

# 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 Bellami Hair, LLC (“**Bellami**”), with KASB and Bellami 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 Bellami 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 Bellami manufactures, imports, sells, and distributes for sale in California vinyl/PVC carriers containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Bellami Hair Extensions Carrier; Item 135002; SO1147636*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC carriers 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 January 13, 2023, KASB served Bellami, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Bellami 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**

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

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date of the last signature of this Agreement.

### **2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS**

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products Bellami 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 be either Reformulated Products in compliance with the Reformulation Standard set forth in Section 2.2 or Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.5.

#### **2.2 Reformulated Products & Reformulation Standard Defined**

For purposes of this Agreement, "Reformulated Products" are defined as Products containing di(2-ethylhexyl) phthalate ("DEHP") in a maximum concentration of less than 0.1 percent (1,000 parts per million) ("**Reformulation Standard.**") 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, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory


Accreditation Cooperation ("ILAC"). For purposes of compliance, 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.


### 2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, Bellami shall provide clear and reasonable health hazard warnings for all Products Bellami manufactures, imports, distributes, sells or offers for sale, in or into, California that do not meet the foregoing Reformulation Standard. 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, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions prior to purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

**(a) Warning:**

 **WARNING:** This product contains chemicals, including [name or one or more chemicals] 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)

 **WARNING:** This product contains chemicals, including 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)

The warning provided must be consistent and comply with the requirements of title 27

Cal. Code Regs. § 25603.

**(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 by 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.

#### **2.4 On-Product Warning Requirements**

Bellami shall affix a warning on the Product Label, its packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in or into California. “Product Label” is defined as a display of written, printed, or graphic material printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

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 by Bellami directly or through third-party websites over which Bellami has the ability to control the application of warnings, Bellami 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. 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. For third-party websites, as a condition of sale, Bellami shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Bellami agrees to pay a nonwaivable civil penalty of \$3,500 within ten (10) business days of the Effective Date. Bellami’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. Bellami shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$875. KASB’s counsel shall deliver to OEHHA and KASB their respective portions of the 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, Bellami agrees to issue a check in the amount of \$21,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Bellami'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; Address; W9s**

All payments payable and due under this Agreement shall be delivered to KASB's counsel at following address according to the timeframes set forth in each subsection:

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

KASB's counsel shall deliver, by electronic mail, to counsel for Bellami Federal Form W9s for each payee under this Agreement at the time this document is fully executed by all Parties, allowing Bellami to comply with its Federal Income Tax reporting requirements. However, delivery of W9s is not a condition precedent to other obligations under this Agreement nor will failure to deliver W9s act as an extension of time to remit payment under the terms herein.

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

### **4.1 KASB's Release of Bellami**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Bellami, 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 Bellami, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each

entity to whom Bellami 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 about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Bellami 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 Bellami, before the Effective Date (collectively, “**Claims**”), against Bellami and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend: (a) 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 Bellami; nor (b) to Releasees who have been instructed by Bellami 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 Bellami’s Products.

#### **4.2 Bellami’s Release of KASB**

Bellami, 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 Bellami 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 Bellami 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 Bellami:  
John Costanza, President  
Bellami Hair, LLC  
21123 Nordhoff Street  
Chatsworth, CA 91311

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

*With a copy to:*  
John Epperson, Esq.  
Buchalter LLP  
425 Market Street, Suite 2900  
San Francisco, CA 94105

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: Aug 17, 2023

**AGREED TO:**

Date: Aug 8, 2023

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

By: Derrick Porter  
Derrick Porter (Aug 8, 2023 13:23 MDT)  
Derrick Porter, Chief Executive Officer  
Bellami Hair, LLC









# KASB Bellami Hair\_Settlement Agreement for signature(77965980.1)

Final Audit Report

2023-08-08

Created:	2023-08-08
By:	Abby Barraclough (abbyb@beautyindustrygroup.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAwwjOo2r7cj-zKiy0LSXW3-WnvmXxRTR_

## "KASB Bellami Hair\_Settlement Agreement for signature(77965980.1)" History

-  Document created by Abby Barraclough (abbyb@beautyindustrygroup.com)  
2023-08-08 - 6:10:26 PM GMT
-  Document emailed to dp@beautyindustrygroup.com for signature  
2023-08-08 - 6:11:03 PM GMT
-  Email viewed by dp@beautyindustrygroup.com  
2023-08-08 - 7:22:08 PM GMT
-  Signer dp@beautyindustrygroup.com entered name at signing as Derrick Porter  
2023-08-08 - 7:23:23 PM GMT
-  Document e-signed by Derrick Porter (dp@beautyindustrygroup.com)  
Signature Date: 2023-08-08 - 7:23:25 PM GMT - Time Source: server
-  Agreement completed.  
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