

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between Keep America Safe & Beautiful (“KASB”) and Xcar Automotive Inc. dba Auto Parts Outlets and A Abigail (collectively “Auto Parts Outlets”), with KASB and Auto Parts Outlets 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 Auto Parts Outlets 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 Auto Parts Outlets manufactures, imports, sells, and distributes for sale in California Siphon Hoses containing di(2-ethylhexyl) phthalate (“DEHP”) and di-n-butyl phthalate (“DBP”) 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”). The “Products” covered by this Agreement are defined as, and specifically limited to, the *A Abigail Gas Siphon Hose Pump Shaker Siphon for Gasoline Fuel Water Transfer Safe Multi-Purpose Self Priming Pump 6 Foot High Grade Hose 1/2” Valve, A7726F, X002B054TZ* sold on the Amazon.com website, bearing the specific Amazon Standard Identification Number or ASIN “B07XFM6KB3.” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. DBP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Notice of Violation

On September 11, 2020, KASB served Amazon.com, Inc. (“Amazon”), the California

Attorney General and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In its Notice, KASB alleges Amazon violated Proposition 65 by failing to warn its customers and consumers in California the Products can expose users to DEHP and DBT. Auto Parts Outlets is the supplier who sold or offered the Products for sale on on the Amazon.com, Inc. (“Amazon”) website. It enters this agreement under prinipals of indemnity and contractual obligation to resolve the claims against Amazon alleged in KASB’s Notice. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.3 No Admission

Auto Parts Outlets 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. Neither any term of this Agreement nor Auto Parts Outlets’s compliance with this Agreement shall constitute or be construed as, an admission by Auto Parts Outlets of any fact, finding, legal issue or conclusion, or violation of law. This section shall not, however, diminish or otherwise affect Auto Parts Outlets’s obligations, responsibilities, and duties under this Agreement.

1.4 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 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Auto Parts Outlets 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 in 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, “Reformulated Products” are defined as Products containing neither di(2-ethylhexyl) phthalate (“DEHP”) nor di-n-butyl phthalate (“DBP”) in a concentration exceeding 0.1 percent (1,000 parts per million) in any accessible component (i.e., any component that may be touched or handled by an individual during a reasonably foreseeable use) 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 (the “Reformulation Standard”).

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Auto Parts Outlets shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section and 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 one of the following statements:

a. For Products containing DEHP:


 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate [DEHP] which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

- or -

Short-Form Warning. Auto Parts Outlets may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(a) (“Short-Form Warning”), and subject to the additional requirements in Sections 2.4 and 2.5, as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

b. For Products containing DBT:


 **WARNING:** This product can expose you to chemicals including di-n-butyl phthalate [DBT] 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.

- or -

Short-Form Warning. Auto Parts Outlets 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 2.4 and 2.5, as follows:

 **WARNING:** Reproductive Harm - www.P65Warnings.ca.gov.

c. For Products containing DEHP and DBT:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate [DEHP] and di-n-butyl phthalate [DBT] which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

- or -

Short-Form Warning. Auto Parts Outlets may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(c) (“Short-Form Warning”), and subject to the additional requirements in Sections 2.4 and 2.5, as follows:



WARNING: Cancer and Reproductive Harm -
www.P65Warnings.ca.gov.

(d) 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, then Auto Parts Outlets must provide the warning in those other language(s) in addition to English.

2.4 Product Warnings

Auto Parts Outlets shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. “Product label” means a display of written, printed or graphic material printed on or affixed to each Product Auto Parts Outlets sells or offers for sale in California or to such Products immediate packaging, 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 yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and, in no case, may not be smaller than the largest type size used for other consumer information on the Products.

2.5 Internet Warnings

If, after the Effective Date, Auto Parts Outlets sells 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, Auto Parts Outlets 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(a)-(c) if the warning provided on the Product label also uses the Short-Form Warning content. For third-party websites, as a condition of sale, Auto Parts Outlets 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, as detailed above.

3. MONETARY SETTLEMENT TERMS

3.1 Auto Parts Outlets's Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), Auto Parts Outlets agrees to pay a civil penalty of \$2,500.00 within five (5) business days of the Effective Date. Auto Parts Outlets'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. Auto Parts Outlets shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875.00; and (b) "Keep America Safe & Beautiful" in the amount of \$625.00. KASB's counsel shall remit OEHHA and KASB's respective portions of Auto Parts Outlets's civil penalty payment.

3.2 Auto Parts Outlets's Reimbursement of KASB's 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, Auto Parts Outlets agrees to issue a check in the amount of \$32,500.00 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Auto Parts Outlets’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 Auto Parts Outlets and Amazon.com, Inc.

This Agreement is a full, final and binding resolution between KASB, as an individual nonprofit corporation and *not* on behalf of the public in California, and Auto Parts Outlets, of any violation of Proposition 65 that was or could have been asserted by KASB on its own behalf or on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, against Auto Parts Outlets, Amazon, or each of their respective parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Auto Parts Outlets directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Releasees”), based on the failure to warn, arising under Proposition 65 about alleged exposures to DEHP and DBT contained in Products sold on amazon.com, as specifically defined in Section 1.2, above, for Products manufactured, distributed, sold and/or offered for sale by Auto Parts Outlets before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual nonprofit corporation and *not* on behalf of the public in California, on its own behalf and on behalf of 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, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP and DBT in Products, as specifically defined in Section 1.2, above, for Products manufactured, distributed, sold and/or offered for sale on amazon.com by Auto Parts Outlets before the Effective Date (collectively, "Claims"), against Auto Parts Outlets, Amazon and Releasees.

The Parties further understand and agree that this Section 4.1 release 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 Auto Parts Outlets, nor shall this Section 4.1 Release extend downstream to any Releasee who has been instructed by Auto Parts Outlets to provide a warning pursuant to Section 2.5 and 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 Auto Parts Outlets' Products sold on Amazon's website.

4.2 Auto Parts Outlets's Release of KASB

Auto Parts Outlets, on its own behalf and on behalf of 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 them in this matter with respect to the Products.

5. SEVERABILITY

If 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. If Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Auto Parts Outlets may notify KASB in writing 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 Auto Parts Outlets from its obligation to comply with any 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 Auto Parts Outlets:

Jinwei Wang
Xcar Automotive Inc.
Tel. No. +86-21-68555779*809
Email: Vicky_Vap@vickiwong.com

For KASB:

Laralei Paras, Esq.
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.

8. COUNTERPARTS, FACSIMILE OR ELECTRONIC SIGNATURES

This Agreement may be executed in counterparts and by electronic or facsimile 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 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 executed by or on behalf of both parties and reported to the Office of the California Attorney General as a corrected or modified settlement within five (5) days of execution of any written or modified settlement.

12. AUTHORIZATION

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

AGREED TO:

Date: 10/03/2024

By: 

Lance Nguyen, CEO
KEEP AMERICA SAFE AND
BEAUTIFUL

AGREED TO:

Date: 10/7/2024

By: 

Jinwei Wang
XCAR AUTOMOTIVE INC.