

# 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 Clearview Systems, LLC dba Rip-It Sports (“**Rip-It Sports**”), with KASB and Rip-It Sports 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 Rip-It Sports 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 Rip-It Sports manufactures, imports, sells, and distributes for sale in California backpacks with vinyl/PVC components containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Rip-It Girls Soccer Backpack, SKU: 100248985001, RN: 152349, VN NO. JC2000, UPC: 2050011803129*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Backpacks with vinyl/PVC components 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 December 12, 2022, KASB served Rip-It Sports, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Rip-It Sports violated Proposition 65 by failing to warn its customers and consumers in

California that 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**

Rip-It Sports 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 Rip-It Sports of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Rip-It Sports' 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 all Parties.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

### **2.1 Reformulation Commitment and/or Warnings**

As of the Effective Date, and continuing thereafter, all Products that Rip It Sports manufactures, imports, distributes, sells, or offers for sale in or into California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to § 2.3, below. For purposes of this Settlement Agreement, a "Reformulated Product" is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in § 2.3 shall not apply to any Reformulated Product.

### **2.2 Reformulation Standard**

"Reformulated Products" shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance.


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**


Commencing on or before the Effective Date, Rip-It shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in or into California in accordance with this Section 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 clearly associated with the specific Product to which the warning applies.

The warning shall consist of either the Warning or Alternative Warning described in §§ 2.3(a) or (b), respectively:

**(a) Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate (DEHP), 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](http://www.P65Warnings.ca.gov).

**(b) Alternative Warning:** Rip-It Sports may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

**(c) 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.

**(d) Product Warnings**

A **Warning** or **Alternative Warning** provided pursuant to § 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 that if the sign or label for the Products does not use the color yellow, 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** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed 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 of purchase or use. The **Warning** or **Alternative 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 Product and shall be at least the same size as those other safety warnings.

**(e) Internet Warnings**

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Rip It Sports offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Rip-It Sports shall post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers. If Rip-It Sports does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, it shall provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2, and advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 4.1 of this Agreement if they fail to meet the warning requirements of this Section.

#### **2.4 Customer Notification**

No later than the Effective Date, Rip-It Sports shall send a letter, electronic or otherwise (“**Notification Letter**”) to each retailer or distributor that has any inventory of Products, which Rip-It Sports supplied between December 12, 2019 and December 12, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the following warning statement:

**⚠WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

The foregoing warning 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. 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. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing warning statements.

**2.5 Compliance with Warning Regulations.** The Parties agree that Rip-It Sports shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”) applicable to the Product and the exposures at issue after the Effective Date.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Rip-It Sports agrees to pay a civil penalty of \$2,500 within five (5) business days of the Effective Date. Rip-It Sports' 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. Rip-It Sports shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Seven Hills in Trust for KASB" in the amount of \$625. 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. 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 five (5) business days of the Effective Date, Rip-It Sports agrees to issue a check in the amount of \$18,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Rip-It Sports' 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: Laralei Paras  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

#### 4. **CLAIMS COVERED AND RELEASED**

##### 4.1 **KASB's Release of Rip-It Sports**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Rip-It Sports, 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 Rip-It Sports, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Rip-It Sports 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 DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Rip-It Sports 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 Rip-It Sports, before the Effective Date (collectively, “**Claims**”), against Rip-It Sports and Releasees.

The Parties further understand and agree that this Section 4.1 release shall 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 Rip-It Sports nor (b) to Releasees who have been instructed by Rip-It Sports pursuant to Sections 2.3(e) and 2.4, 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 Rip-It Sports' Products.

#### **4.2 Rip-It Sports' Release of KASB**

Rip-It Sports, 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.

#### **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 Rip-It Sports 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 Rip-It Sports 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 Rip-It Sports:

Matthew Polstein, CEO  
Clearview Systems, LLC  
dba Rip-It Sports  
4855 LB McLeod Road  
Orlando, FL 32811

For KASB:

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

*With a copy to:*

Samuel Felker, Esq.  
Baker, Donelson, Bearman, Caldwell  
& Berkowitz, PC  
Broadwest Center  
1600 West End Avenue, Suite 2000  
1600 Nashville, TN 37203

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: 01/04/2024

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

**AGREED TO:**

Date: 01/04/2024

By:   
Matthew Polstein, Chief Executive Officer  
Clearview Systems, LLC  
dba Rip-It Sports