

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information

Original Filing Supplemental Filing Corrected Filing

PARTIES TO THE ACTION	PLAINTIFF(S) Keep America Safe and Beautiful		
	DEFENDANT(S) INVOLVED IN SETTLEMENT VSB Opco, LLC		
CASE INFO	COURT DOCKET NUMBER No Complaint Filed		COURT NAME
	SHORT CASE NAME		
REPORT INFO	INJUNCTIVE RELIEF See Section 2 of Attached Settlement Agreement.		
	PAYMENT: CIVIL PENALTY \$2,000.00	PAYMENT: ATTORNEYS FEES \$28,000.00	PAYMENT: OTHER
	WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL	DATE SETTLEMENT SIGNED 12 / 23 /2022
	COPY OF SETTLEMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT Arturo Padilla		
	ORGANIZATION AVJustice	TELEPHONE NUMBER (323) 744-1671	
	ADDRESS 12155 Mora Drive, Suite 17	FAX NUMBER ()	
	CITY Sante Fe Springs	STATE CA	ZIP 90015

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1. Keep America Safe and Beautiful and VSB Opco, LLC

This Settlement and Release Agreement (“Settlement Agreement”) is entered into by and between Keep America Safe and Beautiful (“KASB”), on the one hand, and VSB Opco, LLC (“VSB”), on the other hand, with KASB and VSB collectively referred to as the “Parties.”

1.2. General Allegations

KASB alleges that VSB manufactured and/or distributed and offered for sale in the State of California Popchips Cassava Chips containing lead, and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. Product Description

The products that are covered by this Settlement Agreement are defined as “Popchips Cassava Chips” that VSB has sold, offered for sale or distributed in California. All such items shall be referred to herein as the “Products.”

1.4. Notice of Violation

On May 27, 2022, KASB served Popchips, LLC; VSB Opco, LLC; and iHerb, LLC (collectively, the “Noticed Parties”), and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the Noticed Parties and such public enforcers with notice that the Noticed Parties were allegedly in violation of California

Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. No Admission

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning VSB's compliance with Proposition 65. VSB denies the material factual and legal allegations contained in KASB's Notice and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by VSB of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by VSB of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by VSB on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of VSB under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

No later than twelve (12) months after the Effective Date, VSB may, in its sole discretion, either cease selling, offering for sale, or distributing the Products in California, or may manufacture, import, or otherwise source for authorized sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are

labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below.

Products that were manufactured, supplied or contracted to be supplied to third parties by VSB prior to 12 months after the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled.

2.1. Reformulation Standards

The Products shall be deemed to comply with Proposition 65 (and therefore be considered “Reformulated Products”) with regard to lead and be exempt from any Proposition 65 warning requirements for lead if the level of lead in the Products does not exceed 17.8 ppb (parts per billion).

2.2. Warning Language

If the Products do not comply with the standards set forth in Section 2.1 above within twelve (12) months of the Effective Date, VSB shall provide Proposition 65 warnings on the Product’s label as follows:

(a) VSB may use either of the following warning statements in full compliance with this Section (the words in brackets are optional):

(1) **WARNING:** Consuming this product can expose you to chemicals including lead, 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/food

(2) **WARNING:** [Cancer and] Reproductive Harm – www.P65Warnings.ca.gov.

(b) The requirements for warnings set forth in subsection (a) above are imposed pursuant to the terms of this Settlement Agreement. The Parties

recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

(c) If Proposition 65 warnings for lead should no longer be required due to changes in law, VSB shall have no further obligations pursuant to this Settlement Agreement.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, VSB shall pay a total of \$2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to KASB. KASB’s counsel shall be responsible for delivering OEHHA’s portion and KASB’s portion of the penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, VSB shall reimburse KASB’s counsel for fees and costs, incurred as a result of investigating and bringing this matter to VSB’s attention. VSB shall pay KASB’s counsel \$28,000 for all attorneys’ fees, expert and investigation fees, and related costs associated with this matter and the Notice.

5. PAYMENT INFORMATION

By December 31, 2022, VSB shall make a total payment of Thirty Thousand Dollars (\$30,000) for the civil penalties and attorney's fees / costs by wire transfer to KASB's counsel AVJUSTICE LAW FIRM:

Bank: Wells Fargo Bank, N.A.

Routing No.: 122000247

Account No.: 8685506365

Beneficiary: AVJustice, PLC

Other than these payments, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of VSB, The Noticed Parties, Downstream Customers, and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4, and 5 above, KASB, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims 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 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) the Noticed Parties, including VSB; (b) VSB's manufacturers; (c) each of VSB's downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, including but not limited to iHerb, LLC; (d) VSB's parent companies, corporate affiliates, subsidiaries, doing

business as entities (“DBAs”), predecessor companies, successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, including but not limited to Popchips LLC and VSB Opco, LLC dba Velocity Snack Brands; and (e) any third-party re-seller(s) who sold, offered for sale or distributed the Products in California, whether such actions were authorized by VSB or unauthorized (collectively “Releasees”).

KASB also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against VSB and the Releasees. KASB acknowledges that it is familiar with California Civil Code section 1542, which provides 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, in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

6.2. VSB's Release of KASB

VSB waives any and all claims against KASB, 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Products.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then VSB shall have no further obligations pursuant to this Settlement Agreement.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by:

(i) electronic mail; or (ii) overnight courier on any party by the other party at the following addresses:

For VSB: Trenton H. Norris, Esq.
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center, 10th Floor
San Francisco, CA 94133

For KASB: Arturo Padilla, Esq.
AVJUSTICE LAW FIRM
714 W. Olympic Blvd
Suite 450
Los Angeles, CA 90015

Any party, from time to time, may specify in writing to the other party a change of address or electronic mail to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, 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 HEALTH & SAFETY CODE SECTION 25249.7(f)

KASB agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT


This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<p style="text-align: center;">AGREED TO:</p> <p>Date: December <u>23</u>, 2022</p> <p>By:  _____ on behalf of Keep America Safe and Beautiful</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: December <u>23</u>, 2022</p> <p>By: <u>Aaron Greenwald</u> _____ on behalf of VSB Opco, LLC</p>
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