

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 Loftus International Inc. (“**Loftus**”), with KASB and Loftus 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 Loftus is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

The products covered by this Agreement are products with vinyl/PVC components containing di(2ethylhexyl) phthalate (“**DEHP**”) identified as, *Star Power Halloween Weapon Fake Rubber Knife Black Grey 10 in; ASIN B000GL1EB2; Model No. JW-0022* and *Loftus International Classic Water Squirting Rose Flower Corsage Pin, Model No. JW-0061, Bar Code: X002SK6MS5, ASIN: B06Y2MCR7W* (the “**Products**”), that are manufactured, imported, sold, distributed for sale in California by Loftus without providing the health hazard warning that KASB alleges but Loftus disputes is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and/or birth defects and other reproductive harm.

1.3 Notice of Violation

On February 25, 2022, KASB served Loftus, Amazon.com, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Loftus violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. On May 9, 2022 KASB served the same parties and entities with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”) alleging Loftus violated Proposition

65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. The Notice and Supplemental Notice are referred to herein collectively as the “**Notices.**” No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notices.

1.4 No Admission

Loftus denies the factual and legal allegations contained in the Notices 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, including as supported by relevant testing by independent and accredited laboratories. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Loftus of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Loftus’s obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulation

Commencing on the Effective Date and continuing thereafter, all Products Loftus manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more 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 which, if they contain di(2-ethylhexyl) phthalate (“DEHP”), contain DEHP in a maximum concentration of less than 0.1 percent (1,000 parts per million) per chemical 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 or CPSC-CH-

C1001.09.4 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, Loftus shall send a letter, electronic or otherwise (“**California Notification Letter**”) to: each Loftus customer that is a retailer or distributor located in California or offers Products for sale to consumers in California via the Internet that has any inventory of Products, which Loftus directly supplied between February 25, 2021 and February 25, 2022. The California Notification Letter shall advise the recipient that the Products supplied during this timeframe may contain di(2-ethylhexyl) phthalate (DEHP), a chemical known to the State of California to cause birth defects or other reproductive harm. The California Notification letter shall inform the recipient that all such Products may be returned to Loftus for a full refund. There shall be no obligation for Loftus to reformulate, recall or otherwise withdraw any Products manufactured, distributed, sold and/or offered for sale by Loftus in California prior to the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Loftus agrees to pay a civil penalty of \$6,000 within ten (10) business days of the Effective Date. Loftus’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. Loftus shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$4,500; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$1,500. KASB agrees that KASB’s counsel have sole responsibility for delivering 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 Notices 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, Loftus agrees to issue a check in the amount of \$29,750 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Loftus'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: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

3.4 Tax Documentation

Upon full execution of this agreement, counsel for KASB shall provide IRS Form W-9 for each payee to counsel for Loftus via electronic mail. The Parties agree Loftus's obligations to comply with Section 3 shall not arise until such W-9 Forms are transmitted.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Loftus

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Loftus, of any violation of Proposition 65 or any other law 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 Loftus, its parents, subsidiaries, affiliated entities under common

ownership including: directors, officers, employees, attorneys, and each entity to whom Loftus directly or indirectly distributes or sells Products, including, but not limited to, Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to comply with any law related to the chemical composition of the Products, including but not limited to the failure to warn under Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Loftus in California before the Effective Date, even if sold by a Releasee after the Effective Date, as alleged in the Notices.

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 or any other law with respect to the Products manufactured, distributed, sold and/or offered for sale by Loftus, before the Effective Date (collectively, “**Claims**”), against Loftus 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 Loftus. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Loftus’s Products.

4.2 Loftus’s Release of KASB

Loftus, 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 Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. KASB on behalf of itself only, on one hand, and Loftus on behalf of itself only, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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 Loftus each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

4.4 Deemed Compliance with Proposition 65

The Parties agree that compliance by Loftus with this agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from the Products.

4.5 Public Benefit

It is Loftus's understanding that the commitments it has agreed to herein, and actions to be taken by Loftus under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code Tit. 11, Section 3201. As such, it is the intent of Loftus that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Loftus's failure to provide a warning concerning exposure to DEHP from the Products it has manufactured, distributed, sold, or offered for sale in California, such private party action would not confer

a significant benefit on the general public as to those Products addressed in this Agreement, provided that Loftus is in material compliance with this Agreement.

5. ENFORCEMENT

Prior to proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Product without a warning and which is alleged to not be a Reformulated Product, KASB shall provide a written notice to Loftus specifying, for each Product alleged to be in violation of this Agreement: the date of alleged violation(s), place of sale and, if applicable, proof of purchase and test reports obtained by KASB regarding each such Product. KASB shall take no further action regarding any alleged violation if, within thirty (30) days of receiving such notice, Loftus affirms in writing (a) that the Product was sold or offered for sale by Loftus before the Effective Date; (b) that Loftus provided a Customer Notification pursuant to Section 2.3; or (c) that the Product is a Reformulated Product pursuant to Section 2.2 as supported by a test report on a Product manufactured on or about the same date as the alleged violation from an independent accredited third party laboratory.

6. 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.

7. 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 Loftus 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 Loftus from its obligation to comply with any pertinent state or federal law or regulation.

8. 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 Loftus:

Casey R. Fitts, CEO
Loftus International Inc.
865 S. 200th E.
Salt Lake City, UT 84111

For KASB:

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

With a copy to:

Kim Sandell, Esq.
Conkle, Kremer & Engel, PLC
3130 Wilshire Blvd., Suite 500
Santa Monica, CA 90403

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.

9. 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.

10. 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).

11. 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.

12. MODIFICATION


Except as otherwise provided herein, this Agreement may be modified only by a written agreement of the Parties.

13. 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: Feb 05, 2024

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: Feb 1, 2024

By: Casey Fitts
Casey Fitts (Feb 1, 2024 22:34 GMT+1)
Casey R. Fitts, CEO
Loftus International Inc.