

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 Rubber-Cal, Inc. (“**Rubber-Cal**”), with KASB and Rubber-Cal 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. Rubber-Cal 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 Rubber-Cal manufactures, imports, sells, and distributes for sale in California PVC hoses containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *PVC Flexduct, Blue, Part No. 01-203-1.25-12, UPC 8 45605 07339 0, ASIN B01GKB99KE*, without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). PVC hoses 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 April 7, 2021, KASB served Rubber-Cal, Amazon.com, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Rubber-Cal 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

Rubber-Cal 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 constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Rubber-Cal of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Rubber-Cal's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean April 11, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Rubber-Cal 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 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") 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, Rubber-Cal 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.

(b) Short-Form Warning. Rubber-Cal 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, 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.

(d) Other Chemicals. With respect to the warning to be provided in accordance with this Section 2.3, Rubber-Cal can modify the warning to include a warning for a cancer endpoint in addition to the reproductive toxicity endpoint.

2.4 Product Warnings

Rubber-Cal shall affix a warning to the Product label or otherwise directly on Products, that are not Reformulated Products, provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution and require the warning to be consumers in California prior to purchase. 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.

2.5 Internet Warnings

If, after the Effective Date, Rubber-Cal sells Products, that are not 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 nationwide distribution and e-commerce websites, Rubber-Cal 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.

2.6 Customer Notification.

No later than the Effective Date, Rubber-Cal shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each retailer or distributor in California to which it supplied Products between April 7, 2018 and April 7, 2021; and (2) any other retailer or distributor that Rubber-Cal reasonably understands or believes has any inventory of Products which Rubber-Cal supplied for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must have a label attached to the packaging of each Product expressly referring to the Product, which contains one of the warning statements in Section 2.3 (a) or Section 2.3 (b), before it is sold in the California market or to a customer in California. The Notification Letter shall include a sheet of white background, adhesive stickers with one of the warning statements in Section 2.3 (a) or Section 2.3 (b).

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Rubber-Cal agrees to pay a civil penalty of \$1,500 within fifteen (15) business days of the Effective Date. Rubber-Cal’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. Rubber-Cal shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,125; and (b) “**Keep America Safe and Beautiful**” in the amount of \$375. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Final Waivable Civil Penalty

Rubber-Cal shall pay a second civil penalty of \$3,000. However, the second civil penalty shall be waived in its entirety, if, on or before August 15, 2022, an officer of Rubber-Cal certifies, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by Rubber-Cal 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 with nationwide distribution and e-commerce websites, are Reformulated Products as defined by Section 2.2. Unless the second civil penalty is waived, on or before August 30, 2022, Rubber-Cal shall issue a check made payable to “OEHHA” in the amount of \$2,250 and a check made payable to “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 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 fifteen (15) days of the Effective Date, Rubber-Cal agrees to issue a check in the amount of \$19,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Rubber-Cal’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 Rubber-Cal

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Rubber-Cal, 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 Rubber-Cal, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Rubber-Cal 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 Rubber-Cal 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, DBP, DINP, BBP, DIDP and DnHP in the

Products manufactured, distributed, sold and/or offered for sale by Rubber-Cal, before the Effective Date (collectively, “**Claims**”), against Rubber-Cal 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 Rubber-Cal. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Rubber-Cal’s Products.

4.2 Rubber-Cal’s Release of KASB

Rubber-Cal, 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 Rubber-Cal 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 Rubber-Cal 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 Rubber-Cal:

Beau Pirghibi, President
Rubber-Cal, Inc.
18424 Mount Langley Street
Fountain Valley, CA 92708

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Jennifer Taggart
Demetriou, Del Guercio, Springer & Francis, LLP
915 Wilshire Blvd., Suite 2000
Los Angeles, CA 90017

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: 04/15/2022

By: 

Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 4/13/22

By: 

Beau Pirghibi, President
Rubber-Cal, Inc.