

# 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 Icenine Industries, Inc. dba Quality Clever (“Quality Clever”), with KASB and Quality Clever 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 harms are disclosed to consumers and end-users in California or to eliminate such chemicals from consumer products sold in California. KASB alleges, and Quality Clever disputes, Quality Clever is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b). KASB further alleges Quality Clever is an entity responsible for selling and/or offering products for sale to consumers in the State of California and/or to entities who are persons in the course of doing business for purposes of Health & Safety Code § 25249.11(b).

### 1.2 Consumer Product Description

The type or category of products (“Products”) covered by this Agreement are limited to and specifically identified as the *“Do Not Disturb Sign (2 Pack) Executive Quality Door Hanger; Model # QCP00200”*, a Vinyl/PVC Door Hanger containing di(2-ethylhexyl) phthalate (“DEHP”), and bearing the Amazon Standard Identification Number or “ASIN” B00VY03GEW, identified in KASB’s “Notice” and sold on amazon.com by Quality Clever, and all “Products” as defined and described in the Notice. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

### 1.3 Notice of Violation

On October 14, 2020, KASB served Quality Clever, Amazon.com, Inc. (“Amazon”), the California Attorney General and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In its Notice, KASB alleges Amazon and Quality Clever violated Proposition 65 by failing to warn their customers and consumers in California the Products can expose users to DEHP. Quality Clever is the supplier of the Products sold on amazon.com and

seeks to resolve KASB's claims alleged in the Notice under principles of indemnity, contribution, and/or contractual obligations. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Quality Clever 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, comply with all laws. No term of this Agreement nor Quality Clever's compliance with this Agreement shall be deemed an admission by Quality Clever of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Quality Clever's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

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

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

### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products Quality Clever manufactures, causes to be manufactured, imports, sells, ships, or distributes 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 defined by Section 2.2, below, or be accompanied by a clear and reasonable warning pursuant to Section 2.3, below.

### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products containing di(2-ethylhexyl) phtalate ("DEHP") in a maximum concentration of 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, a nationally recognized accrediting organization, 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-C1001.09.3 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**

For those Products that do not meet the definition of Reformulated Products established by Section 2.2, above, Quality Clever shall provide clear and reasonable warnings for all Products sold or offered for sale to consumers in California in accordance with this Section, and 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 chemicals including di(2-ethylhexyl) phthalate [DEHP], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**(b) Short-Form Warning.** Quality Clever may, but is not required to, use the following short-form 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, below, as follows:

**⚠WARNING:** 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**

Quality Clever 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, an e-commerce platform, or nationwide distribution. For purposes of this Agreement,

“Product label” means a display of written, printed, or graphic material printed on or affixed to a Product or its immediate packaging, 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 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, Quality Clever sells Products other than Reformulated Products via the internet, through its own website, affiliated websites or a third-party website, to consumers located in California or to customers with retail outlets in California, nationwide distribution or e-commerce websites, Quality Clever 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. For third-party websites, as a condition of sale, Quality Clever 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, pursuant to Section 2.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b), Quality Clever agrees to pay a civil penalty of \$2,500 within fifteen (15) business days of the Effective Date. Quality Clever'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. Quality Clever shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$625; and (b) "Seven Hills LLP in trust for Keep America Safe & Beautiful" in the amount of \$1875. 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 material injunctive and civil penalty settlement terms, they negotiated and reached an accord on Quality Clever's reimbursement of a portion of KASB's attorneys' fees and costs under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5. Quality Clever agrees to reimburse Seven Hills LLP \$21,500 in the form of a check payable to "Seven Hills LLP" within fifteen (15) business days of the Effective Date. Quality Clever's reimbursement of a portion of KASB's attorneys' fees and costs includes all fees and costs incurred by KASB investigating, bringing this matter to Quality Clever's attention, negotiating a settlement in the public interest, and reporting 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 at following address:

Seven Hills LLP  
Attn: Kimberly Gates Johnson  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

##### **4.1 KASB's Release of Quality Clever**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Quality Clever, 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 Quality Clever, Amazon.com, Inc., and their respective past and present members, directors, officers, employees, attorneys, and each entity to whom Quality Clever directly or indirectly distributes or sells the Products including, but not limited to, Quality Clever's downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on the alleged or actual failure to warn under Proposition 65 about exposures to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Quality Clever 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 nonprofit organization and *not* on behalf of the public, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all 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 Products as specifically defined by Section 1.2 manufactured, distributed, sold and/or offered for sale by Quality Clever, before the Effective Date (collectively, "Claims"), against Quality Clever and Releasees.

The Parties further 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 Quality Clever. Nor shall this release extend downstream to any entity or individual directed to provide a consumer health hazard warning by Quality Clever pursuant to Section 2.5, above, and 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 Quality Clever's Products.

#### **4.2 Quality Clever's Release of KASB**

Quality Clever, 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. If Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Quality Clever may provide KASB with 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 Quality Clever from its obligation to comply with any applicable 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 Quality Clever:

Dean Faith, President  
Quality Clever  
11033 SE 27<sup>th</sup> PL  
Bellevue, WA 98006

For KASB:

Kimberly Gates Johnson, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

*With a copy to:*

Landon D. Bailey, Esq.  
Bailey PLC  
1200 Suncoast Lane, Suite 7  
El Dorado Hills, CA 95762

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 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 subject matter hereof, and any prior discussion, negotiation, commitment, or understanding related hereto, if any, are hereby merged. No warranty, representation, or other agreement between the Parties exists except as expressly set forth 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 hereto.

**11. MODIFICATION**

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

*[Remainder of Page Intentionally Left Blank]*

**12. AUTHORIZATION**

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

**AGREED TO:**

Date: May 05, 2024

By:   
Lance Nguyen, CEO  
KEEP AMERICA SAFE AND  
BEAUTIFUL

**AGREED TO:**

Date: April 16, 2024

By: *Dean Faith*  
Dean Faith, Managing Member  
QUALITY CLEVER