

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement ("Settlement Agreement") is hereby entered into by and between Keep America Safe And Beautiful ("KASAB") and Kraftware Corporation ("Kraftware"). KASAB and Kraftware are collectively referred to as the "Parties" and each of them as a "Party." KASAB is a California nonprofit public benefit corporation headquartered in Westminster, California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Kraftware is a New York corporation headquartered in Roselle, New Jersey.

1.2 Allegations and Representations

(a) KASAB alleges that Kraftware is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq., and has offered for sale in the State of California and sold in California the "Vinyls and Mylars Ice Bucket" that when used as intended exposes consumers to Diisononyl Phthalate ("DINP") and that such sales have not been accompanied by Proposition 65 warnings. DINP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm. KASAB has cited the "Vinyls and Mylars Ice Bucket" as a specific example of the Products that are the subject of its allegations.

(b) Kraftware does not admit and denies the material, factual, and legal allegations contained in the Notices and the corresponding Complaint, and maintains that all products sold, distributed, or offered for sale in California are and have been in compliance with all laws, including, without limitation, Proposition 65.

(c) The Parties enter into this Settlement Agreement to resolve all Proposition 65 claims concerning the Covered Products (defined below) set forth in KASAB's Notice, including claims against manufacturers, distributors, customers, retailers, and affiliates, who allegedly violated Proposition 65 by distributing the Covered Products in California.

1.3 Covered Products

The products that are covered by this Settlement Agreement are defined as, “Vinyls and Mylars Ice Bucket” manufactured, distributed, sold, or offered for sale by Kraftware in or into the State of California (“Covered Products”).

1.4 Notice of Violation

On or about May 21, 2021 KASAB served Kraftware, Amazon.com, Inc., Amazon.com Services, Inc. and all public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided Kraftware, Amazon.com, Inc., Amazon.com Services, Inc., and such public enforcers with notice that alleged that Kraftware Amazon.com, Inc., and Amazon.com Services, Inc. were in alleged violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to DINP. No public enforcer diligently prosecuted the claims alleged in the Notice within sixty days plus service time relative to the provision of the Notice to them by KASAB.

1.5 No Admission

Kraftware denies the material allegations contained in KASAB’s Notice and maintains that it has not violated Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Kraftware of any fact, finding, issue of law, or violation of law, or any other statutory, regulatory, common law, or equitable doctrine; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kraftware of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Kraftware. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of Kraftware under this Settlement Agreement.

1.6 Execution/Effective Date

1.6.1 For purposes of this Settlement Agreement, the term “Execution Date” shall mean the date this Settlement Agreement is fully executed.

1.6.2 For purposes of this Settlement Agreement, the term “Effective Date” shall mean

the date that the Parties agreed in writing to the injunctive relief measures of this Settlement Agreement (“Injunctive Relief”). Such Injunctive Relief shall be implemented pursuant to Article 2.

2. INJUNCTIVE RELIEF

2.1 Beginning One Hundred and Twenty (120) days after the Effective Date (the “Compliance Date”), Kraftware shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that exposes a person to a DINP, unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term “Distributing into the State of California” shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Kraftware knows or has reason to know will sell the Covered Product in California.

2.2 If Kraftware is required to provide a warning pursuant to Section 2.1, then Kraftware shall ensure that the Covered Products are in full compliance with California Code of Regulations, Title 27, Article 6, Clear and Reasonable Warning Requirements § 25601-25603 (see also: “www.P65Warnings.ca.gov.”). The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession and is no longer under the control of Kraftware prior to the Compliance Date and all claims as to such Covered Products are released in this Settlement Agreement. Covered Products that were manufactured, packed, or labeled prior to the Compliance Date shall be permitted to be sold as previously manufactured, packaged or labeled.

3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS

3.1 Payment pursuant to Health & Safety Code Section 25249.7(b). Kraftware shall

pay a Civil Penalty of \$500.00 to be apportioned in accordance with California Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment (CCR Title 11 Div 4-Proposition 65 Private Enforcement) and the remaining 25% of the penalty remitted to KASAB, as provided by California Health & Safety Code Section 25249.7.

3.2 Kraftware shall pay KASAB's counsel \$9,500.00 for attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice and incurred as a result of investigating, bringing this matter to Kraftware's attention, and negotiating a settlement.

3.3 The \$500.00 payment and the \$9,500.00 payment shall be made via bank wire to the "Law Offices of Stephanie Sy" no later than Fifteen (15) days following the Execution Date or Kraftware's receipt of the Law Offices of Stephanie Sy's and KASAB's W-9 forms, whichever is later.

3.4 The Law Offices of Stephanie Sy agrees to provide Kraftware with completed W9 forms, signed in 2023, for The Law Offices of Stephanie Sy and for KASAB within one (1) day following the Execution Date.

3.5 KASAB and The Law Offices of Stephanie Sy agree to dismiss the court action entitled *Keep America Safe And Beautiful v. Kraftware Corporation, et al.* pending in San Diego Superior Dept. C-60 and bearing Case No. 37-2022-00015508-CU-NP-CTL (the "Complaint") with prejudice within five (5) days following receipt of the monetary requirements in § 3.3 above and to electronically serve Kraftware's counsel of record with the file-confirmed Request for Dismissal and with Court's Entry of Dismissal promptly upon receipt of the same.

3.6 Other than the payment specified herein, each side is to bear its own attorneys' fees and costs in connection with this matter, including the Complaint.

4. CLAIMS COVERED AND RELEASED

4.1 KASAB Release

KASAB, on behalf of itself, releases Kraftware and all entities and persons from whom Kraftware, directly or indirectly, obtains the Covered Products and all entities and persons to

whom Kraftware, directly or indirectly, distributes or sells the Covered Products, including but not limited to each of Kraftware's manufacturers, distributors, marketplace hosts, wholesalers, licensors, licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, and users, and their respective parent companies, corporate affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, employees, and related entities (collectively "Releasees") from all claims for violations of Proposition 65 through the Effective Date based on exposure to DINP from the Covered Products.

In addition to the foregoing, KASAB, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any other claims, actions, causes of action, demands, rights, suits, liabilities, damages, losses, costs, expenses, and attorney's fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that she could make against Kraftware or the other Releasees relating to or arising from the Covered Products.

4.2 CCP 1542 Waiver

Except as provided in Section 4.1 above, KASAB understands and agrees that this release extends to all claims based on exposure to DINP from the Covered Products that exist at the time of execution of this Settlement Agreement, whether they are known or unknown, suspected or unsuspected, past, or present. KASAB acknowledges it is waiving rights it may have under California Civil Code section 1542 which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Kraftware and the Releasees are "creditors" and/or "released parties" within the meaning of California Civil Code section 1542. KASAB understands that it is releasing both known and

unknown claims based on exposure to DINP from the Covered Products against the Kraftware and the Releasees herein.

4.3 Kraftware Release of KASAB

Aside from any potential dispute relating to this Settlement Agreement, Kraftware waives any and all claims against KASAB, its attorneys and other representatives, for any and all actions taken or statements made by KASAB and its attorneys and other representatives in the course of investigating the claims or otherwise seeking enforcement of Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY AND MERGER

If subsequent to the execution of this Settlement Agreement any of the provisions of this document are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

6. GOVERNING LAW

6.1 This Settlement Agreement shall be interpreted in accordance with the plain English meaning of its terms and the construction thereof shall be governed by the laws in force in the State of California, USA without regard to conflicts of law principles. This Settlement Agreement resolves any issue, now or in the future, with the requirements of Proposition 65 with respect to alleged exposures to Lead arising from the Covered Products. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Kraftware shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

6.2 This Settlement Agreement shall apply to and be binding upon KASAB and Kraftware, its divisions, subdivisions, and subsidiaries, if any, and the Parties' members, owners, officers, directors, successors and assigns.

6.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

7. NOTICES

Unless otherwise specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and delivered or sent by email and: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

For KRAFTWARE:

Carey L. Cooper, Esq.
Theodore S. Wolter, Esq.
Klinedinst Sacramento
801 K Street, Suite 2100
Sacramento, CA, 95814

For KASAB:

Stephanie Sy, Esq.
Law Offices of Stephanie Sy
11622 El Camino Real, Suite 100
San Diego, California 92130

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

The stipulations to this Settlement Agreement may be executed in counterparts and by

means of facsimile and/or portable document format (pdf), which taken together shall be deemed to constitute one document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

KASAB agrees to promptly comply with the requirements set forth in California Health & Safety Code §25249.7(f).

10. MODIFICATION

This Settlement Agreement may be modified only by further written agreement executed by both the Parties.

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs.

12. ENTIRE AGREEMENT

This Settlement 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. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

AGREED TO:

KASAB:

Signature:  _____

Printed Name: My Chi Nguyen - COO

Date: 07/18/2023

KRAFTWARE:

Signature: _____

Printed Name: _____

Date: _____

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document.

AGREED TO:

KASAB:

Signature: _____

Printed Name: _____

Date: _____

KRAFTWARE:

Signature: D. Randall Grant

Printed Name: D. Randall Grant

Date: 8/8/23