

1 Laralei Paras, State Bar No. 203319
2 Rebecca M. Jackson, State Bar No. 221583
3 SEVEN HILLS LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 laralei@sevenhillslp.com
8 rebecca@sevenhillslp.com
9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL
11

12 Daniel Fox, State Bar No. 268757
13 K&L GATES LLP
14 4 Embarcadero Center, Suite 1200
15 San Francisco, CA 94111
16 Telephone: (415) 882-8017
17 daniel.fox@klgates.com

18 Attorneys for Defendant
19 HAT CLUB LLC

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 COUNTY OF SAN FRANCISCO
22 UNLIMITED CIVIL JURISDICTION

23 KEEP AMERICA SAFE AND BEAUTIFUL,

24 Plaintiff,

25 v.

26 HAT CLUB LLC; and DOES 1-30,
27 inclusive,

28 Defendants.

Case No. CGC-23-607494

[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 Hat Club LLC (“Hat Club”), with KASB and Hat Club each individually
4 referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the January 13,
5 2023 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic Enforcement
6 Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

8 KASB is a California-based non-profit organization proceeding in the public interest pursuant
9 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
10 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
11 consumer products sold in California. Hat Club 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 Hat Club manufactures, imports, sells, or distributes for sale in California
15 vinyl/PVC bags containing di(2ethylhexyl) phthalate (“DEHP”) including, but not limited to, *HAT*
16 *CLUB 30 CAP 3D DUFFLE BAG – BLACK; UPC 1391847; Style #31615*, without providing the
17 health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.*
18 (“Proposition 65”). All such vinyl/PVC bags are referred to hereinafter as the “Products.” DEHP is
19 listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and
20 birth defects or other reproductive harm.

21 **1.3 Notice of Violation**

22 On January 13, 2023, KASB served Hat Club, the California Attorney General, and the
23 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Hat Club
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 July 6, 2023, KASB commenced the instant action (“**Complaint**”), naming Hat Club as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.5 No Admission**

5 Hat Club 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 Hat Club of any fact, finding, conclusion of law, issue of law, or violation of law. This
10 section shall not, however, diminish or otherwise affect Hat Club’s obligations, responsibilities, and
11 duties under this Consent Judgment. Hat Club 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, the Parties stipulate: this Court has jurisdiction
15 over Hat Club as to the allegations contained in the Complaint; venue is proper in San Francisco
16 County; and the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment,
17 pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

18 **1.7 Effective Date**

19 The term “Effective Date” means the date on which KASB provides Hat Club with notice that
20 the Court approves this Consent Judgment and enters Judgment pursuant to its terms.

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

22 **2.1 Commitment to Reformulate or Warn**

23 Commencing on the Effective Date and continuing thereafter, all Products Hat Club sells or
24 distributes for sale, in or into California, directly or through one or more third party retailers or e-
25 commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as
26 defined by Section 2.2, or be accompanied by clear and reasonable warnings pursuant to Section 2.3.

1 **2.2 Reformulation Standard Defined**

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

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

14 **2.3 Clear and Reasonable Warnings**

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

23 **(a) Warnings**

24 The Warning shall consist of one of the following statements:

- 25 1. For Products containing DEHP:

26 **⚠WARNING:** This product can expose you to di(2-ethylhexyl) phthalate
27 (DEHP), which is known to the State of California to cause cancer
28

and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

- or -

2. For Products containing other phthalate chemicals listed under Proposition 65:

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

(b) Short-Form Warning

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

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

⚠ WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

⚠ WARNING: Cancer - www.P65Warnings.ca.gov.

(c) Foreign Language Requirement

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

2.4 Product Warnings

For any on-product warnings, Hat Club shall affix a warning to the Product label or otherwise directly on each Product provided for sale to customers located in California and to customers for sale in or into California. 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 Product or its immediate wrapper or packaging. A warning provided pursuant to Section 2.3(a) or 2.3(b) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word

1 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
2 outline, except that if the labeling does not use the color yellow, then the symbol may be in black and
3 white. For a warning provided pursuant to Section 2.3(a) or 2.3(b), the entire warning shall appear in
4 a type size of at least 6-point type and no smaller than the largest type size used for other Consumer
5 Information on the Products. The internet warning may use the Short-Form Warning content
6 described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form
7 Warning content.

8 **2.5 Internet Warnings**

9 If, after the Effective Date, Hat Club sells Products that are not Reformulated Products, via
10 the internet to customers located in California, Hat Club shall provide warnings for each Product both
11 on the Product label in accordance with Section 2.4, and by including either the warning or a clearly
12 marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise
13 prominently displaying the warning to the purchaser prior to completing the purchase and without
14 requiring the purchaser to search for the warning in the general content of the website. If Hat Club
15 sells Products that are not Reformulated Products directly to customers for sale through the
16 customer’s e-commerce websites, Hat Club shall inform those customers in writing of their obligation
17 to provide online warnings consistent with Title 27 California Code of Regulations § 25602(b) as a
18 condition of sale of the Products.

19 **3. MONETARY SETTLEMENT TERMS**

20 **3.1 Civil Penalty**

21 Pursuant to Health and Safety Code § 25249.7(b), Hat Club agrees to pay a civil penalty of
22 \$5,750 within thirty (30) business days of the Effective Date. Hat Club’s civil penalty payment will be
23 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
24 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
25 (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Hat Club shall issue
26 its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$4,312.50; and (b) “Seven
27 Hills LLP in Trust for KASB” in the amount of \$1,437.50. KASB’s counsel shall deliver to OEHHA
28

1 and KASB their respective portions of the penalty payment. Hat Club shall deliver its civil penalty
2 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 thirty (30) business days of the Effective Date, Hat Club shall issue a check
12 in the amount of \$27,600 and made payable to "Seven Hills LLP" for all fees and other costs incurred
13 investigating, bringing this matter to Hat Club's attention, litigating, negotiating a settlement in the
14 public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the
15 California Attorney General. Hat Club shall deliver its payment to the address listed in Section 3.3.

16 **3.3 Payments**

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

19 Seven Hills LLP
20 Attn: Laralei Paras
21 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

22 **4. CLAIMS COVERED AND RELEASED**

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

24 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
25 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint. KASB,
26 acting on its own behalf, in the public interest, and on behalf of its past and current agents,
27 representatives, attorneys, successors and assignees ("**Releasors**") releases Hat Club, its past and
28 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,

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

9 The Parties further understand and agree that this Section 4.1 release shall neither extend (a)
10 to upstream entities that manufactured the Products or any component parts thereof, or any upstream
11 distributors or suppliers who sold the Products or any component parts thereof to Hat Club nor (b) to
12 Releasees who have been instructed by Hat Club pursuant to Section 2.5, to provide a warning on
13 Products that are not Reformulated Products and have failed to do so.

14 **4.2 KASB’s Individual Release of 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 the Products manufactured, distributed, sold and/or offered for sale by Hat Club and
23 sold in or into California before the Effective Date, against Hat Club and Releasees. The Parties
24 understand and agree that this Section 4.2 release shall not extend upstream to any entities that sold,
25 supplied, or manufactured the Products or any component parts thereof to Hat Club.

26 **4.3 Hat Club’s Release of KASB**

27 Hat Club, on behalf of itself, its past and current officers, agents, shareholders, employees,
28 predecessors, representatives, attorneys, successors, and assignees, hereby waives any and all claims

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

5 **5. COURT APPROVAL**

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

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise
19 rendered inapplicable, by reason of law, generally, as to the Products or as to DEHP, then Hat Club
20 may seek to modify this Consent Judgment pursuant to Section 12. Nothing in this Consent Judgment
21 shall be interpreted to relieve Hat Club from its obligation to comply with any pertinent state or federal
22 law or regulation.

23 **8. NOTICE**

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

1 For Hat Club:

2 Mark Wacker
3 Hat Club
4 575 E Germann Rd #104
5 Gilbert, AZ 85297

6 With a copy to:

7 Daniel Fox, Esq.
8 K&L Gates LLP
9 4 Embarcadero Center, Suite 1200
10 San Francisco, CA 94111

11 For KASB:

12 Laralei Paras, Partner
13 Seven Hills LLP
14 4 Embarcadero Center, Suite 1400
15 San Francisco, CA 94111

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

18 **9. COUNTERPARTS AND PDF SIGNATURES**

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

22 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

25 **11. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
27 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
28 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
are no warranties, representations, or other agreements between the Parties except as expressly set
forth herein. No representations, oral or otherwise, express or implied, other than those specifically
referred to in this Consent Judgment have been made by any Party hereto. No other agreements not

1 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
2 of the Parties hereto.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

10 **AGREED TO:**

AGREED TO:

11 Date: 09/23/2024

Date: 9/11/2024

12 By: 
13 _____

By: Mark Wacker
14 _____

15 Lance Nguyen, CEO
16 Keep America Safe and Beautiful

17 Name: Mark Wacker
18 Hat Club LLC