

## SETTLEMENT AND RELEASE AGREEMENT

### 1. **INTRODUCTION**

#### 1.1. **Keep America Safe and Beautiful and Cincinnati Recipe, Inc.:**

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful (“KASB”), represented by its attorneys KJT Law Group, LLP on the one hand, and Skytime, Inc. and Cincinnati Recipe, Inc. (collectively, "Cincinnati"), on the other hand, with KASB and Cincinnati collectively referred to as the "Parties."

#### 1.2. **General Allegations**

KASB alleges that Cincinnati distributed and offered for sale in the State of California Chili Mix, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. This Agreement shall have no application to any Covered Products that Cincinnati distributes or sells exclusively outside the State of California.

#### 1.3. **Product Description**

The products covered by this Settlement Agreement are defined as Cincinnati Recipe Chili Mix products, including but are not limited to, “Cincinnati Recipe – Chili Mix; UPC #: 0 73591 03082 4” that Cincinnati has sold, offered for sale, manufactured, or distributed in California. All such items shall be referred to herein as the "Covered Product."

#### 1.4. **Notice of Violation**

On December 12, 2022, Keep America Safe and Beautiful served Cincinnati and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the

People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided Cincinnati and such public enforcers alleging that the Covered Product violated California Health & Safety Code section 25249.6 ("Proposition 65") concerning alleged exposures to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Cincinnati's compliance with Proposition 65. Specifically, Cincinnati denies the factual and legal allegations contained in KASB's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 and all other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Cincinnati of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Cincinnati of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cincinnati. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Cincinnati under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

## **2. INJUNCTIVE RELIEF:**

2.1 For Covered Products manufactured more than sixty days after the Effective Date, Cincinnati agrees to discontinue Distributing into the State of California any Covered Product that exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship Covered Product into California for sale in California or to sell Covered Product to a distributor that Cincinnati knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to Covered Product that is already in the stream of commerce as of the Effective Date or 60 days thereafter and all claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

### **2.2 Clear and Reasonable Warnings**

If Cincinnati is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning").

**Option 1:**

**WARNING:** Consuming this product can expose you to chemicals including lead, which is 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/food](http://www.P65Warnings.ca.gov/food)

**Option 2:**

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

Cincinnati shall use the phrase "cancer and" in the Warning if the exposure level is greater than 15 micrograms of lead per day.

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. For purposes of this Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper. If consumer information on the package is in a foreign language, the warning must also be provided in the foreign language. Notwithstanding the above, the content and method of transmission shall be provided in any form as authorized by Proposition 65 law or regulation effective on or after the Effective Date.

**3. CONSIDERATION**

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under Proposition 65, the private attorney general doctrine and principles of contract law. Under these legal principles, Cincinnati shall pay (\$31,000.00) in total as settlement for monetary relief, including but not limited to penalties, fees, and costs, related to the Notice.

**4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION**

**25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Three Thousand Dollars (\$3,000.00) shall be considered a “civil penalty.” The civil penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty shall be mailed to; payable to; “KJT Law Group, LLP”, to be forwarded to KASB.

**5. REIMBURSEMENT OF FEES AND COSTS**

In settlement of all the claims referred to in this Settlement Agreement, (\$28,000.00) shall be considered reimbursement of KASB’s attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law.

**6. PAYMENT INFORMATION**

Cincinnati shall mail these payments within ten (10) business days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to KASB and for attorneys’ fees, shall be payable and delivered to the following payment address:

KJT LAW GROUP LLP  
230 N. Maryland Avenue, Suite 306  
Glendale, CA 91206

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics  
Senior Accounting Officer -- MS 19-B  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA. 95812-0410  
For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

No other payment is due under the terms of this Agreement.

**7. RELEASE OF ALL CLAIMS**

**7.1. Release of Cincinnati, Downstream Customers and Upstream Vendors**

KASB, on behalf of itself, its past and current agents, members, owners, principals, shareholders, officers, directors, parents, subsidiaries, representatives, attorneys, successors and/or assignees, fully releases (a) Cincinnati and each of its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, (b) their upstream suppliers and all downstream entities in the stream of commerce including but not limited to distributors, wholesalers, customers, retailers (including Amazon.com Services, LLC), franchisees, cooperative members, and licensees, and (c) the shareholders, directors, officers, employees, agents, members, managers, equity owners, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and licensors of any of the entities identified in subsections (a) and (b), above, (the entities identified in subsections (a), (b), and (c), above, are collectively referred to as "Releasees") of any violation of Proposition 65 or other statutory or common law that was or could have been asserted, including any and all claims based on their alleged or actual failure to warn about alleged exposures to lead contained in any Covered

Products that were allegedly manufactured for sale on or up to sixty days after the Effective Date.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. This Settlement Agreement is expressly intended to cover and include all such claims and Covered Product manufactured up to and through the Effective Date. KASB acknowledges that it is familiar with California Civil Code section 1542, 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.

KASB, in its capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California 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 that it may lawfully waive such rights or benefits pertaining to the released matters.

The Parties understand and agree that the commitments Cincinnati has agreed to herein, and actions to be taken by Cincinnati under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Administrative Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Cincinnati's failure to provide a Proposition 65 warning concerning the Covered Product, such private party action would not confer a significant benefit on the general public, provided that Cincinnati is in material compliance with this Agreement.

7.2. **Cincinnati's Release of KASB:**

Cincinnati waives any and all claims against KASB, 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 enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Product.

7.3. **Deemed in Compliance with Proposition 65.**

The Parties agree that material compliance by Cincinnati with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to lead in the Covered Product.

**8. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then Cincinnati shall have no further obligations pursuant to this Settlement Agreement.

**9. NOTICES AND ENFORCEMENT**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For Cincinnati:	Will Wagner, Esq. Arnold & Porter Kaye Scholer LLP Three Embarcadero Center, 10th Floor San Francisco, CA 94111
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For KASB:

Tro Krikorian, Esq.  
KJT Law Group, LLP  
230 N. Maryland Ave., Suite 306  
Glendale, CA 91206

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

Should either Party wish to enforce future alleged violations of this Agreement, it must first provide written notice to the other Party and allow thirty (30) days to expire, during which the other Party is entitled to cure the alleged breach.

**10. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**13. DRAFTING**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this

Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

**14. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION**

**25249.7(F)**

KASB and its attorneys agree to comply with the reporting requirements referenced in Health and Safety Code section 25249.7(f).

**15. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

**IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.**

Executed on Oct 19, 2023.

Keep America Safe and Beautiful

  
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By:

Executed on Oct 13, 2023.

Cincinnati Recipe, Inc.

Richard F Williams  
Richard F Williams (Oct 13, 2023 17:23 EDT)

By: Richard F Williams

Its: President