

# 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 Mechanix Wear, Inc. (“**Mechanix**”), with KASB and Mechanix 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. Mechanix 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 Mechanix manufactures, imports, sells, and distributes for sale in California vinyl/PVC aprons containing diisononyl phthalate (“**DINP**”) including, but not limited to, Children’s Vinyl Apron, Ages 8-14, Royal Blue, Item No. 04926-5051, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC aprons 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 birth defects or other reproductive harm.

### 1.3 Notice of Violation

On July 3, 2023, KASB served Mechanix, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Mechanix 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

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

### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date upon which this Agreement is fully executed.

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

### **2.1 Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, all Products Mechanix 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 2.1.1. This Reformulation Commitment does not apply to any Product sold or distributed prior to the Effective Date.

#### **2.1.1 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"), 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 CPSCCH-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.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Mechanix agrees to pay a civil penalty of \$2,000 within five (15) business days of the Effective Date. Mechanix'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. Mechanix 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 portion of the penalty payment. Alternatively, Mechanix may make payment in full of all civil penalties and attorneys' fees (set forth in Section 3.3) via ACH or wire transfer within 15 business days of the Effective Date. Wire transfer information shall be provided upon request along with a W9. The Parties understand and agree that no payment, whether via check or wire transfer, shall be made or due until Mechanix receives a W9 from KASB.

#### **3.2 Representations**

Mechanix represents that the sales data, product reformulation and/or knowledge of DINP that it provided to KASB in negotiating this Agreement was truthful and a material factor upon which KASB relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, KASB discovers and presents to Mechanix evidence demonstrating that the preceding representation was materially inaccurate, then Mechanix shall have 30 days to meet and confer regarding KASB's contention. In the event the 30-day meet and confer period passes without any such resolution between KASB and Mechanix, then KASB shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 4.2 of the Agreement pursuant to Code of Civil Procedure § 664.6. The prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as

approved by the Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to enforce the settlement until the expiration of the nine (9) months following the Effective Date pursuant to Code of Civil Procedure § 664.6.

### **3.3 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 five (15) days of the Effective Date, Mechanix agrees to issue a check in the amount of \$17,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Mechanix' attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### **3.4 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 Mechanix**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Mechanix, 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 Mechanix, its directors, officers, employees, attorneys, agents, representatives, successors, or assigns, and each entity to whom

Mechanix directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Chicago Protective Apparel, Inc. (collectively, “**Releasees**”), from all claims for violations of Proposition 65 based on their alleged failure to warn about alleged exposures to DINP contained in the Products that were manufactured, distributed, sold by Mechanix and/or offered for sale 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, DEHP, DBP, BBP, DIDP, or DnHP in the Products manufactured, distributed, sold by Mechanix and/or offered for sale before the Effective Date (collectively, “**Claims**”), against Mechanix and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend 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 Mechanix. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Mechanix’ Products.

#### **4.2 Mechanix’ Release of KASB**

Mechanix, 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.

### **4.3 Mutual Waiver of California Civil Code Section 1542**

The Parties each acknowledge familiarity with Section 1542 of the Civil Code, which provides 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.

The Parties, each on their own behalf, and each on behalf of their past and current agents, representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all rights and benefits which it/they may have under, or which may be conferred upon it/them by the provisions of Civil Code Section 1542, as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent they may lawfully waive such rights or benefits pertaining to the released matters, as specifically defined by Sections 4.2 and 4.3, above. Nothing in this section shall affect KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve 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 Mechanix 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 Mechanix 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 Mechanix:

Ryan Edmonson, CFO  
Mechanix Wear LLC  
27335 Tourney Road  
Floor 3  
Valencia, CA 91355

For KASB:

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

With a copy to counsel:

Damon M. Pitt, Esq.  
K&L Gates LLP  
1 Park Plaza, Twelfth Floor  
Orange County, California 92614

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: 1/19/2023

By:   
Lance Nguyen, CEO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 1/16/2024

By:   
Ryan Edmonson, CFO  
Mechanix Wear LLC