

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**”) on the one hand, and Lilly Lashes, LLC (“**Lilly Lashes**”) on the other hand, with KASB and Lilly Lashes 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. Lilly Lashes 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 Lilly Lashes manufactures, imports, sells, and distributes for sale in California bags with vinyl components containing diisononyl phthalate (“**DINP**”) including, but not limited to, *Gold Cosmetic Bag with Lash Applique, Item No. LLAC35*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Storage, bags, and packaging made with vinyl 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 May 22, 2023, KASB served Lilly Lashes, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Lilly Lashes 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

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

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the day by which it is signed by both Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Lilly Lashes 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 shall be accompanied by a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standard

For purposes of this Agreement, "**Reformulated Products**" are defined as Products which, if they contain diisononyl phthalate ("**DINP**"), comply with the applicable standard under Proposition 65 at the time any Product is sold in California.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Lilly Lashes shall provide clear and reasonable warnings for all Products, that are not Reformulated 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.

The Warning for DINP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠WARNING: This product can expose you to diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

2.3.1 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 On Product Warnings

Lilly Lashes shall affix a warning to the Product label or otherwise directly on Products, that are not Reformulated Products, provided for sale to consumers located in California and to 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 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.

2.5 Internet Warnings

If, after the Effective Date, Lilly Lashes 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, Lilly Lashes shall provide warnings for each Product both on the Product label 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 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. For third-party websites, as a condition of sale, Lilly Lashes shall provide its customer with notices stating 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 Sections 2.3 through 2.5.

2.6 Compliance with Warning Regulations

The Parties agree that Lilly Lashes shall be deemed to be in compliance with this Agreement by adhering to Section 2.0 of this Agreement. In the event that the Office of Environmental Health Hazard Assessment promulgates after the Effective Date one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DINP different than those set forth above, Lilly Lashes shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Lilly Lashes agrees to pay a civil penalty of \$1,000 within twenty (20) business days of the Effective Date. Lilly Lashes’ 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. Lilly Lashes shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “**Seven Hills in trust for Keep America Safe and Beautiful**” in the amount of \$250. 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 twenty (20) days of the Effective Date, Lilly Lashes agrees to issue a check in the amount of \$17,250 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to Lilly Lashes’ 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 Lilly Lashes

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Lilly Lashes, 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 Lilly Lashes, its predecessors, successors, parents, subsidiaries, members, suppliers, indemnitors, insurers, reinsurers, and affiliates, as well as their respective present and former officers, directors, members, shareholders, managers, employees, attorneys, agents and other representatives, as well as each entity to whom Lilly Lashes directly or indirectly distributes, ships, or sells any of the Products, including but not limited to downstream distributors, wholesalers, retailers, franchisees, franchisors, cooperative members, suppliers, lenders, licensees, and licensors, and all of the foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, representatives, predecessors, successors, and assigns (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 Lilly Lashes 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 DINP in the Products manufactured, distributed, sold and/or offered for sale by Lilly Lashes, before the Effective Date (collectively, "**Claims**"), against Lilly Lashes and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend Releasees who have been instructed by Lilly Lashes pursuant to Section 2.5 to provide a warning and fails to do so.

4.2 Lilly Lashes' Release of KASB

Lilly Lashes, 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 Lilly Lashes 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 Lilly Lashes 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 electronic mail and by either (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 Lilly Lashes:

Daniel A. Solitro
Locke Lord LLP
300 S. Grand Avenue, Suite 2600
Los Angeles, CA 90071
dsolitro@lockelord.com

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
laralei@sevenhillslp.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 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: 04/11/2024

By: 

Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 4/10/2024

By: 

July Bocabeille
Lilly Lashes, LLC