

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 Dynacraft BSC, Inc. (“**Dynacraft**”), with KASB and Dynacraft 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 Dynacraft 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 Dynacraft manufactures, imports, sells, and distributes for sale, in or into, California vinyl/PVC bicycle seats containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Dynacraft 20 Inch Wipeout Boys BMX Bike with Front Hand Brake, Red; UPC 087876111696; MPN 8111-69*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC bicycle seats 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 June 23, 2022, KASB served Dynacraft, Walmart Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Dynacraft 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

Dynacraft 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 Dynacraft of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Dynacraft's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean October 4, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products Dynacraft 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) in compliance with the Reformulation Standard for Reformulated Products, as defined by Section 2.2, below; 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 containing di(2-ethylhexyl) phthalate ("DEHP") 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

Within 30 days of the Effective Date, and continuing thereafter, Dynacraft shall provide clear and reasonable health hazard warnings, in accordance with this Section and pursuant to 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, for all Products Dynacraft manufactures, imports, distributes, sells, or offers for sale, in or into California, that do not meet the Reformulation Standard.


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) Warnings:

 **WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP), which 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.

Or

(b) Short-Form Warning: As an alternative to the warning set forth in the preceding subsection (a), Dynacraft may, but is not required to, use the following short-form warning (“Short-Form”), subject to the additional requirements set forth in the following Sections 2.4 and 2.5:

 **WARNING:** Cancer and Reproductive Harm-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 On-Product Warning Requirements

Dynacraft shall affix one of the foregoing warnings on the “Product Label,” its packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided or intended to be provided for sale to consumers in or into California and does not meet the Reformulation Standard. “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, then 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 Dynacraft directly or through third-party websites over which Dynacraft has the ability to control the application of warnings, Dynacraft 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 be transmitted in accordance with Cal. Code Regs., tit. 27, § 25602(b),

specifically, on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. For third-party websites, as a condition of sale, Dynacraft 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), Dynacraft agrees to pay a civil penalty of \$1,500 within ten (10) business days of the Effective Date, in conformity with the terms outlined in Section 3.3, below. Dynacraft'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. Dynacraft shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,125; and (b) "Seven Hills LLP in Trust for Keep America Safe and Beautiful" in the amount of \$375. 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 ten (10) business days of the Effective Date,

Dynacraft agrees to issue a check in the amount of \$20,000 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Dynacraft’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 & Terms

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 Settlement Agreement is fully executed by the Parties, counsel for KASB shall remit to counsel for Dynacraft a copy of the agreement, along with Federal Form W9s for all payees herein: OEHHA, KASB and Seven Hills LLP. The Parties agree that no payment shall become due until such information is transmitted. The Parties further agree such transmission may be satisfied by an electronic message with attachments, such being deemed sent at the time the message is posted and no return or acknowledging response required.

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of Dynacraft

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Dynacraft, 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 Dynacraft, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Dynacraft directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including Walmart Inc., Wal-Mart Stores Inc., Wal-Mart Stores East, Inc. Wal-Mart Stores East, LP, Walmart Apollo, LLC, Wal-Mart.com, Inc., and Wal-Mart.com USA, LLC, , and each of

their past, present and future owners, shareholders, directors, officers, employees, attorney, insurers, representatives, franchisees, cooperative members, successors, assigns, and each entity to whom Dynacraft 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 Products, as specifically defined in Section 1.2, that were manufactured, distributed, sold and/or offered for sale by Dynacraft in California prior to 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, as defined by Section 1.2, that were manufactured, distributed, sold and/or offered for sale by Dynacraft, before the Effective Date (collectively, “**Claims**”), against Dynacraft 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 Dynacraft, nor shall this Section 4.1 apply to any downstream entities who fail to provide a warning pursuant to the foregoing Section 2. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Dynacraft’s Products, as defined under Section 1.2.

4.2 Dynacraft’s Release of KASB

Dynacraft, 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.

The Parties each acknowledge familiarity with Section 1542 of the California Civil Code 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.

The Parties, each on their own behalf, and each on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which it/they may have under, or which may be conferred upon it/them by the provisions of 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 they may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by preceding Sections 4.1 and 4.2. Nothing in this section shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve 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 Dynacraft 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 Dynacraft 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 Dynacraft:

Dynacraft BSC, Inc.
Legal Department
Attn. Susy Mueller
1501 Crossgate Road
Port Wentworth, GA 31407

For KASB:

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

With a copy to:

Bernard Gehlhar, Esq.
Burke, Williams & Sorensen, LLP
1 California Street, Suite 3050
San Francisco, CA 94111

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.

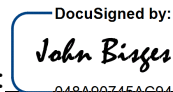
AGREED TO:

Date: 10/04/2023

AGREED TO:

Date: 10/3/2023

By: 
My Nguyen, COO
Keep America Safe and Beautiful

By: 
John Bisges, Managing Director
Dynacraft BSC, Inc.