

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.0 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Ink America International Group LLC (“**Ink America**”) with KASB and Ink America referred to individually as a “**Party**” and, collectively, as the “**Parties**”. KASB is a California nonprofit corporation, proceeding in the public interest, pursuant to California Health & Safety Code § 25249.7(d), to promote awareness of the health hazards posed by exposure to toxic chemicals and to ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed on or eliminated from products sold in California. Ink America employs ten or more persons and is a “person in the course of doing business”, as defined by California Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.1 General Allegations

KASB alleges Ink America manufactures, imports, sells and/or distributes for sale in California cooler bags containing di(2-ethylhexyl)phthalate (“**DEHP**”) and that it does so without providing the health hazard warning KASB alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.2 Consumer Product Description

The consumer products covered by this Settlement Agreement are cooler bags containing DEHP and manufactured, imported, distributed, sold or offered for sale, in California, by Ink America, sold as the *ChromaCast Soft PU Leather Wine Travel Carrier & Cooler Bag, Black, Item #WC-WTC-PU, UPC #8 11501 07349 9*. All such cooler bags are referred to collectively hereinafter as the “**Products**.”

1.3 60-Day Notice of Violation

On October 28, 2020, KASB served Ink America, Amazon.com, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of

Violation (“**Notice**”) alleging Ink America violated Proposition 65 when it failed to warn its customers and consumers in California that the Product allegedly exposes users to DEHP, a reproductive toxicant and carcinogen. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Settlement Agreement, the term “**Effective Date**” shall mean November 30, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.0 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date, and continuing thereafter, Ink America 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 the following Section 2.2; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.6, below.

2.1 Reformulated Products 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.

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 accepted methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.2 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, Ink America shall provide clear and reasonable health hazard warnings for all Products Ink America manufactures, imports, distributes, sells or offers for sale in California that do not qualify as Reformulated Products. 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) Warning¹:

⚠️WARNING: This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP) which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

¹ For a grace period of six (6) months after the Effective Date, the parties agree Ink America may use the alternative warning language on its preexisting warning labels: **⚠️WARNING:** This product can expose you to di(2-ethylhexyl) phthalate, which is known to the State of California to cause cancer. 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 Ink America determine additional chemical endpoints need to be included in either of the above warnings, Ink America 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.*

2.3 On-Product Warning Requirements

Ink America 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, 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 concerning the Products and shall be at least the same size as any such other safety warnings.

2.4 Internet Product Warning Requirements

For all Products imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date, Ink America 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.

2.5 Compliance with Warning Regulations

Ink America 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

3.0 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Ink America agrees to pay a \$1,000 initial civil penalty. Penalty payments shall be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by KASB. On or before the Effective Date, Ink America agrees to pay the non-waivable civil penalty in two separate checks, made payable as follows: (1) “OEHHA” in the amount of \$750; and “Keep America Safe and Beautiful” in the amount of \$250.

3.1 Final Waivable Civil Penalty

Ink America shall pay a second civil penalty of \$2,000. However, the second civil penalty shall be waived in its entirety, if, on or before December 30, 2022, an officer of Ink America provides counsel for KASB with a signed certification that states: as of the Effective

Date, and continuing thereafter, any and all Products manufactured, caused to be manufactured, ordered for resale or imported by Ink America for sale to consumers in California directly including through its own website or a third party website, to consumers located in California, and to customers with nationwide distribution and e-commerce websites, are Reformulated Products as defined by Section 2.2. Unless the second civil penalty is waived, by December 30, 2022, Ink America shall issue a check made payable to "OEHHA" in the amount of \$1,500 and a check made payable to "Keep America Safe & Beautiful" in the amount of \$500.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge KASB and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized the terms of injunctive relief and the civil penalty amount, Ink America expressed a desire to resolve KASB's attorneys' fees and costs. The Parties then negotiated a resolution of the compensation due to KASB and its 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 of this Settlement Agreement. Under these legal principles, Ink America agrees to reimburse KASB and its counsel \$21,500 of the fees and costs incurred in investigating, bringing this matter to the attention of Ink America's management, and negotiating a settlement in the public interest. On or before the 30th day of each month beginning on November 30, 2021 through August 30, 2022, Ink America agrees to issue separate checks each in the amount of \$2,000 payable to "Seven Hills LLP." On or before September 30, 2022, Ink America agrees to issue a check in the amount of \$1,500 payable to "Seven Hills LLP." Ink America agrees to pay interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received on or before the due date.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Seven Hills LLP
c/o Laralei Paras
4 Embarcadero Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.0 KASB's Release of Ink America

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Ink America, 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 Ink America, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Ink America directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including but not limited to amazon.com, 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 Products distributed, sold or offered for sale by Ink America, 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 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DINP, DIDP, BBP, DBP and DnHP in Products distributed, sold and/or offered for sale by Ink America prior the Effective Date, as alleged in the Notice, against Ink America and Releasees.

The Parties further understand and agree that 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 to Ink America. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Ink America's Products.

4.1 Ink America's Release of KASB

Ink America, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against KASB and its attorneys or other representatives, for any actions taken or statements made (or those that could have been taken or made) by KASB and its attorneys or other representatives, whether in the course of investigating claims or seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.2 Mutual Waiver of Unknown Claims

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice or relating to the Products will develop or be discovered. KASB, on behalf of itself only, on the one hand, and Ink America, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims for Products manufactured, imported, distributed, or sold by Ink America up through and including the Effective Date, including all rights of action therefore, and further acknowledges that the claims released in this section may include unknown claims, and nevertheless mutually waive California Civil Code, section 1542 as to any such unknown claims. California Civil Code, section 1542 reads 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 and Ink America each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provision of this Settlement 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 and apply within the laws of the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then Ink America

shall provide written notice to KASB 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 Ink America from its obligation to comply with pertinent state or federal toxics control laws.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided by this Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Ink America:
Joseph Fuoco, Managing Member
Ink America International Group LLC
810 Lawrence Dr.
Newbury Park, CA 91320

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

Any party, from time to time, may 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 SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

9. REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)

KASB agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. MODIFICATION

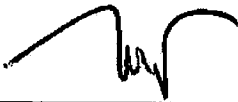
This Settlement Agreement may only be modified by the written agreement of the Parties.

11. AUTHORIZATION

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

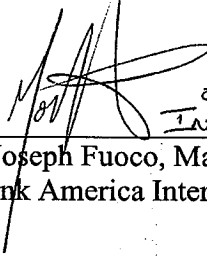
Date: 11/17/2021

By: 

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

AGREED TO:

Date: 11/24/2021

By: 

on behalf of
Ink America International Group, LLC
Joseph Fuoco, Managing Member
Ink America International Group LLC