

# 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 Fitness Superstore, Inc. (“**Fitness Superstore**”), with KASB and Fitness Superstore 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 Fitness Superstore 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 Fitness Superstore manufactures, imports, sells, and distributes for sale in California vinyl jump ropes and vinyl ab mats containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *French Fitness Speed Skipping Vinyl Jump Rope, Product Code: FF-SSVJR* and *French Fitness FF-AM Ab Mat New, Product Code: FF-AM*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl jump ropes and vinyl ab mats are referred to hereinafter, collectively, as the “**Products.**” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

### 1.3 Notices of Violation

On April 14, 2022, KASB served Fitness Superstore, the California Attorney General, and the requisite public enforcement agencies with 60-Day Notice of Violation, AG# 2022-00753 (“**Notice**”), alleging Fitness Superstore violated Proposition 65 by failing to warn its customers and consumers in California that its vinyl jump ropes can expose users to DEHP. On September 19, 2022, KASB served the

same parties and entities with Supplemental 60-Day Notice of Violation, AG# 2022-02211 (“**Second Notice**”) alleging Fitness Superstore also violated Proposition 65 by failing to warn its customers and consumers in California that its vinyl ab mats can expose users to DEHP. The Notice and Second 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**

Fitness Superstore 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, but not limited to 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 Fitness Superstore of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Fitness Superstore’s obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, “**Effective Date**” shall mean November 9, 2022.

## **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

**2.1** Commencing on the Effective Date and continuing thereafter, all Products Fitness Superstore manufactures, imports, sells, ships, or distributes for sale to California consumers, 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 (b) accompanied by a clear and reasonable warning, pursuant to the following Sections 2.3 through 2.5.

#### **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 any or all 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-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine DEHP content in a solid substance.

### 2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Fitness Superstore shall provide clear and reasonable warnings for all Products provided for sale to consumers in California in accordance with this Section and 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 for the Products shall consist of the following statement:

**⚠WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

**⚠WARNING:** This product can expose you to chemicals including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning requirements set forth herein are imposed pursuant to the terms of this Agreement and are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations (Title 27, California Code of Regulations, section 25601, et seq.) in effect as of the Effective Date or as such regulations may be amended in the future, and may include warnings for chemicals in addition to DEHP where appropriate. In

addition, if and where appropriate, Fitness Superstore may follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide warnings for the Products consistent with this Agreement.

**(b) Short-Form Warning.** Fitness Superstore 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 Section 2.5, as follows:

**⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://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**

Commencing on or before the Effective Date, Fitness Superstore shall affix a warning to the Product label or otherwise directly on Products or on the Product’s immediate container, wrapper, or packaging for those Products provided for sale to consumers located in California and, where appropriate to customers with retail outlets in California. For purposes 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. The warning shall consist of either the Warning or the Short Form described in subsection 2.3(a) or (b), respectively.



## **2.5 Internet Warnings**

If, after the Effective Date, Fitness Superstore 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 or e-commerce websites, Fitness Superstore shall provide warnings for the Products both on the Product label, in accordance with Section 2.4, and by prominently displaying, or requesting 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 prior to or 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 described in Section 2.3(b), if the warning provided on the Product label also uses the Short-Form.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Fitness Superstore agrees to pay a civil penalty of \$1,000.00 within thirty (30) days of the Effective Date to resolve the allegations in the Notices. Fitness Superstore’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. Fitness Superstore shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750.00; and (b) “**Keep America Safe and Beautiful**” in the amount of

\$250.00. 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 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 thirty (30) days of the Effective Date, Fitness Superstore agrees to issue a check in the amount of \$18,000.00 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Fitness Superstore'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 Fitness Superstore**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Fitness Superstore, 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 Fitness Superstore, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Fitness Superstore 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 DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Fitness Superstore in California before 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 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by Fitness Superstore, before the Effective Date (collectively, “Claims”), against Fitness Superstore 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 Fitness Superstore. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Fitness Superstore’s Products.

#### **4.2 Fitness Superstore’s Release of KASB**

Fitness Superstore, 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 Fitness Superstore, on the other hand, each acknowledge that the claims in this Agreement include all known and



unknown claims pertaining to DEHP allegedly contained in the Products that were sold in California before the Effective Date, 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. 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 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 Fitness Superstore 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 Fitness Superstore 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 Fitness Superstore:

Timothy French, President  
Fitness Superstore, Inc.  
537 Stone Rd. Ste. F  
Benecia, CA 94510

For KASB:

Laralei Paras, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

*With a copy to:*

Patrick Veasy, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814

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**

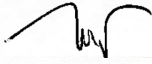
This Agreement may be modified only by a written agreement of the Parties.

**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.

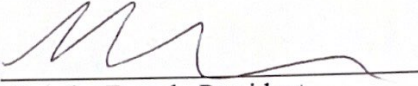
**AGREED TO:**

Date: 11/08/2022

By:   
\_\_\_\_\_  
Ngoc-Bich Hoang Vo, CEO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 11-8-22

By:   
\_\_\_\_\_  
Timothy French, President  
Fitness Superstore, Inc.