

# 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**”), on the one hand, and Catalyst Medium Four, Inc. (“**Catalyst**”) on the other hand, with KASB and Catalyst 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 Catalyst 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 Catalyst manufactures, imports, sells, and distributes for sale in California smart phone cases containing Bisphenol A (“**BPA**”) including, but not limited to, *Silk Innovation PureView Clear Case for iPhone 7 Plus, Item model # SLK-PV7P-CLEAR, ASIN B01JTI6M50*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Smart phone cases and accessories 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 developmental and female reproductive toxicity.

### 1.3 Notice of Violation

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

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

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean December 16, 2021.

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


### **2.1 Reformulation Standards**

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.

### **2.2 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Catalyst shall provide clear and reasonable warnings for all newly manufactured Products that do not meet the standard for BPA-Free Products and which are 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 BPA, 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.** Catalyst 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 Subsections 2.3(d) and 2.3(e), 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.

(d) **On-Product Warnings.** If, after the Effective Date, Catalyst sells Products that are not BPA-Free Products, Catalyst shall affix a warning to the Product label or otherwise directly on newly manufactured 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.

(e) **Internet Warnings.** If, 30-days after the Effective Date, Catalyst sells Products that are not BPA-Free 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, Catalyst shall provide warnings for each Product 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), Catalyst agrees to pay a civil penalty of \$2,500 within thirty (30) business days of the Effective Date. Catalyst’s civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(I) 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. Catalyst shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,875; and (b) “**Keep America Safe & 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**

Under general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, Catalyst will make a payment of \$18,500 to “Seven Hills LLP,” counsel for KASB (to be paid by December 31, 2021).

### **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 Catalyst**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Catalyst, 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 Catalyst, its past and present parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Catalyst 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 Catalyst 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 Catalyst, before the Effective Date (collectively, "**Claims**"), against Catalyst 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 Catalyst. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Catalyst's Products.

#### **4.2 Catalyst's Release of KASB**

Catalyst, 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 Catalyst 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 Catalyst 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 either 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 Catalyst:

Matthew Altschul, CEO  
Catalyst Medium Four, Inc.  
500 E. 4<sup>th</sup> Street, Ste 122  
Austin, TX 78701

For KASB:

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

*With a copy to:*

Perry R. Clark, Esq.  
Law Offices of Perry R. Clark  
825 San Antonio Road  
Palo Alto, CA 94303

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**

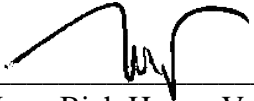
This Agreement may be modified only by a written agreement of the Parties.

**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.

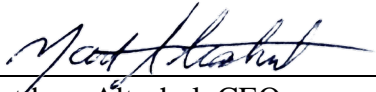
**AGREED TO:**

Date: 1/5/2022

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

**AGREED TO:**

Date: 12/27/2021

By:   
\_\_\_\_\_  
Matthew Altschul, CEO  
Catalyst Medium Four, Inc.