

## SETTLEMENT AND RELEASE AGREEMENT

### 1. INTRODUCTION

#### 1.1. Keep America Safe and Beautiful and Prosource Discounts, Inc.

This Settlement Agreement is entered into by and between KASB Alliance, LLC ("KASB"), on the one hand, and Prosource Discounts, Inc. ("Prosource"), on the other hand, with KASB and Prosource collectively referred to as the "Parties."

#### 1.2. General Allegations

KASB alleges that Prosource manufactured and distributed and offered for sale in the State of California abdominal mats containing Di(2-ethylhexyl)phthalate ("DEHP"), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

#### 1.3. Product Description

The products that are covered by this Settlement Agreement are defined as abdominal mats that Prosource has sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

#### 1.4. Notice of Violation

On March 23, 2020, KASB served Prosource, Amazon.com, Inc., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled "60-Day Notice of Violation" ("Notice") that provided Prosource and such public enforcers with notice that Prosource was allegedly in

violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.5. No Admission and No Further Purchase and Testing**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Prosource's compliance with Proposition 65. Prosource denies the material factual and legal allegations contained in KASB's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Prosource of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Prosource of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Prosource on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Prosource under this Settlement Agreement.

KASB, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, parents, subsidiaries, affiliates, employees, insurers, officers, directors, investors, shareholders, and all persons acting by, through, under, or in concert with KASB, hereby agrees not, directly or indirectly, through any means, purchase, use, test, or acquire any goods sold, manufactured, packaged, labeled, or distributed by Prosource.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

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

As of the Effective Date, Prosource shall label with a clear and reasonable Proposition 65 warning pursuant to Section 2.1 below. Products that were manufactured, packaged, labeled, offered for sale, in the stream of commerce, or supplied to third parties by Prosource prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.1. **Warning Language**

Where required, Prosource shall provide Proposition 65 warnings on the Product's label in compliance with the labeling requirements set forth in Proposition 65.

- (a) If Proposition 65 warnings for DEHP should no longer be required, Prosource shall have no further obligations pursuant to this Settlement Agreement.

3. **PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement and because it previously began to implement Proposition 65 warnings for the Products, Prosource shall pay a total of \$750 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to KASB. KASB's counsel shall be

responsible for delivering OEHHHA's portion of any penalty payment made under this Settlement Agreement.

4. **TAX LIABILITY**

As a condition precedent for payment, KASB and its counsel shall provide Prosource's counsel with W9 forms, and shall take full and complete responsibility for, and shall hold harmless and indemnify Prosource and its current and former parents, subsidiaries, affiliated companies, owners, officers, directors, current and former employees, representatives, attorneys, investigators, servants, agents, heirs and assigns from any and all tax liability, costs, penalties, and fines incurred resulting from the payment of the Settlement Funds, including but not limited to, federal, state or local taxes, and any interest or penalties incurred as a result of this settlement and Agreement.

KASB will rely on its own tax advisors as to the tax consequences of the Settlement Funds. KASB acknowledges that neither Prosource nor its attorneys have made any representations or warranties regarding the taxation of the Settlement Funds. KASB represents that it will fully and properly report its portion of the payment of the Settlement Funds to the IRS and any other required taxing authority as required.

Each Party acknowledges and agrees that: (1) no provision of this Agreement, and no written communication or disclosure between or among the Parties or their attorneys and other advisors, is or was intended to be, nor shall any such communication or disclosure constitute or be construed or relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (2) each Party (a) has relied exclusively upon his or its own independent legal and tax advisors for advice (including tax advice) in connection with this Agreement, (b) has not entered into this Agreement based upon

the recommendation of any other Party or attorney or any attorney or advisor to that Party; and (c) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on a Party; and (3) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or advisor's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Agreement.

5. **REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Prosource shall reimburse KASB's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Prosource's attention. Prosource shall pay KASB's counsel \$13,000 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

6. **PAYMENT INFORMATION**

By July 20, 2020, Prosource shall make a total payment of Thirteen Thousand Seven Hundred Fifty Dollars (\$13,750) for the civil penalties and attorney's fees / costs by wire transfer to Plaintiff's counsel Custodio & Dubey LLP:

Bank: Bank of America, N.A.

Routing No.: 026009593

Account No.: 325104702031

Beneficiary: Custodio & Dubey LLP

Other than this payment, each side is to bear its own attorneys' fees and costs.

7. **RELEASE OF ALL CLAIMS**

7.1. **Release of Prosource, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, KASB, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, parents, subsidiaries, affiliates, employees, insurers, officers, directors, investors, shareholders, and all persons acting by, through, under, or in concert with any of them, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, fees, accounts, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Prosource, (b) each of Prosource's downstream distributors (including but not limited to Amazon.com, Inc.), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Prosource's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

KASB also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, parents, subsidiaries, affiliates, employees, insurers, officers, directors, investors, shareholders, and all persons acting by, through, under, or in concert with any of them, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'

fees, damages, losses, claims, fees, accounts, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Prosource and the Releasees.

KASB acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

KASB, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, parents, subsidiaries, affiliates, employees, insurers, officers, directors, investors, shareholders, and all persons acting by, through, under, or in concert with any of them, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

8. **REPRESENTATION BY COUNSEL AND INFORMED CONSENT**

The Parties expressly acknowledge and represent they have been represented by counsel in the negotiations culminating in this Agreement and that each of them has read this Agreement, reviewed the same, and fully understand the meaning and effect of each and every provision of this Agreement, in particular the meaning and effect of Civil Code § 1542.

9. **SIGNATORIES HAVE AUTHORITY; NO ASSIGNMENT**

The Parties represent and warrant that they have the full power, capacity, and authority to enter into this Agreement, that no portion of any charge, claim, right, demand, action, or cause of action that any party has or might have arising out of the transactions, omissions, or acts referred



to herein has been assigned, transferred, or conveyed to any third party, by way of subrogation, operation of law, or otherwise, and that no other agreement, release, or settlement is necessary from any other person or entity to release and discharge completely the other party from the claims specified above which may be held by such party.

**10. COVENANT NOT TO SUE**

The Parties expressly represent, warrant, and covenant not to sue the other to enforce any claim or cause of action released pursuant to this Agreement. A lawsuit to enforce the terms of this Agreement shall be excepted from the terms of this Section, and shall not constitute a breach of the covenant not to sue. This covenant not to bring or maintain any action in law or equity shall be specifically enforced and each party shall have standing to bring any such action for specific enforcement and shall be a real party as defined in Code of Civil Procedure § 367.

**11. BREACH OF COVENANT NOT TO SUE**

In the event a Party breaches the covenant not to sue as set forth in this Agreement, that Party shall be liable for all damages incurred by the other, including without limitation, compensatory damages as well as attorneys' fees and costs.

**12. NO RELIANCE ON REPRESENTATIONS**

The Parties represent and acknowledge that in executing this Agreement, they do not rely and have not relied upon any representation or statement not set forth herein. The Parties also represent and agree that they have entered into this Agreement voluntarily and without coercion or duress and have been offered a reasonable time to consider the Agreement.

**13. NO LIENS OR ENCUMBRANCES**

KASB and its counsel expressly represent and warrant that they have not assigned or transferred to any person, firm, corporation, or other entity any claim, demand, right, damage,



liability, debt, account, action, cause of action, or any other matter therein released. KASB expressly agrees to indemnify and hold Prosource harmless against any claim, demand, right, damage, liability, debt, account, action, cause of action, cost or expense, including attorneys' fees, arising out of or any way connected with any liens, encumbrances, transfer or assignment, or any such purported claimed lien, encumbrance, transfer or assignment.

**14. CONFIDENTIALITY**

KASB on behalf of his agents, representatives, attorneys, assigns, parents, subsidiaries, affiliates, employees, insurers, officers, directors, investors, shareholders, and all persons acting by, through, under, or in concert with any of them, agrees and warrants that they understand that as a material condition of this Agreement, and in exchange for consideration hereunder, the existence of the Agreement together with its terms and conditions, and the allegations forming the basis of the Action, are to remain strictly private and confidential to the extent permitted by law, subject only to the exceptions set forth below.

KASB expressly agrees that it will not disclose, request, or consent to disclosure or otherwise disseminate said information to anyone concerning the Dispute and this Agreement, with the sole exceptions of its attorneys, accountants, and tax preparers as to the amounts of the Settlement Funds, and shall instruct those individuals not to disclose the fact of this Agreement, or the terms and conditions of this Agreement to anyone, including the amount of the Settlement Funds, unless specifically permitted or required by law, and in that event, only such information as the law permits or requires to be disclosed.

In the event any third party inquires of KASB about the status of the Action, this Settlement or Agreement, it may only state as follows: "The matter has been resolved." KASB and its counsel shall not otherwise reveal the terms or substance of any part of the Agreement.

Any Party to this Agreement that receives a request from any third party (other than those set forth above) for disclosure of this Agreement, in whole or in part, must notify the other Party of such request prior to any disclosure and must not make any such disclosure without providing the other Party a reasonable opportunity (at least 10 business days, if possible) to intervene as necessary and/or be heard with regard to the disclosure request.

In the event KASB breaches this obligation of confidentiality, Prosource will suffer damages in an amount which will be extremely difficult to ascertain. In order to establish a reasonable amount of damage for such a breach, and to put a limitation on such damages, KASB agrees to pay to Prosource as liquidated damages the sum of \$1,000 for each proven breach of the confidentiality provision of this Agreement. Because of the impracticability of fixing actual damages, and because of the benefit to each party in fixing a limitation on damages, KASB acknowledges that this provision for liquidated damages does not constitute a penalty or forfeiture within the meaning of Civil Code §§ 3275 or 3369 or any other provision of law.

*KASB and his counsel further agree that they shall not publicize this settlement or Agreement in any manner, even anonymously, including, without limitation, reporting to Jury Verdicts or any other reporting services.*

KASB acknowledges and agrees that any breach of this provision will cause damage to Prosource in an amount or amounts difficult to ascertain. Accordingly, in addition to any other relief to which it may be entitled, Prosource shall be entitled to injunctive relief as may be ordered by any court of competent jurisdiction to prevent violation of this provision.

In the event that KASB is subject to subpoena that could require it to disclose any information concerning the Dispute or this Agreement, or testify regarding any matters concerning Prosource, KASB shall notify Prosource in writing a minimum of seven (7) days prior to sitting for deposition or producing documents pursuant to a subpoena.

**15. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California, and that no Party shall be deemed the drafter of this Agreement. Each of the Parties acknowledges that this Agreement was jointly negotiated and reviewed and approved by them and their respective attorneys of record. The Agreement shall not be construed by any court of law or equity against any party solely by virtue of any party having drafted this Agreement. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Prosource shall have no further obligations pursuant to this Settlement Agreement.

**16. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Prosource: Regina Spurley, Esq.  
Law Offices of Regina Spurley  
300 N. Lake Ave., Suite 1100  
Pasadena, California 91101

For KASB: Vineet Dubey, Esq.  
Custodio & Dubey LLP  
448 S. Hill St., Suite 615  
Los Angeles, CA 90013

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

17. **COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

18. **COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

KASB agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

19. **ENTIRE AGREEMENT**


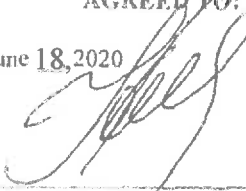
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

20. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

21. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p><b>AGREED TO:</b></p> <p>Date: June <u>18</u>, 2020</p> <p>By:  NCCC BICH VC On Behalf of KASB Alliance, LLC Its:</p>	<p><b>AGREED TO:</b></p> <p>Date: June <u>18</u>, 2020</p> <p>By:  On Behalf of Prosource Discounts, Inc. Its:</p>
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