

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 Cinema Secrets, Inc. (“**Cinema Secrets**”), with KASB and Cinema Secrets 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 Cinema Secrets 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 that Cinema Secrets manufactures, imports, sells, and distributes for sale in California vinyl/PVC bags containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Makeup Bag Clear, Medium*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC bags are referred to hereinafter, collectively, 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 Notices of Violation

On September 13, 2022, KASB served Cinema Secrets, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Cinema Secrets violated Proposition 65 by failing to warn its customers and consumers in California that its vinyl/PVC bags can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notices.

1.4 No Admission

Cinema Secrets denies the factual and legal allegations contained in the Notices and maintains that

all products it has 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 Cinema Secrets of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Cinema Secrets' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement has been signed by both parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing thirty (30) days after the Effective Date and continuing thereafter, all Products Cinema Secrets newly manufactures, imports, sells, ships, or distributes for sale in or into California, except for Products that were manufactured prior to thirty (30) days after the Effective Date, 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 (thereby constituting "Reformulated Products"); or (b) be labeled with a clear and reasonable exposure warning pursuant to Section 2.3 below (thereby constituting "Labeled Products"). The warning requirements set forth in Section 2.3 shall not apply to any Reformulated Products, and the reformulation requirements set forth in Section 2.2 shall not apply to any Labeled Products.

2.2 Reformulation Standard

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") (collectively, "**Phthalates**"), contain any or all such chemicals each 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. For

purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 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 Clear and Reasonable Warnings

Cinema Secrets 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 [chemicals including] [di(2-ethylhexyl) phthalate (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.

- or -

⚠WARNING: This product can expose you to [chemicals including] [di(2-ethylhexyl) phthalate (DEHP)], which [is][are] are known to the State of California to cause [cancer] [and] [birth defects or other reproductive harm] and [chemicals including] [diisononyl phthalate (DINP)], which [is][are] are known to the State of California to cause [cancer]. 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). Di(2-

ethylhexyl) phthalate (DEHP) may be replaced with di-n-butyl phthalate (DBP), diisononyl phthalate (DINP), butyl benzyl phthalate (BBP), di-isodecyl phthalate (DIDP) or di-n-hexyl phthalate (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

Cinema Secrets shall affix a warning to the Product 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, 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, Cinema Secrets 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 or to customers with nationwide distribution or e-commerce websites, Cinema Secrets shall provide warnings for the Products both 1) on the Product label, in accordance with Section 2.4, and 2) 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. A warning is not prominently displayed if the purchaser must search for it in the general content of the website. Where Cinema Secrets sells, ships, or distributes Products, that are not Reformulated Products, to third-party retailers or e-commerce marketplaces, Cinema Secrets shall advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Cinema Secrets agrees to pay a civil penalty of \$1,500 within five (5) business days of the Effective Date. Cinema Secrets' 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. Cinema Secrets 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 KASB" 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 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.

Cinema Secrets shall pay a total sum of \$19,500 for all fees and other costs incurred investigating, bringing this matter to Cinema Secrets' attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. The attorneys' fees and costs payments shall be made as detailed in subsection (a) and shall be deposited according to the schedule detailed there and subject to its terms.

(a) Attorneys' Fees & Costs: Installment Agreement Terms & Timing

Cinema Secrets agrees to provide all attorneys' fees and costs payments due under this Agreement within five (5) business days of the Effective Date. The Parties agree the payment of attorneys' fees and costs, totaling \$19,500, shall be broken into four equal installment payments of \$4,875. All payments under this Section shall be made in the form of individual checks payable to "Seven Hills LLP" and delivered to the address below, in Section 3.3. Upon receipt, Seven Hills LLP shall immediately deposit the initial payment of \$4,875. Seven Hills LLP agrees to hold the remaining (3) installment payments and deposit them on or about the 30th of each of the following months: November 2023, December 2023, and January 2024.

Cinema Secrets agrees and understands, should any installment payment due under this Section or this Agreement fail due to insufficient funds, KASB shall advise Cinema Secrets in the manner set forth in Section 7, and will provide Cinema Secrets ten (10) business days, calculated from the date notice is provided, to cure any non-compliance under this Agreement, pursuant to this Section, before any remaining payments become due and payable. In the event Seven Hills LLP incurs fees for any returned checks, Cinema Secrets agrees to reimburse KASB's counsel for such fees.

Cinema Secrets acknowledges that, until the last installment payment is deposited and clears with sufficient funds, KASB reserves the right to institute a proceeding under Proposition 65, including the filing of a complaint based on the allegations in the Notice, a suit based on breach of or failure to perform under a contract, or any other remedy allowable under law. In the event any such action is brought; Cinema Secrets retains all defenses and does not hereby waive any potential defenses.

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 Cinema Secrets

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Cinema Secrets, 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 Cinema Secrets, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Cinema Secrets 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 under Proposition 65 about alleged exposures to Phthalates contained in the Products that were manufactured, distributed, sold and/or offered for sale by Cinema Secrets in California before the Effective Date, as alleged in the Notices.

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 Phthalates in the Products manufactured, distributed, sold and/or offered for sale by Cinema Secrets, before the Effective Date (collectively, “**Claims**”), against Cinema Secrets 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 Cinema Secrets nor (b) to Releasees who have been instructed by Cinema Secrets, 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 Cinema Secrets' Products.

4.2 Cinema Secrets' Release of KASB

Cinema Secrets, 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 Phthalates in 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 Cinema Secrets 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 Cinema Secrets 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 Cinema Secrets:

Michael Stein, CEO
Cinema Secrets, Inc.

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP

6636 Odessa Avenue
Van Nuys, CA 91406

4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Megan Caldwell, Esq.
Husch Blackwell LLP
1801 Wewatta Street, Suite 1000
Denver, CO 80202

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.

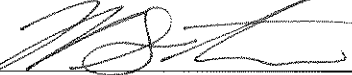
AGREED TO:

Date: 10/17/2023

By: 
My Nguyen, Chief Financial Officer
Keep America Safe and Beautiful

AGREED TO:

Date: 10-17-2023

By: 
Michael Stein, Chief Executive Officer
Cinema Secrets, Inc.