

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 American Soccer Company, Inc. (“**American Soccer Company**”), with KASB and American Soccer Company, Inc., 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 that American Soccer Company 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 American Soccer Company manufactures, imports, sells, and distributes for sale in California notebooks with vinyl/PVC components containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Game Planner 695, SKU: 695-X-X*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Notebooks 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 January 20, 2023, KASB served American Soccer Company, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging American Soccer Company 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

American Soccer Company 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 American Soccer Company of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect American Soccer Company's 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 and delivered to American Soccer Company via electronic mail to its counsel.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Warning or Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products American Soccer Company 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 either (1) meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2 or (2) meet the clear and reasonable warning standard for Proposition 65, as defined by Section 2.3 through 2.5.

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, American Soccer Company shall provide clear and reasonable warnings for all Products provided for sale to customers in 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 is clearly associated with the specific Product to which the warning applies.

(a) 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.*:

1. For Products containing DEHP:

⚠WARNING: This product can expose you to 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.

- or -

2. For Products containing any other phthalate chemical(s):

⚠WARNING: This product can expose you to chemicals including [name of chemical or chemicals], which [is/are] 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.

(b) **Alternative Warnings.** American Soccer Company may, but is not required to, use one of the following alternative short-form warnings (“**Alternative Warning**”), 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.

⚠ WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

⚠ WARNING: Cancer - 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.

2.4 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 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. American Soccer Company 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 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. The warning must be 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 may be contained in the same section of the packaging or labeling 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.

2.5 Internet Warnings

If, after the Effective Date, American Soccer Company 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 or e-commerce websites, American Soccer Company shall provide warnings for the Products both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning or a clearly marked hyperlink to the warning using the word “**WARNING**” to the consumer or customer prior to completing the purchase such that the consumer or customer does not have to search for 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 and shall not require customers or customers to seek out the warning. Where American Soccer Company sells, ships, or distributes Products, that are not Reformulated Products, to third-party retailers or e-commerce marketplaces, American Soccer Company shall advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

2.6 Compliance with Warning Regulations. The Parties agree that American Soccer Company shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 through 2.5 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date. There shall be no obligation for American Soccer Company to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), American Soccer Company agrees to pay a civil penalty of \$3,000 within ten (10) business days of the Effective Date. American Soccer Company’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. American Soccer Company shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,250; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$750. 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 ten (10) business days of the Effective Date,

American Soccer Company agrees to issue a check in the amount of \$16,937.50 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to American Soccer Company’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 American Soccer Company

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and American Soccer Company, 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 American Soccer Company, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom American Soccer Company 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 American Soccer Company 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 American Soccer Company, before the Effective Date (collectively, "**Claims**"), against American Soccer Company 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 American Soccer Company nor (b) to Releasees who have been instructed by American Soccer Company 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 American Soccer Company's Products.

4.2 American Soccer Company's Release of KASB

American Soccer Company, 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 American Soccer Company 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 American Soccer Company 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 American Soccer Company:

Kevin Mahoney, CEO
American Soccer Company, Inc.
726 E. Anaheim Street
Wilmington, CA 90744

For KASB:

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

With a copy to:

Michael Gleason, Esq.
Hahn Loeser & Parks LLP
One America Plaza
600 West Broadway, Suite 1500
San Diego, CA 92101

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: 06/01/2023

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

AGREED TO:

Date: 6-1-23

By: 
Kevin Mahoney, Chief Executive Officer
American Soccer Company, Inc.