

PROPOSITION 65 SETTLEMENT AGREEMENT

60-Day Notice Number 2020-02687

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between Keep America Safe and Beautiful (“KASB”) and Bastex Wireless LLC (“Bastex”) with KASB and Bastex each, individually, referred to as a “Party” and, collectively, 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. KASB alleged and Bastex disputes Bastex is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges Bastex manufactures, imports, sells, or distributes for sale, in or into California, Tools with Grips containing di(2-ethylhexyl) phthalate (“DEHP”) without providing the health hazard warning KASB alleges is required by the Safe Drinking Water & Toxic Enforcement Act of 1986. California Health & Safety Code §§ 25249.5 et seq. The “Products” covered by this Settlement Agreement are specifically identified as and expressly limited to the following the *Bastex 12-Inch Oil Filter Wrench, Product Code #X001GJYHTF232* sold by Bastex on amazon.com and bearing the Amazon Standard Identification No. (“ASIN”) B073C1SXZP.

DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Bastex enters into this Settlement Agreement on behalf of “Notice Recipient”, Amazon.com, Inc., as detailed in Section 1.3, below, and from whom Bastex have accepted a tender of defense pursuant to a contractual clause to indemnify and defend the Notice Recipient for alleged liability for the sale of the Products as defined in this Section 1.2. To that end, Bastex contacted KASB and seeks a resolution in the public interest, pursuant to the terms detailed in the following Section 2.

1.3 Notice of Violation

On October 14, 2020, KASB served Bastex, Amazon.com, Inc. (“Amazon” or the “Notice Recipient”), the California Attorney General, and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In the Notice, KASB alleges Amazon and Bastex violated Proposition 65 by failing to warn their customers and consumers in California the Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Bastex denies the factual and legal allegations contained in the Notice and maintains all Products it sold or caused to be sold in California comply with all laws. No term of this Agreement nor Bastex’s compliance with the terms herein shall be deemed an admission by Bastex of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Bastex’s obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “Effective Date” shall mean the date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, for all Products Bastex imports, sells, ships, distributes for sale, or causes to be sold through the Notice Recipient, in or into California, shall either: (a) meet the Reformulation Standard for Reformulated Products defined by Section 2.2; or (b) be accompanied by a Proposition 65-compliant health hazard warning, pursuant to Sections 2.3 through 2.5.

2.2 Reformulation Standard & Reformulated Products Defined

For purposes of this Agreement, “Reformulated Products” are defined as Products containing di(2-ethylhexyl) phthalate (“DEHP”) in a maximum concentration of 0.1 percent (1,000 parts per million) in any “accessible component” (i.e., any component that may be

touched during a reasonably foreseeable use) when analyzed by a laboratory certified or accredited by the State of California, the United States Food and Drug Administration, Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation (ILAC). For purposes of compliance with this Reformulation Standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.4 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 Clear and Reasonable Warnings

Commencing on or before the Effective Date, for Products that are not Reformulated Products, Bastex shall provide clear and reasonable warnings for all Products provided for sale to consumers in California 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 di(2-ethylhexyl) phthalate [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.

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

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

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(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language(s) other than English, the warning must also be provided such other language(s).

2.4 Product Warnings

Bastex 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 (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, Bastex offers Products, that are not Reformulated Products, for sale through Amazon, ecommerce platforms, through downstream vendors with ecommerce platforms or online storefronts, or on its own website to consumers located in California, then Bastex 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 prior to or 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: (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. For third-party websites, as a condition of sale, Bastex shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Bastex agrees to pay a civil penalty of two thousand dollars (\$1,500.00) within five (5) business days of the Effective Date. Bastex's 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. Bastex shall remit its penalty payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,125; and (b) "Keep America Safe and Beautiful" in the amount of \$375.00. 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. After the Parties finalized all other material settlement terms, they negotiated Bastex's reimbursement 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. Within five (5) business days of the Effective Date, Bastex agrees to issue a check made payable to "Seven Hills LLP" in the amount of \$17,000 for reimbursement of a proportional share of the fees and costs incurred investigating, bringing this matter to the Notice Recipient's attention, negotiating a settlement in the public interest, and reporting the terms of this Agreement to Office of the California Attorney General pursuant to Section 9.

3.3 Payments

All payments payable and due under this Agreement shall be delivered to KASB's counsel, with an accompanying tracking number, at following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Bastex

This Agreement is a full, final and binding resolution between KASB, as an individual nonprofit organization and *not* on behalf of the public, and Bastex, of any violation of Proposition 65 that was or could have been asserted by KASB on its own behalf or on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, against Bastex, their directors, officers, employees, attorneys, and each entity to whom Bastex directly distributes or sells Products, including Amazon.com, Inc., downstream distributors, and wholesalers (collectively, "Releasees"), based on the alleged or actual failure to warn under Proposition 65 about alleged exposures to DEHP from Products, as that term is specifically defined in Section 1.2, above, sold or offered for sale in or into California prior to the Effective Date by Bastex and Releasees, 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 it 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 specifically defined Product that was sold or offered for sale by Bastex, before the Effective Date (collectively, "Claims"), against Bastex and Releasees.

The Parties understand and agree that this Section 4.1 release shall not extend upstream to any entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Bastex. Nor shall this release extend downstream to any entity Bastex requires to provide a warning for Products sold or offered for sale in California who fails to do so. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Bastex's Products.

4.2 Bastex's Releases of KASB

Bastex, on its own behalf and on behalf of 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 action taken or statement 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, after 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 Bastex may provide KASB written notice of its 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 Bastex from their obligations 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 Bastex:

Sami Mubasher, President
BASTEX WIRELESS LLC
166 State Highway 95
Pomona, CA 91766

For KASB:

Laralei Paras, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Leslie R. Gillis, Esq.
ROSENBAUM & SEGALL, P.C.
1166 State Highway 95
Bastrop, TX 78602

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 AND ELECTRONIC SIGNATURES

This Agreement may be executed in counterparts and by electronic or facsimile signature(s), 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. All prior discussions, negotiations, commitments, or understandings, if any, are hereby merged herein. No representation, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreement not specifically contained herein shall be deemed to exist or to bind either of the Parties.

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, understand, and agree to all terms and conditions of this Agreement.

AGREED TO:


AGREED TO:

Dated: _____

Dated: 2/23/24

By: _____

Lance Nguyen, CEO
KEEP AMERICA SAFE AND
BEAUTIFUL

By:  _____

Sami Mubasher, President
BASTEX WIRELESS LLC

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, understand, and agree to all terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

Dated: Feb 26,2024

Dated: _____

By: 

Lance Nguyen, CEO
KEEP AMERICA SAFE AND
BEAUTIFUL

By: _____
Sami Mubasher, President
BASTEX WIRELESS LLC