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16 Attorneys for Defendant  
17 ZIPWALL, LLC

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 COUNTY OF SAN FRANCISCO  
20 UNLIMITED CIVIL JURISDICTION

21 KEEP AMERICA SAFE AND BEAUTIFUL,

22 Plaintiff,

23 v.

24 ZIPWALL, LLC; and DOES 1-30,  
25 inclusive,

26 Defendants.

Case No. CGC-24-612178

**[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 Beautiful  
3 (“KASB”) and defendant Zipwall, LLC (“Zipwall”), with KASB and Zipwall each individually referred  
4 to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the December 12, 2022  
5 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of  
6 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. Zipwall 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 Zipwall manufactures, imports, sells, or distributes for sale in California  
15 vinyl/PVC sheeting and associated parts containing di(2-ethylhexyl) phthalate (“DEHP”) including,  
16 but not limited to, *Zipwall ZipDoor Plastic Door Kit, Item# 1559897, UPC: 641877202854*, without  
17 providing the health hazard warning KASB alleges is required by California Health & Safety Code §  
18 25249.5 *et seq.* (“Proposition 65”). All such vinyl/PVC sheeting and associated parts are referred to  
19 hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known to the  
20 State of California to cause cancer and birth defects or other reproductive harm.

21 **1.3 Notice of Violation**

22 On December 12, 2022, KASB served Zipwall, the California Attorney General, and the  
23 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Zipwall  
24 violated Proposition 65 by failing to warn its customers and consumers in California that the Products  
25 can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action  
26 to enforce the allegations set forth in the Notice.

1           **1.4     Complaint**

2           On February 6, 2024, KASB commenced the instant action (“**Complaint**”), naming Zipwall  
3 as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.5     No Admission**

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

13           **1.6     Jurisdiction**

14           For purposes of this Consent Judgment only and any court action that may become necessary  
15 to enforce this Consent Judgment, the Parties stipulate: this Court has jurisdiction over Zipwall as to  
16 the allegations contained in the Complaint; venue is proper in San Francisco County; and the Court  
17 has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to Proposition  
18 65 and Code of Civil Procedure § 664.6.

19           **1.7     Effective Date**

20           The term “Effective Date” means the date on which the Court approves this Consent Judgment  
21 and enters Judgment pursuant to its terms and Notice is served that this Consent Judgment is entered  
22 as a Judgment by this Court..

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

24           **2.1     Commitment to Reformulate or Warn**

25           Commencing on the Effective Date and continuing thereafter, all Products Zipwall  
26 manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through  
27 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard  
28 for Reformulated Products, as defined by Section 2.2, or be accompanied by clear and reasonable

1 warnings pursuant to Section 2.3.

2 **2.2 Reformulation Standard Defined**

3 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products  
4 which, if they contain di(2-ethylhexyl) phthalate (“DEHP”), di-n-butyl phthalate (“DBP”),  
5 diisononyl phthalate (“DINP”), butyl benzyl phthalate (“BBP”), di-isodecyl phthalate (“DIDP”) and  
6 di-n-hexyl phthalate (“DnHP”), contain any or all such chemicals each in a maximum concentration  
7 of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or  
8 accredited by the State of California, the United States Food and Drug  
9 Administration/Environmental Protection Agency, the National Environmental Laboratory  
10 Accreditation Program, or a member accreditation body of the International Laboratory  
11 Accreditation Cooperation (“ILAC”).

12 For purposes of compliance with this reformulation standard, testing samples shall be  
13 prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC  
14 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or  
15 other methodologies utilized by federal or state government agencies to determine phthalate content  
16 in a solid substance. (“**Reformulation Standard**”.)

17 **2.3 Clear and Reasonable Warnings**

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

26 **(a) Warnings**

27 The Warning shall consist of one of the following statements:  
28

1 1. For Products containing only the phthalate DEHP:

2 **⚠WARNING:** This product can expose you to di(2-ethylhexyl) phthalate  
3 (DEHP), which is known to the State of California to cause cancer  
4 and birth defects or other reproductive harm. For more  
5 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

6 - or -

7 2. For Products containing any other phthalate chemical(s):

8 **⚠WARNING:** This product can expose you to chemicals including  
9 [name of chemical or chemicals], which [is/are] are  
10 known to the State of California to cause [cancer] [and]  
11 [birth defects or other reproductive harm]. For more  
12 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 13 (b) Short-Form Warning

14 Zipwall may, but is not required to, use one of the following short-form warnings (“**Short-**  
15 **Form Warning**”), in lieu of the warnings set forth in subsection 2.3(a) subject to the additional  
16 requirements in Sections 2.3 through 2.5 and modified to reflect the correct chemical endpoint, as  
17 follows:

18 **⚠WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

20 **⚠WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

### 21 (c) Foreign Language Requirement

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

## 26 2.4 Product Warnings

27 Zipwall shall affix a warning to the Product label or otherwise directly on each Product  
28 provided for sale to consumers located in California and to customers with retail outlets in California  
or to customers with nationwide distribution. For the purpose of this Consent Judgment, “**Product  
label**” means a display of written, printed or graphic material that is printed on or affixed to each of a

1 Product or its immediate wrapper or packaging. A warning provided pursuant to Section 2.3(a) or  
2 Section 2.3(b) must print the word “**WARNING:**” in all capital letters and in bold font. The warning  
3 symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow  
4 equilateral triangle with a black outline, except that if the labeling does not use the color yellow, then  
5 the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-  
6 point type and no smaller than the largest type size used for other Consumer Information on the  
7 Products.

### 8 **2.5 Internet Warnings**

9 If, after the Effective Date, Zipwall sells Products, via the internet directly, or indirectly  
10 through customers with nationwide distribution or nationwide e-commerce websites, to customers  
11 located in California, Zipwall shall provide warnings for each Product both on the Product label in  
12 accordance with Section 2.4, and, where Zipwall has control over the e-commerce site, by including  
13 either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product  
14 display page, or by otherwise prominently displaying the warning to a California the purchaser prior  
15 to completing the purchase and without requiring the purchaser to search for the warning in the  
16 general content of the website. If Zipwall sells Products directly to customers with e-commerce  
17 websites, Zipwall shall inform those customers in writing of their obligation to provide online  
18 warnings consistent with Title 27 California Code of Regulations § 25602(b) as a condition of sale of  
19 the Products.

## 20 **3. MONETARY SETTLEMENT TERMS**

### 21 **3.1 Civil Penalty**

22 Pursuant to Health and Safety Code § 25249.7(b), Zipwall agrees to pay a civil penalty of  
23 \$2,500 within ten (10) business days of the Effective Date and after obtaining IRS W-9 forms for each  
24 payee from KASB. Zipwall’s civil penalty payment will be allocated according to Health and Safety  
25 Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California  
26 Office of Environmental Health Hazard Assessment (“**OEHHA**”), and the remaining twenty-five  
27 percent (25%) retained by KASB. Zipwall shall issue its payment in two checks made payable to: (a)  
28 “**OEHHA**” in the amount of \$1,875; and (b) “**Seven Hills LLP in Trust for KASB**” in the amount of

1 \$625. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty  
2 payment. Zipwall shall deliver its civil penalty payments to the address listed in Section 3.3, below.

### 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 costs  
11 on appeal, if any. Within ten (10) business days of the Effective Date and after obtaining IRS W-9  
12 forms for the payee from KASB, Zipwall shall issue a check in the amount of \$25,000 and made  
13 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing this matter  
14 to Zipwall's attention, litigating, negotiating a settlement in the public interest, obtaining the Court's  
15 approval of its terms pursuant to Section 5, and reporting to the California Attorney General. Zipwall  
16 shall deliver its payment to the address listed in Section 3.3.

### 17 **3.3 Payments**

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

20 Seven Hills LLP  
21 Attn: Kimberly Gates Johnson  
22 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

## 23 **4. CLAIMS COVERED AND RELEASED**

### 24 **4.1 KASB's 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 in the 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 Zipwall, its past and

1 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,  
2 employees, attorneys, and each entity to whom Zipwall directly or indirectly distributes or sells the  
3 Products including, but not limited to its downstream distributors, wholesalers, marketplace hosts,  
4 customers, retailers, franchisee, cooperative members and licensees and the successors and assignees  
5 of each (“**Releasees**”) based on the failure to provide a clear and reasonable warning under Proposition  
6 65 about alleged exposures to DEHP contained in the Products that were manufactured, processed,  
7 distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the  
8 Notice and Complaint. The Parties further agree that compliance with Section 2 of this Consent  
9 Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP  
10 in the Products.

11 The Parties further understand and agree that this Section 4.1 release shall neither extend (a)  
12 to upstream entities that manufactured the Products or any component parts thereof, or any  
13 distributors or suppliers who sold the Products or any component parts thereof to Zipwall nor (b) to  
14 Releasees who have been instructed by Zipwall pursuant to Section 2.5, to provide a warning on  
15 Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects  
16 KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does  
17 not involve Zipwall’s Products.

#### 18 **4.2 KASB’s Individual Release of Claims**

19 In further consideration of the promises and agreements herein contained, KASB, as an  
20 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,  
21 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB’s rights to  
22 institute or participate in, directly or indirectly, any form of legal action and releases all claims that  
23 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,  
24 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, including,  
25 but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65  
26 with respect to DEHP, DBP, DINP, BBP, DIDP, and DnHP in the Products manufactured,  
27 distributed, sold and/or offered for sale by Zipwall and sold in or into California before the Effective  
28 Date, against Zipwall and Releasees. The Parties understand and agree that this Section 4.2 release



1 shall not extend upstream to any entities that sold, supplied, or manufactured the Products or any  
2 component parts thereof to Zipwall.

3 **4.3 Zipwall's Release of KASB**

4 Zipwall, on behalf of itself, its past and current officers, agents, shareholders, employees,  
5 predecessors, representatives, attorneys, successors, and assignees, hereby waives any and all claims  
6 against KASB and its attorneys and other representatives for any and all actions taken or statements  
7 made (or those that could have been taken or made) by KASB, its attorneys and other representatives,  
8 whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it  
9 in this matter with respect to the Products.

10 **4.4 Mutual Waiver of California Civil Code § 1542**

11 It is possible that other claims not known to the Parties arising out of the facts alleged in the  
12 Notice and relating to the Products will develop or be discovered. KASB on behalf of itself only, and  
13 Zipwall on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and  
14 include all such claims up through the Effective Date, including all rights of action therefor. The Parties  
15 acknowledge that the claims released in §§ 4.1 through 4.3, above, may include unknown claims, and  
16 nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code  
17 § 1542 reads as follows:

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

22 The Parties acknowledge and understand the significance and consequences of this specific waiver of  
23 California Civil Code § 1542.

24 **5. COURT APPROVAL**

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

1 section, “best efforts” shall include, at a minimum, supporting the motion for approval, responding to  
2 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 Proposition 65 is repealed, preempted, or is otherwise  
10 rendered inapplicable, by reason of law, generally, as to the Products or as to DEHP, then Zipwall may  
11 seek to modify this Consent Judgment pursuant to Section 12. Nothing in this Consent Judgment shall  
12 be interpreted to relieve Zipwall from its obligation to comply with any pertinent state or federal law  
13 or regulation.

14 **8. NOTICE**

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

18 For Zipwall:

19 Lauren Michals, Esq.  
20 Nixon Peabody LLP  
21 One Embarcadero Center, 32<sup>nd</sup> Floor  
San Francisco, CA 94111

For KASB:

Kimberly Gates Johnson, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

24 **9. COUNTERPARTS AND PDF SIGNATURES**

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

1 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

4 **11. ENTIRE AGREEMENT**

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

13 **12. MODIFICATION**


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

17 **13. AUTHORIZATION**

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

20 **AGREED TO:**

21 Date: 08/13/2024

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

**AGREED TO:**

21 Date: 7/30/2024

22 By:   
23 Jeffrey Whittemore, President  
24 Zipwall, LLC