

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 ECS Tuning, LLC (“**ECS**”), with KASB and ECS each individually referred to as a “**Party**” and, collectively, the “**Parties.**” KASB is a California-based non-profit organization that alleges that it proceeds 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. ECS 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 ECS manufactures, imports, sells, and distributes for sale in California creepers with vinyl upholstery containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Schwaben Padded Creeper Seat /Stool with Tool Tray Part #:PEL-005940SCH01A*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). These creepers 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 or other reproductive harm.

1.3 Notice of Violation

On or about May 26, 2023, KASB served ECS, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging ECS violated Proposition 65 by failing to warn 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

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

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean the date by which the Agreement is signed by both Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, (a) all Products ECS manufactures, imports, or otherwise acquires 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 (b) all Products that are not Reformulated Product that ECS sells, ships, distributes or offers for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall be accompanied by a clear and reasonable health hazard warning pursuant to the Section 2.3.

2.2 Reformulation Standard & Reformulated Products Defined

For purposes of this Agreement, “Reformulated Products” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), contain a maximum concentration of such chemical 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-C1001.09.4 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. (“**Reformulation Standard.**”)

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, ECS shall provide clear and reasonable warnings for all Products that are not Reformulated Products provided for ultimate sale to customers in California or to customers with retail outlets 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, 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 following warnings for Products containing DEHP 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 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.

- or -

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

(b) **Foreign Language Requirement.** Where a sign or label used to provide a warning includes “consumer information”, as the term is defined in Title 27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages other than English, then the

warning required by Section 2.3(a) must also be provided in those languages, in addition to English.

(c) **On-Product Warning Requirements.** ECS shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For purposes of this Consent Judgment, “**Product label**” means a display of written, printed, or graphic material that is printed on or affixed to each Product or its immediate wrapper. A warning provided pursuant to Section 2.3(a) 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 that if the labeling does not use the color yellow, then the symbol may be in black and white.

(d) **Catalog Warnings.** If, after the Effective Date, ECS prints new catalogs and sells Products through such catalogs to customers located in California or with retail outlets located in California, ECS shall provide a warning for each Product both on the Product label in accordance with Section 2.3(c), and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. The catalog warning may use the second warning described in Section 2.3(a) if the warning provided on the Product label also uses the second warning.

(e) **Internet Product Warning Requirements.** For all Products sold in or into California through websites over which ECS has the ability to control the application of warnings, ECS shall provide warnings for each Product, both on the Product label, in accordance with Section 2.3(c), and by prominently displaying the warning over the internet to customers prior to purchase such that the consumer does not have to seek out the information being provided . The warning itself or a clearly marked hyperlink to the warning, using the word “**WARNING**” shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout

process. The internet warning may use the second warning described in Section 2.3(a) if the warning provided on the Product label also uses the second warning. ECS shall notify its downstream customers to whom the Products are sold for purposes of resale that their websites must have a Proposition 65 compliant warning on them if the website is accessible to California purchases of the Products, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, pursuant to Section 2.3.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), ECS agrees to pay a civil penalty of \$2,500 within the later of ten (10) business days of the Effective Date or KASB's delivery to ECS of completed W-9 forms for all payees identified in this Agreement. ECS' 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. ECS shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Seven Hills LLP in trust for Keep America Safe and Beautiful" in the amount of \$625. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payments.

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 the later of ten (10) business days of the

Effective Date or KASB's delivery to ECS of completed W-9 forms for all payees identified in this Agreement, ECS agrees to issue a check in the amount of \$21,500 payable to "Seven Hills LLP" for all fees and costs incurred in investigating, bringing this matter to ECS'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 Schmohl Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of ECS

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and ECS, 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, employees, representatives, attorneys, successors, and/or assignees, against ECS, its directors, officers, employees, attorneys, members, parents, subsidiaries, affiliates, and each entity to whom ECS directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**") from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by ECS 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, employees, representatives, attorneys, successors, and/or assignees, hereby waives and

relinquishes all rights to institute or participate in, directly or indirectly, any form of legal action against Releasees, and further releases all claims, actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees, whether sought in law or in equity, arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold and/or offered for sale by ECS, before the Effective Date (collectively, "**Claims**").

The Parties further understand and agree that this Section 4.1 release shall extend neither upstream to any 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 ECS, nor shall this Section 4.1 extend to any downstream entities who fail to provide a warning pursuant to Section 2.3(e).

4.2 ECS's Release of KASB

ECS, 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, for any and all actions taken or statements made by KASB and its attorneys and other representatives 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, without regard to its conflicts of law principles. 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 ECS 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 ECS 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 ECS:

Matthew I. Kaplan
Tucker Ellis LLP
515 S. Flower St., 42nd Floor
Los Angeles, CA 90071

For KASB:

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

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. 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 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. 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. 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. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

13. 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: 05/29/2024

By:  _____

Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: May 29, 2024

By:  _____

Alek Mergy, CBDO
ECS Tuning, LLC