

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement is hereby entered into by and between Keep America Safe and Beautiful, a California nonprofit corporation (“KASAB”) and Versatile Retail Group PA LLC, a Pennsylvania limited liability company and Versatile Retail Group LLC dba 365 Cycles, a New Hampshire limited liability company (collectively “365 CYCLES”). KASAB and 365 CYCLES are collectively referred to as the “Parties” and each of them as a “Party.”

1.2 Recitals

(a) KASAB sent a Notice of Violation dated July 15, 2021 to ZEFAL, and Target Corporation (“Target”) alleging violation of Proposition 65, Cal. Health & Safety Code § 25249.6 et seq, citing the “ZEFAL Console Pack T1 Top Tube/Stem Bag” (“ZEFAL Console Pack”) as a specific example of the products that are the subject of its allegations.

(b) KASAB alleges that 365 CYCLES 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 through Target’s website at target.com the “Console Pack T1 Top Tube/Stem Bag” that contains DEHP (Di-[2-Ethylhexyl] Phthalate) (“DEHP”) and that such sales have not been accompanied by Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive harm.

(b) 365 CYCLES does not admit and denies the material, factual, and legal allegations contained in the Notice (as defined below), and maintains that to its knowledge all “Console Pack T1 Top Tube/Stem Bag” products sold, distributed, or offered for sale in California have been and are 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 the Notice (defined below), including claims against manufacturers, distributors, customers, retailers, and affiliates, who

allegedly violated Proposition 65 by distributing the Covered Products in California, including without limitation Target.

1.3 Covered Products

The products that are covered by this Settlement Agreement are defined as the “ZEFAL Console Pack T1 Top Tube/Stem Bag” previously offered for sale by 365 CYCLES in the State of California (“Covered Products”).

1.4 Notice of Violation

On or about July 15, 2021 KASAB served ZEFAL, Target 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 ZEFAL, 365 CYCLES (through Target), Target and such public enforcers with notice that alleged ZEFAL and Target were in violation of Proposition 65 for failing to warn consumers and customers that the Covered Products exposed users in California to DEHP. 365 CYCLES contacted KASAB and advised that it sold one “ZEFAL Console Pack T1 Top Tube/Stem Bag” to a representative of KASAB through Target. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by KASAB. Upon Execution of this Settlement Agreement, KASAB will prepare and serve a Supplemental 60 Day Notice (“Supplemental Notice”) upon 365 Cycles that is the same as the Notice in all material respects except that it adds “Versatile Retail Group PA LLC dba 365 Cycles” and Versatile Retail Group LLC dba 365 Cycles” as a noticed parties.

1.5 No Admission

365 CYCLES denies the material allegations contained in KASAB’s Notice and Supplemental Notice and maintains that it has not violated Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by 365 CYCLES 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 365 CYCLES of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by 365 CYCLES. However, this section shall not diminish or otherwise affect the obligations, responsibilities, and duties of 365 CYCLES 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: WARNINGS

2.1 Commencing thirty (30) days after the Execution Date, 365 CYCLES shall not sell, offer for sale, ship for sale or otherwise distribute or allow to be distributed in California the ZEFAL Console Pack T1 Top Tube/Stem Bag, unless the sales and distribution of the ZEFAL Console Pack T1 Top Tube/Stem Bag 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.”). ZEFAL Console Pack T1 Top Tube/Stem Bag that were manufactured, packed, or labeled prior to the Execution Date shall be permitted to be sold as previously manufactured, packed or labeled.

3. CIVIL PENALTY & REIMBURSEMENT OF FEES AND COSTS

3.1 Payment pursuant to Health & Safety Code Section 25249.7(b). 365 CYCLES shall pay a Civil Penalty of five hundred dollars (\$500) 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.

3.2 365 CYCLES shall pay KASAB's counsel nine-thousand five hundred dollars (\$9,500) for attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice and Supplemental Notice and incurred as a result of investigating, bringing this matter to 365 CYCLES's attention, and negotiating a settlement. Payment of said monies shall be made via bank wire to "Sy and Smith, LP" no later than Three (3) business days following the Execution Date.

3.3. Sy and Smith, LP agrees to provide 365 CYCLES with wire instructions and tax identification information within one (1) day following the Execution Date.

3.4 All payments pursuant to Section 3.1 and 3.2 shall be held in escrow by Sy and Smith, LP and released to Sy and Smith LP to KASAB's counsel, KASAB and the State of California's Office of Environmental Health Hazard Assessment as provided in Sections 3.1 and 3.2 upon expiration of the notice period for the Supplemental Notice and provided that no other party asserts a claim or brings legal action against the Releasees before such notice period expires. In event the foregoing condition is not met, all payments shall be returned to 365 Cycles.

3.5 Other than the payment specified herein, each side is to bear its own attorneys' fees and costs. Time is of the essence with regard to the receipt of payments specified. If payments are not made as agreed, this agreement shall, in its entirety, be null and void.

4. CLAIMS COVERED AND RELEASED

4.1 Release of 365 CYCLES and Downstream Customers

KASAB, on behalf of itself and, to the maximum extent permissible by law, each of its current or former, direct and indirect, parent companies, subsidiaries, affiliates and respective assigns, predecessors, successors, related entities, and its and their past, present and future officers, directors, and employees, hereby fully and without limitation irrevocably and unconditionally releases, covenants not to sue and forever discharges 365 CYCLES, and all of current or former affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, and employees, and all entities and persons from whom they

obtain and to whom they directly or indirectly distribute or sell the Covered Products, including but not limited to each of its current or former 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, and employees, and sister entities (collectively "Releasees") from any and all claims, counterclaims, demands, liabilities, damages, actions and causes of action whether in law or in equity, suits, injunctions, losses, rights, obligations, costs, expenses, attorneys' fees, and compensation, of any nature (collectively, "Claims"), known or unknown, fixed or contingent, suspected or unsuspected, including without limitation all Claims for violations of Proposition 65 through the Effective Date based on exposure to DEHP from the Covered Products and any Claims relating to the Notice and the Supplemental Notice. For the avoidance of doubt, the Releasees include Target, and its current or former parents, affiliates, subsidiaries, officers, directors, attorneys, representatives, shareholders, agents, successors, and employees.

In addition to the foregoing, KASAB, on behalf of itself, its past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases any Claims, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future that it could make against 365 CYCLES or the other Releasees relating to or arising from the Covered Products. With respect to the foregoing waiver and release in this paragraph, KASAB hereby specifically waives any and all rights and benefits which it now has, or in the future may have, conferred by virtue of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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.

4.2 365 CYCLES' Release of KASAB

365 CYCLES waives any and all Claims against KASAB, its attorneys and other representatives, for any and all actions taken or statements made by KASAB or 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 Covered 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 DEHP 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 365 CYCLES shall provide written notice to KASAB of any asserted change in the law, and 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 365 CYCLES, their respective divisions, subdivisions, and subsidiaries, if any, and the Parties' 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 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 365 CYCLES:

Jason M. Sobel, Esq.
Brown Rudnick, LLP
Seven Times Square
New York, NY 10036

For KASAB:

Stephanie Sy, Esq.
Sy and Smith LP.
2834 La Mirada Dr., Suite E
Vista, CA 92081

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 of 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:

By: 
Name: NGOC-BICH HOANG VO

365 CYCLES:

By: 
Name: Benjamin Berman