

## 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 Seismic Audio Speakers, Inc. (“**Seismic Audio**”), with KASB and Seismic Audio 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. KASB alleges Seismic Audio 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 Seismic Audio manufactures, imports, sells and distributes for sale in California instrument cables containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *20-Foot Right Angle to Straight Guitar Cable, Model name: SAGC20R-Black-4Pack*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Instrument cables 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 March 3, 2021, KASB served Seismic Audio, Amazon.com, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Seismic Audio and Amazon.com, Inc. violated Proposition 65 by failing to warn their customers and consumers in California that the 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**

Seismic Audio denies the 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, 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 Seismic Audio of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Seismic Audio's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date of the last signature to this Agreement.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, each Product Seismic Audio manufactures, imports, sells, ships, or distributes for sale in or into California, directly, through one or more third party retailers whom Seismic Audio knows or has reason to know offer the Products for sale in California or e-commerce marketplaces, 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. No warnings shall be required for Products meeting the Reformulation Standards set forth in Section 2.2 below.

### **2.2 Reformulation Standard**

For purposes of this Agreement, "**DEHP Free Products**" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("**DEHP**"), contain no more than 0.1 percent (1,000 parts per million) DEHP when analyzed by an "**Accredited Lab**," defined as a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of this Agreement, "**Reformulated Products**" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("**DEHP**"), di-isodecyl phthalate



(“**DIDP**”), di-n-butyl phthalate (“**DBP**”), diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), 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 an Accredited Lab. 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 Products requiring warnings under this Agreement, Seismic Audio 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. as they may be amended from time to time. 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 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](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** As an alternative to the warning set forth in subsection 2.3(a) above, Seismic Audio 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 Section 2.5, as follows:

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

(c) **Foreign Language Requirement.** Where the Product label used to provide the warning includes consumer information, as that term is defined in Title 27 California Code of Regulations § 25600.1(c) (“Consumer Information”), in languages other than English, the warning must also be provided in those languages in addition to English.

#### **2.4 Product Warnings**

For Products requiring a warning under this Agreement, Seismic Audio shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers whom Seismic Audio knows or has reason to know offer- the Product for sale in California. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to a Product 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. For the short form 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 product.

#### **2.5 Internet Warnings**

For Products requiring a warning under this Agreement, if, after the Effective Date, Seismic Audio sells Products via the internet directly to customers located in California, Seismic Audio shall provide warnings for each Product both on the Product label in accordance with Sections 2.3 and 2.4, and for its own website or third-party websites through which it sells Products and also is capable of directly providing warnings by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase and without requiring the purchaser to search for the warning in the general content of the website. Otherwise, if Seismic Audio sells Products directly to customers with e-commerce



websites whom Seismic Audio knows or has reason to know offers the Products for sale in California, Seismic Audio shall inform those customers in writing of their obligation to provide online warnings consistent with Title 27 California Code of Regulations § 25602(b). 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), Seismic Audio agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. Seismic Audio'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. Seismic Audio shall issue its payment 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. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

#### **3.2 Second Waivable Civil Penalty**

Seismic Audio shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be waived in its entirety, if, on or before December 31, 2021, an officer of Seismic Audio certifies, as of such date, and continuing thereafter, any and all Products manufactured or imported by Seismic Audio for sale to consumers in California directly including through its own website, affiliated websites or a third party website, to consumers located in California, and to customers whom Seismic Audio knows or has reason to know offer the Products for sale in California, are DEHP Free Products as defined by Section 2.2. Unless the second civil penalty is waived, on or before December 31, 2021, Seismic Audio shall issue a check made payable to "OEHHA" in the amount of \$1,875 and a check made payable to "Keep America Safe & Beautiful" in the amount of \$625.

### **3.3 Third Waivable Civil Penalty**

Seismic Audio shall pay a third civil penalty of \$1,500. However, the third civil penalty shall be waived in its entirety, if, on or before December 31, 2021, an officer of Seismic Audio certifies, as of such date, and continuing thereafter, any and all Products manufactured or imported by Seismic Audio for sale to consumers in California directly including through its own website, affiliated websites or a third party website, to consumers located in California, and to customers whom Seismic Audio knows or has reason to know offer the Products for sale in California, are Reformulated Products as defined by Section 2.2. Unless the second civil penalty is waived, on or before December 31, 2021, Seismic Audio shall issue a check made payable to "OEHHA" in the amount of \$1,125 and a check made payable to "Keep America Safe & Beautiful" in the amount of \$375.

### **3.4 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) business days of the Effective Date, Seismic Audio agrees to issue a check in the amount of \$19,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Seismic Audio's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.5 Payments**

All payments payable and due under this Agreement shall be delivered to KASB's

counsel at: 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 Seismic Audio

This Agreement is a full, final and binding resolution between KASB, acting in its individual capacity, *not* on behalf of the public, and Seismic Audio, 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 Seismic Audio, its past and present parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Seismic Audio directly or indirectly distributes or sells Products including Amazon.com, Inc., downstream distributors, wholesalers, marketplace hosts, customers, retailers, franchisees, cooperative members, licensees, and the successors and assigns of any of them (“**Releasees**”), based on the failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Seismic Audio in California before the Effective Date, as alleged in the Notice. The Parties further agree that compliance with Section 2 of this Agreement shall be deemed compliance with Proposition 65 with respect to alleged exposures to DEHP in the Products.

In further consideration of the promises and agreements herein contained, KASB in its individual capacity, *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, DIDP, DBP, DINP, BBP, and DnHP in the Products manufactured, distributed and/or sold to consumers in California, before the Effective Date (collectively, “**Claims**”), against Seismic Audio and its Releasees. The Parties further



understand and agree that this Section 4.1 release shall not extend upstream to any entities who sold, supplied or manufactured the Products, or any component parts thereof, to Seismic Audio.

#### **4.2 Seismic Audio's Release of KASB**

Seismic Audio, 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 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 Seismic Audio 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 Seismic Audio 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, in addition to being sent to the email addresses set forth below, 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 Seismic Audio:

Ann G. Grimaldi  
Grimaldi Law Offices  
75 Broadway Street, Suite 202  
San Francisco, CA 94111  
ann.grimaldi@grimaldilawoffices.com

Robert Hill  
Seismic Audio Speakers, Inc.  
4180 E Raines Rd.  
Memphis, TN 38118  
robert@seismicaudiospeakers.com

For KASB:

Laralei Paras  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
laralei@sevenhillsllp.com

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.

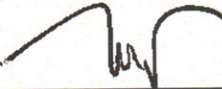


**12. AUTHORIZATION**

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

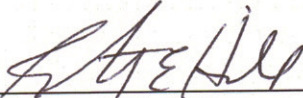
**AGREED TO:**

Date: 10/4/2021

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

**AGREED TO:**

Date: 10/15/2021

By:   
\_\_\_\_\_  
Robert E. Hill, CEO  
Seismic Audio Speakers, Inc.