

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**”), on the one hand, and Boss Pet Products, Inc. (“**Boss Pet**”), on the other hand, with KASB and Boss Pet each sometimes individually referred to as a “**Party**” and collectively, as the “**Parties.**” KASB represents that it 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 harm are disclosed in or limited/eliminated from consumer products sold in California. KASB alleges that Boss Pet is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 et seq. (“**Proposition 65**”).

1.2 Consumer Product Description

KASB alleges that Boss Pet manufactures, imports, sells and/or distributes for sale in California, certain vinyl dog mannequins containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, East Side Collection Dog Mannequin, # ZW653 08 17, UPC #7 21343 00817 0, without first providing California consumers with a Proposition 65 warning. All such vinyl dog mannequins are collectively referred to herein as the “**Products.**” **DEHP** is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

1.3 Notice of Violation

On November 18, 2020, KASB served Boss Pet, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Boss Pet violated Proposition 65 by failing to warn customers in California that exposures to DEHP can occur from use of the Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Boss Pet enters into this Agreement as a full and final settlement of all claims that were or that could have been raised in the Notice, and solely to avoid prolonged and costly litigation. Boss Pet denies the material factual and legal allegations contained in the Notice, maintains that it is not a person subject to Proposition 65, and that all products that it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. Nothing in this Agreement shall be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Boss Pet of any fact, finding, issue of law, or violation of law, including but not limited to any fact or conclusion of law suggesting that Boss Pet has violated Proposition 65, nor shall compliance with this Agreement constitute or be construed as an admission by Boss Pet of any of the above, such being specifically denied by Boss Pet. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or defense Boss Pet may have in this or any other future legal proceeding. This Agreement is the product of negotiation and compromise and is accepted by Boss Pet solely for purposes of settling, compromising, and resolving issues disputed in the Notice. However, this Section 1.4 shall not diminish or otherwise affect the Parties' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean the date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

As of the Effective Date, Boss Pet shall not sell or offer the Products for sale in the State of California unless they meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or are accompanied by a clear and reasonable warning pursuant to Section 2.3.


2.2 Reformulation Standard

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”**) or di-n-hexyl phthalate (**“DnHP”**), contain any or all such chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) in any accessible components when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (**“Accredited Lab”**) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other methodologies utilized by federal or state government agencies for the purposes of determining the phthalate content in a solid substance (**“Reformulation Standard”**).

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Boss Pet shall provide clear and reasonable warnings for all Products that Boss Pet manufactures, imports, distributes, sells, and or offers for sale in or into California that are not Reformulated Products. There shall be no obligation for Boss Pet to provide a warning hereunder for Products that entered the stream of commerce prior to the Effective Date, as they have been included in the calculation of civil penalties pursuant to Section 3.1. Each warning shall consist of one of the Warnings in 2.3 (a), (b), or (c) below:

(a) **DEHP Warning.** The Warning for Products containing DEHP, a phthalate chemical known to cause cancer and birth defects or other reproductive harm, in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2, shall consist of the following statement:

 [California Prop 65] **WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl) phthalate (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.

Language in brackets optional.

(b) Short Form Warning.

 [California Prop 65] **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov

Language in brackets optional.

(c) Warnings for other Listed Phthalates. For Covered Products that are not Reformulated Products as to DBP, DIDP, DINP, BBP, and/or DnHp, Boss Pet or its suppliers must provide a Proposition 65 warning on the Covered Products' packaging or product label for such products sold in California that is consistent with 27 California Code of Regulations Section 25603.

(d) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning for Products 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

Any warning given 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 labeling does not use the color yellow, then 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 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 Products. The warning shall consist of one of the warnings in Section 2.3 above as specified. The warning shall be affixed to or printed on the Product itself, or on the Product's packaging, container, labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of 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.

2.5 Internet Warnings

If, after the Effective Date, Boss Pet sells Products that are not Reformulated Products via the internet to consumers located in California, then Boss Pet 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 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 “[California Prop. 65] **WARNING**” given in conjunction with the sale of the Products via the internet (language in brackets optional) 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. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Compliance with Warning Regulations

The Parties agree that Boss Pet shall be deemed to be in compliance with this Agreement by either adhering to Sections either 2.2 or Sections 2.3 through 2.5 of this Agreement. If the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DEHP different than those set forth above, Boss Pet shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

2.7 Public Benefit

It is Boss Pet’s understanding that the commitments it has agreed to herein, and actions to be taken by Boss Pet under this Agreement, confer a significant benefit to the general public, as

set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Boss Pet that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Boss Pet's alleged failure to provide a warning concerning actual or alleged exposure to DEHP or other listed phthalates prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Agreement, provided that Boss Pet is in material compliance with this Agreement.

3. MONETARY SETTLEMENT TERMS

In settlement for all claims for monetary relief of any kind related to the Notices or referred to in this Agreement, Boss Pet agrees to make the following settlement payments.

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Boss Pet agrees to pay a civil penalty of \$2,000. Boss Pet'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. Boss Pet shall issue its civil penalty payment within 10 days of the Effective Date in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Keep America Safe & Beautiful" in the amount of \$500. Boss Pet shall send its civil penalty payments to the address listed in Section 3.3 below. KASB's counsel shall be solely responsible for delivering to OEHHA and KASB their respective portion of the penalty payment.

3.2 Attorneys' Fees and Costs

The Parties acknowledge that KASB and its counsel offered to resolve this dispute without reaching terms on the amount of attorneys' fees and expenses to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the Agreement had been settled. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord to resolve KASB's fees and costs under general contract principles and

the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter. Under these legal principles, Boss Pet shall reimburse KASB's counsel the total amount of \$20,000 for any and all of KASB's attorney's fees and expenses, including but not limited to all investigative, expert, and testing expenses incurred as a result of investigating and bringing this matter to Boss Pet's attention and negotiating this Agreement. Within ten (10) days of the Effective Date, Boss Pet agrees to issue a check in the amount of \$20,000 payable to "Seven Hills LLP" for delivery to the address identified in Section 3.3 below.

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: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Boss Pet

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Boss Pet, 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 Boss Pet, its past and present parents, subsidiaries, affiliated entities under common ownership, shareholders, marketplaces, directors, officers, employees, attorneys, and each entity to whom Boss Pet directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Amazon), franchisees, cooperative members, importers, licensors and licensees (collectively, "**Releasees**"), from all claims for actual or alleged violations of Proposition 65 for all Products manufactured through the Effective Date relating to unwarned exposures to alleged or actual DEHP in the Products.

In further consideration of the promises and agreements herein contained, and for the payments made pursuant to Section 3 above, KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby 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 limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DINP, DIDP, DBP, BBP and DnHP in the Products manufactured, distributed, sold and/or offered for sale by Boss Pet, before the Effective Date (collectively, "**Claims**"), against Boss Pet and the Releasees, and further covenants not to sue with respect to the Claims only and waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action with respect to the Claims.

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 thereof to Boss Pet. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Boss Pet's Products.

4.2 Boss Pet's Release of KASB

Boss Pet, 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 the claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 California Civil Code § 1542

It is possible that other claims not known to the Parties including those arising out of the facts alleged in the Notice and relating to products manufactured, imported, distributed, and/or sold by Boss Pet through the Effective Date will develop or be discovered. KASB on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees only, on

one hand, and Boss Pet, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims against the Releasees for DEHP, DINP, DIDP, DBP, BBP and DnHP in Products manufactured, imported, distributed, and/or sold by Boss Pet up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the Claims released in Sections 4.1 and 4.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims against the Releasees for DEHP, DINP, DIDP, DBP, BBP and DnHP in Products manufactured, imported, distributed, and/or sold by or for Boss Pet up through the Effective Date, except with regard to the limitations provided in Section 4.1. California Civil Code § 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 Boss Pet expressly waive and relinquish any and all rights and benefits that they may have under or that may be conferred upon them by the provisions of Civil Code §1542 as to DEHP, DINP, DIDP, DBP, BBP and DnHP in Products manufactured, imported, distributed, and/or sold by Boss Pet up through the Effective Date , as well as under any other state or federal statute or common law principle of similar effect pertaining to DEHP, DINP, DIDP, DBP, BBP and DnHP in Products manufactured, imported, distributed, and/or sold by Boss Pet up through the Effective Date except, to the fullest extent they may lawfully waive such rights or benefits pertaining to DEHP, DINP, DIDP, DBP, BBP and DnHP in Products manufactured, imported, distributed, and/or sold by Boss Pet up through the Effective Date, except with regard to the limitations provided in Section 4.1.

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 Products, then Boss Pet may provide KASB with written notice of any asserted change in the law, and shall have no further 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 Boss Pet from its obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

Unless otherwise 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 Boss Pet:

President
Boss Pet Products, Inc.
1221 Page Street
Kewanee, IL 64413

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With Copy to:

J. Robert Maxwell, Shareholder
Rogers Joseph O'Donnell, PLC
311 California Street, 10th floor
San Francisco, CA 94104

Any Party may, from time to time, specify in writing to the other Party a change of address to which all Notice 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. ENFORCEMENT

Before any Party may take action to enforce the terms of this Agreement for alleged breach, that Party must give the other Party written notice of such violation and a good faith opportunity to respond and cure the alleged violation. KASB agrees to provide relevant information in support of the alleged violation subject to an appropriate confidentiality agreement within a reasonable time after serving the notice of alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. KASB agrees that if Boss Pet produces a passing test result for the specific product plaintiff identifies as an alleged violation from an Accredited Lab for DEHP within a year of the same specific Product's date of manufacture or sale by Boss Pet in California without a Proposition 65 warning, which KASB may at its option seek to verify with an independent test from an Accredited Lab of KASB's choosing, Boss Pet shall have no liability for violating this Agreement or Proposition 65 with respect to the Products so long as the Parties can agree on appropriate corrective action to be taken by Boss Pet (if any). If the alleged violation cannot be resolved, the Party alleging a violation may thereafter move to enforce the terms of this Agreement. The prevailing party on any motion to enforce this Agreement shall be entitled to its reasonable attorney's fees and costs according to proof.

11. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the

manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

12. 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.

13. MODIFICATION

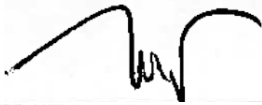
This Agreement may be modified only by a written agreement of the Parties.

14. 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: 10/25/2022

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

AGREED TO:

Date: 10-25-2022

By: 
James F. Sanders
Vice President and General Counsel
Boss Pet Products, Inc.