

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 Whale Spa Inc. (“**Whale Spa**”), with KASB and Whale Spa 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 Whale Spa 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 Whale Spa manufactures, imports, sells, and distributes for sale, in and into California, seats with vinyl upholstery containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Technician Stool 1004H, Gray, 104*, without providing the warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). All such seats with vinyl upholstery 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 November 4, 2022, KASB served Whale Spa, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Whale Spa violated Proposition 65 by failing to warn its customers and consumers in California 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

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

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this agreement is fully executed by the parties.

2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing within thirty (30) days of the Effective Date and continuing thereafter, all Products Whale Spa 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 either: (a) meet 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 2.8.

2.2 Reformulation Standard Defined

For purposes of this Consent Judgment, "**Reformulated Products**" are defined as Products which contains 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 certified or accredited by: the State of California, a federal agency, or a nationally or internationally 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

Commencing within thirty (30) days of the Effective Date, Whale Spa shall provide clear and reasonable warnings for all Products it manufactures, imports, distributes, sells or offers for sale, in or into California, that do not meet the Reformulation Standard, defined at Section 2.2. For purposes of this Agreement, a warning shall be deemed clear and reasonable, if it meets the criteria set forth in 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.

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. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warning:

⚠️ WARNING: This product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP) which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/furniture.

Whale Spa may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), as follows:

⚠️ WARNING: Reproductive Harm: www.P65Warnings.ca.gov.

(b) Foreign Language Requirement. Where a consumer product sign, label or tag used to provide a warning includes “consumer information”, as the term is defined in Title

27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then the accompanying warnings must also be provided in those languages, in addition to English.

(c) Statutory or Regulatory Change

As detailed in this Section 2, warnings for Products are to be provided as specified in the Proposition 65 regulations, codified at title 27, California Code of Regulations, § 25601, *et seq.* and in effect as of the Effective Date, including Product warnings for other chemicals, where appropriate, according to the procedures set forth in title 27, California Code of Regulations § 25600.2. If such regulations and/or procedures are amended in the future, or if the Office of Environmental Health Hazard Regulations require or permit specific safe harbor warning text and/or methods of transmission different than those set forth herein, then Whale Spa may comply with such amendments and not be deemed in breach of this Agreement.

2.4 On-Product Warning Requirements

For all Products provided for sale to consumers located in California, or to customers with retail outlets in California, ecommerce platforms, or nationwide distribution, or for direct sales to California, Whale Spa shall include the applicable warning statement from Section 2.3 (a) or (b) on furniture Product labels affixed to the furniture Products in the same manner as other consumer information or warning materials on Products. 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. “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to each of the Products or its immediate container or wrapper. 27 Cal. Code Regs. § 25600.

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 through third-party websites over which Whale Spa has the ability to control the application of warnings, Whale Spa 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 appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process which can include a pop-up warning when a California zip code is entered for the shipping location. The warning shall appear in any of the above instances adjacent to or immediately following the display, description or price of the Product for which it is given in the same type size or larger than other consumer information provided for the Product. Whale Spa shall notify known third-party sellers of the Products of the Prop 65 warnings, as set forth in section 2.3, and that such warnings should be provided for internet sales into California.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Whale Spa agrees to pay a civil penalty of \$2,000 within ten (10) business days of the Effective Date. Whale Spa’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. Whale Spa shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Seven Hills in Trust for Keep America Safe and Beautiful” in the amount of \$500. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the civil penalty payments.

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) days of the Effective Date, Whale Spa 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 Whale Spa’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

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 Whale Spa

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Whale Spa, 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 Whale Spa, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Whale Spa 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 the Products that were manufactured, distributed, sold and/or offered for sale by Whale Spa in California before 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 manufactured, distributed, sold and/or offered for sale by Whale Spa, before the Effective Date (collectively, “**Claims**”), against Whale Spa 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 Whale Spa. Nor shall this Release apply downstream to any third-party sellers or entities who were notified, pursuant to Section 2.4, but failed to provide a Product warning. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Whale Spa’s Products.

4.2 Whale Spa’s Release of KASB

Whale Spa, 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 that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Whale Spa 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 Whale Spa 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 Whale Spa:

Johnny Ngo, CEO
Whale Spa Inc.
8881 Warner Avenue
Huntington Beach, CA 92647

For KASB:

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

With a copy to:

Ryan S. Landis, Esq.
Gordon & Rees Scully Mansukhani LLP
5 Park Plaza, Ste. 1100
Irvine, CA 92614

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:

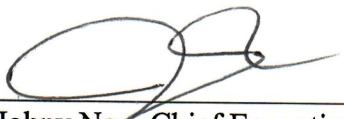
Date: 12/12/2023

By: 

My Nguyen, Chief Financial Officer
Keep America Safe and Beautiful

AGREED TO:

Date: 12/12/23

By: 

Johny Ngo, Chief Executive Officer
Whale Spa Inc.

