

# 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 Friends Beauty Supply, Inc. (“**Friends**”), with KASB and Friends 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 eliminate harmful chemicals from consumer products. Friends is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

### 1.2 Consumer Product Description

Friends distributes, sells and causes to be sold, in and into California, vinyl bags containing the phthalate chemical di(2ethylhexyl) phthalate (“**DEHP**”), including, but not limited to, the *Friends Set Bag Round Clear, SKU 856563*, without providing the warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl bags 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 July 8, 2022, KASB served Friends, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Friends violated Proposition 65 by failing to warn its customers and consumers in California the Products can expose users to DEHP. To the best of the Parties knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

### 1.4 No Admission

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

### **1.5 Effective Date**

For purposes of this Agreement, “**Effective Date**” shall mean July 21, 2023.

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

### **2.1 Commitment to Reformulate or Warn**

Commencing within thirty (30) days of the Effective Date and continuing thereafter, all Products Frends manufactures, distributes, sells or offers for sale, in or into California, shall be either: (a) in compliance with the Reformulation Standard for Reformulated Products, as defined by Section 2.2; or (b) be accompanied by a clear and reasonable warning, pursuant to the following Sections 2.3 through 2.5.

### **2.2 Reformulation Standard 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) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization.


(“**Reformulation Standard**”.) 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.

### **2.3 Warnings**


For all Products that do not meet the Reformulation Standard, pursuant to Title 27 California Code of Regulations § 25600, *et seq.*, Frends shall provide clear and reasonable warnings for Products that are provided for sale to customers and consumers in California. 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) **Warnings.** The Warning for Products containing DEHP shall consist of the following statement:

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

Frends may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), subject to the additional requirements in Sections 2.4 and 2.5, as follows:

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

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

The warning requirements set forth herein 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, Frends may follow the procedure set out in Title 27, California Code of Regulations, § 25600.2 or a similar procedure to provide warnings for the Products consistent with this Agreement.

## **2.4 Product Warnings.**

Frends shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For the purpose of this Consent Judgment, “**Product label**”

means a display of written, printed or graphic material that is printed on or affixed to each of a Product or its immediate packaging, container or wrapper. Pursuant to Section 2.4, the word “**WARNING:**” must appear 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 a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the Products.

### **2.5 Internet Warnings.**

If, after the Effective Date, Frends sells Products via the internet, directly or indirectly through customers that sell the Products into California, Frends shall, for websites to which it has access and control, provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase and without requiring the purchaser to search for the warning in the general content of the website. For all other websites, Frends shall communicate the duty to provide a warning, as a condition of sale. The warning or a clearly marked hyperlink to the warning, using the word “**WARNING**” and 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 during the checkout process. In any of the preceding instances, the warning shall appear adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or a type size larger than other consumer information provided for the Products. Frends may use the Short-Form Warning for internet Product sales, if the warning provided on the Product label is also the Short-Form Warning.

### **2.6. Statutory or Regulatory Change**

If the Office of Environmental Health Hazard Assessment regulations require or permit specific safe harbor warning text and/or methods of transmission different than those set forth

above, Frends shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Settlement Agreement. If regulations, legislation, or judicial rulings are enacted or issued, providing that a Proposition 65 warning for the Product is no longer required, a lack of warning will not thereafter be a breach of this Agreement, provided Frends complies with Section 6 by providing written notice.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Frends agrees to pay a civil penalty of \$1,000 within ten (10) business days of the Effective Date. Frends' 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. Frends 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 KASB**” 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**

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. After the Parties finalized the other material settlement terms, they negotiated 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. Within ten (10) business days of the Effective Date, Frends agrees to issue a check in the amount of \$18,000 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to Frends' 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 Friends**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Friends, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its agents, representatives, attorneys, successors, and/or assignees, against Friends, its past and current parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Friends directly or indirectly distributes or sells Products, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn about alleged exposures to DEHP, arising under Proposition 65 contained in Products distributed, sold and/or offered for sale by Friends in California before the Effective Date, as alleged in the Notice, regardless of the date any other Releasee distributes the Products.

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, 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 Friends, before the Effective Date (collectively, “**Claims**”), against Friends and Releasees.

The Parties 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 Friends. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Friends's Products. The Parties agree this Section 4.1 release shall not extend downstream to third-party websites or other retailers failing to communicate a warning, pursuant to Section 2.

Finally, it is the Parties' understanding that the commitments Friends has agreed to herein and the actions to be taken by Friends under the terms of this Settlement Agreement would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the Parties' intent, to the extent any other private party initiates an action alleging a violation of Proposition 65 based on Friends's or Releasees' failure to provide a compliant health hazard warning concerning exposure to DEHP for Products Friends manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant public benefit as to the Products addressed in this Settlement Agreement, provided that Friends is in material compliance with this Settlement Agreement.

#### **4.2 Friends's Release of KASB**

Friends, 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 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 Sections 4.2 and 4.3, above. 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 Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Friends 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 Friends 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 Friends:

Ryan Landis  
Gordon Rees Scully Mansukhani LLP  
5 Park Plaza, St 1100  
Irvine, CA 92614

For KASB:

Kimberly Gates Johnson, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
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: 08/24/2023

By:   
\_\_\_\_\_

My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 8-21-23

By:   
\_\_\_\_\_

Paul Esper, President  
Friends Beauty Supply, Inc