

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Keep America Safe and Beautiful, Government Discount, Inc. and Kennedy International, Inc.

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful ("KASB"), on the one hand, Government Discount, Inc. ("Government") and Kennedy International, Inc. ("Kennedy"), on the other hand, with KASB, Government and Kennedy collectively referred to as the "Parties."

1.2. General Allegations

KASB alleges that Kennedy manufactured and distributed and offered for sale in the State of California suction bath caddies 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"). KASB further alleges that Walmart, Inc. and Walmart East L.P. (collectively, "Walmart") sold the suction bath caddies distributed by Kennedy also without warnings. The Walmart marketplace was available for the sale of the bath caddies by Government, which alleges that it acquired them from Kennedy. 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 suction bath caddies containing DEHP that Kennedy has sold or offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

1.4. Notice of Violation

On October 19, 2020, KASB served Kennedy, Walmart ., 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 Kennedy and such public enforcers with notice that Kennedy 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

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Kennedy's and Walmart's compliance with Proposition 65. Kennedy and Government deny the material factual and legal allegations contained in KASB's Notice and maintain that all products that they manufactured or distributed for sale in California, including the Products, have been and are in compliance with Proposition 65 and any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Kennedy or Government 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 Kennedy or Government of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Kennedy and Government on their behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Kennedy or Government under this Settlement Agreement.

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

Upon receipt of the Notice, Kennedy ceased selling, using and distributing the Products in California. To the extent that Kennedy sells the Products in California in the future, as of the Effective Date, Kennedy shall manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. Products that were either ordered by or supplied to third parties by Kennedy 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, and as such, shall be deemed compliant with Proposition 65. To the extent that Government sells the Products in California in the future, as of the Effective Date, Government shall only sell Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below. However, products that were either ordered by or supplied to third parties by Government prior to the Effective date shall be deemed exempted from the requirements of Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled, and as such, shall be deemed compliant with Proposition 65.

2.1. Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.

Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance.

2.2. Warning Language

Where required, Kennedy shall provide Proposition 65 warnings on the Product's label as follows:

(a) Kennedy may use either of the following warning statements in full compliance with this Section:

(1) **WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(2) **WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.ca.gov.

(b) If Kennedy uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING."

(c) The requirements for warnings, set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties

recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(d) If Proposition 65 warnings for DEHP should no longer be required, Kennedy shall have no further obligations pursuant to this Settlement Agreement. Furthermore, if regulations or legislation alter the text or means of transmission of warning required or permitted pursuant to Proposition 65, Kennedy may alter its warnings so as to conform to such regulations or legislation.

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 ceased use of the Products upon receipt of the Notice, Kennedy and Government shall jointly pay a total of \$400 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.

4. 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, Kennedy and Government shall reimburse KASB's counsel for fees and costs, incurred as a result of investigating and bringing this matter to Kennedy's and Government's attention. Kennedy and Government shall pay KASB's counsel \$9,600 for all attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By March 25, 2021, Kennedy and Government shall jointly make a total payment of Ten Thousand Dollars (\$10,000) 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

Kennedy and Government may make these payments by each company sending a percentage to Custodio & Dubey LLP or by one of them making the full payment to Custodio & Dubey while the other contributes an agreed portion to the company making the payment. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Kennedy, 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, 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, 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) Kennedy, (b) Government; (c) Walmart Inc. and Wal-Mart Stores East L.P. (d) all

others' of Kennedy's and Government's downstream distributors), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Kennedy's and Government'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 and Government also, on behalf of themselves, their past and current agents, representatives, attorneys, successors, and/or assignees and *not* in their representative capacity, provide general releases 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, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against Kennedy, Government, Walmart and the Releasees. KASB and Government acknowledge that they are 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 representative capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees 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.

6.2. Kennedy's Release of KASB

Kennedy waives any and all claims against KASB, 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7. 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Kennedy and Government shall have no further obligations pursuant to this Settlement Agreement.

8. 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 Government:

Scali Rasmussen, PC
1901 Harrison Street, 14th Floor
Oakland, CA 94612

For Kennedy:

Todd C. Hunt, Esq.
Law Office of Todd C. Hunt, APC
30721 Russell Ranch Road, Suite 140

Westlake Villages, CA 91362

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 or via e-mail to the other party a change of address to which all notices and other communications shall be sent.

9. 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.

10. 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).

11. 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.

12. MODIFICATION

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

13. 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.

AGREED TO:	AGREED TO:
Date: March <u>9</u> , 2021	Date: March <u>23</u> , 2021
By: <u>[Signature]</u>	By: <u>[Signature]</u>
On Behalf of Keep America Safe and Beautiful	On Behalf of Kennedy International, Inc.

AGREED TO:

Date: March 24, 2021

By: Eddy Sua
On Behalf of Government Discount, Inc.