

# SETTLEMENT AND RELEASE AGREEMENT

## **1. INTRODUCTION**

### **1.1 Parties**

This settlement and release agreement ("Settlement Agreement") is entered into by and between Keep America Safe and Beautiful, ("KASB"), on the one hand, and Glad Lash, Inc., ("Glad Lash") on the other hand, with KASB and Glad Lash each individually referred to as a "Party" and collectively as the "Parties."

### **1.2 General Allegations**

KASB alleges in a 60-Day Notice of Violation, dated January 20, 2023 (AG #2023-00199), that Glad Lash sells and/or distributes for sale makeup brush set(s) in California that contain di(2ethylhexyl) phthalate ("DEHP") without providing the warning that KASB alleges is required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notice"). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, and expressly limited to, Professional Seven Piece Makeup Brush Set, UPC#C831, (hereinafter collectively the "Product") that allegedly contains DEHP and that KASB alleges is manufactured, imported, sold, and/or distributed for sale in California by Glad Lash.

### **1.4 Notice of Violation**

On January 20, 2023, KASB served the Notice on Glad Lash, the California Attorney General and the other requisite public enforcers, alleging that Glad Lash violated Proposition 65 by failing to warn its customers and consumers in California that the Product can expose users to DEHP.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth in the Notice concerning Glad Lash's compliance with Proposition 65. Glad Lash expressly denies all factual and legal allegations contained in the Notice and maintains that all products it has sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws, including, but not limited to Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall constitute or be construed as, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Glad Lash or any of its officers, directors, shareholders, employees, agents, attorneys, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion of law, issue of law, or violation of law, including under Proposition 65. This Section shall not, however, diminish or otherwise affect Glad Lash's specific obligations, responsibilities, and duties 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** Beginning on the Effective Date, Glad Lash may, in its sole discretion, either cease selling or offering for sale the Products to California consumers; sell or offer for sale the Products to California consumers by meeting the Reformulation Standard for Reformulated Products, as defined by Section 2.2; or sell or offer for sale the Products to California consumers by providing a clear and reasonable warning for the Products, pursuant to the following Sections 2.3 through 2.5.

### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain DEHP, contain any or all such chemical in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally 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-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine DEHP content in a solid substance.

### **2.3 Clear and Reasonable Warnings**

Beginning on or before the Effective Date, Glad Lash shall provide clear and reasonable warnings for all Products provided for sale to consumers in California in accordance with this Section and 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, designs, or devices, 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, so as to minimize the risk of consumer confusion.

(a) The Warning for the Products shall consist of one of the following statements:

**⚠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).


OR

**⚠WARNING:** This product can expose you to 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 requirements set forth herein are imposed pursuant to the terms of this Settlement Agreement and are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations (Title 27, California Code of Regulations, section 25601, et seq.) in effect as of the Effective Date or as such regulations may be amended in the future, and may include warnings for chemicals in addition to DEHP

where appropriate. In addition, if and where appropriate, Glad Lash may follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide warnings for the Products consistent with this Settlement Agreement.

(b) **Short-Form Warning.** Glad Lash may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“Short-Form Warning”), and subject to the additional requirements in Section 2.5, as follows:

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

## **2.4 Product Warning**

Commencing on or before the Effective Date, Glad Lash shall affix a warning to the Product label or otherwise directly on Products or on the Product’s immediate container, wrapper, or packaging for those Products provided for sale to consumers located in California and, where appropriate to customers with retail outlets in California. For purposes of this Agreement, “Product label” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) or (b) 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, except, if the labeling does not use the color yellow, the symbol may be in black and white. 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. The warning shall consist of either the Warning or the Short Form described in subsection 2.3(a) or (b), respectively.

## **2.5 Internet Warnings**

If, after the Effective Date, Glad Lash sells Products, that are not Reformulated Products, via the internet, through its own website, affiliated websites or a third party website, to consumers located in California, Glad Lash shall provide warnings for the Products both on the Product label, in accordance with Section 2.4, and by prominently displaying, or requesting the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser prior to or 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 Products for which it is given in the same type size or larger than other consumer information provided for the Products. The internet warning may use the Short-Form described in Section 2.3(b), if the warning provided on the Product label also uses the Short-Form.

## **2.6 Grace Period for Existing Inventory of Products**

Notwithstanding anything else in this Settlement Agreement, the injunctive relief requirements of Section 2 shall not apply to any Product that is already in the stream of commerce as of the Effective Date. Such Products shall be subject to release of liability pursuant to this Settlement Agreement, without regard to when such Products were, or are in the future, sold to consumers in California. As a result, the obligation of Glad Lash, or any Glad Lash Releasees (if applicable), do not apply to these Products and are expressly subject to the releases provided in Section 4.1.

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

#### **3.1 Total Settlement Penalty**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, Glad Lash shall make a total settlement payment of Thirteen Thousand Five Hundred Dollars and 00/100 (\$13,500.00), ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty, Attorney's Fees and Costs, and a Cost Reimbursement as set forth in Sections 3.2, 3.3, 3.4 and 3.5 below.

#### **3.2 Civil Penalty Payment**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Glad Lash agrees to pay One Thousand Three Hundred Fifty Dollars and 00/100 (\$1,350.00), in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by KASB. Within ten (10) days of the Effective Date, Glad Lash shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of One Thousand Twelve Dollars and 50/100 (\$1,012.50), and (b) KASB in the amount of Three Hundred Thirty-Seven Dollars and 50/100 (\$337.50).

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS 19B  
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street MS #19B  
Sacramento, CA 95814

All penalty payments owed to KASB shall be sent to:

Manning Law APC  
Client Trust and CalSafe Research Center (taxpayer identification number 84-4419173)  
26100 Towne Centre Drive  
Foothill Ranch, CA. 92610

#### **3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to KASB's counsel under the private attorney general doctrine, codified at California Code of Civil Procedure §1021.5, and general principles of contract law. Under these legal principles, within ten (10) days of the date this Settlement Agreement is

executed by the Parties, Glad Lash agrees to pay Twelve Thousand One Hundred Fifty Dollars and 00/100 (\$12,150.00), to KASB's counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Glad Lash, negotiating a settlement, and all other work performed through the mutual execution and (12,150.00), reporting of this Settlement Agreement to the Office of the California Attorney General. The \$ in Attorney's Fees and Costs shall be paid via a check made payable to "Manning Law, APC".

### **3.4 Payment Address**

All payments required under this section to Manning Law APC shall be delivered to:

Manning Law, APC (taxpayer identification number 83-0502205)  
26100 Towne Centre Drive  
Foothill Ranch, CA. 92610

### **3.5 Tax Documentation**

Glad Lash agrees to provide a completed IRS 1099 form for its payments to KASB; and Manning Law agrees to provide IRS W-9 forms to Glad Lash. The Parties acknowledge that Glad Lash cannot issue any settlement payments pursuant to Section 3 above until after Glad Lash receives the requisite W-9 forms from KASB's counsel.

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

### **4.1 KASB's Release of Glad Lash**

This Settlement Agreement is a full, final and binding resolution between KASB, acting on its own behalf and not on behalf of the public, and Glad Lash, of any violation of Proposition 65 related to the Product that was or could have been asserted by KASB. In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3, KASB, on behalf of itself, its officers, directors, shareholders, employees, past and current agents, representatives, attorneys, parent companies, subsidiaries, divisions, successors, and/or assignees, hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action against Glad Lash and fully releases and discharges all claims that KASB may have, including, without limitation, any and 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, and expenses asserted, or that could have been asserted arising under Proposition 65 with respect to the Product, as defined in Section 1.3, manufactured, distributed, sold and/or offered for sale by Glad Lash and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Glad Lash Releasees") and all entities to which Glad Lash Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party").

### **4.2 Glad Lash's Release of KASB**

Glad Lash on behalf of 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 by KASB and its attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

**4.3 Mutual Waiver of California Civil Code Section 1542**

It is possible that other claims not known to the Parties, arising out of the Notice or relating to the Products, will develop or be discovered. KASB on behalf of itself only, and Glad Lash on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action, therefore. KASB and Glad Lash acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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 acknowledge and understand the significance and consequences of this specific waiver of California Code § 1542.

**5. SEVERABILITY**

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law principals. 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 Glad Lash 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.

**7. NOTICE**

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For KASB

Joseph R. Manning, Jr.  
Manning Law, APC  
26100 Towne Center Drive  
Foothill Ranch, CA 92610

For Glad Lash:

Patrick F. Veasy

Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> Floor  
Sacramento, CA 95814  
E-mail: pveasy@downeybrand.com

**8. COUNTERPARTS: FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

**9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)**

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

**10. MODIFICATION**

The Settlement Agreement may be modified only by written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by, or relied on, any Party.

**12. INTERPRETATION**

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

**13. 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.

AGREED TO:

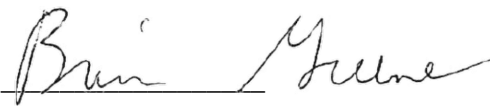
Date: 04/19/2023

By:   
My Nguyen - CFO

Keep America Safe and Beautiful

AGREED TO:

Date: 4/17/2023

By:   
Brian Greene  
Glad Lash, Inc.