

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 D&M Dental Laboratory Inc. d.b.a. Impressive Smile (“Impressive Smile”), with KASB and Impressive Smile each individually referred to as a “Party” and collectively, as the “Parties.” KASB 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 Impressive Smile is a responsible entity selling products for sale to consumers in State of California and/or to entities who are persons in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

The “Products” covered by this agreement are limited to and specifically identified as the Vinyl Cases included with the *Impressive Smile Oral Hygiene Set 4, X0020JX6WJ*, bearing the Amazon Standard Identification Number or “ASIN” B019YP21GW identified in KASB’s “Notice” and sold on amazon.com by Impressive Smile. 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 November 18, 2020, KASB served Impressive Smile, Amazon.com, Inc. (“Amazon”), the California Attorney General and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In its Notice, KASB alleges Amazon and Impressive Smile violated Proposition 65 by failing to warn their customers and consumers in California the Products can expose users to DEHP. Impressive Smile is the supplier of the Products sold on amazon.com. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Impressive Smile 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, comply with all laws. No term of this Agreement nor Impressive Smile's compliance with this Agreement shall be deemed an admission by Impressive Smile of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Impressive Smile's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "Effective Date" shall mean the date by which this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products Impressive Smile manufactures, causes to be manufactured, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products defined by Section 2.2, below, or be accompanied by a clear and reasonable warning pursuant to Section 2.3, below.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), in a maximum concentration of 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, a nationally recognized accrediting organization, or a member accreditation body of the International Laboratory Accreditation Cooperation (ILAC). 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

For those Products that do not meet the definition of Reformulated Products established by Section 2.2, above, Impressive Smile shall provide clear and reasonable warnings for all Products sold or offered for sale to consumers 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 the following statement:

⚠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) **Short-Form Warning.** Encased 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, below, as follows:

⚠WARNING: 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 language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

2.4 Product Warnings

Impressive Smile shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California, an e-commerce platform, or nationwide distribution. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided

pursuant to section 2.3(a) 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 if the labeling does not use yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

2.5 Internet Warnings

If, after the Effective Date, Impressive Smile sells Products other than Reformulated Products via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with retail outlets in California, nationwide distribution or e-commerce websites, Impressive Smile shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, 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 “**WARNING**” given in conjunction with the sale of the Products via the internet 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. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. For third-party websites, as a condition of sale, Impressive Smile shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, pursuant to Section 2.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), Impressive Smile agrees to pay a civil

penalty of \$1,000 within five (5) business days of the Effective Date. Impressive Smile’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. Impressive Smile shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$750; and (b) “Seven Hills LLP in trust for Keep America Safe & Beautiful” in the amount of \$250. KASB’s counsel shall deliver to OEHHA and KASB their respective portion 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. After the Parties finalized all material injunctive and civil penalty settlement terms, they negotiated and reached an accord on Impressive Smile’s reimbursement of a portion of KASB’s attorneys’ 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 through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. Impressive Smile agrees to reimburse Seven Hills LLP \$12,500 for all fees and costs incurred investigating, bringing this matter to Impressive Smile’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9, in the form of a check payable to “Seven Hills LLP” within ten (10) business days of the Effective Date.

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 Impressive Smile

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Impressive Smile, 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 Impressive Smile, Amazon.com, Inc., and their respective past and present members, directors, officers, employees, attorneys, and each entity to whom Impressive Smile directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including (collectively, "Releasees"), based on the alleged or actual failure to warn under Proposition 65 about exposures to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Impressive Smile 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 its own behalf and on behalf of 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 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 exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products as specifically defined by Section 1.2 manufactured, distributed, sold and/or offered for sale by Impressive Smile, before the Effective Date (collectively, "Claims"), against Impressive Smile and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither 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 Impressive Smile nor downstream entity directed to provide a consumer health hazard warning by Impressive Smile pursuant to Section 2.5 and who fails to do so. Nothing in this Section affects

KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Impressive Smile's Products.

4.2 Impressive Smile's Release of KASB

Impressive Smile, 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 action taken or statement 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 Products.

5. SEVERABILITY

If, after 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 Impressive Smile 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 Impressive Smile 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:

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For Impressive Smile:

Michael Kamen, CEO
Michael Kamen dba Impressive Smile
19220 Natures View Court
Boca Raton, FL 33498

For KASB:

Laralei Paras, Esq.
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 AND ELECTRONIC SIGNATURES

This Agreement may be executed in counterparts and by electronic signature(s), 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 subject matter hereof, and any prior discussions, negotiations, commitments, or understandings related hereto, if any, are hereby merged herein. No warranty, representation, or other agreement between the Parties exists except as expressly set forth herein. No representation, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreement not specifically contained herein shall be deemed to exist or to bind either of the Parties hereto.

11. MODIFICATION

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

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12. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agreed to all the terms and conditions of this Agreement.

AGREED TO:

Date: March 18, 2024

By: 
Lance Nguyen, CFO
KEEP AMERICA SAFE AND
BEAUTIFUL

AGREED TO:

Date: March 12, 2024

By: *Michael Kamen*
Michael Kamen, CEO
D&M DENTAL LABORATORY, INC.
dba IMPRESSIVE SMILE