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12 CENTRAL GARDEN & PET COMPANY

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

15
16 KEEP AMERICA SAFE AND BEAUTIFUL,

17 Plaintiff,

18 v.

19 CENTRAL GARDEN & PET COMPANY;
and DOES 1-30, inclusive,

20 Defendants.
21

Case No. CGC-24-613973

[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 acting on behalf of itself and in the public interest (“KASB”) and defendant Central Garden &
4 Pet Company (“Central”), with KASB and Central each individually referred to as a “Party” and
5 collectively, as the “Parties,” to resolve the allegations in the July 3, 2023 60-Day Notice of Violation in
6 compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code
7 §25249.6 *et seq.* (“Proposition 65”).

8 **1.1 The Parties**

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

14 **1.2 Consumer Product Description**

15 KASB alleges that Central manufactures, imports, sells, or distributes for sale in California
16 tools with vinyl/PVC grips containing di(2ethylhexyl) phthalate (“DEHP”), including but not limited
17 to, *Four Paws Magic Coat® Professional Series Cat Nail Clipper, UPC 0 45663 11455 8*, without
18 providing the health hazard warning that KASB alleges is required by California Health & Safety
19 Code § 25249.5 *et seq.* (“Proposition 65”). Tools with vinyl/PVC grips are referred to hereinafter as
20 the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of
21 California to cause birth defects and other reproductive harm.

22 **1.3 Notice of Violation**

23 On July 3, 2023, KASB served Central, the California Attorney General, and the requisite
24 public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Central violated
25 Proposition 65 by failing to warn its customers and consumers in California that the Products can
26 expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to
27 enforce the allegations set forth in the Notice.

1 **1.4 Complaint**

2 On April 16, 2024, KASB, acting in the interest of the general public in California,
3 commenced the instant action (“**Complaint**”), naming Central as a defendant for the alleged
4 violations of Proposition 65 that are the subject of the Notice.

5 **1.5 No Admission**

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

13 **1.6 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Central as to the allegations contained in the Complaint; that venue is proper in San
16 Francisco County; and that the Court has jurisdiction to enter and enforce the provisions of this
17 Consent Judgment, 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 the Court approves this Consent
20 Judgment and enters Judgment pursuant to its terms.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 **2.1 Reformulation Commitment**

23 As of the Effective Date and continuing thereafter, all Products Central manufactures,
24 imports, and acquires for sale in or into California, directly or through one or more third party
25 retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated
26 Products, as defined by Section 2.2.

1 **2.2 Reformulation Standard**

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 accredited by the State of California, a federal agency, or a nationally recognized accrediting
6 organization. For purposes of compliance with this reformulation standard, testing samples shall be
7 prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC
8 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or
9 other methodologies utilized by federal or state government agencies to determine phthalate content
10 in a solid substance.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Civil Penalty**

13 Pursuant to Health and Safety Code § 25249.7(b), Central agrees to pay a civil penalty of
14 \$4,500 within ten (10) days of the Effective Date. Central’s civil penalty payment will be allocated
15 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
16 penalty paid to the California Office of Environmental Health Hazard Assessment (“**OEHHA**”), and
17 the remaining twenty-five percent (25%) retained by KASB. Central shall issue its payment in two
18 checks made payable to: (a) “**OEHHA**” in the amount of \$3,375; and (b) “**Seven Hills in trust for**
19 **Keep America Safe & Beautiful**” in the amount of \$1,125. KASB’s counsel shall deliver to OEHHA
20 and KASB their respective portions of the penalty payment.

21 **3.2 Reimbursement of Attorneys’ Fees and Costs**

22 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
23 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties
24 finalized the other material settlement terms, they negotiated and reached an accord on the amount of
25 reimbursement to be paid to KASB’s counsel, under general contract principles and the private
26 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
27 performed through the mutual execution and reporting of this Consent Judgment to the Office of the
28 California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees and

1 costs on appeal, if any. Within ten (10) days of the Effective Date, Central shall issue a check in the
2 amount of \$27,500 payable to "Seven Hills LLP" for all fees and other costs incurred investigating,
3 bringing this matter to Central's attention, litigating, negotiating a settlement in the public interest,
4 obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the California
5 Attorney General.

6 **3.3 Payments**

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

9 Seven Hills LLP
4 Embarcadero Center, Suite 1400
10 San Francisco, CA 94111

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 KASB's Release of Proposition 65 Claims**

13 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
14 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
15 KASB, acting on its own behalf and in the public interest, and on behalf of its past and current
16 agents, representatives, attorneys, successors and assignees ("**Releasors**") releases Central, its past
17 and present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
18 employees, attorneys, and each entity to whom Central directly or indirectly distributes or sells the
19 Products including, but not limited to, Amazon.com, Inc., its downstream distributors, wholesalers,
20 marketplace hosts, customers, retailers, franchisees, cooperative members, and licensees
21 ("**Releasees**") of all claims arising out of the alleged violations of Proposition 65 for failure to
22 provide a clear and reasonable warning about alleged exposures to DEHP contained in the Products
23 that were manufactured, processed, distributed, sold and/or offered for sale in California before the
24 Effective Date, as set forth in the Notice and Complaint. The Parties further agree that compliance
25 with Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with
26 respect to alleged exposures to DEHP in the Products.

27 In addition to the foregoing, Releasors hereby waive all rights to institute or participate in,
28 directly or indirectly, any form of legal action and releases Releasees from any and all manner of

1 actions, causes of action, claims, demands, rights, suites, obligations, debts, contracts, agreements,
2 promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of any nature
3 whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future, with
4 respect to any alleged violations of Proposition 65 related to or arising from the Products sold in or
5 into California prior to the Effective Date.

6 **4.2 Central's Release of KASB**

7 Central, on behalf of itself, its past and current agents, representatives, attorneys, successors,
8 and assignees, waives any and all claims against KASB and its attorneys and other representatives,
9 for any and all actions taken or statements made (or those that could have been taken or made) by
10 KASB and its attorneys and other representatives, whether in the course of investigating claims or
11 otherwise seeking to enforce Proposition 65 against him in this matter with respect to the Products.

12 **5. COURT APPROVAL**

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

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

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

1 **8. NOTICE**

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

6 For Central:

7 Wendy L. Manley, Director
8 FENNEMORE WENDEL
9 1111 Broadway, 24th Floor
Oakland, CA 94607
wmanley@fennemorelaw.com

For KASB:

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillsllp.com

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

12 **9. COUNTERPARTS AND PDF SIGNATURES**

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

16 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

19 **11. ENTIRE AGREEMENT**

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

1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

9
10 **AGREED TO:**

11 Date: 09/23/2024

12 By: _____

Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

11 Date: 9/19/24

12 By: _____

Joyce McCarthy, General Counsel
Central Garden & Pet Company