

1 Laralei S. Paras, State Bar No. 203319
2 Brian C. Johnson, State Bar No. 235965
3 SEVEN HILLS LLP
4 4 Embarcadero Center, Suite 1400
5 San Francisco, CA 94111
6 Telephone: (415) 926-7247
7 Email: laralei@sevenhillslp.com
8 Email: brian@sevenhillslp.com

9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 Allan B. Gelbard, State Bar No. 184971
12 LAW OFFICES OF ALLAN B. GELBARD
13 15760 Ventura Blvd., Ste. 801
14 Encino, CA 94136-3018
15 Telephone: (818) 386-9200
16 XXXEsq@AOL.com

17 Attorneys for Defendant
18 THE STOCKROOM, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 FOR THE COUNTY OF MARIN

21 KEEP AMERICA SAFE AND BEAUTIFUL,

22 Plaintiff,

23 v.

24 THE STOCKROOM, INC.; and DOES 1-30,
25 inclusive,

26 Defendants.

Case No. CV0001483

**[PROPOSED] PROPOSITION 65
SETTLEMENT AND RELEASE
AGREEMENT**

Case filed: December 5, 2023

Trial: Not set

27 **1. INTRODUCTION**

28 This Proposition 65 Settlement and Release Agreement (“Settlement”) is entered by and
between plaintiff Keep America Safe and Beautiful (“KASB”) and defendant The Stockroom, Inc.
 (“Stockroom”), with KASB and Stockroom each individually referred to as a “Party” and collectively,
as the “Parties,” to resolve the allegations in KASB’s September 13 and September 19, 2022, 60-Day

1 Notices of Violation in compliance with the Safe Drinking Water and Toxic Enforcement Act of 1986,
2 Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

3 **1.1 The Parties**

4 KASB is a California-based non-profit organization proceeding in the public interest pursuant
5 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
6 California to cause cancer and birth defects, or other reproductive harm are disclosed to consumers
7 and end-users in California, or reduced or eliminated from consumer products sold in California.
8 Stockroom is a person in the course of doing business for purposes of California Health & Safety
9 Code § 25249.11(b).

10 **1.2 Consumer Product Description**

11 KASB alleges that Stockroom imports, sells, or distributes for sale in California (i) Faux
12 Leather Harnesses and Vinyl/PVC Bulb Pumps with components containing di(2-ethylhexyl)
13 phthalate (“DEHP”), including but not limited to the *Inflatable Anal Plug Harness for Men, SKU:*
14 *J402*, without providing the health hazard warning KASB alleges is required by California Health &
15 Safety Code § 25249.5 *et seq.* (“Proposition 65”). All such harnesses and vinyl/PVC bulb pumps with
16 components containing DEHP are referred to hereinafter as the “Products.” DEHP is listed pursuant
17 to Proposition 65 as a chemical known to the State of California to cancer and birth defects or other
18 reproductive harm.

19 **1.3 Notices of Violation**

20 On September 13, 2022 and September 19, 2022, respectively, KASB served Stockroom, the
21 Office of the California Attorney General (“OAG”), and all requisite public enforcement agencies
22 with a two 60-Day Notices of Violation of Proposition 65 (the “Notices”). In its Notices, KASB
23 alleges Stockroom violated Proposition 65 by failing to warn its customers and consumers in
24 California the Products can expose users to DEHP. No public enforcer has commenced and is
25 diligently prosecuting an action to enforce the allegations set forth in the Notices.

26 **1.4 Complaint**

27 On December 5, 2023, KASB commenced the instant action (“Complaint”), naming
28 Stockroom as a defendant for the alleged violations of Proposition 65 that are the subject of the
Notices.

1 **1.5 No Admission**

2 Stockroom denies the material, factual and legal allegations contained in the Notices and
3 Complaint and maintains that all products it sold or distributed for sale in California, including the
4 Products, comply with all laws. Neither any term of this Settlement nor Stockroom’s compliance with
5 its terms shall be deemed an admission by Stockroom of any fact, finding, legal issue or conclusion,
6 or violation of law. This Section shall not, however, diminish or otherwise affect Stockroom’s
7 obligations, responsibilities, and duties under this Settlement.

8 **1.6 Jurisdiction**

9 For purposes of this Settlement only, the Parties stipulate that this Court has jurisdiction over
10 Stockroom as to the allegations in the Complaint; that venue is proper in the Superior Court for the
11 County of Marin; and that the Court has jurisdiction pursuant to Proposition 65 and Code of Civil
12 Procedure § 664.6 to enter and enforce the provisions of this Settlement.

13 **1.7 Effective Date**

14 The term “Effective Date” means the date on which the Court enters an order approving this
15 Settlement as contemplated by Section 5, below.

16 **2. SETTLEMENT TERMS**

17 **2.1 Product Warnings**


18 For all Products specified in Paragraph 1.2 above, Stockroom represents that it does not
19 currently sell or offer the Products for sale. However, should Stockroom decide to resume sales of the
20 Products after the Effective Date , Stockroom shall provide clear and reasonable warnings for any
21 Products sold or offered for sale to customers in California in accordance with this Section pursuant
22 to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be prominently placed
23 with such conspicuousness as compared with other words, statements, or designs as to render it likely
24 to be read and understood by an ordinary individual under customary conditions before purchase or
25 use and shall be provided in a manner such that it is clearly associated with the specific Product to
26 which the warning applies. The warning for Products containing DEHP in amounts greater than 1,000
ppm (0.1%) shall consist of one of the following statements:

27 **(a) Warning:** The Warning (i.e., Long-Form Warning) shall consist of the following statement:

28 **⚠ WARNING:** This product can expose you to chemicals including

1 di(2-ethylhexyl) phthalate [DEHP], which is known to the State of
2 California to cause cancer and birth defects or other reproductive
harm. For more information go to www.P65Warnings.ca.gov.

3 **(b) Short-Form Warning:** Stockroom may but is not required to use the following short-form
4 warning set forth in this Section 2.3(b) (“Short-Form Warning) subject to the additional requirements
5 set forth in sections 2.4 and 2.5, below).

6  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

7
8 **(c) Internet Warnings**

9 If, after the Effective Date, Stockroom sells Products via the internet to customers in California,
10 Stockroom shall provide warnings for each Product both on the Product label in accordance with
11 Section 2.1(a) and/or 2.1(b) , and by including either the warning or a clearly marked hyperlink using
12 the word “**WARNING**” on the product display page, or by otherwise prominently displaying the
13 warning to the purchaser prior to completing the purchase and without requiring the purchaser to search
14 for the warning in the general content of the website.

15 The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given
16 in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web
17 page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the
18 Products; or (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.

19 The warning shall appear in any of the above instances adjacent to or immediately following
20 the display, description or price of the Products for which it is given in the same type size or larger than
21 other consumer information provided for the Products. The internet warning may use the Short-Form
22 Warning content described in Section 2.1(b).

23 **(d) Foreign Language Requirement**

24 Where a consumer product sign, label or shelf tag used to provide a warning includes
25 “Consumer Information”, as that term is defined in Title 27 California Code of Regulations section
26 25600.1(c), in a language other than English, the warning must also be provided in such other
27 language(s).

1 **2.2 Civil Penalty**

2 Pursuant to Health and Safety Code § 25249.7(b), Stockroom agrees to pay a civil penalty of
3 \$1,000 within ten (10) days of the Effective Date. Stockroom’s civil penalty payment will be
4 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
5 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
6 (“OEHHA”), and the remaining twenty-five percent (25%) retained by KASB. Stockroom shall issue
7 its payment in two checks made payable to: (a) “OEHHA” in the amount of \$750; and (b) “Seven
8 Hills LLP in trust for Keep America Safe and Beautiful” in the amount of \$250. KASB’s counsel
9 shall deliver to OEHHA and KASB their respective portions of the penalty payment.

10 **2.3 Reimbursement of Attorneys’ Fees and Costs**

11 Within ten (10) days of the Effective Date, Stockroom shall issue a total sum of \$19,000 in 10
12 separate checks payable to “Seven Hills LLP” according to the following schedule:

- 13 (1) One (1) check for \$9,000 payable to Seven Hills LLP and dated at the time it is
14 sent to KASB’s counsel; and
15 (2) Ten (10) checks for \$1,000 each postdated for deposit on the first of each
16 month December 1, 2024, through August 1, 2025.

17 KASB’s counsel represents, warrants and guarantees no check shall be deposited until on or
18 after the check date according to the schedule set forth above. Stockrooms payment of \$19,000 shall
19 cover all fees and costs incurred by KASB and its counsel investigating, bringing this matter to
20 Stockroom’s attention, litigating, negotiating a settlement in the public interest, obtaining the Court’s
21 approval of its terms pursuant to Section 5, and reporting the Parties’ settlement to the OAG.

22 **2.4 Payments**

23 All payments payable and due under this Settlement shall be delivered to KASB’s counsel at
24 the following address:

25 Seven Hills LLP
26 Attn: Laralei Paras, Esq.
27 4 Embarcadero Center, Suite 1400
28 San Francisco, CA 94111

1 **3. CLAIMS COVERED AND RELEASED**

2 **3.1 KASB's Release of Proposition 65 Claims**

3 This Settlement is a full, final, and binding resolution of the claims that were or could have
4 been asserted by KASB arising out of the allegations in the Notices and Complaint. KASB, acting on
5 its own behalf, in the public interest, and on behalf of its past and current agents, representatives,
6 attorneys, successors and assignees ("Releasers") releases Stockroom, its past and present parents,
7 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,
8 and each entity to whom Stockroom directly or indirectly distributes or sells the Products including,
9 but not limited to, its downstream distributors, wholesalers, marketplace hosts, customers, retailers,
10 franchisees, cooperative members, and licensees ("Releasees") based on the failure to provide a clear
11 and reasonable warning under Proposition 65 about actual or alleged exposures to DEHP in Products
12 distributed, sold and/or offered for sale in California before the Effective Date, as set forth in the
13 Notices and Complaint.

14 The Parties further understand and agree these releases shall not extend upstream to any entity
15 who supplied the Products, or any component part thereof, to Stockroom. Nothing in these Section 4
16 releases shall affect KASB's right to commence or prosecute an action under Proposition 65 against a
17 Releasee that does not involve Stockroom's Products.

18 **3.2 KASB's Individual Release of Claims**

19 KASB, in its individual capacity as a nonprofit corporation only and not in its representative
20 capacity, also hereby provides a release to Stockroom and the Releasees which shall be effective as a
21 full and final accord and satisfaction, as a bar to all actions, causes of actions, obligations, costs,
22 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of KASB of any nature,
23 character, or kind arising out of alleged or actual exposures to DEHP in Products sold or distributed
24 for sale in or into California by Stockroom prior to the Effective Date. Nothing in this section shall
25 affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that
26 does not involve Stockroom's Products.

27 **3.3 Stockroom's Release of KASB**

28 Stockroom, on its own behalf and on behalf of its past and current agents, representatives,
attorneys, successors, and assignees, hereby waives all claims against KASB and its attorneys and

1 other representatives, for any actions taken or statements made (or those that could have been taken
2 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
3 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
4 Products.

5 **3.4 MUTUAL WAIVER OF CIVIL CODE § 1542**

6 KASB and Stockroom, each acting on its own behalf, and not in a representative capacity or
7 in the public interest, intend the foregoing releases to be a full release and to constitute a full and final
8 accord and satisfaction extending to all claims of any nature which may exist in their favor arising
9 from or relating to the matters released herein, including claims which each Party does not know or
10 suspect to exist at the time of the execution of this Agreement including, without limitation,
11 Stockroom’s alleged failure to warn about exposures to DEHP in the Products prior to the Effective
12 Date. The Parties, having been informed of the significance and consequences of the following
13 waiver expressly and knowingly waive any and all rights they may have under any statute, code,
14 ordinance or the common law, which may limit or restrict the effect of a general release as to released
15 claims which they do not know or suspect to exist in their favor at the time of the execution of this
16 Agreement, including, to the extent deemed applicable, all rights under California Civil Code section
17 1542, which provides as follows:

18 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
19 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE**
20 **TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST**
21 **HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”**

22 **4. COURT APPROVAL**

23 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
24 motion for judicial approval of this Settlement. The Parties agree to mutually employ their best
25 efforts, and those of their counsel, to support the Court’s approval of this Settlement, and to seek and
26 obtain such judicial approval of in a timely manner. For purposes of this section, “best efforts” shall
27 include, at a minimum, supporting the motion for approval, responding to any third-party objection,
28 and appearing at the hearing before the Court if so requested.

1 **5. DISMISSAL OF THE ACTION FOLLOWING COURT APPROVAL**

2 KASB and its counsel agree, warrant and represent that within ten (10) days of receiving
3 Stockroom’s civil penalty and attorneys’ fees payments pursuant to Sections 3.1 and 3.2, above,
4 KASB shall file a Judicial Council form Request for Dismissal with prejudice of the entire action of
5 all parties and all causes of action. As noted in Section 1.6, above, the Parties and their counsel agree
6 and acknowledge the Court shall retain jurisdiction pursuant to Code of Civil Procedure § 664.6 to
7 oversee and enforce the terms of the Parties’ Settlement set forth herein.

8 **6. SEVERABILITY**

9 If, subsequent to the Court’s approval of this Settlement, any provision of this Settlement is
10 deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
11 affected.

12 **7. GOVERNING LAW**

13 The terms of this Settlement shall be governed by the laws of the State of California and apply
14 within California. If Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by
15 reason of law generally, or as to the Products, then Stockroom may seek a modification pursuant to
16 Section 13, below. Nothing in this Settlement shall be interpreted to relieve Stockroom from its
17 obligation to comply with any applicable state or federal law or regulation.

18 **8. NOTICE**

19 Unless specified herein, all correspondence and notice required by this Settlement shall be in
20 writing and sent by: (i) first-class registered or certified mail, return receipt requested; or (ii) a
21 recognized overnight courier to any Party by the other at the following addresses:

22 For Stockroom:

23 Joel Tucker, Chief Executive Officer
24 The Stockroom, Inc.
1769 Glendale Blvd.
Los Angeles, CA 90026-1761

For KASB:

Laralei Paras, Esq.
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

25 With a copy to:

26 Allan B. Gelbard, Esq.
27 Law Offices of Allan B. Gelbard
15760 Ventura Blvd., Ste. 801
28 Encino, CA 94136-3018

1
2 Any Party may, from time to time, specify in writing to the other Party a change of address to which
3 all notices and other communications shall be sent.

4 **9. COUNTERPARTS AND ELECTRONIC SIGNATURES**

5 This Settlement may be executed in counterparts and by electronic or facsimile signature(s),
6 each of which shall be deemed an original and, all of which, when taken together, shall constitute one
7 and the same document.

8 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

9 KASB and its counsel agree to comply with the reporting form requirements referenced in
10 California Health and Safety Code § 25249.7(f).

11 **11. ENTIRE AGREEMENT**

12 This Settlement contains the sole and entire agreement and understanding of the Parties with
13 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
14 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
15 are no warranties, representations, or other agreements between the Parties except as expressly set
16 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
17 referred to in this Settlement have been made by any Party hereto. No other agreements not
18 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
19 of the Parties hereto.

20 **12. MODIFICATION**

21 This Settlement may be modified only by: (i) a written agreement of the Parties and the entry
22 of a modified Settlement by the Court thereon; or (ii) upon a successful motion of any party and the
23 entry of a modified Settlement by the Court thereon. No Party shall seek modification of this
24 Settlement without first providing written notice to the other Party of the basis for the modification
25 sought, and meeting and conferring in good faith prior to moving the Court for an order modifying
26 the Settlement. In the event the Parties or either Party seek(s) modification of this Settlement by
27 written agreement or on noticed motion by the Court, the Party or Parties shall provide the OAG with
28

1 no less than 45 days' notice of their intended revision(s) to the Settlement prior to any hearing by the
2 Court on a motion for approval of such modification.

3 **13. AUTHORIZATION**


4 The undersigned are authorized to execute this Settlement on behalf of their respective Party
5 and have read, understand, and agree to all the terms and conditions of this Settlement.

6 **AGREED TO:**

AGREED TO:

7
8 Date: 10/03/2024

Date: Oct 3, 2024

9
10 By:  _____

By:  _____

11 Lance Nguyen, CEO
12 KEEP AMERICA SAFE AND
13 BEAUTIFUL

14 Joel Tucker, Chief Executive Officer
15 THE STOCKROOM, INC.