

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 Monoprice, Inc. (“**Monoprice**”), with KASB and Monoprice 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 Monoprice 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 Monoprice manufactures, imports, sells and distributes for sale in California containers containing Bisphenol A (“**BPA**”) including, but not limited to, *StarLight Sous Vide Container, 12 Quart 3 gallon Polycarbonate Pan with Custom Lid, White, P/N 34704, UPC 8 89028 09892 9, ASIN B07KJLFB9N*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Containers are referred to hereinafter as the “**Container Products.**” BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental and female reproductive toxicity.

1.3 Notice of Violation

On April 7, 2021, KASB served Monoprice, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Monoprice violated Proposition 65 by failing to warn its customers and consumers in California that its Container Products can expose users to BPA. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean February 28, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, any Container Products Monoprice 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.

2.2 Reformulation Standards

For purposes of this Agreement, "**Reformulated Products**" are defined as Container Products containing no detectable amount of BPA, Bisphenol S ("BPS"), Bisphenol F ("BPF"), and Bisphenol ("BPAF") when analyzed pursuant to AT'S 367 Rev. 0 by LC/MS/MS, or other methodologies utilized by federal or state government agencies to determine BPS, BPF, and BPAF content in a solid substance, by a laboratory accredited by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Monoprice agrees to pay a civil penalty of \$2,500 on or before April 1, 2022. Monoprice'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. Monoprice shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,875; and (b) “**Keep America Safe and Beautiful**” in the amount of \$625. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

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. On or before April 1, 2022, Monoprice agrees to issue a check in the amount of \$18,500 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to Monoprice’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: Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Monoprice

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Monoprice, 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 Monoprice, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Monoprice directly or indirectly distributes or sells Container 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 BPA contained in the Container Products that were manufactured, distributed, sold and/or offered for sale by Monoprice 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 BPA, BPS, BPF, and BPAF in the Container Products manufactured, distributed, sold and/or offered for sale by Monoprice, before the Effective Date (collectively, "**Claims**"), against Monoprice and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Container Products or any component parts thereof, or any distributors or suppliers who sold the Container Products or any component parts thereof to Monoprice. Nothing in this Section affects KASB's right to commence or prosecute

an action under Proposition 65 against a Releasee that does not involve Monoprice's Container Products.

4.2 Monoprice's Release of KASB

Monoprice, 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 Container 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 Container Products, then Monoprice 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 Container Products are so affected. Nothing in this Agreement shall be interpreted to relieve Monoprice 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 email and either (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 Monoprice:

Elizabeth McNulty
Evans Fears & Schuttert LLP
4440 Von Karman Avenue, Suite 250
Newport Beach, CA 92660
emcnulty@efstrialaw.com

For KASB:

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

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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: 3/09/2022

By: 

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

AGREED TO:

Date: 3/9/22

By: 

Bernard Luthi, CEO
Monoprice, Inc.