

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Hardware Factory Store, Inc. (“**HFS**”) with KASB and HFS each individually referred to as a “**Party**” and collectively, as the “**Parties.**” KASB, is a person in the State of California 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. HFS is a person in the course of doing business for purposes of California Health & Safety Code §§ 25249.11(b).

1.2 Allegations and Chemical

KASB alleges HFS manufactures, imports, sells and distributes for sale in California tools with grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) without providing the health hazard warning required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). 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 Consumer Product Description

The Consumer Products forming the subject of this Agreement are specifically limited to the following tools with vinyl grips containing DEHP that are manufactured, imported, distributed, sold or offered for sale by HFS in California;(1) the *HFS Hose Clamp Set, Model #15816, X0014D7FV5, ASIN B01GGW5W1C* ; and (2) *HFS 9pc Deluxe Flexible Hose Clamp Plier Assortment Kit Flexible Tool Set, Model # 18473-JP, ASIN # B077XQRIJC, UPC #6 88949 76255 7* (hereinafter, collectively, the “Consumer Products”).

1.4 Notice of Violation

On October 21, 2020, KASB served Hardware Factory Store, Inc., Amazon.com, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day

Notice of Violation (“**Notice**”), alleging HFS violated Proposition 65 when it failed to provide a clear and reasonable warning to its customers and to consumers in California that its Consumer Products can expose users to DEHP, a known developmental and reproductive toxin. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.5 No Admission

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

1.6 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean August 5, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date, and continuing thereafter, each Consumer Product, as that term is used and defined by Section 1.3, above, that HFS manufactures, imports, distributes, sells or offers for sale, directly or indirectly in or into California, shall either: (1) meet the Reformulation Standard for Reformulated Products, as defined by the following Section 2.2; or (2) shall bear a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.7, below.

2.2 Reformulation Standard

For purposes of this Agreement, “**Reformulated Products**” are defined as Consumer Products which, if they contain di(2-ethylhexyl)phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate

(“**DIDP**”) and/or di-n-hexyl phthalate (“**DnHP**”), contain any or all of such chemicals each in a maximum concentration of less than 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 of the Consumer Products when utilized according to its intended purpose) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Reformulation Standard**”).

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

Commencing on or before the Effective Date, HFS shall provide clear and reasonable warnings for all Consumer Products provided for sale to customers 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 one of the following statements:

⚠ **WARNING:** This product can expose you to 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.

Or,

⚠ **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov. To mitigate your risk of exposure to DEHP, you should consider wearing gloves when you use tools with vinyl grips.

(b) **Short-Form Warning.** HFS 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, as follows:

 **WARNING:** Cancer and Reproductive Harm - 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 a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings


HFS shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to a Product 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 that if the labeling does not use the color yellow, then the symbol may be in black and white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, HFS prints new catalogs and sells Consumer Products via mail order through such catalogs to customers located in California, HFS shall provide a warning for each Consumer Product both on the Consumer Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Consumer Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Consumer

Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Consumer Product label also uses the Short-Form Warning content.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, HFS may utilize a designated symbol of HFS's choosing to cross reference the applicable warning and shall define the meaning of the designated symbol with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

 **WARNING:** Certain products identified with this symbol [▼] and offered for sale in this catalog can expose you to di(2-ethylhexyl) phthalate, 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.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, HFS must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

2.6 Internet Warnings

If, after the Effective Date, HFS sells Consumer Products via the internet to customers located in California, HFS shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Consumer 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 Consumer Products via the internet shall appear either: (a) on the same web page on which the Consumer Product is displayed; (b) on the same web page as the order form for the Consumer Product; (c) on the same page as the price for any Consumer Product; 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 Consumer Product for which it is given in the same type size or larger than other consumer information provided for the Consumer Product. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Consumer Product label also uses the Short-Form Warning content.

2.7 Compliance with Warning Regulations

HFS may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), HFS agrees to pay a civil penalty of \$2,000 within five (5) days of the Effective Date. HFS' 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. HFS shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Keep America Safe and Beautiful" in the amount of \$500. KASB's counsel shall deliver to OEHHA and KASB their respective portions 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. Within five (5) days of the Effective Date, HFS agrees to issue a check in the amount of \$19,000, payable to “Seven Hills LLP”, for all fees and costs incurred investigating, bringing this matter to HFS’ attention, negotiating a settlement in the public interest, and reporting its terms 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 HFS

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and HFS, 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 (“**Releasors**”), against HFS, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom HFS directly or indirectly distributes or sells Consumer Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in the specific Consumer Products, defined at Section 1.3, *supra*, that are manufactured, distributed, sold or offered for sale by HFS, as alleged in the Notice, prior to the Effective Date

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 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, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DBP, DINP, BBP, DIDP and DnHP in the specific Consumer Products, as defined by Section 1.3, that are manufactured, distributed, sold and/or offered for sale by HFS prior to the Effective Date (collectively, "**Claims**"), against HFS and Releasees.

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

4.2 HFS' Release of KASB

HFS, 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 Consumer 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 Consumer Products, then HFS 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 Consumer Products are so affected. Nothing in this Agreement shall be interpreted to relieve HFS 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 HFS:

Liang Guo, Chief Executive Officer
Hardware Factory Store, Inc.
684 Arrow Grand Circle
Covina, CA 91722

With a Copy to:

Rami Kayyali, Esq.
The Demidchik Law Firm
923 E. Valley Blvd., Suite 268
San Gabriel, CA 91776

For KASB:

Kimberly Gates Johnson, 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: 8/12/2021

By: 

Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 8/11/2021

By: 

Liang Guo, Chief Executive Officer
Hardware Factory Store, Inc.