

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 Boardriders Wholesale, LLC’s Roxy brand (“**Boardriders**”), with KASB and Boardriders 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. Boardriders 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 Boardriders manufactures, imports, sells, and distributes for sale in California vinyl/PVC pouches containing di(2ethylhexyl) phthalate (“**DEHP**”) identified as, *ROXY In My Life Little, Color: KVJ5, Style: ARJAA03242, Item Code: 41292295701, UPC 1 95718 10739 1*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). The ROXY In My Life Little, Color: KVJ5, Style: ARJAA03242, Item Code: 41292295701, UPC 1 95718 10739 1 is 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 and other reproductive harm.

1.3 Notices of Violation

On August 3, 2023, KASB served Boardriders IP Holdings, LLC, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Boardriders IP Holdings, LLC violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to DEHP.

Thereafter, on October 18, 2023, KASB served Boardriders Wholesale, LLC, Authentic Brands Group LLC, the California Attorney General, and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”) alleging Boardriders Wholesale, LLC and Authentic Brands Group LLC violated Proposition 65 by failing to warn their customers and consumers in California that the Products can expose users to DEHP. The Notice and Supplemental Notice are referred to hereinafter collectively as, the “**Notices.**” No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notices.

1.4 No Admission

Boardriders denies the factual and legal allegations contained in the Notices 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 Boardriders of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Boardriders’ 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 all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Boardriders 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.

2.2 Reformulation Standard

For purposes of this Agreement, “Reformulated Products” are defined as Products containing di(2-ethylhexyl) phthalate (“DEHP”) 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 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Boardriders agrees to pay a civil penalty of \$2,575 within thirty (30) days of the Effective Date and following receipt of the appropriate vendor setup and IRS forms for processing of payment. Boardriders’ 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. Boardriders shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,931.25; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$643.75. 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 thirty (30) days of the Effective Date and after receipt of IRS forms for the processing of payment, Boardriders agrees to issue a check in the amount of \$21,375 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Boardriders' 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 Boardriders

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Boardriders, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past, current and future agents, officers, representatives, attorneys, successors, and/or assignees, against Boardriders, its sister and parent companies, subsidiaries, affiliated entities, and their respective directors, officers, members, partners, employees, attorneys, representatives, shareholders, agents, owners,

predecessors, successors, assigns, licensors, and each entity to whom Boardriders directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn under Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Boardriders in California before the Effective Date, as alleged in the Notices.

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

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) to upstream 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 Boardriders nor (b) to Releasees who have been instructed by Boardriders pursuant to Section 2.4, to provide a warning on Products that are not Reformulated Products and have failed 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 Boardriders’ Products.

4.2 Boardriders’ Release of KASB

Boardriders, 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 Boardriders 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 Boardriders 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 (1) electronic mail; and (2) 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 Boardriders:

Bridgette Fitzpatrick
Boardriders Wholesale, LLC
1411 Broadway 21st Floor
New York, NY 10018
LegalDept@authentic.com

For KASB:

Laralei Paras, Partner
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.

8. COUNTERPARTS, FACSIMILE 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 | 7:13 PM EDT

By: Jay Dubiner
Jay Dubiner, Chief Legal Officer
Boardriders Wholesale, LLC