

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 Gurin Products LLC (“**Gurin**”), with KASB and Gurin 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. Gurin 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 Gurin manufactures, imports, sells and distributes for sale, in and into California, vinyl sphygmomanometer tubing containing di(2-ethylhexyl)phthalate (“**DEHP**”) through Amazon.com, Inc., including, but not limited to, the *SantaMedical Deluxe Aneroid Sphygmomanometer, Model: SP-110, X000FVBQ1R, UPC #8 58759 00541 4*, 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 November 18, 2020, KASB served Gurin, Amazon.com, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Gurin 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

Gurin denies the material, factual, and legal allegations contained in the Notice, and maintains all products it manufactured, imported, 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 Gurin of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Gurin's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term "**Effective Date**" shall mean March 15, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, each Product Gurin manufactures, imports, or distributes for sale in or into California shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, "**Reformulated Products**" are defined as Products containing di(2-ethylhexyl)phthalate ("**DEHP**") in a maximum concentration of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e. any component that may be touched during a reasonably foreseeable use of the Product) 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-C1001.09.4 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.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Gurin agrees to pay a civil penalty of \$2,500 within five (5) days of the Effective Date. Gurin's civil penalty payment will be allocated in accordance with 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. Gurin shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Seven Hills LLP in Trust for KASB" in the amount of \$625. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payments.

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, Gurin agrees to issue a check in the amount of \$18,500 payable to "Seven Hills LLP" for all fees and costs incurred in investigating, bringing this matter to Gurin's 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

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Gurin

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Gurin, 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 Gurin, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Gurin or Amazon.com, Inc. directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including, without limitation, Amazon.com, Inc., franchisees, cooperative members, and licensees (collectively, "Releasees"), based on their failure to warn, arising under Proposition 65, about alleged exposures to DEHP contained in Products, as that term is defined by Section 1.2, manufactured, imported, distributed, sold and/or offered for sale by Gurin in California prior to 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 in Products manufactured, imported, distributed, sold and/or offered for sale by Gurin, prior to the Effective Date (collectively, Claims), against Gurin 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 Gurin. Nothing

in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Gurin's Products.

4.2 Gurin's Release of KASB

Gurin, 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 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 Gurin 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 Gurin 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 Gurin:

For KASB:

Sanjay Gupta, CEO
Gurin Products LLC
2522 Chambers Rd., Suite 100
Tustin, CA 92780

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Jeffrey H. Schick, Esq.
8401 Lake Worth Road
Suite 230
Lake Worth, FL 33467

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: 04/17/2023

By: 
My Nguyen, COO
Keep America Safe and Beautiful

AGREED TO:

Date: 3/28/23

By: 3/28/23 
Sanjay Gupta, CEO
Gurin Products LLC