

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 Encased Products, Inc. (“Encased”), with KASB and Encased 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 to consumers and other individuals in California or eliminated from consumer products sold in California. KASB alleges Encased and Encased disputes that Encased 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 Encased manufactures, imports, sells and distributes for sale in California smart phone cases containing Bisphenol A (“BPA”) including, but not limited to, *Encased iPhone 12 Pro Max Wallet Case-Purple, Item model: PS129IG, ASIN B08KHQV7YT*, and that it does so without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). All such Smart Phone Cases are referred to hereinafter as the “Products.” BPA is listed pursuant to Proposition 65 as a chemical known to the State of California to cause female reproductive toxicity.

1.3 Notice of Violation

On May 13, 2021, KASB served Encased, Amazon.com, Inc. (“Amazon”), the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In the Notice, KASB alleges Encased and Amazon violated Proposition 65 by failing to warn their customers and consumers in California the 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

Encased 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, comply with all laws. No term of this Agreement, nor Encased's compliance with this Agreement shall be deemed an admission by Encased of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Encased's obligations, responsibilities, and duties under this Agreement. Encased denies all of KASB's allegations.

1.5 Effective Date

For purposes of this Agreement, "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products Encased 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 either BPA-Free Products or 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, "BPA-Free Products" are defined as Products containing no detectable amount of BPA when analyzed pursuant to ATS 367 Rev. 0 by LC/MS/MS, or other methodologies utilized by federal or state government agencies to determine BPA content in a solid substance, by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization ("Accredited Laboratory"). Many BPA-free polycarbonate ("PC") replacement products leach chemicals having significant levels of estrogenic activity ("EA"). As such, for purposes of this Agreement, "Reformulated Products" are defined as Products containing no detectable amount of Bisphenol A ("BPS"),

Bisphenol A (“BPF”), and Bisphenol (“BPAF”) when analyzed pursuant to ATS 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 an Accredited Laboratory.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Encased shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section 2.3, pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed with such conspicuousness when 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 bisphenol A [BPA], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. Encased 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, below, 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) On-Product Warnings. If, after the Effective Date, Encased sells Products that do not meet the definitions of BPA-Free Products and Reformulated Products established by Section 2.2, above, Encased 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 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 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.

(e) **Internet Warnings.** If, after the Effective Date, Encased sells Products that are neither BPA-Free Products nor 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, Encased 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. For third-party websites, as a condition of sale, Encased shall notify the sellers the Products must be accompanied by a

warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements set forward in this Section 2.3.

2.4 Customer Notification.

No later than the Effective Date, Encased shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each retailer or distributor in California to which it supplied Products during the one-year period prior to the Effective Date; and (2) any other retailer or distributor that Encased reasonably understands or believes has any inventory of Products, which Encased supplied during the one-year period preceding the Effective Date, intended for sale, or which Encased reasonably believes will be sold or offered for sale to consumers in California. The Notification Letter shall advise the recipient the Products contain BPA, 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), Encased agrees to pay a civil penalty of \$6,000 within five (5) business days of the Effective Date. Encased’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. Encased shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$4,500; and (b) “Keep America Safe and Beautiful” in the amount of \$1,500. 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. Within five (5) days of the Effective Date, Encased agrees to issue a check in the amount of \$29,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Encased'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 Encased

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Encased, 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 Encased and Amazon, and each of their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Encased 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 BPA contained in the Products that were manufactured, distributed, sold and/or offered for sale by Encased 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 in the Products manufactured, distributed, sold and/or offered for sale by Encased, before the Effective Date (collectively, “Claims”), against the Releasees.

The Parties further understand and agree that these Section 4 releases of Releasees (i.e., Section 4.1-4.2) shall not extend upstream to any entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Encased. Nor shall these Section 4 releases extend downstream to any entity of individual Encased instructs to provide warnings pursuant to Section 2.3-2.4, above, who fails to do so. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Encased’s Products.

4.2 Encased’s Release of KASB

Encased, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives 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. DISMISSAL OF LAWSUIT AGAINST AMAZON

Within ten (10) business days of the effective date, or following KASB's confirmation of Encased's compliance with the injunctive and monetary settlement terms established by Sections 3 and 4, above, KASB's counsel will file a dismissal with prejudice of its lawsuit against Amazon pending in San Francisco Superior Court, Case No. CGC-22-601018.

6. SEVERABILITY

If, after the execution of this Agreement, any provision of this Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. If Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Encased may provide KASB with written notice of its 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 Encased from its obligation to comply with any applicable state or federal law or regulation.

8. 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 Encased:

Akiva Isenberg, President
Encased Products, Inc.
730 Grand Ave, Suite 2K
Ridgefield, NJ 07657

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.

9. 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.

10. 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).

11. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof, and any prior discussions, negotiations, commitments, or understandings, if any, are hereby merged herein. No warranty, representation or other agreement exists between the Parties except as expressly set forth herein. No representation, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by either Party. No other agreement not specifically contained or referenced herein shall be deemed to exist or to bind either Party hereto.

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Party and have read, understand, and agree to all of the terms and conditions of this Agreement.


AGREED TO:

AGREED TO:

Date: March 11, 2024

Date: 3/7/24

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

By: 
Akiva Isenberg, President
Encased Products, Inc.