 KEEP AMERICA SAFE AND BEAUTIFUL,

14 Plaintiff,

15 v.

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

17 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”), Environmental Health Advocates, Inc. (“EHA”), and defendant Valken, Inc.
4 (“Valken”), with KASB and Valken each individually referred to as a “Party” and collectively, as the
5 “Parties,” to resolve the allegations in the KASB’s 60-Day Notice of Violation dated September 13,
6 2022 to Valken and EHA’s 60-Day Notice of Violation dated February 1, 2024 to Valken, in compliance
7 with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et*
8 *seq.* (“Proposition 65”).

9 **1.1 The Parties**

10 KASB is a California-based non-profit organization proceeding in the public interest pursuant
11 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
12 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
13 consumer products sold in California. Environmental Health Advocates, Inc. is an organization in the
14 State of California acting in the interest of the general public. Valken is a person in the course of doing
15 business for purposes of California Health & Safety Code § 25249.11(b).

16 **1.2 Consumer Product Description**

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

25 **1.3 Notices of Violation**

26 On September 13, 2022, KASB served Valken, the California Attorney General, and the
27 requisite public enforcement agencies with a 60-Day Notice of Violation (“DEHP Notice”), alleging
28 Valken violated Proposition 65 by failing to warn its customers and consumers in California that the

1 Products can expose users to DEHP.

2 On February 1, 2024, Environmental Health Advocates, Inc. served Valken, the California
3 Attorney General, and the requisite public enforcement agencies with a Proposition 65 Notice of
4 Violation (“**Lead Notice**”), alleging Valken violated Proposition 65 by failing to warn its customers
5 and consumers in California that the Products can expose users to Lead. The DEHP Notice and the
6 Lead Notice are collectively referred to herein as the “Notices.” No public enforcer has commenced
7 and is diligently prosecuting an action to enforce the allegations set forth in the Notices.

8 **1.4 Complaint**

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

11 **1.5 No Admission**

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

19 **1.6 Jurisdiction**

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

24 **1.7 Execution Date**

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

26 **1.8 Effective Date**

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

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Commitment to Reformulate**

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

8 **2.2 Reformulation Standard**

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

11 (a) “**Listed Phthalate Chemicals**” defined as di(2-ethylhexyl) phthalate (“DEHP”), di-n-
12 butyl phthalate (“DBP”), diisononyl phthalate (“DINP”), butyl benzyl phthalate (“BBP”), di-isodecyl
13 phthalate (“DIDP”), and di-n-hexyl phthalate (“DnHP”), contain any or all such Phthalate Chemicals
14 each in a maximum concentration of less than 0.1 percent (1,000 parts per million) in any and all
15 accessible components when analyzed by a laboratory certified or accredited by the International
16 Organization for Standardization (“ISO”), the State of California, the United States Food and Drug
17 Administration/Environmental Protection Agency, the National Environmental Laboratory
18 Accreditation Program, or a member accreditation body of the International Laboratory Accreditation
19 Cooperation (“ILAC”). For purposes of compliance with this reformulation standard, testing samples
20 shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology
21 CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology
22 8270D, or other methodologies utilized by federal or state government agencies to determine
23 phthalate content in a solid substance; and

24 (b) Lead in a total concentration of 0.009% or 90 ppm or less in all accessible components
25 when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies
26 3050B and 6020A or equivalent methodologies utilized by federal or state agencies for the purpose of
27 determining Lead content in a solid substance, and yielding a test result of no more than 1.0
28

1 microgram of Lead on the entire surface area of any and all accessible components when sampled
2 pursuant to the NIOSH 9100 testing protocol and analyzed pursuant to EPA 3050B and 6020A.

3 **2.3 Clear and Reasonable Warnings**

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

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

16 **⚠ WARNING:** This product can expose you to chemicals including
17 [Lead] which are known to the State of California to
18 cause birth defects or other reproductive harm. For
19 more information go to www.P65Warnings.ca.gov.

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

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

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

28 **(d) On-Product Warnings.** Valken shall affix a warning to the Product label or otherwise
directly on each Product provided for sale to customers located in California, with locations in

1 California, nationwide distribution, or e-commerce websites. For the purpose of this Consent
2 Judgment, "Product label" means a display of written, printed or graphic material that is printed on or
3 affixed to each of a Product or its immediate packaging. A warning provided pursuant to Section 2.3(a)
4 or (b) must print the word "**WARNING:**" in all capital letters and in bold font. The warning symbol
5 to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral
6 triangle with a black outline, except that if the labeling does not use the color yellow, then the symbol
7 may be in black and white. The entire warning shall appear in a type size of at least 6-point type and
8 no smaller than the largest type size used for other Consumer Information on the Products.

9 **(e) Internet Warnings.** If, after the Effective Date, Valken sells Products, that are not
10 Reformulated Products, via the internet, through its own website, affiliated websites or a third party
11 website, to customers located in California, with locations in California, nationwide distribution, or
12 e-commerce websites, Valken shall provide warnings for each Product both on the Product label in
13 accordance with Section 2.3(d), and by prominently displaying, or requiring the warning to be
14 prominently displayed on affiliated websites, third party websites or by retail customers, to consumers
15 during the purchase of the Products without requiring customers to seek out the warning. The warning
16 or a clearly marked hyperlink to the warning using the word "**WARNING**" given in conjunction with
17 the sale of the Products via the internet shall appear either: (a) on the same web page on which the
18 Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the
19 same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser
20 during the checkout process. The warning shall appear in any of the above instances adjacent to or
21 immediately following the display, description, or price of the Products for which it is given in the
22 same type size or larger than other consumer information provided for the Products. For third-party
23 websites over which Valken has no control, as a condition of sale, Valken shall provide its customer
24 with notices stating the Products must be accompanied by a warning, prior to sale in or into California,
25 and shall supply the warning requirements, pursuant to Sections 2.3.

26 **2.4 Customer Notification**

27 No later than the Effective Date, Valken shall send a letter, electronic or otherwise
28 ("**Notification Letter**") to each customer that is a retailer or distributor with any inventory of

1 Products Valken supplied between September 13, 2019, and the Effective Date for sale to consumers
2 in California. The Notification Letter shall advise the recipient that the Products contain DEHP and/or
3 Lead, chemicals known to the State of California to cause birth defects or other reproductive harm.
4 The Notification letter shall inform the recipient all Products must either be sold in or shipped to
5 California with (a) an On-Product Warning and (b) an Internet Warning which states:

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

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

10 **2.4.1 On Product Warning.** The Notification Letter shall advise that the On
11 Product Warning must be attached to a label on the packaging of each Product expressly referring to
12 the Product before it is sold in the California market or shipped to a customer in California and shall
13 supply the warning requirements, pursuant to this Section 2.4.1 as follows. The warning must print
14 the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the
15 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
16 outline. The entire warning shall appear in at least 6-point type and no smaller than the largest type
17 size used for other consumer information on the Products. The Notification Letter shall include a
18 sheet of white background, adhesive stickers with the forgoing warning statement.

19 **2.4.2 Internet Warning.** The Notification Letter shall advise Products sold through
20 e-commerce platforms must be accompanied by a warning, prior to and as a condition of sale, in or
21 into California, and shall supply the warning requirements, pursuant to this Section 2.4.2 as follows:
22 The Internet Warning must be prominently displayed during the purchase of the Products without
23 requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the
24 warning using the word “**WARNING**” given in conjunction with the sale of the Products via the
25 internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the
26 same web page as the virtual cart displaying the Products; (c) on the same page as the price for the
27 Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The
28 warning shall appear in any of the above instances adjacent to or immediately following the display,

1 description or price of the Products for which it is given in the same type size or larger than other
2 consumer information provided for the Products.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty**

5 Pursuant to Health and Safety Code § 25249.7(b), Valken agrees to pay a civil penalty of
6 \$7,500 within five (5) days of the Effective Date. Valken’s civil penalty payment will be allocated
7 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
8 penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and
9 the remaining twenty-five percent (25%) retained by KASB. Valken shall issue its payment in two
10 checks made payable to: (a) “**OEHHA**” in the amount of \$5,625; (b) “**Seven Hills in Trust for Keep**
11 **America Safe and Beautiful**” in the amount of \$1,250; and (c) “**Environmental Health Advocates,**
12 **Inc.**” in the amount of \$625. KASB’s counsel shall deliver to OEHHA, EHA and KASB their
13 respective portions of the penalty payment.

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

15 Under general contract principles and the private attorney general doctrine, codified at
16 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution
17 and reporting of this Consent Judgment to the Office of the California Attorney General and entry of
18 Judgment pursuant its terms, but exclusive of fees and costs on appeal, if any, Valken shall issue two
19 checks for a total of \$46,500 for all fees and other costs incurred investigating, bringing the
20 allegations in the Notices and Complaint to Valken’s attention, litigating, negotiating a settlement in
21 the public interest, obtaining the Court’s approval of its terms pursuant to Section 5, and reporting to
22 the California Attorney General. Within five (5) days of the Effective Date, Valken deliver one
23 check in the amount of \$28,000 made payable to “**Seven Hills LLP**” and a second check in the
24 amount of \$18,500 made payable to “**Entorno Law.**” KASB’s counsel shall deliver to Entorno Law,
25 its respective portions of the amount of reimbursement of attorney’s fees and costs.

1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be delivered to KASB’s
3 counsel at the following address: Seven Hills LLP
4 Attn: Laralei Paras
5 4 Embarcadero Center, Suite 1400
6 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Release of Proposition 65 Claims**

9 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
10 have been asserted by KASB and EHA arising out of the allegations in the Notices and in the
11 Complaint. KASB and EHA, acting on their own behalf, in the public interest, and on behalf of their
12 past and current agents, representatives, attorneys, successors and assignees (“**Releasors**”) release
13 Valken, its past and present directors, officers, employees, attorneys, and each entity to whom
14 Valken directly or indirectly distributes or sells the Products including, but not limited to, its
15 downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees,
16 cooperative members, and licensees (“**Releasees**”) based on the failure to provide a clear and
17 reasonable warning under Proposition 65 about alleged exposures to Lead and DEHP contained in
18 the Products that were manufactured, processed, distributed, sold and/or offered for sale in
19 California before the Effective Date, as set forth in the Notices. The Parties further agree that
20 compliance with Section 2 of this Consent Judgment shall be deemed compliance with Proposition
21 65 with respect to alleged exposures to Lead and DEHP in the Products.

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

27 **4.2 Individual Release of Claims**

28 KASB and EHA, in their individual capacities only and not in their representative capacity,
also hereby provide a release to Valken and the Releasees which shall be effective as a full and final

1 accord and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses,
2 attorneys' fees, damages, losses, claims, liabilities and demands of KASB and EHA of any nature,
3 character, or kind arising out of alleged or actual exposures to DEHP DINP, DIDP, DnHP, DBP, BBP
4 or Lead in Products manufactured, imported, sold or distributed for sale, in or into the State of
5 California, by Valken prior to the Execution Date, as alleged in the Notices and Complaint. The
6 Parties understand and agree this Section 4.2 release shall not extend (a) to upstream entities that
7 sold, supplied, or manufactured the Products or any component parts thereof, or any distributors or
8 suppliers who sold the Products or any component parts thereof to Valken nor (b) to Releasees who
9 have been instructed by Valken, pursuant to Section 2.4 to provide a warning on Products that are not
10 Reformulated Products and have failed to do so. Nothing in this section shall affect KASB's right to
11 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
12 Valken's Products.

13 **4.3 Valken's Release of KASB**

14 Valken, on behalf of itself, its past and current agents, representatives, attorneys, successors,
15 and assignees, hereby waives any and all claims against KASB, EHA and their attorneys and other
16 representatives, for any and all actions taken or statements made (or those that could have been taken
17 or made) by KASB, EHA and their attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
19 respect to the Products.

20 **5. COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within California. Nothing in this Consent Judgment shall be interpreted to relieve Valken
8 from its obligation to comply with any pertinent state or federal law or regulation.

9 **8. NOTICE**

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

13 For Valken:

14 Jane Lorber
15 General Counsel
16 Valken, Inc.
17 1 Hawk Court
18 Swedesboro, NJ 08085

For KASB:

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

For EHA

Noam Glick
Entorno Law
225 Broadway, Suite 1900
San Diego, CA 92101

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

22 **9. COUNTERPARTS AND PDF SIGNATURES**

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

26 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

1 **11. ENTIRE AGREEMENT**

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

10 **12. MODIFICATION**


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

14 **13. AUTHORIZATION**

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

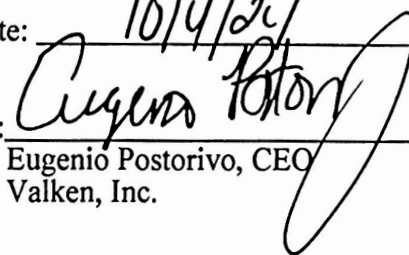
18 **AGREED TO:**

19 Date: 10/04/2024

20 By: 
21 Lance Nguyen, CEO
22 Keep America Safe and Beautiful


AGREED TO:

Date: 10/4/24

By: 
Eugenio Postorivo, CEO
Valken, Inc.

23 **AGREED TO:**

24 Date: 10/07/2024

25 By: 
26 Fred Duran, CEO
27 Environmental Health Advocates, Inc.
28