

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Parties**

This settlement agreement ("Settlement Agreement") is entered into by and between Keep America Safe and Beautiful, Inc., ("KASB"), on the one hand, and HB USA Holdings, Inc., ("HB USA" or "Defendant") on the other hand, with KASB and HB USA 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 February 23, 2023, that HB USA sells and/or distributes the "Brown Obsession Tortoise Makeup Pouch products" in California that contains Di(2-ethylhexyl) Phthalate (DEHP) without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (collectively the "Notice"). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

### **1.3 Product Description**

The product covered by this Settlement Agreement is defined as, makeup pouches including Brown Obsession Tortoise Makeup Pouch products", (hereinafter the "Covered Product").

### **1.4 Notice of Violation**

On February 23, 2023, KASB served the Notice on HB USA, the California Attorney General and the other requisite public enforcers, alleging that HB USA violated Proposition 65 when they failed to warn consumers in California of the alleged exposures to DEHP from the Covered Product.

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**

HB USA denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Covered Product, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall constitute or be construed as an admission by HB USA or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by HB USA or any of its officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by HB USA. This Section shall not, however, diminish or otherwise affect HB USA's 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 DEHP Warning Level

For Covered Product manufactured after the Effective Date, and Shipped for Sale in California, such Covered Product shall either bear a warning as set forth in Paragraph 2.2 or have a maximum concentration of less than 0.1% (1,000 parts per million) DEHP 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 performed by using a laboratory method that is approved by the Consumer Product Safety Commission ("CPSC"), U.S. Environmental Protection Agency ("USEPA"), or other federal or state government agency approved testing method. HB USA may rely on the results of its supplier's testing to determine compliance with this Section.

"Shipped for Sale in California" means the Covered Product that HB USA or its affiliates either directly ships to California for sale in California, or that it sells to a distributor or retailer who HB USA knows will sell the Covered Product to consumers in California.

### 2.2 General Warning Requirements

HB USA agrees that warnings 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion. The warning shall also comply with 27 C.C.R. § 25607.1(c). Specifically, where the Covered Product sign, label, or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered Product shall consist of a warning affixed to the packaging, label, tag, or directly to each of Covered Product Shipped for Sale in California by HB USA that contains one of the following statements:

1) **⚠ WARNING:** This product can expose you to chemicals including Di(2-ethylhexyl) phthalate (DEHP), which 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).

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

Online warnings shall be required to the extent required in 27 CCR § 25602.

(i) Changes in Warning Regulations or Statutes

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, HB USA shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations, legislation or judicial rulings are enacted or issued providing that a Proposition 65 warning for the Covered Product is no longer required, a lack of warning will not thereafter be a breach of this Agreement.

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

The injunctive requirements of Section 2 shall not apply to Covered Product that is already in the stream of commerce as of the Effective Date, which Covered Product is expressly subject to the releases provided in Section 4.1.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Total Settlement Payment**

In full satisfaction of all potential civil penalties, attorneys' fees, and costs, HB USA shall make a total settlement payment of Twenty Thousand Dollars **(\$20,000.00)** ("Total Settlement Amount"). The Total Settlement Amount shall be apportioned into a Civil Penalty and Attorney's Fees and Costs as set forth in Sections 3.2 and 3.3 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, HB USA agrees to pay Two Thousand Dollars **(\$2,000.00)** in civil penalties. The Civil 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) business days of the Effective Date, HB USA shall issue a check to "OEHHA" in the amount of One Thousand Five Hundred Dollars **(\$1,500.00)** and shall, pursuant to the instructions below, wire to KASB the amount of Five Hundred Dollars **(\$500.00)**.

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 via wire to:

**Wire & ACH Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 270 Park Ave. New York, NY. 10017  
ACH Routing / ABA Number: 322271627  
Wire Routing / ABA Number: 021000021  
Account Number: 802922919

For further benefit of: Civil Penalty Payment File No. P65-02-0018

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

The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, within ten (10) business days of the date this Settlement Agreement is executed by the Parties, HB USA agrees to pay Eighteen Thousand Dollars (**\$18,000.00**) to KASB and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of HB USA, and negotiating a settlement.

The payment shall be sent via wire to:

#### **Wire & ACH Instructions:**

Account Name: The Law Offices of Joseph R. Manning  
Bank Name: J.P. Morgan Chase Bank, N.A.  
Bank Address: 270 Park Ave. New York, NY. 10017  
ACH Routing / ABA Number: 322271627  
Wire Routing / ABA Number: 021000021  
Account Number: 802922919

For further benefit of: Attorney's Fees and Costs File No. P65-02-0018

### **3.4 Tax Documentation**

HB USA agrees to provide a completed IRS 1099 form for its payments to, and KASB and Manning Law agree to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that HB USA cannot issue any settlement payments pursuant to Section 3 above until after HB USA receives the requisite W-9 forms from KASB's counsel.

## **4. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

### **4.1 Binding Effect**

This Settlement Agreement is a full, final, and binding resolution between KASB, on behalf of itself and its respective members, owners, principals, officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, successors, assigns, legal representatives, and affiliates and HB USA and (a) its respective equity owners, officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, and related companies, (b) its upstream suppliers and downstream entities in the stream of commerce including, but not limited to franchisees, licensees, customers, suppliers, distributors, wholesalers,

cooperative members and retailers, and (c) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors, and assigns of any of the entities in subsections (a) and (b), above (the entities identified in subsections (a), (b), and (c), above, are collectively referred to as “Released Parties”) as to the Covered Product and DEHP under Proposition 65.

#### **4.2 KASB’s Release of HB USA**

KASB, acting on behalf of itself and its respective members, owners, principals, officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, successors, assigns, legal representatives, and affiliates hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted based on or related to the handling, use, sale, distribution or consumption of the Covered Product in California, as to any alleged violation of Proposition 65 or its implementing regulations up through the Effective Date, based on a failure to provide Proposition 65 warnings on any Covered Product manufactured on or before the Effective Date with respect to exposures to DEHP.

#### **4.3 HB USA’s Release of KASB**

HB USA 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 Covered Product.

#### **4.4 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 Covered Products, will develop or be discovered. KASB on behalf of itself only, and HB USA 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 HB USA acknowledge that the claims released in Sections 4.2 and 4.3 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.

### **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.

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.  
26100 Towne Center Drive  
Foothill Ranch, CA 92610  
Tel: Office (949) 200-8757 Fax: (866) 843-8309  
p65@manninglawoffice.com

**For HB USA, INC.**

Will Wagner  
ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111  
Tel: (415) 471-3100  
Fax: (415) 471-3400  
Will.wagner@arnoldporter.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 with respect to the entire subject matter herein, including any and all prior discussions, negotiations, commitments, and understandings related thereto. No representations or terms of agreement other than those contained herein exist or bind any Party. No representations, oral or otherwise, express or implied,

other than those specifically referred to in this Agreement have been made by, or relied on, by 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: October 13, 2023

By:   
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Keep America Safe and Beautiful, Inc.

AGREED TO:

Date: Oct 12, 2023

By:   
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HB USA Holdings, Inc.