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VERY FINE DANCE SHOES
11

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

14 KEEP AMERICA SAFE AND BEAUTIFUL,

15 Plaintiff,

16 v.

17 VERY FINE DANCE SHOES; and DOES
1-30, inclusive,

18 Defendants.
19

Case No. CGC-23-609535

[PROPOSED] CONSENT JUDGMENT

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

Case Filed: October 5, 2023

Trial: Not set

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful (“KASB”) and defendant Very Fine Dance Shoes (“VFDS”), with KASB and VFDS each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 September 13, 2022, 60-Day Notice of Violation (“Notice”) in compliance with the Safe Drinking Water
6 and Toxic Enforcement 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. VFDS 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 VFDS manufactures, imports, sells, or distributes for sale, in or into California
15 the Vinyl/PVC Bags containing the phthalate chemical, di(2-ethylhexyl) phthalate (“DEHP”),
16 including the *Tote Bag* identified in KASB’s Notice , and that VFDS does so without providing the
17 health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et*
18 *seq.* (“Proposition 65”). All Vinyl/PVC Bags regardless of model, color, size or other variations are
19 referred to herein as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known
20 to the State of California to cause birth defects and other reproductive harm. All Vinyl/PVC Bags
21 including, but not limited to, the *Tote Bag* identified in Plaintiff’s Notice shall be referred to herein as
22 the “Products.”

23 **1.3 Notice of Violation**

24 On October 6, 2022, KASB served VFDS, the California Attorney General, and all requisite
25 public enforcement agencies with the Notice. The Notice alleges VFDS violated Proposition 65 by
26 failing to warn its customers and consumers in California the Products can expose users to DEHP.
27 No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations
28 set forth in the Notice.

1 **2.2 Reformulation Standard**

2 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products
3 containing DEHP in a maximum concentration of 0.1 percent (1,000 parts per million) in any
4 “accessible component” (i.e., any component that may be touched during a reasonably foreseeable
5 use) analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
6 recognized accrediting organization. For purposes of compliance with this reformulation standard,
7 testing samples shall be prepared and extracted using Consumer Product Safety Commission
8 (“CPSC”) methodology CPSC CH-C1001.09.4 and analyzed using U.S. Environmental Protection
9 Agency methodology 8270D, or other methodologies utilized by federal or state government
10 agencies to determine phthalate content in a solid substance.

11 **2.3 Clear and Reasonable Warnings**

12 Commencing on the Effective Date, for all Products sold, manufactured, or distributed for
13 sale by VFDS prior to the Compliance Date, VFDS shall provide clear and reasonable health hazard
14 warnings, in accordance with this Section and pursuant to California Health & Safety Code §
15 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as
16 may be amended from time to time.

17 Each warning provided shall be prominently placed with such conspicuousness when
18 compared with other words, statements, designs, or devices, as to render it likely to be read and
19 understood by an ordinary individual under customary conditions prior to purchase or use. Each
20 warning shall be provided in a manner such that the consumer or user understands to which *specific*
21 Product the warning applies, to minimize the risk of consumer confusion. For purposes of this
22 Agreement, the following warnings shall be deemed clear and reasonable:

23 **(a) Warnings:**

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

28 Or

1 **(b) Short-Form Warning:** As an alternative to the warning set forth in the preceding
2 subsection (a), VFDS may, but is not required to, use the following short-form warning (“Short-
3 Form”), subject to the additional requirements set forth in the following Sections 2.4 and 2.5:

4  **WARNING:** Reproductive Harm-[www. P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

9 **2.4 On-Product Warning Requirements**

10 Prior to the Compliance Date, VFDS shall affix one of the foregoing warnings on the
11 “Product Label”, its immediate packaging or labeling, or directly on each Product manufactured,
12 imported, distributed, sold or otherwise provided or intended to be provided for sale to consumers in
13 or into California that does not meet the Reformulation Standard. “Product Label” is defined as a
14 display of written, printed or graphic material printed on or affixed to a Product or its immediate
15 container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it
16 be smaller than the largest type size used for other consumer information on the Product.

17 Warnings provided pursuant to Section 2.3 must print the word “**WARNING:**” in all capital
18 letters and in bold font, followed by a colon. The warning symbol to the left of the word
19 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
20 outline, except, if the sign or label for the Products does not use the color yellow, then the symbol
21 may be in black and white. The symbol must be in a size no smaller than the height of the word
22 “**WARNING:**”. The warning may be contained in the same section of the packaging, labeling, or
23 instruction booklet that states other safety warnings, if any, concerning the use of the Products and
24 shall be at least the same size as those other safety warnings.

25 **2.5 Internet Product Warning Requirements**

26 For all Products manufactured, imported, distributed, sold or offered for sale prior to the
27 Compliance Date remaining in VFDS’ inventory or the inventory of any customers or other
28 downstream entities in VFDS’ chain of distribution after the Effective Date via the internet to

1 customers located in California, or sold in or into California by VFDS or its customers, directly or
2 through third-party websites over which VFDS has the ability to control the application of warnings,
3 VFDS shall provide warnings for each Product, both on the Product label, in accordance with
4 Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the
5 checkout process such that the consumer does not have to seek out the information being provided.
6 The warning or a clearly marked hyperlink to the warning, using the word “WARNING” and given
7 in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on
8 which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the
9 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
10 during the checkout process. The warning shall appear in any of the above instances adjacent to or
11 immediately following the display, description or price of the Product for which it is given in the
12 same type size or larger than other consumer information provided for the Product. For third-party
13 websites, as a condition of sale, VFDS shall notify the sellers the Products must be accompanied by a
14 warning, prior to and as a condition of sale, in or into California, and shall supply the warning
15 requirements, as detailed above.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Civil Penalty**

18 Pursuant to Health and Safety Code § 25249.7(b), VFDS agrees to pay a civil penalty of
19 \$1,500 within ten (10) days of the Effective Date. VFDS’s civil penalty payment will be allocated
20 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
21 penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and
22 the remaining twenty-five percent (25%) retained by KASB. VFDS shall issue its payment in two
23 checks made payable to: (a) “OEHHA” in the amount of \$1,125; and (b) “Seven Hills in Trust for
24 Keep America Safe and Beautiful” in the amount of \$375. KASB’s counsel shall remit to OEHHA
25 and KASB their respective portions of VFDS’s civil penalty payment.

26 **3.2 Reimbursement of Attorneys’ Fees and Costs**

27 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
28 reaching terms on the amount of reimbursement of attorneys’ fees and costs. After the Parties

1 reached an agreement in principle on the injunctive terms and VFDS's payment of civil penalties,
2 the parties negotiated VFDS's reimbursement of a portion of KASB's reasonable attorneys' fees and
3 costs of suit to be paid to KASB's counsel, under general contract principles and the private attorney
4 general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed
5 through the mutual execution and reporting of this Consent Judgment to the Office of the California
6 Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and costs on
7 appeal, if any. Within ten (10) days of the Effective Date, VFDS shall issue a check in the amount
8 of \$24,000 payable to "Seven Hills LLP" for all fees and other costs incurred in investigating,
9 bringing this matter to VFDS' attention, litigating, negotiating a settlement in the public interest,
10 obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the California
11 Attorney General.

12 **3.3 Payments**

13 All payments payable and due under this Consent Judgment shall be delivered to KASB's
14 counsel at the following address:

15 Seven Hills LLP
16 Attn: Kimberly Gates Johnson
17 4 Embarcadero Center, Suite 1400
18 San Francisco, CA 94111

18 **3.4 Tax Documentation**

19 Counsel for KASB, Seven Hills LLP, agrees to provide IRS Form W-9s via electronic mail to
20 counsel for VFDS for each of the payees under this Settlement Agreement with five business days of
21 the Effective Date. The Parties acknowledge that VFDS cannot issue any settlement payments
22 pursuant to this Section 3, until after VFDS receives the requisite W-9 forms from Plaintiffs' counsel.

23 **4. CLAIMS COVERED AND RELEASED**

24 **4.1 KASB's Public Release of Proposition 65 Claims**

25 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
26 have been asserted by KASB arising out of the allegations in the Notice and Complaint. KASB,
27 acting on its own behalf, in the public interest, and on behalf of its past and current agents,
28 representatives, attorneys, successors and assignees ("Releasors") releases VFDS, its past and

1 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
2 employees, attorneys, and each entity to whom VFDS directly or indirectly distributes or sells the
3 Products including its downstream distributors, wholesalers, marketplace hosts, customers, retailers,
4 franchisees, cooperative members, and licensees (“Releasees”) based on the failure to provide a clear
5 and reasonable warning, arising under Proposition 65, about alleged exposures to DEHP in Products
6 manufactured, processed, distributed, sold and/or offered for sale in California before the Effective
7 Date, as set forth in the Notice and Complaint. The Parties further agree that compliance with
8 Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to
9 alleged exposures to DEHP in the Products. The Parties understand and agree this Section 4.1
10 release shall not extend to upstream to any entity that manufactured the Products or sold or
11 distributed the Products to VFDS, nor shall this Section 4.1 release extend downstream to any
12 Releasees who have been instructed by VFDS, pursuant to Sections 2.3 and 2.6, above, to provide a
13 warning for Products that are not Reformulated Products and 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 and *not* on behalf of the public, on behalf of itself, its past and current agents,
17 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB’s rights to
18 institute or participate in, directly or indirectly, any form of legal action and releases all claims that
19 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,
20 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including,
21 but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65
22 with respect to DEHP in Products manufactured, distributed, sold and/or offered for sale by VFDS
23 and sold in or into California, prior to the Effective Date against VFDS and Releasees.

24 **4.3 VFDS’s Release of KASB**

25 VFDS, on its own behalf and on behalf of its past and current agents, representatives,
26 attorneys, successors, and assignees, hereby waives any and all claims against KASB and its
27 attorneys and other representatives, for any and all actions taken or statements made (or those that
28 could have been taken or made) by KASB and its attorneys and other representatives, whether in the

1 course of investigating claims or otherwise seeking to enforce Proposition 65 against it with respect
2 to the Products.

3 The Parties further agree these Section 4 releases shall not extend upstream to any entity who
4 manufactured, imported, distributed, sold, or supplied the Products, for sale, or any of their
5 component parts to VFDS. Nothing in these Section 4 releases shall affect KASB's right to
6 commence or prosecute an action under Proposition 65 against a Releasee that does not involve
7 VFDS's Products.

8 **4.4 General Release**

9 The Parties acknowledge that the claims released in Sections 4.1, 4.2 and 4.3 above may
10 include unknown claims, and the Parties nevertheless waive California Civil Code § 1542 as to any
11 such unknown claims. California Civil Code § 1542 reads as follows:

12
13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
16 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

17 KASB, on behalf of itself only, and VFDS, on behalf of itself only, acknowledge and understand the
18 significance and consequences of this specific waiver of California Civil Code § 1542. The Parties
19 expressly waive and relinquish any and all rights and benefits that they may have under, or which
20 may be conferred on them by any other state or federal statute or common law principle of similar
21 effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to the
22 released matters.

23 **5. COURT APPROVAL**

24 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
25 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
26 best efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
27 Consent Judgment, and to seek judicial approval of their settlement in a timely manner. For purposes
28

1 of this section, “best efforts” shall include, at a minimum, supporting the motion for approval,
2 responding to any third-party objection, and appearing at the hearing before the Court if so 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 inapplicable by reason of law generally, or as to the Products, then VFDS may provide
11 KASB with written notice of any asserted change in the law, and shall have no further injunctive
12 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
13 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve VFDS from its
14 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
17 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
18 (ii) a recognized overnight courier to any Party by the other at the following addresses:

19 For VFDS:

20 David Chui, President
21 Very Fine Dance Shoes
22 10501 Valley Blvd. Ste 1118
El Monte, CA 91731

For KASB:

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

23 *With a copy to:*

24 Michael Gleason
25 HAHN LOESER & PARKS LLP
One American Plaza, 600 West
San Diego, CA 92101

26 Any Party may, from time to time, provide written notice to the other Party of a change of address to
27 which all notices and other communications shall be sent.
28

1 **9. COUNTERPARTS AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by portable document format
3 (PDF) signature, each of which shall be deemed an original and, all of which, when taken together,
4 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
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
12 therein. There are no warranties, representations, or other agreements between the Parties except as
13 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
14 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
15 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
16 exist or to bind any of the Parties hereto.

17 **12. MODIFICATION**

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

21 **13. AUTHORIZATION**

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


25 **AGREED TO:**

26 Date: 10/03/2024

27 By: 
28 Lance Nguyen, CEO

AGREED TO:

Date: 9/27/2024

By: 

Keep America Safe and Beautiful

David Chui, President
Very Fine Dance Shoes

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