

# 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 Kingsum, Inc. (“Kingsum”), with KASB and Kingsum 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 the presence of chemicals known to cause cancer and birth defects or other reproductive harms are disclosed to California consumers and end-users, or eliminated from consumer products sold in California. KASB alleges Kingsum 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 Kingsum manufactures, imports, distributes, ships, sells and offers for sale in or into California storage boxes with vinyl/PVC components containing Di(2-ethylhexyl)phthalate (“DEHP”), including, but not limited to, the Lucky Clover Item # 6116BL: Roosevelt Faux Leather Collapsible Storage Box with Lid – Black; Mel & Rose, Item 900125 Custom Gift Basket, without providing the clear and reasonable warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). All such storage boxes 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 and birth defects or other reproductive harms.

### 1.3 Notices of Violation

On February 14, 2023, KASB served MELK Enterprises, Inc. (“MELK”), a downstream reseller of some of Kingsum’s Products, the Office of the Attorney General of the State of California (“OAG”), and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In its Notice, KASB alleges MELK violated Proposition 65 by failing to warn its customers and consumers in California the Products can expose users to DEHP.

On September 9, 2024, KASB served Kingsum, MELK, the OAG, and all requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”). The Supplemental Notice involves the same Products subject to this Agreement. In the Supplemental Notice, KASB makes only the additional allegation that Kingsum also violated Proposition 65 when it failed to provide clear and reasonable warnings for the Products sold in California by MELK and any other individual or entity in Kingsum’s downstream chain of distribution.

The Notice and Supplemental Notice shall be referred to hereinafter collectively as the “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the alleged violations that are the subject of either of the Notices.

#### **1.4 No Admission**

Kingsum denies the factual and legal allegations in the Notices and maintains that all products it has sold or distributed for sale in California, including the Products, comply with all laws. No term of this Agreement shall constitute or be construed as, nor shall Kingsum’s compliance with any term of this Agreement constitute or be construed as, an admission of any fact, finding, conclusion of law, issue of law, or violation of law, all of which Kingsum expressly denies. This Section shall not, however, diminish or otherwise affect Kingsum 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 the Parties. The “Compliance Date” shall be thirty (30) days after the “Effective Date.”

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

### **2.1 Commitment to Warn or Provide Reformulated Products**

Commencing on the Effective Date and continuing thereafter, all Products Kingsum manufactures, imports, distributes, ships, sells, or offers for sale in or into California, directly or

indirectly through one or more third party retailers or e-commerce marketplaces (if Kingsum knows or reasonably should know such retailers or marketplaces distribute for sale Products into California), shall either (i) meet the definition of Reformulated Products established and defined by Section 2.2, below, or (ii) be accompanied by a “clear and reasonable warning” in compliance with Section 2.3.

## **2.2 Reformulated Products Defined**

For purposes of this Agreement, “Reformulated Products” are defined as Products containing DEHP in a maximum concentration of 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-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or California government agencies to determine phthalate content in a solid matrix.

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

Commencing on the Compliance Date and continuing thereafter, for all Products that are not Reformulated Products as defined by Section 2.2, above, Kingsum shall provide clear and reasonable warnings 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 when 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.

**(a) Warning.** The Warning shall consist of the following 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) **Short-Form Warning.** Kingsum may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b), and subject to the additional requirements set forth in Sections 2.4 and 2.5, below, 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).

## **2.4 Product Warnings**

Commencing on the Compliance Date and continuing thereafter, for all Products sold and/or offered for sale in California that do not meet the definition of “Reformulated Products” established by Section 2.2, above. Kingsum shall affix the warning to the Product label or otherwise directly on Products it knows or reasonably should know are sold or distributed for sale to consumers in California and to its downstream customers and resellers with retail outlets in California or nationwide distribution. For purposes of this Agreement, “Product label” means any display of written, printed or graphic material printed on or affixed to a Product or its immediate container or packaging. A warning provided pursuant to Section 2.3(a) or (b), above, 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 yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and, in no case, shall be any smaller than the largest type size used for other consumer information on the Products.

## **2.5 Internet Warnings**

If, after the Compliance Date, Kingsum sells Products other than Reformulated Products via the internet, through its own website, an affiliates’ website or a third-party website, to

consumers located in California or to customers it knows or reasonably should know have retail outlets in California, nationwide distribution or e-commerce websites, then Kingsum shall provide warnings for each Product both on the Product packaging in accordance with Section 2.4, 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 Product without requiring customers to seek out the warning. However, Kingsum shall not assume any duty to monitor any third-party websites for compliance. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of Products via the internet shall appear (A) on the same web page on which the Products are displayed; (B) via a clearly marked hyperlink using the word “**WARNING**” or the words “**CA WARNING**” or “**CALIFORNIA WARNING**” on the product display page that links to the warning; or (C) as an otherwise prominently displayed warning provided to the purchaser prior to completing the purchase (which does not include a warning in the general content section of the website). For third-party websites where Kingsum knows or reasonably should know the Products will be sold, as a condition of sale, Kingsum shall notify such 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, pursuant to this Section 2.

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

#### **3.1 Civil Penalty**

Pursuant to Health & Safety Code § 25249.7(b), Kingsum agrees to pay a civil penalty of \$2,000 within fifteen (15) days of the Effective Date. Kingsum’s civil penalty payment will be allocated according to Health & 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. Kingsum 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 Keep America Safe and Beautiful**” in the amount of \$500. KASB’s counsel shall deliver to OEHHA and KASB their respective portions of the

penalty payments. The above civil penalty payment shall be due and payable within fifteen (15) business days of the Effective Date or immediately following Kingsum's counsel's receipt of Internal Revenue Service ("IRS") form W9s for each payee, whichever date is later.

### **3.2 Reimbursement of Attorneys' Fees and Costs**

After the Parties finalized all other material noneconomic and economic settlement terms, they negotiated and reached an accord on the amount of Kingsum's reimbursement or a reasonable portion of KASB's attorneys' fees and costs, under general contract principles and the private attorney general doctrine, codified at Code of Civil Procedure §1021.5, for all work performed through the mutual execution and reporting of this Agreement to the OAG. Within fifteen (15) days of the Effective Date, Kingsum agrees to issue a check in the amount of \$24,000 payable to "Seven Hills LLP" for a portion of fees and costs incurred in investigating, bringing this matter to Kingsum's attention, negotiating a settlement in the public interest, and reporting its terms to the OAG pursuant to Section 9, below. Kingsum's reimbursement of a reasonable portion of KASB's attorneys' fees and costs shall be due and payable within fifteen (15) days of the Effective Date or immediately following Kingsum's counsel's receipt of IRS form W9 for Seven Hills LLP, whichever date is later.

### **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, Esq.  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

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

This Agreement is a full, final and binding resolution between KASB, as an individual nonprofit corporation and *not* on behalf of the public, and Kingsum, of any violation arising

under 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 Kingsum, its directors, officers, employees, attorneys, fictitious business names, trademark brands (including without limitation The Lucky Clover Trading Company and Garden Winds) and each entity to whom Kingsum directly or indirectly distributes or sells Products, including, but not limited to, MELK Enterprises, Inc., who the Parties acknowledge is a third-party beneficiary of this Agreement, and any other downstream distributor, wholesaler, online marketplace, customer, retailer, franchisee, cooperative member, and/or licensee (collectively, “Releasees”) from all claims for violations of Proposition 65 based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold and/or offered for sale by Kingsum in California before the Compliance Date, as alleged in the Notices. All Products in inventory or the stream of commerce as of the Compliance Date shall be released pursuant to this provision.

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 Products manufactured, distributed, sold and/or offered for sale by Kingsum, before the Effective Date (collectively, “Claims”), against Kingsum and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any individual or entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Kingsum, nor shall it extend downstream to any Releasee instructed by Kingsum to provide a

warning and who fails 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 Kingsum's Products.

#### **4.2 Kingsum's Release of KASB**

Kingsum, on its own behalf and 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 or otherwise seeking to enforce Proposition 65 against it with respect to the Products.

#### **5. DISMISSAL OF PENDING ACTION AGAINST MELK**

Within twenty (20) days of the Effective Date, or after KASB's counsel confirms Kingsum's compliance with the economic terms set forth in Section 3, above, whichever is later, KASB and its counsel shall dismiss with prejudice the lawsuit captioned *Keep America Safe and Beautiful v. MELK Enterprises, Inc., et al.*, Case No. 23CV418915, currently pending in the Santa Clara County Superior Court.

#### **6. 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.

#### **7. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California and apply within California. If Kingsum believes that Proposition 65 is repealed, preempted, or otherwise rendered inapplicable by reason of law generally, or as to the Products, then Kingsum meet and confer with KASB and its counsel for a reasonable period of time before seeking to modify this Agreement pursuant to Section 12, below. Nothing in this Agreement shall be



interpreted to relieve Kingsum from its obligation to comply with state or federal law or regulation.

**8. NOTICE**

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by: (i) electronic transmission, including via e-mail, (ii) first-class registered or certified mail, return receipt requested; and/or (iii) a recognized overnight courier to any Party by the other at the following addresses:

For Kingsum:

Michael Yim, CEO  
Kingsum, Inc.  
4950 E. 2<sup>nd</sup> Street  
Benecia, CA 94510-1027

*With a Copy To:*

Sherry E. Jackman, Esq.  
Sedina L. Banks, Esq.  
2049 Century Park East, Suite 2600  
Los Angeles, CA 90067  
sjackman@greenbergglusker.com  
sbanks@greenebrgglusker.com

For KASB:

Laralei Paras, Esq.  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
laralei@sevenhillsllp.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.

**9. COUNTERPARTS AND ELECTRONIC SIGNATURES**

This Agreement may be executed in counterparts and by electronic or facsimile signature(s), each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH REPORTING REQUIREMENTS**

KASB and its counsel agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f) and shall report this Agreement to the OAG within five (5) days of the Effective Date.

**11. 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 prior discussion, negotiation, commitment, or understanding related to the subject of this Agreement, if any, are hereby merged. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representation, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreement not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind either of the Parties.

**12. MODIFICATION**

This Agreement may be modified only by a written agreement of the Parties. In the event the Parties seek to modify this Agreement, KASB and its counsel agree to report the modified agreement to the OAG within five (5) days of the last date of execution of such modified agreement in compliance with California law, including Health & Safety Code § 25249.7(f).

**13. AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Party and have read, understand, and agree to all terms and conditions set forth herein.

**AGREED TO:**

Date: 5/13/2025

By:   
Lance Nguyen, CEO  
KEEP AMERICA SAFE AND  
BEAUTIFUL

**AGREED TO:**

Date: May 7, 2025

By:   
Michael Yim, CEO  
KINGSUM, INC.