

# PROPOSITION 65 SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Style Asia, Inc. *dba* American Builder (“**Style Asia**”), with KASB and Style Asia each individually referred to as a “**Party**” and, collectively, 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. KASB alleges Style Asia 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 Style Asia manufactures, imports, sells and distributes for sale in California tool kits containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to: (1) *American Builder HW2194 Gray 31-Piece Auto Roadside Emergency Tool Kit, ASIN# B005MSJ2IQ, Model# HW2194, UPC# 7 36386 22194 3*; (2) *American Builder Auto 7-Piece Car Cleaning Kit, ASIN# B07NDG92MN, Model# HW2300, UPC# 7 36386 00378 5*; and (3) *American Builder HW2190 Auto Emergency In Triangular Mold Case, ASIN# B01MYBRE12, Model# HW2190, UPC# 7 36386 00042 5*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Tool kits are referred to hereinafter 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.

### 1.3 Notice of Violation

On February 3, 2021, KASB served Style Asia, Amazon.com, Inc., the California

Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Style Asia violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Style Asia denies the factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, 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 constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Style Asia of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Style Asia’s obligations, responsibilities, and duties under this Agreement. Notwithstanding the allegations in the Notice, Style Asia maintains that it has not knowingly imported, manufactured, caused to be manufactured, distributed, offered for sale, or sold the Products in California in violation of Proposition 65.

#### **1.5 Effective Date**

For purposes of this Agreement, “**Effective Date**” shall mean October 1, 2021.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Style Asia manufactures, 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 either: (1) meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2; or (2) 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”) 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) 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, Style Asia shall provide clear and reasonable warnings for all Products provided for sale to customers 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, or designs 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 DEHP, which is known to the State of California to cause birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** Style Asia may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), and subject to the additional requirements in Section 2.5 as follows:

 **WARNING:** 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**

Style Asia 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 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) 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 if the labeling does not use the color 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. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warning, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings, if greater than 6-point type.

#### **2.5 Internet Warnings**

If, after the Effective Date, Style Asia sells Products via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Style Asia 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. 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 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Style Asia agrees to pay a civil penalty of \$1,000 within ten (10) business days of the Effective Date. Style Asia’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. Style Asia shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Keep America Safe and Beautiful**” in the amount of \$250. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment. Payments under this Section shall be remitted to the address in Section 3.3.

#### **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 ten (10) days of the Effective Date or no later than October 1, 2021, Style Asia shall remit payments to "Seven Hills LLP" totaling \$18,000 for all fees and costs incurred investigating, bringing this matter to Style Asia's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

**(a) Installment Agreement**

The Parties agree to the following installment agreement. The sum payment of attorneys' fees and costs of \$18,000 shall be broken out into three separate, equal payments of \$6,000, with all payments due at the time of the Effective Date and payable or to be deposited according to the following mutually agreeable schedule. Style Asia shall remit its payments via wire transfer and through checks made payable to "Seven Hills LLP", delivered to the address listed in Section 3.2(b), subject to the following additional provisions.

**1. Timing of Attorneys' Fees & Costs Payments**

Style Asia agrees to provide all attorneys' fees and costs payments due under this Agreement within ten (10) days of the Effective Date or by October 1, 2021, whichever is later. The Parties agree the payment of attorneys' fees and costs, totaling \$18,000, shall be broken out into three equal installment payments of \$6,000 each: one wire transfer and two payments issued via checks made payable to Seven Hills LLP. The first installment payment of \$6,000 shall be paid via wire transfer pursuant to wiring instructions provided by counsel for KASB, as detailed below. The remaining two installment payments of \$6,000 each, made in the forms of checks payable to "Seven Hills LLP", shall be deposited on the first days of November and December.

**2. Terms of Attorneys' Fees & Costs Installment Agreement**

The agreement to installment payments of attorneys' fees and costs is contingent on a

tolling agreement executed by both Parties and running concurrently during the payment plan. Style Asia agrees and understands, should any installment payment due under this Section or this Agreement fail due to insufficient funds, the remaining payments shall become immediately due and payable. In the event Seven Hills LLP incurs fees for any returned checks, Style Asia agrees to reimburse KASB's counsel for such fees.

Style Asia acknowledges that KASB reserves the right to institute a proceeding under Proposition 65, including the filing of a complaint based on the allegations in the Notice, a suit based on breach of or failure to perform under a contract, or any other remedy allowable under law, in the event of a default on the terms of this Section.

**(b) Fees & Costs Payment Wiring Instructions; Form W9s; Payment Address**

Upon both Parties' execution of this Agreement, counsel for KASB shall provide bank wiring instructions to counsel for Style Asia for the initial installment payment of attorneys' fees and costs. KASB's counsel shall also provide Form W9s for each entity payee upon full execution of this Settlement Agreement. Style Asia's civil penalty payments and second and third attorneys' fees and costs installment payments shall be delivered to KASB's counsel at following address:

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

**(c) CLAIMS COVERED AND RELEASED**

**a. KASB's Release of Style Asia**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Style Asia, 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 Style Asia, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Style Asia 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 DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Style Asia 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 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 DEHP in the Products manufactured, distributed, sold and/or offered for sale by Style Asia, before the Effective Date (collectively, “**Claims**”), against Style Asia 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 thereof to Style Asia. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Style Asia’s Products.

**b. Style Asia’s Release of KASB**

Style Asia, 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.



**c. Mutual Waiver of California Civil Code § 1542**

The Parties each acknowledge familiarity with Section 1542 of the Civil Code, which provides 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.

The Parties, each on its own behalf, and each on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which it/they may have under, or which may be conferred upon it/them by the provisions of Civil Code Section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent it may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.1 and 4.2, above. Nothing in this section shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products.

**(d) 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.

**(e) 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 Style Asia 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 Style Asia from its obligation to comply with any pertinent state or federal law or regulation.

**(f) 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 Style Asia:

Asok Pamani, Chief Executive Officer  
Style Asia, Inc. *dba* American Builder  
101 Moonachie Avenue  
Moonachie, NJ 07074

For KASB:

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

*With a Copy to:*

Kelly Griffin-Fromm, Esq.  
Law Offices of Jeffrey S. Kimmel  
1640 Vauxhall Road – Suite 2F  
Union, New Jersey 07083

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.

**(g) 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.

**(h) 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).

**(i) 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.

(j) **MODIFICATION**

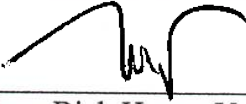
This Agreement may be modified only by a written agreement of the Parties.

(k) **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.

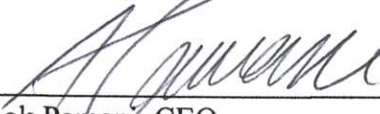
**AGREED TO:**

Date: 10/18/2021

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

**AGREED TO:**

Date: 10/12/21

By:   
\_\_\_\_\_  
Ashok Pamani, CEO  
Style Asia, Inc. dba American Builder