

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 Studio Designs, Inc. (“**Studio Designs**”), with KASB and Studio Designs 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 Studio Designs 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 Studio Designs distributes for sale in California seats with vinyl upholstery containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Calico Designs Height Adjustable Stool Chrome/Black, Item No. 13175, UPC 0 17342 13175 0*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Seats with vinyl upholstery 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 August 3, 2021, KASB served Studio Designs, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Studio Designs violated Proposition 65 by failing to warn its customers in California that the 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

Studio Designs 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 Studio Designs of any fact, finding, conclusion of law, issue of law, or violation of law. Studio Designs maintains that it has not knowingly or intentionally caused exposures to any chemical in violation of Proposition 65. Nothing in this Agreement shall prejudice, waive, or impair any right, argument, or defense that the Parties may have with respect to the allegations in the Notice or with respect to any other future legal proceedings, except as otherwise provided herein. This section shall not, however, diminish or otherwise affect Studio Designs' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "Effective Date" shall mean September 30, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date of this Agreement, all Products Studio Designs imports and distributes for sale in California, directly or through third party retailers, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products that contain di(2-ethylhexyl) phthalate ("DEHP") 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.

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2.3 Certification to Compliance with Reformulation Standard

Within thirty (30) days after the Effective Date, an officer of Studio Designs shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products imported by Studio Designs for sale to (a) consumers in California through its own website, affiliated websites, or third party websites, and (b) customers who distribute the Products into California or sell the Products to consumers in California, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Studio Designs shall provide a recent test result performed after the date of the Notice, showing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated Products. Failure to comply with this section shall render this Agreement null and void.

2.4 Interim Clear and Reasonable Warnings

Commencing on the Effective Date, Studio Designs shall provide clear and reasonable warnings for all Products provided for sale to customers in California pursuant to Title 27 California Code of Regulations § 25600, et seq, if the Products are not Reformulated Products. Each warning shall be 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. However, there shall be no obligation for Studio Designs to provide a warning for Products that entered the stream of commerce prior to the Effective date.

(a) **DEHP Warning.** The Warning for DEHP, in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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.

- or -

⚠WARNING: This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer or birth defects and other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, Studio Designs may utilize warning content applicable to the Products provided by Title 27 California Code of Regulations § 25600, *et seq.* and any amendments thereto, or other warning content applicable to the Products later adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

(b) 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.

2.5 Product Warnings

Studio Designs 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. 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, packaging, or wrapper. A warning provided pursuant to section 2.3(a) 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.

Alternatively, Studio Designs may utilize any other warning methods of transmission applicable to the Products provided by Title 27 California Code of Regulations § 25600, *et seq.* and any amendments thereto, or other warning methods of transmission applicable to the Products later adopted by OEHHA.

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2.6 Internet Warnings

If, after the Effective Date, Studio Designs sells Products, that are not Reformulated Products, via the internet, through its own website, or affiliated websites (“Websites”), to consumers located in California or to customers with nationwide distribution and e-commerce websites, Studio Designs 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 the Websites 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 or pop-ups displayed to a purchaser during the checkout process, or by any other method contemplated by Title 27 of the California Code of regulations § 25602(b) and any amendments thereto.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Studio Designs agrees to pay a civil penalty of \$2,500 within five (5) business days of the Effective Date. Studio Designs’ 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 **OEHHA**, and the remaining twenty-five percent (25%) retained by KASB. Studio Designs 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. Within five (5) days of the Effective Date, Studio Designs agrees to issue a check in the amount of \$19,250 payable to "Seven Hills LLP" for all reasonable fees and costs incurred investigating, bringing this matter to Studio Designs' 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 Studio Designs

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Studio Designs, 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 Studio Designs, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, successors, and/or assignees, and each entity to whom Studio Designs directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, resellers, cooperative members, and licensees, and their respective parents, subsidiaries, and affiliates and agents (collectively, "**Releasees**"), based on their failure to warn about alleged exposures to DEHP allegedly contained in the Products

distributed or offered for sale by Studio Designs and (i) sold in or into California before the Effective Date or (ii) which entered the stream of commerce 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 in the Products imported, distributed, sold and/or offered for sale by Studio Designs and (i) sold in or into California before the Effective Date, or (ii) which entered into the stream of commerce before the Effective Date (collectively, "**Claims**"), against Studio Designs 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 Studio Designs. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Studio Designs' Products.

4.2 Studio Designs' Release of KASB

Studio Designs, 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.

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4.3 California Civil Code § 1524

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. With the exception of the limitations set forth in Section 4.1, KASB on its own behalf, on one hand, and Studio Designs, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims concerning DEHP in the Products distributed or offered for sale by Studio Designs and sold in or into California through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims concerning DEHP in the Products distributed or offered for sale by Studio Designs and sold in or into California through the Effective Date with the exception of the limitations set forth in Section 4.1. California Civil Code § 1542 reads 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.

KASB and Studio Designs each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

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 Studio Designs 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 Studio Designs 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 Studio Designs:

Scott Maynes, President
Studio Designs, Inc.
6027 Bandini Blvd.
Los Angeles, CA 90040

For KASB:

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

with a copy to:

Andrew J. Bedigian
Larson LLP
555 South Flower Street, Suite 4400
Los Angeles, CA 90071

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 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).

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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: 9/23/2022

By: 

Ngoc Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 9-30-22

By: 

Scott Maynes, President
Studio Designs, Inc.