

## 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 Pro Impact Sports Inc. (“**Pro Impact**”), with KASB and Pro Impact 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 reproductive harm are disclosed in or eliminated from consumer products sold in California. Pro Impact 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 that Pro Impact manufactures, imports, sells and distributes for sale in California vinyl/PVC balls containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, Pro Impact Poly Soft PVC Cricket Balls, Product No. X0009ISTWF and Pro Impact Training Soccer Ball Pink Size 5, Product No. X002ETXUNP, and vinyl/PVC mini boxing gloves containing diisononyl phthalate (“**DINP**”) including, but not limited to, Pro Impact Mini Boxing Gloves, 101667435, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC balls and vinyl/PVC mini boxing gloves are referred to collectively herein as the “**Products.**” **DEHP** is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. **DINP** is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. **DEHP** and **DINP** are referred to collectively herein as the “**Listed Chemicals.**”

#### 1.3 Notices of Violation

On October 21, 2020, KASB served Pro Impact, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Pro Impact violated Proposition 65 when it failed to warn its customers and consumers in

California that its vinyl/PVC balls can expose users to DEHP. On February 3, 2021, KASB served Pro Impact, the California Attorney General and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”), alleging Pro Impact violated Proposition 65 when it failed to warn its customers and consumers in California that its vinyl/PVC mini boxing gloves can expose users to DINP. The Notice and Supplemental Notice are collectively referred to herein as the “**Notices.**” No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notices.

#### **1.4 No Admission**

Pro Impact denies the material, factual, and legal allegations contained in the Notices, 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 Pro Impact of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Pro Impact’s obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, “**Effective Date**” shall mean March 15, 2023.

## **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Pro Impact manufactures, imports, sells or distributes for sale in or into California shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or be 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**”) and 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) 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-C1001.09.3 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**

Commencing on or before the Effective Date, Pro Impact shall provide clear and reasonable warnings for all Products provided 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 Diisononyl phthalate (DINP) which is known to the State of California to cause cancer and Di(2-ethylhexyl)phthalate (DEHP) which is 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](http://www.P65Warnings.ca.gov)

(b) **Short-Form Warning.** Pro Impact 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, as follows:

⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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**

For all Products Pro Impact ships, or causes to be shipped, after the Effective Date, Pro Impact shall affix, or caused to be affixed, a warning to the Product label or otherwise directly on Products provided for sale to (a) consumers located in California and (b) customers with retail outlets in California, e-commerce platforms or nationwide distribution. For the purpose of this agreement, "**Product label**" means a display of written, printed or graphic material that is printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) or (b) 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 that if the labeling does not use the color yellow, then the symbol may be in black and white. 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 either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

#### **2.5 Internet Warnings**

If, after the Effective Date, Pro Impact sells Products via the internet, through its own website or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Pro Impact shall provide warnings for each Product both on the Product label, in accordance with Section 2.4 for Products Pro Impact ships after the Effective Date, and by prominently displaying, or requiring the warning to be prominently displayed on 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. 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.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Initial Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Pro Impact agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. Pro Impact'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. Pro Impact shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Seven Hills LLP in trust for Keep America Safe & Beautiful" in the amount of \$500. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

#### **3.2 Final Waivable Civil Penalty**

Pro Impact shall pay a second civil penalty of \$3,000. However, the second civil penalty shall be waived in its entirety, if, on or before April 15, 2023, an officer of Pro Impact certifies, as of the Effective Date, and continuing thereafter, any and all Products manufactured for or by Pro Impact for sale to consumers in California are Reformulated Products as defined by Section 2.2. Unless the second civil penalty is waived, on or before April 15, 2023, Pro Impact shall issue a check made payable to "OEHHA" in the amount of \$2,250 and a check made payable to "Seven Hills LLP in trust for Keep America Safe & Beautiful" in the amount of \$750.

### **3.3 Reimbursement of Attorneys' Fees and Costs**

KASB and its counsel offered to resolve the allegations in the Notices 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, Pro Impact agrees to issue a check in the amount of \$16,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Pro Impact's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.4 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 Pro Impact**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Pro Impact, 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 Pro Impact, its directors, officers, employees, attorneys, and each entity to whom Pro Impact directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on

their failure to warn about alleged exposures to Listed Chemicals contained in the Products that were manufactured, distributed, sold and/or offered for sale by Pro Impact in California before the Effective Date, as alleged in the Notices.

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 including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to Listed Chemicals in the Products manufactured, distributed, sold and/or offered for sale by Pro Impact, before the Effective Date (collectively, "**Claims**"), against Pro Impact 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, and any distributors or suppliers who sold the Products, or any component parts thereof, to Pro Impact nor downstream to entities not applying a warning as directed by Pro Impact after the Effective Date, pursuant to Section 2.5. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Pro Impact's Products.

#### **4.2 Pro Impact's Release of KASB**

Pro Impact, 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 that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Pro Impact 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 Pro Impact 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 Pro Impact:

Atul Mahajan, President & Chief Executive Officer  
Pro Impact Sports Inc.  
8 The Green, Suite 5854  
Dover, DE 19901

For KASB:

Laralei Paras, 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: 03/12/2023

By: 

My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 03/11/2023

By: 

Atul Mahajan, President  
Pro Impact Sports Inc.