

# PROPOSITION 65 SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe & Beautiful (“**KASB**”) and Shark Outdoors LLC dba Shark BBQ (“**Shark Outdoors**”), with KASB and Shark Outdoors each individually referred to as a “**Party**” and collectively, as the “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Shark Outdoors is a responsible entity selling products for sale to consumers in State of California and/or to entities who are persons in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

### 1.2 Consumer Product Description

KASB alleges that Shark Outdoors manufactures, imports, sells and distributes for sale into California tongs with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, *but not limited to*, Premium Stainless Steel Grill Tongs for Pitmasters & Serious Grillers, Red SS Grill Tongs, B07MQBWR3N, without providing the health hazard warning KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). Tongs with vinyl/PVC grips manufactured, caused to be manufactured, imported, sold or distributed for sale by Shark Outdoors are referred to hereinafter as the “**Products.**” **DEHP** is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Notice of Violation

On October 7, 2020, KASB served Amazon.com, Inc. (“**Amazon**”), the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Amazon violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to DEHP. Shark Outdoors enters into this Settlement Agreement on behalf of Amazon from whom Shark Outdoors has

accepted a tender of defense pursuant to a contractual clause to indemnify and defend the Amazon for alleged liability for the sale of the Products, defined in Section 1.2. To that end, Shark Outdoors contacted KASB and seek a resolution in the public interest, pursuant to the terms detailed in the following Section 2. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Shark Outdoors denies the material, factual, and legal allegations contained in the Notice, and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Shark Outdoors of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Shark Outdoors' obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, “**Effective Date**” shall mean the date the Agreement is signed by both Parties.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Shark Outdoors manufactures, causes to be manufactured, or imports for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2. be accompanied by a clear and reasonable warning pursuant to Section 2.3.

### **2.2 Reformulation Standard**

For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), contain a maximum concentration of less than 0.1 percent (1,000 parts per million) DEHP when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting

organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 or 4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

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

On or before thirty five (35) days after the Effective Date, a member of Shark Outdoors shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured, caused to be manufactured, or imported by Shark Outdoors for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, to consumers located in California, and (b) customers with nationwide distribution and e-commerce websites, are Reformulated Products as defined by Section 2.2.


### **2.3 Interim Clear and Reasonable Warnings**

Commencing on or before the Effective Date, for all Products, that are not Reformulated Products as defined in Section 2.2, provided for sale to consumers in California that Shark Outdoors sells, ships, or distributes for sale, directly or through one or more third party distributors, retailers or e-commerce marketplaces, Shark Outdoors shall provide clear and reasonable warnings in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

**(a) Warning.** The Warning shall consist of the following statement:

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

(b) **Short-Form Warning.** Shark Outdoors may, but is not required to, use the following shortform warning as set forth in this subsection 2.3(b) (“Short-Form Warning”), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

 **WARNING:** Cancer or Reproductive Harm- [www.P65Warnings.ca.gov](http://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 in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

## **2.4 Product Warnings**

Shark Outdoors shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. 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 “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

## **2.5 Internet Warnings**

If, after the Effective Date, Shark Outdoors sells Products via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Shark Outdoors shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the

Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Shark Outdoors agrees to pay a civil penalty of \$1,000 within five (5) business days of the Effective Date. Shark Outdoors' civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Shark Outdoors shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$750; and (b) “Keep America Safe & Beautiful” in the amount of \$250. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

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

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Shark Outdoors agrees to reimburse Seven Hills LLP \$16,500 for all fees and costs incurred investigating, bringing this matter to Shark

Outdoors' attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9, in the form of a check payable to "Seven Hills LLP" within ten (10) business days of the Effective Date.

### **3.3 Payments**

All payments payable and due under this Agreement shall be delivered to KASB's counsel at following address:

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

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

### **4.1 KASB's Release of Shark Outdoors**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Shark Outdoors, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Shark Outdoors, its past and present parents, subsidiaries, affiliated entities under common ownership, members, directors, officers, employees, attorneys, and each entity to whom Shark Outdoors directly or indirectly distributes or sells Products, including, but not limited, Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including (collectively, "**Releasees**"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Shark Outdoors in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees

arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Shark Outdoors, before the Effective Date (collectively, “**Claims**”), against Shark Outdoors and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Shark Outdoors. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Shark Outdoors’ Products.

#### **4.2 Shark Outdoors’ Release of KASB**

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

#### **5. SEVERABILITY**

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Shark Outdoors may provide KASB with written notice of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Agreement shall be interpreted to relieve Shark Outdoors from its obligation to comply with any pertinent state or federal law or regulation.

**7. NOTICE**

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

For Shark Outdoors:

Christiaan Brown, Member  
Shark Outdoors LLC  
373 S Willow Street  
Manchester, NH 03103

For KASB:

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

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

**8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

**9. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

**10. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, 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 Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

**11. MODIFICATION**

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




**12. AUTHORIZATION**

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

**AGREED TO:**

Date: 02/17/2023

By:   
My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 02/22/2023

By: *Christiaan Brown*  
Christiaan Brown, Member  
Shark Outdoors LLC