

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 Steele Canvas Basket Corporation (“**SCBC**”), with KASB and SCBC 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 SCBC is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b). SCBC represents that it is a small family owned and operated manufacturer located in Massachusetts, that sells only a fraction of its products to California residents.

1.2 Consumer Product Description

KASB alleges that SCBC manufactures, imports, sells, and distributes for sale in California baskets with vinyl/PVC components containing diisononyl phthalate (“**DINP**”) including, but not limited to, Steele Canvas 2 Bushel Carry Basket, Product #20 2BU, SKU: 4253380, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Baskets with vinyl/PVC components are referred to hereinafter as the “**Products.**” DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Notice of Violation

On May 9, 2022, KASB served SCBC, West Elm, LLC, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging SCBC violated Proposition 65 by failing to warn its customers and consumers in California that certain of its baskets with vinyl/PVC components can expose users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

SCBC denies the factual and legal allegations contained in the Notice, including the allegations pertaining to whether the level of DINP present in the Products poses a significant health risk, 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 SCBC of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect SCBC'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 OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products SCBC 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 either: (a) 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 & 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, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation ("ILAC"). 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

SCBC shall provide clear and reasonable warnings for all Products 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 following warnings for Products containing one or more chemical(s) in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall be deemed in compliance with Title 27 California Code of Regulations § 25600, et seq.:

▲WARNING: This product can expose you to [DINP], 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.

- or -

▲WARNING: This product can expose you to [chemicals including] [DINP], which is known to the State of California to cause [cancer] and [chemicals including] [DEHP], which [is][are] 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.

The bracketed language in the proceeding warnings must be changed according to the listed phthalate chemical(s) in the product and the harms associated with exposure to the listed chemical(s). DINP may be

replaced with DEHP, DBP, BBP, DIDP, and/or DnHP according to the harms caused by each chemical and whether one or more than one phthalate is contained in the Product.

(b) **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

After the Grace Period, SCBC shall affix a warning to the Products' 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 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) 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, then 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 one of the Warnings described in subsection 2.3(a).

2.5 Internet Warnings

If, after the Effective Date, SCBC 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, SCBC shall provide warnings for the Products both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning or a clearly marked hyperlink to the warning using the word "**WARNING**" to the consumer or customer prior to completing the purchase such that the consumer or customer does not have to search for 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 and shall not require customers or customers to seek out the warning. For third-party websites, as a condition of sale, SCBC shall notify sellers that the Products be accompanied by a warning, prior to sale, in or into California, and shall supply the warning requirements, as detailed above.

2.6 Notice and Opportunity to Cure

To the extent KASB identifies any Product in the future KASB believes is not in compliance with this Agreement, KASB agrees to advise SCBC of such alleged non-compliance, in the manner set forth in Section 7, and will provide SCBC with 30 business days, calculated from the date notice is served, to cure any alleged non-compliance with this Agreement, pursuant to this Section. Such notice to SCBC shall contain information sufficient for SCBC to identify the allegedly violative product and to distinguish it from other products, by providing information, such as the name or product UPC or SKU number. If the alleged non-compliance is cured, KASB shall take no further action to enforce Proposition 65 with respect to the alleged failure to comply with the terms of this Agreement, and the matter shall be deemed to be resolved. A cure of the alleged non-compliance shall be deemed to have taken place when accused products sold 30 days or more after notice is provided are either reformulated or provided by SCBC with warnings in compliance with this Agreement. In the event SCBC fails to conform to the material terms of this Section and does not cure, after notice is provided, KASB reserves its rights to enforce the alleged violation.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), SCBC agrees to pay a civil penalty of \$6,500.00 within five (5) business days of the Effective Date. SCBC'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. SCBC shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$4,875.00; and (b) “**Seven Hills LLP in Trust for KASB**” in the amount of \$1,625.00. 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 five (5) days of the Effective Date, SCBC agrees to issue a check in the amount of \$22,500.00 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to SCBC’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

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of SCBC

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and SCBC, 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 SCBC, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom SCBC 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 DINP contained in the Products that were manufactured, distributed, sold and/or offered for sale by SCBC 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 DINP in the Products manufactured, distributed, sold and/or offered for sale by SCBC, before the Effective Date (collectively, “**Claims**”), against SCBC 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 SCBC nor (b) to Releasees who have been instructed by SCBC pursuant to section 2.5, 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 SCBC’s Products.

4.2 SCBC’s Release of KASB

SCBC, 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 SCBC 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 SCBC 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 SCBC:

John Lordan, President
Steele Canvas Basket Corporation
201 Williams St.
Chelsea, MA 02150

For KASB:

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

With a copy to:

Robert Goldberg, Esq.
Cirlin Goldberg LLP
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212

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: 05/02/2023

By: 
My Nguyen, COO
Keep America Safe and Beautiful

AGREED TO:

Date: 05-01-2023

By: 
John Lordan, President
Steele Canvas Basket Corporation