

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 Excelta Corporation (“**Excelta**”), with KASB and Excelta 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 Excelta 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 Excelta manufactures, imports, sells, and distributes for sale in California tools with vinyl/PVC grips containing diisononyl phthalate (“**DINP**”) including, but not limited to, *Chain Nose Pliers, Jaw Length: 5/16 in, Jaw Width: 7/16 in, Jaw Bend: 0°, Tip Width: 1/16 in; Item# 32NE99, Mfr. Model# 2644, UNSPSC# 27112134*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Tools with vinyl/PVC grips are referred to hereinafter as the “**Products.**” DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Notice of Violation

On December 3, 2021, KASB served Excelta, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Excelta violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Excelta denies the factual and legal allegations contained in the Notice and maintains that it did not knowingly or intentionally expose California consumers to DINP and that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including, without limitation, Proposition 65. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Excelta of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Excelta's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date upon which this agreement is fully executed by all parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND INTERIM WARNINGS

2.1 Reformulation Commitment

By October 7, 2022, and continuing thereafter, all Products Excelta newly 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 by Section 2.2. In the interim, all Products that are not Reformulated Products which are distributed, shipped, sold, and offered for sale in or into California must 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 which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), di-n-butyl phthalate ("DBP"), diisononyl phthalate ("DINP"), butyl benzyl phthalate ("BBP"), di-isodecyl phthalate ("DIDP") or di-n-hexyl phthalate ("DnHP"), contain any or all such chemicals each 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.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Excelta shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, 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 DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. Excelta 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, as follows:

 **WARNING:** Cancer - 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.

2.4 Product Warnings

Excelta 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 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.

2.5 Internet Warnings

If, after the Effective Date, Excelta sells Products, that are not 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, Excelta 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.

2.6 Customer Notification

No later than the Effective Date, Excelta shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each retailer or distributor in California to which it supplied Products between December 3, 2020 and December 3, 2021; and (2) any other retailer or distributor that Excelta reasonably understands or believes has any inventory of Products, which Excelta supplied between December 3, 2018 and December 3, 2021, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DINP, a chemical known to the State of California to cause cancer. 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 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Excelta agrees to pay a civil penalty of \$2,000 within ten (10) business days of the Effective Date. Excelta’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. Excelta shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,500; and (b) “**Keep America Safe and Beautiful**” in the amount of \$500. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Final Waivable Civil Penalty

Excelta shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be waived in its entirety, if, on or before October 7, 2022, an officer of Excelta certifies, as of that date, and continuing thereafter, any and all Products manufactured or imported by Excelta for sale to consumers in California directly including through its own website, affiliated

websites or a third party website, to consumers located in California, and to customers with nationwide distribution and e-commerce websites, are Reformulated Products as defined by Section 2.2. Along with its attested declaration, Excelta shall provide a recent test result, or a 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.

If Excelta does not provide the attested declaration and test results by October 7, 2022, then Excelta agrees to remit two checks to the address listed in Section 3.4, below, and payable as follows: “OEHHA” in the amount of \$1,875 and “Keep America Safe and Beautiful” in the amount of \$625, pursuant to Health and Safety Code § 25249.7(b) and allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d).

3.3 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 ten (10) business days of the Effective Date, Excelta agrees to issue a check in the amount of \$22,500 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Excelta’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.4 Payments

All payments payable and due under this Agreement shall be delivered to KASB’s counsel at following address:

Seven Hills LLP
Attn: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Excelta

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Excelta, 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 Excelta, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Excelta 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 DINP contained in the Products manufactured, distributed, sold and/or offered for sale by Excelta and sold in or into 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 DINP in the Products manufactured, distributed, sold and/or offered for sale by Excelta and sold in or into California, before the Effective Date (collectively, "**Claims**"), against Excelta 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 Excelta.

Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Excelta's Products.

4.2 Excelta's Release of KASB

Excelta, 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.

4.3 Mutual Waiver of California Civil Code § 1542

KASB, on behalf of itself only and *not* in the public interest, on the one hand, and Excelta, on the other hand, each acknowledge that the claims in this Agreement include all known and unknown claims pertaining to DINP contained in the Products that were sold in California before the Effective Date, except as provided in Section 4.1 hereinabove, and each waive the provisions of California Civil Code § 1542 as to any unknown claims pertaining to DINP contained in the Products that were sold in California that may have existed prior to and including the Effective Date, except as provided 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.

The Parties 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 Excelta 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 Excelta 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 Excelta:

Lynn Bonzer, CEO
Excelta Corporation
60 Easy St., Ste. F
Buellton, CA 93427

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Ryan Landis, Esq.
CMBG3 Law P.C.
100 Spectrum Center Dr.
Suite 820
Irvine, CA 92618

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.

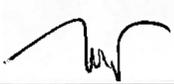
11. MODIFICATION

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: 07/15/2022

By: 

Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:
Date: 7/14/2022

By: 

Steve Johnson, Acting CEO
Excelta Corporation