

# 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 Strikeforce Bowling, LLC (“**Strikeforce**”), with KASB and Strikeforce 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 Strikeforce 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 Strikeforce manufactures, imports, sells, and distributes for sale in California bags with vinyl/PVC components containing diisononyl phthalate (“**DINP**”) including, but not limited to, *KR Strikeforce NFL Add-On Bowling Bag, SKU: 17947295, Style: 8707NFL, UPC: 043014010900*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Bags with vinyl/PVC components are referred to hereinafter as the “**Products.**” DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

### 1.3 Notice of Violation

On January 20, 2023, KASB served Strikeforce, Dick’s Sporting Goods, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Strikeforce violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Strikeforce denies each of 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 Strikeforce of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Strikeforce's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the last date on which the Agreement is executed by both Parties.

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

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

Commencing on the Effective Date and continuing thereafter, all Products Strikeforce 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 meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3. The warning requirement in Section 2.3 shall only be required as to Products that are sold or shipped out to consumers, retailers, or distributors in California on or after the Effective Date. No Proposition 65 warning shall be required as to any Products that are already in the stream of commerce as of the Effective Date.

### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), di-n-butyl phthalate ("DBP"), diisononyl phthalate ("DINP"), butyl benzyl phthalate ("BBP"), di-isodecyl phthalate ("DIDP") or di-n-hexyl phthalate ("DnHP"), contain any or all such chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) 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 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, Strikeforce shall provide clear and reasonable warnings for all 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.

#### **(a) Warnings**

The following warnings for Products containing one or more chemical(s) in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall be deemed in compliance with Title 27 California Code of Regulations § 25600, *et seq.*:

**⚠WARNING:** This product can expose you to [chemicals including] [DEHP], which [is][are] 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][are] are known to the State of California to cause [cancer] [and] [birth defects or

other reproductive harm] and [chemicals including] [DINP], which [is][are] are known to the State of California to cause [cancer]. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The bracketed language in the proceeding warnings must be changed according to the listed phthalate chemical(s) in the product and the harms associated with exposure to the listed chemical(s). DEHP may be replaced with DINP, DBP, BBP, DIDP, and/or DnHP according to the harms caused by each chemical and whether one or more than one phthalate is contained in the Product.

**(b) Short-Form Warnings.** Strikeforce may, but is not required to, use one of the following short-form warnings (“**Short-Form**”), in lieu of the warnings set forth in subsection 2.3(a) subject to the additional requirements in Sections 2.3 and 2.4 and modified to reflect the correct chemical endpoint, as follows:

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

Strikeforce shall affix a warning to the Product label or otherwise directly on all Products, that are not Reformulated Products, provided for sale to consumers located in California or to downstream entities who sell in or into California, such as customers with retail outlets in California or nationwide distribution. For the purpose 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.

**(e) Internet Warnings**

If, after the Effective Date, Strikeforce 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 or to customers with nationwide distribution and e-commerce websites, Strikeforce shall provide warnings for each Product both on the Product label in accordance with Section 2.3(c), and by prominently displaying, or requiring 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 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. Where Strikeforce sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, Strikeforce will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Initial Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Strikeforce agrees to pay a civil penalty of \$2,000 within fifteen (15) business days of the Effective Date. Strikeforce’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. Strikeforce 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 KASB” in the amount of \$500. 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 fifteen (15) business days of the Effective Date, Strikeforce agrees to issue a check in the amount of \$17,500 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Strikeforce’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: Laralei Paras  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

### **4.1 KASB’s Release of Strikeforce**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Strikeforce, 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 Strikeforce, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Strikeforce directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Dick's Sporting Goods, Inc., Moxy Bowling, and Turbo Grips, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn under Proposition 65 about alleged exposures to DINP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Strikeforce and sold in or into 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, claims, 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 DINP in the Products manufactured, distributed, sold and/or offered for sale by Strikeforce, before the Effective Date (collectively, "**Claims**"), against Strikeforce and Releasees.

The Parties further understand and agree that this Section 4.1 release 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 Strikeforce nor (b) to Releasees who have been instructed by Strikeforce 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 Strikeforce's Products.

**4.2 Strikeforce’s Release of KASB**

Strikeforce, 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 Strikeforce 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 Strikeforce 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 and (iii) a courtesy copy by electronic mail to any Party by the other at the following addresses:

For Strikeforce:

Bradley Handelman, President  
Strikeforce Bowling, LLC  
2020 Indian Boundary Drive

For KASB:

Laralei Paras, Partner  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400



Melrose Park, IL 60160  
Email: brad@krstrikeforce.com

San Francisco, CA 94111  
Email: laralei@sevenhillslp.com

*With a copy to:*

Lynn R. Fiorentino, Esq.  
ArentFox Schiff LLP  
44 Montgomery Street, 38th Floor  
San Francisco, CA 94104  
Email: lynn.fiorentino@afslaw.com

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:**

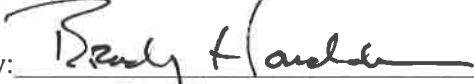
Date: 09-05-2023

By: 

My Nguyen, Chief Operating Officer  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 09-05-23

By: 

Bradley Handelman, President  
Strikeforce Bowling, LLC