

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 N.E. Brands LLC *dba* X-Ray Jeans (“**X-Ray Jeans**”), with KASB and X-Ray Jeans each individually referred to as a “**Party**” and, collectively, as the “**Parties**.” KASB is a California nonprofit corporation and is a person in the State of California proceeding in the public interest pursuant to California Health & Safety Code §§ 25249.7(d) to ensure chemicals known to the State to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. X-Ray Jeans 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 X-Ray Jeans manufactures, imports, sells and distributes for sale in California vinyl waist bags/fanny packs containing di(2-ethylhexyl)phthalate (“**DEHP**”), including, but not limited to, the *X-Ray Jeans Fanny Pack/Waist Bag, Style No: XBG-09004, UPC #6 13053 35743 6*, referred to hereinafter as the “**Products**,” without providing the health hazard warning KASB alleges is 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 Notice of Violation

On October 21, 2020, KASB served X-Ray Jeans, Walmart, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging X-Ray Jeans violated Proposition 65 when it failed to warn its customers and consumers in California its Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 No Admission

X-Ray Jeans 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 be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by X-Ray Jeans of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect X-Ray Jeans' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean April 20, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date, and continuing thereafter, X-Ray Jeans agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with and as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to the following Sections 2.3 through 2.6.

2.2 Reformulated Products & Reformulation Standard Defined

For purposes of this Agreement, “**Reformulated Products**” are defined as 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**”), have phthalate chemicals in maximum concentrations of less than 0.1 percent (1,000 parts per million) in each and every accessible component (i.e. a component that may be touched or utilized during a reasonably foreseeable use) 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 accepted methodologies utilized by federal or state government agencies or accredited laboratories to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, for all Products not meeting the Reformulation Standard, X-Ray Jeans shall provide clear and reasonable health hazard warnings for all Products it manufactures, imports, distributes, sells or offers for sale in or into California. For purposes of this Agreement, a warning shall be deemed clear and reasonable if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warning:

⚠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

(b) Alternative Short-Form Warning:

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

The Parties agree, should X-Ray Jeans determine additional chemical endpoints need to be included in either of the above warnings, X-Ray Jeans may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

2.4 On-Product Warning Requirements

For all Products that are not reformulated, X-Ray Jeans shall affix one of the warnings

provided in Section 2.3 on the Product Label, packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. "Product Label" is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

A Warning or Alternative Short-Form Warning provided pursuant to Section 2.3 must print the word "WARNING:" in all capital letters and in bold font, followed by a colon. 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 sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "WARNING:". The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

Commencing on the Effective Date, for all Products that are not Reformulated Products and that are imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date, X-Ray Jeans shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word "WARNING" and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any 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 Product for which it is given in the same type size or larger than other consumer information provided for the Product.

Warnings provided in conjunction with the sale of Products via the internet may use the Alternative Short-Form Warning, described supra in Section 2.2, if the warning appearing on the Product Label also utilizes the Alternative Short Form Warning.

2.6 Compliance with Warning Regulations

X-Ray Jeans 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

Pursuant to Health and Safety Code § 25249.7(b), X-Ray Jeans agrees to pay a civil penalty of \$1,500 within ten (10) days of the Effective Date or by July 24, 2021, whichever is later. In accordance with Health and Safety Code §§ 25249.12(c)(1) and (d), X-Ray Jeans' civil penalty payments will be allocated according to code 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. X-Ray Jeans shall issue its payment in two checks made payable as follows: (a) "OEHHA" in the amount of \$1,125; and (b) "Keep America Safe and Beautiful" in the amount of \$375. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payments. All payments under this Section shall be delivered to the address listed in Section 3.3, below.

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 ten (10) days of the Effective Date or by July 24, 2021, whichever is later, X-Ray Jeans shall issue and remit payments for attorneys' fees and costs totaling \$15,000 in checks made payable to "Seven Hills LLP" for all fees and costs incurred in investigating, bringing this matter to X-Ray Jeans' attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General, pursuant to Section 9, below. Attorneys' fees and costs payments shall be delivered to the address listed in Section 3.4, below. The agreement to reimburse KASB for its reasonable attorneys' fees and costs is subject to the following additional provisions.

(a) Attorneys' Fees & Costs: Terms, Timing

X-Ray Jeans agrees to provide all attorneys' fees and costs payments due under this Agreement within ten (10) days of the Effective Date or by July 24, 2021, whichever is later. The Parties agree the payment of attorneys' fees and costs, totaling \$15,000, shall be broken out into six equal installment payments of \$2,500 each, with all such installment payment checks due within ten (10) days of the Effective Date or by July 24, 2021, whichever is later. in advance and delivered to the address listed in Section 3.3, below. All payments under this Section shall be made in the form of individual checks payable to "Seven Hills LLP" and delivered to the address below, in Section 3.4. Upon receipt, Seven Hills LLP shall immediately deposit X-Ray Jeans' initial payment. Seven Hills LLP shall deposit the remaining five (5) installment payments roughly thirty days apart or on or about the 24th of each of the following months: August, September, October, November and December, with all attorneys' fees and costs deposited no later than December 31, 2021.

X-Ray Jeans agrees and understands, should any installment payment due under this Section or this Agreement fail due to insufficient funds, the remaining payments shall become

immediately due and payable. In the event Seven Hills LLP incurs fees for any returned checks, X-Ray Jeans agrees to reimburse KASB's counsel for such fees.

X-Ray Jeans acknowledges that KASB reserves the right to institute a proceeding under Proposition 65, including the filing of a complaint based on the allegations in the Notice, a suit based on breach of or failure to perform under a contract, or any other remedy allowable under law.

3.3 Payments: Address and Additional Terms

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

Upon delivery of its payments due under this Agreement, X-Ray Jeans agrees to promptly provide a tracking number or similar information to counsel for KASB. Upon receipt, KASB's counsel shall provide notice of receipt of payments via e-mail to X-Ray Jeans. Upon full execution of this Agreement, counsel for KASB shall remit to X-Ray Jeans signed Form W9s, for all payees under this Settlement Agreement, to allow for proper year-end tax reporting.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of X-Ray Jeans

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and X-Ray Jeans, 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 X-Ray Jeans, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom X-Ray Jeans directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers,

retailers, including, without limitation, Walmart, Inc., franchisees, cooperative members, and licensees (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 X-Ray Jeans 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, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DBP, DEHP, BBP, DIDP, and DnHP in the Products manufactured, distributed, sold and/or offered for sale by X-Ray Jeans, prior to the Effective Date (collectively, Claims), against X-Ray Jeans and Releasees.

The Parties further understand and agree 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 X-Ray Jeans. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve X-Ray Jeans' Products.

4.2 X-Ray Jeans' Release of KASB

X-Ray Jeans, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB and his 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 his 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 Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then X-Ray Jeans 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 X-Ray Jeans 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 X-Ray Jeans:

Victor Kameo, Chief Executive Officer
N.E. Brands LLC dba X-Ray Jeans
55 Talmadge Rd.
Edison, NJ 08817

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:

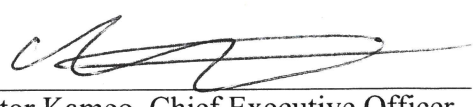
Date: 7/13/2021

By: 

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

AGREED TO:

Date: 7/8/21

By: 

Victor Kameo, Chief Executive Officer
N.E. Brands LLC dba X-Ray Jeans