

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 Antique Electronic Supply, LLC (“**AES**”), Amplified Parts, LLC, and CE Distribution, LLC (“collectively, “the **AES Parties**”), with KASB and the AES Parties 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 the AES Parties are each 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 the AES Parties manufacture, import, sell, and/or distribute for sale in California tools with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Fret Puller, Model: FP01, UPC: 6 09722 14335 6, SKU: S-T206, ASIN: B00BLQ0D2C*, 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 cancer, birth defects or other reproductive harm.

1.3 Notice of Violation

On February 25, 2022, KASB served AES, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging AES 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.

1.4 No Admission

The AES Parties deny the factual and legal allegations contained in the Notice and maintain that all products they have 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 the AES Parties of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect the AES Parties' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean March 17, 2023 or the date this Agreement is fully executed by all Parties, whichever is later.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products the AES Parties manufacture, import, sell, ship, or distribute 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, or be accompanied by a clear and reasonable warning pursuant to Section 2.3 when applicable.


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 such chemical 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-C1001.09.4 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 Clear and Reasonable Warnings

For all Products that do not meet the Reformulation Standard, pursuant to Title 27 California Code of Regulations § 25600, *et seq.*, the AES Parties shall provide clear and reasonable warnings for Products that are provided for sale to customers and consumers in California, in accordance with this Section 2 which shall not require the AES Parties to take any action beyond what is required under California Code of Regulations § 25600, *et seq.*, pursuant to Proposition 65. 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. The warning shall consist of the following statement:

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

AES Parties may, but are not required to, use the following short-form warning, subject to the additional requirements as set forth in this Section 2:

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

Where a consumer product sign, label or shelf tag is used to provide a warning and includes consumer information in language(s) other than English, then the warning must also be provided in the other language(s).

2.4 Product Warnings

For all Products that are not Reformulated Products, the AES Parties 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, in accordance with California Code of Regulations § 25602(a). For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material printed on or affixed to

the Products or its immediate container or wrapper. A warning provided pursuant to Section 2.3 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, the AES Parties sell 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, then the AES Parties shall provide warnings for each Product in accordance with this Section, pursuant to California Code of Regulations § 25602(b), 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 internet 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 if the warning provided pursuant to Section 2.4 also uses the short-form warning.

2.6 Customer Notification

No later than the Effective Date, the AES Parties shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each retailer or distributor in California to which they

supplied Products between February 25, 2021 and February 25, 2022; and (2) any other retailer or distributor that the AES Parties reasonably understand or believe has any inventory of Products, which the AES Parties supplied between February 25, 2019 and February 25, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must have a label expressly referring to the Product, which contains a warning statement pursuant to Sections 2.3 through 2.5, before it is sold in the California market or to a customer in California.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), the AES Parties agree to pay a civil penalty of \$1,000 within five (5) business days of the Effective Date. The AES Parties' 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. The AES Parties shall issue the payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Seven Hills LLP in Trust for KASB**” in the amount of \$250. 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) days of the Effective Date, the AES Parties agree to issue a check in the amount of \$17,500 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to the AES Parties’ 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

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of the AES Parties

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and the AES Parties, 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 the AES Parties, their parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom the AES Parties directly or indirectly distribute or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn under Proposition 65 about alleged exposures to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by the AES Parties 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 DEHP in the Products manufactured, distributed, sold and/or offered for sale by the AES Parties and sold in or into California, before the Effective Date (collectively, "**Claims**"), against the AES Parties and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) to upstream 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 the AES Parties nor (b) to Releasees who have been instructed by AES Parties pursuant to Section 2.6, to provide a warning on Products that are not Reformulated Products and have failed 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 the AES Parties' Products.

4.2 The AES Parties' Release of KASB

The AES Parties, on behalf of themselves, their 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.

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 the AES Parties 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 the AES Parties from their 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 the AES Parties:

Noreen Cravener, President
Antique Electronic Supply, LLC
Amplified Parts, LLC
CE Distribution, LLC
6221 S. Maple Avenue
Tempe, AZ 85283

For KASB:

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

With a copy to:

Erin Carter, Esq.
Ballard Spahr LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103

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: March 09, 2023

AGREED TO:

Date: March 9, 2023

By: 
My Nguyen, Chief Operating Officer
Keep America Safe and Beautiful

By: 
Noreen Cravener, President
Antique Electronic Supply, LLC
Amplified Parts, LLC
CE Distribution, LLC