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KEEP AMERICA SAFE AND BEAUTIFUL

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10 Attorneys for Defendant  
PACIFIC CYCLE, INC.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION  
14

15 KEEP AMERICA SAFE AND BEAUTIFUL,  
16

17 Plaintiff,

18 v.

19 PACIFIC CYCLE, INC.; and DOES 1-30,  
inclusive,

20 Defendants.  
21

Case No. CGC-23-608088

**[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 Pacific Cycle, Inc. (“**Pacific Cycle**”), with KASB and Pacific Cycle  
4 each individually referred to as a “**Party**” and, collectively, as the “**Parties**,” to resolve the allegations in  
5 the December 12, 2022, 60-Day Notice of Violation in compliance with the Safe Drinking Water and  
6 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 chemicals known to the State of California  
10 to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from consumer  
11 products sold in California. KASB alleges Pacific Cycle is a person in the course of doing business  
12 for purposes of California Health & Safety Code § 25249.11(b).

13            **1.2     Consumer Product Description**

14            KASB alleges that Pacific Cycle manufactures, imports, sells, or distributes for sale, in or  
15 into, California vinyl/PVC bicycle seats containing di(2ethylhexyl) phthalate (“**DEHP**”), including  
16 but not limited to, the *Mongoose Switch Freestyle BMX Bike, 18-inch wheels, single speed, Black*  
17 *PO#: PP00347419, Model#: R1840WM*, without providing the health hazard warning by California  
18 Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). All such vinyl/PVC bicycle seats are  
19 referred to, hereinafter, as the “**Products**.” DEHP is listed pursuant to Proposition 65 as a chemical  
20 known to the State of California to cause birth defects or other reproductive harm.

21            **1.3     Notice of Violation**

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

1           **1.4 Complaint**

2           On August 2, 2023, KASB commenced the instant action (“**Complaint**”), naming Pacific  
3 Cycle as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4           **1.5 No Admission**

5           Pacific Cycle 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  
8 be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an  
9 admission by Pacific Cycle of any fact, finding, conclusion of law, issue of law, or violation of law.  
10 This section shall not, however, diminish or otherwise affect Pacific Cycle’s obligations,  
11 responsibilities, and duties under this Consent Judgment.

12           **1.6 Jurisdiction**

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

17           **1.7 Execution Date**

18           The term “Execution Date” means the date all parties have signed this Consent Judgment.

19           **1.8 Effective Date**

20           The term “Effective Date” means the date on which the Court approves this Consent  
21 Judgment and enters Judgment pursuant to its terms.

22 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

23           **2.1 Commitment to Reformulate or Warn**

24           Commencing on the Effective Date, and continuing thereafter, all Products Pacific Cycle  
25 manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through  
26 one or more third party retailers or e-commerce marketplaces, shall either: (a) meet the  
27 Reformulation Standard for Reformulated Products, as set forth in Section 2.2; or (b) shall bear a  
28 complaint Proposition 65 warning label, as defined by Sections 2.4 through 2.6.

1           **2.2     Reformulation Standard**

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

12           **2.3     Certification to Compliance with Reformulation Standard**

13           On or before 120 days of the Effective Date, for all newly manufactured Products, an officer  
14 shall provide to KASB, via its counsel, Seven Hills LLP, a written attested declaration stating, as of  
15 the Effective Date, and continuing thereafter, any and all newly manufactured Products intended for  
16 sale to: (a) consumers in California, directly including through its own website, affiliated websites or  
17 a third party website, to consumers located in California; and (b) customers with nationwide  
18 distribution and e-commerce websites are Reformulated Products in compliance with the  
19 Reformulation Standard set forth in the preceding Section 2.2. Pacific Cycle shall also provide a  
20 recent test result, performed after the date of the Notice, showing the specific saddle Product  
21 identified in the Notice was tested and analyzed according to the parameters set forth in the preceding  
22 Section 2.2 and met the Reformulation Standard. Notwithstanding this provision, Products  
23 containing a warning as provided for in Sections 2.4 through 2.6 need not meet this requirement.


24           **2.4     Clear and Reasonable Warnings**

25           Commencing on the Effective Date, and continuing thereafter, Pacific Cycle shall provide  
26 clear and reasonable health hazard warnings, in accordance with this Section and pursuant to  
27 California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“*Cal.*  
28 *Code Regs.*”) § 25600 *et seq.*, as may be amended from time to time, for all Products Pacific Cycle

1 manufactures, imports, distributes, sells, or offers for sale, in or into California, that do not meet the  
2 Reformulation Standard.

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

9 (a) **Warnings:**

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

12 Or

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

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

17 **2.5 On-Product Warning Requirements**

18 Pacific Cycle shall affix one of the foregoing warnings on the “Product Label”, its packaging,  
19 or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided or  
20 intended to be provided for sale to consumers in or into California and does not meet the  
21 Reformulation Standard. “Product Label” is defined as a display of written, printed or graphic  
22 material printed on or affixed to a Product or its immediate container or wrapper. The entire warning  
23 shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used  
24 for other consumer information on the Product.

25 Warnings provided pursuant to Section 2.3 must print the word “WARNING:” in all capital  
26 letters and in bold font, followed by a colon. The warning symbol to the left of the word  
27 “WARNING:” must be a black exclamation point in a yellow equilateral triangle with a black  
28 outline, except, if the sign or label for the Products does not use the color yellow, then the symbol

1 may be in black and white. The symbol must be in a size no smaller than the height of the word  
2 “WARNING:”. The warning may be contained in the same section of the packaging, labeling, or  
3 instruction booklet that states other safety warnings, if any, concerning the use of the Products and  
4 shall be at least the same size as those other safety warnings.

## 5 **2.6 Internet Product Warning Requirements**

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

## 22 **3. MONETARY SETTLEMENT TERMS**

### 23 **3.1 Civil Penalties**

24 Pursuant to Health and Safety Code § 25249.7(b), Pacific Cycle agrees to pay a civil penalty  
25 of \$4,000 within ten (10) business days of the Effective Date. Pacific Cycle’s civil penalty payment  
26 will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five  
27 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard  
28 Assessment (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Pacific

1 Cycle shall issue its payment in two checks, delivered to KASB's counsel, made payable to: (a)  
2 "OEHHA" in the amount of \$3,000; and (b) "Seven Hills in Trust for Keep America Safe and  
3 Beautiful" in the amount of \$1,000. Counsel for KASB shall deliver to KASB and OEHHA their  
4 respective portions of the civil penalty payments.

### 5 **3.2 Reimbursement of Attorneys' Fees and Costs**

6 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms  
7 on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the  
8 other material settlement terms, they negotiated and reached an accord on the amount of  
9 reimbursement to be paid to KASB's counsel, under general contract principles and the private  
10 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work  
11 performed through the mutual execution and reporting of this Agreement to the Office of the  
12 California Attorney General. Within ten (10) business days of the Effective Date, Pacific Cycle  
13 agrees to issue a check in the amount of \$25,000 payable to "Seven Hills LLP" for all fees and costs  
14 incurred in investigating, bringing this matter to Pacific Cycle's attention, negotiating a settlement in  
15 the public interest, and reporting its terms to Office of the California Attorney General pursuant to  
16 Section 9.

### 17 **3.3 Payments & Other Terms**

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 Within one (1) week of the Execution Date by all signees to this Consent Judgment, counsel  
24 for KASB shall send, by electronic mail, to counsel for Pacific Cycle Federal Form W9s for all of  
25 the following payees under this agreement to allow Pacific Cycle to comply with its tax reporting  
26 requirements: OEHHA, KASB and Seven Hills LLP. Delivery of Form W9s shall be deemed  
27 completed at the time the electronic mail is sent, and lack of acknowledgment of delivery shall not  
28 constitute a bar to payment under this Section 3.

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 KASB's Release of Proposition 65 Claims**

3 This Consent Judgment represents of full, final and binding resolution between KASB, acting  
4 on its own behalf and in the public interest and on behalf of itself, its past and current agents,  
5 representatives, attorneys, successors, and/or assignees, against Pacific Cycle, its parents,  
6 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,  
7 suppliers and each entity to whom Pacific Cycle directly or indirectly distributes or sells Products,  
8 including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,  
9 cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn, under  
10 Proposition 65, about alleged exposures to DEHP contained in the Products manufactured,  
11 distributed, sold and/or offered for sale by Pacific Cycle in California prior to the Effective Date, as  
12 alleged in the Notice.

13 In further consideration of the promises and agreements herein contained, KASB as an  
14 individual and *not* on behalf of the public, on behalf of itself, its past and current agents,  
15 representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to  
16 institute or participate in, directly or indirectly, any form of legal action and releases all claims that  
17 KASB may have, including, without limitation, all actions, and causes of action, in law or in equity,  
18 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including,  
19 but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65  
20 with respect to DEHP in Products manufactured, distributed, sold and/or offered for sale by Pacific  
21 Cycle, before the Effective Date (collectively, "**Claims**"), against Pacific Cycle and Releasees.

22 **4.2 KASB's Individual Release of Claims**

23 KASB, in its individual capacity only and *not* in his representative capacity, also provides a  
24 release to Pacific Cycle and Releasees which shall be effective as a full and final accord and  
25 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
26 damages, losses, claims, liabilities and demands of KASB of any nature, character or kind, whether  
27 known or unknown, suspected or unsuspected, arising out of alleged or actual failure to provide a  
28 clear and reasonable warning about exposures to DEHP, arising under Proposition 65, in Products



1 manufactured, processed, distributed or sold to consumers in California before the Effective Date.  
2 Nothing in this section shall affect KASB's right to commence or prosecute an action under  
3 Proposition 65 against a Releasee that does not involve Pacific Cycle's Products.

4 The Parties understand and agree these Section 4 releases shall not extend upstream to any  
5 entities who sold, supplied, or manufactured the Products, or any component parts thereof, to Pacific  
6 Cycle, nor shall it extend downstream to any third-party entities who had a duty to warn, pursuant to  
7 Proposition 65, and failed to do so. Nothing in these Section 4 releases shall affect KASB's right to  
8 commence or prosecute an action under Proposition 65 against a Releasee that does not involve  
9 Pacific Cycles' Products.

#### 10 **4.3 Pacific Cycle's Release of KASB**

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

#### 17 **5. COURT APPROVAL**

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

#### 24 **6. SEVERABILITY**

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

28

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California  
3 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise  
4 rendered inapplicable by reason of law generally, or as to the Products, then Pacific Cycle may  
5 provide KASB with written notice of any asserted change in the law, and shall have no further  
6 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the  
7 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Pacific  
8 Cycle 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 Pacific Cycle:

14 Eric Shambaugh  
15 Vice President, Product Development & Quality  
16 Pacific Cycle, Inc.  
17 4902 Hammersley Rd.  
18 Madison, WI 53711

For KASB:

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

19 With copy to:

20 Jean-Paul P. Cart, Partner  
21 Venable LLP  
22 101 California Street, Suite 3800,  
23 San Francisco, CA 94111

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

26 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

27 This Consent Judgment may be executed in counterparts and by portable document format  
28 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,  
shall 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  
6 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
7 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
8 therein. There are no warranties, representations, or other agreements between the Parties except as  
9 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those  
10 specifically referred to in this Consent Judgment have been made by any Party hereto. No other  
11 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to  
12 exist or to bind any 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  
19 respective Parties and have read, understood, and agreed to all of the terms and conditions of this  
20 Consent Judgment.

21 **AGREED TO:**

**AGREED TO:**

22 Date: 09/08/2023

22 Date: 9/6/2023

23  
24  
25 By: 

23  
24  
25 By: 

26 My Nguyen, Chief Financial Officer  
27 Keep America Safe and Beautiful

26 Justin Karnes, Vice President Finance  
27 Pacific Cycle, Inc.