

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 Halcyon Manufacturing, Inc (“**Halcyon**”), with KASB and Halcyon 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 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 Halcyon 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 Halcyon manufactures, imports, sells, and distributes for sale in California waterproof notebooks with vinyl/PVC components containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Halcyon Diver’s Notebook SKU: 41.000.001*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Waterproof notebooks with vinyl/PVC components 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 May 9, 2022, KASB served Halcyon, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Halcyon 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

Halcyon denies the factual and legal allegations contained in the Notice and maintains all products it 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 Halcyon of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Halcyon's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean March 15, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products Halcyon manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall be either: (a) Reformulated Products, in compliance with and as defined by the Reformulation Standard set forth in Section 2.2; or (b) Products bearing a clear and reasonable warning pursuant to Sections 2.3 through 2.5.

2.2 Reformulation Standard & Reformulated Products Defined

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") or 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) in any "accessible component" (i.e. any component that may be touched during a reasonably foreseeable use) 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. (“**Reformulation Standard**”.)

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, Halcyon shall provide clear and reasonable health hazard warnings for all Products Halcyon manufactures, imports, distributes, sells or offers for sale in California that do not meet the Reformulation Standard. For purposes of this Agreement, a warning shall be deemed clear and reasonable, if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

Each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions prior to purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warning:

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

The Parties agree, should Halcyon determine additional chemical endpoints need to be included in the above warnings, Halcyon may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

(b) Foreign Language Requirement. Where a consumer product sign, label or tag used to provide a warning includes “consumer information”, as the term is defined in Title 27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then the accompanying warnings must also be provided in those languages.

2.4 On-Product Warning Requirements

Halcyon shall affix a warning on the Product Label, its packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in or into California. “Product Label” is defined as a display of written, printed or graphic material printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

Warnings provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. 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 sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

For all Products manufactured, imported, distributed, sold or offered for sale after the Effective Date via the internet to customers located in California, or sold in or into California, by Halcyon directly or through third-party websites over which Halcyon has the ability to control the application of warnings, Halcyon shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the

warning, using the word “WARNING” and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; 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 Product for which it is given in the same type size or larger than other consumer information provided for the Product. For third-party websites, as a condition of sale, Halcyon shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Halcyon agrees to pay a civil penalty of \$1,000 within ten (10) business days of the Effective Date. Halcyon’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. Halcyon shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Seven Hills LLP in trust for Keep America Safe and Beautiful**” 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; Payment Schedule; Terms

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. Halcyon agrees to pay a total of \$17,500 for all fees and costs incurred investigating, bringing this matter to Halcyon’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

The Parties agree to the following payment schedule, with all checks made payable to “Seven Hills LLP” and due within ten (10) business days of the Effective Date, to be deposited as pursuant to the following schedule. Halcyon shall issue an initial payment of \$10,000 to be payable within ten (10) business days of the Effective Date. The remaining \$7,500 shall be remitted within ten (10) business days of the Effective Date and shall be evenly divided into three (3) checks of \$2,500 each. These remaining individual checks shall deposited on the 22nd of each of the following months: April 30, 2023, May 30, 2023, and June 30, 2023, with the entire balance due under this Section paid in full no later than June 30, 2023.

In the event any of the payments under this Section 3 fails due to lack of funds or failure to adhere to terms detailed herein, KASB and Seven Hills LLP reserve their rights under this agreement to pursue all available remedies at law, including breach of contract or other remedies. Failure to comply with Halcyon’s payment obligations herein shall render this agreement invalid, except that the statute of limitations shall not be negatively affected: The Parties specifically agree no time shall be deemed to pass for purposes of enforcing this agreement, its terms, or the alleged violations in the Notice, based on failure to adhere to this Section. By this Section, KASB reserves its rights to enforce the noticed violations and the legal claims and defenses related thereto.

3.3 Payments; Reporting

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

When this agreement is fully executed by the Parties, counsel for KASB shall deliver to counsel for Halcyon, by electronic mail, a copy of the final Agreement and Federal Form W9s for all payees, allowing Halcyon to comply with its Federal reporting requirements. In return, counsel for Halcyon shall communicate payment tracking information when that information becomes available.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Halcyon

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Halcyon, 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 Halcyon, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Halcyon 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, arising under Proposition 65, about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Halcyon 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 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 Halcyon, before the Effective Date (collectively, “**Claims**”), against Halcyon and Releasees.

The Parties further understand and agree 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 Halcyon. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Halcyon’s Products. Downstream, third-party Product sellers who fail to provide a warning are not released by this Section 4.1.

4.2 Halcyon’s Release of KASB

Halcyon, 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.

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 Halcyon 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 Halcyon 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 Halcyon:

Jarrod Jablonski, CEO
Halcyon Manufacturing, Inc.
24587 NW 178th Pl.
High Springs, FL 32643

For KASB:

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

With a copy to:

Alton J. Hall, Jr., Esq.
Delise & Hall
528 W. 21st Avenue
Covington, LA 70433

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 20, 2023

By: 

My Nguyen, COO
Keep America Safe and Beautiful

AGREED TO:

Date: March 16, 2023

By: 

Jarrod Jablonski, CEO
Halcyon Manufacturing Inc.