

# 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 Warner Manufacturing Corporation (“**Warner**”), with KASB and Warner each individually referred to as a “**Party**” and collectively, as 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 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 Warner 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 Warner manufactures, imports, sells and distributes for sale in California tools with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Warner Long Nose Pliers ITEM # 10838, UPC 0 48661 10838 3*, 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.**” **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 December 22, 2021, KASB served Warner, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Warner violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

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#### **1.4 No Admission**

Warner denies the material, 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 Warner of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Warner's obligations, responsibilities, and duties under this Agreement. Warner maintains that it has not knowingly manufactured, caused to be manufactured, imported, or distributed the Products for sale in California in violation of Proposition 65.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date both parties have signed the agreement.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND INTERIM WARNINGS**

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Warner manufactures, imports, ships, distributes, sells, or offers for sale in or into California, directly or through one or more distributors with distribution into California or third party retailers with retail outlets in California, nationwide distribution or e-commerce platforms, shall meet the Reformulation Standard for Reformulated Products defined in Section 2.2.

### **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**") and 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 Customer Notification**

No later than the Effective Date, Warner shall send a letter, electronic or otherwise, (“**Notification Letter**”) to each retailer with retail outlets in California, nationwide distribution or e-commerce platforms and each distributor with nationwide distribution to which Warner supplied the Warner Long Nose Pliers ITEM # 10838 since December 22, 2020, and has a reasonable belief after inquiry has remaining inventory of Products available for sale to consumers in California. The Notification letter shall inform the recipient that all inventory of Warner Long Nose Pliers ITEM # 10838 remaining available for sale to consumers in California must be returned to Warner for a full refund to the original form of payment within thirty (30) days and include a return shipping label with postage pre-paid. For each retailer and distributor from whom Warner has received written confirmation that there is no inventory of Warner Long Nose Pliers ITEM # 10838 remaining available for sale to consumers in California, this Section 2.3 shall not apply.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Warner agrees to pay a civil penalty of \$2,500 within five (5) business days of the Effective Date. Warner’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. Warner shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,875; and (b) “**Seven Hills in trust for Keep America Safe & 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) business days of the Effective Date, Warner agrees to issue a check in the amount of \$21,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Warner'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 Warner**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Warner, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current officers, agents, shareholders, employees, predecessors, representatives, attorneys, successors, and assignees, against Warner, its past and present respective officers, directors, shareholders, employees,

agents, parent companies, subsidiaries, divisions, franchisees, licensees, customers (not including private label customers of Warner), distributors, wholesalers, retailers, and all other downstream entities in the distribution chain of any of the Products, and the predecessors, successors, and assigns of any of them including (collectively, “**Releasees**”), based on their failure to provide a clear and reasonable warning under Proposition 65 about alleged exposures to DEHP contained in the Products manufactured, processed, imported, distributed, sold and/or offered for sale by Warner in 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 officers, agents, shareholders, employees, predecessors, representatives, attorneys, successors, and 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, DBP, DINP, BBP, DIDP and DnHP in the Products manufactured, distributed, sold and/or offered for sale by Warner, before the Effective Date (collectively, “**Claims**”), against Warner and Releasees.

**4.2 Warner’s Release of KASB**

Warner, 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 Mutual Waiver of California Civil Code § 1542**

KASB, on behalf of itself only and *not* in the public interest, on the one hand, and Warner, on the other hand, each acknowledge that the claims in this Consent Judgment include all known and unknown claims pertaining to DEHP contained in the Products that were sold in California before the Effective Date, except as provided in Sections 4.1 and 4.2 hereinabove, and each waive the provisions of California Civil Code § 1542 as to any unknown claims pertaining to DEHP contained in the Products that were sold in California that may have existed prior to and including the Effective Date, except as provided in Sections 4.1 and 4.2. 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 Warner 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 Warner 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 Warner:

Bao M. Vu, Partner  
STOEL RIVES LLP  
1 Montgomery St., Suite 3230  
San Francisco, CA 94104

For KASB:

Laralei Paras, Partner  
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 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.

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**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 herein.

**AGREED TO:**

Date: 09-05-2023

By: 

My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 9-5-2023

By: 

Keith Herwig, Chief Executive Officer  
Warner Manufacturing Corporation