

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Mastercool U.S.A., Inc. (“**Mastercool**”) and Keep America Safe and Beautiful (“**KASB**”) with Mastercool and KASB referred to, individually, as a “**Party**” and, collectively, as the “**Parties.**” KASB is a California nonprofit corporation, proceeding in the public interest, pursuant to California Health & Safety Code § 25249.7(d), to ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed or eliminated from products sold in California. Mastercool is a “person in the course of doing business,” as defined by Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.2 General Allegations & Consumer Product Description

KASB alleges Mastercool manufactures, distributes, sells and/or offers for sale to consumers in California tools with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Mastercool 5 91490 R12 Standard Valve Core Removers and Installers*, without providing the health hazard warning required by Proposition 65. All such tools with vinyl/PVC grips are referred to hereinafter as the “**Products.**” DEHP is listed as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On October 6, 2023, KASB served Mastercool, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging violated Proposition 65 by failing to warn its customers and 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 either the Notice.

1.4 No Admission

Mastercool denies the factual and legal allegations contained in the Notice and maintains all products it manufactured, sold, and/or distributed for sale, in or into California, including the

Products, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Mastercool of any fact, finding, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Mastercool of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean July 3, 2024.

2. INJUNCTIVE RELIEF: REFORMULATION & INTERIM WARNINGS

2.1 Commitment to Reformulate the Products or Provide Warnings

Commencing on the Effective Date, and continuing thereafter, Mastercool agrees all Products it manufactures and import which are sold or distributed in or into California shall be Reformulated Products, in accordance with and as defined by Section 2.2 below, or accompanied by a clear and reasonable warning pursuant to Section 2.3 below. The Parties agree and intend that compliance with the terms of this Agreement shall constitute compliance with Proposition 65 with respect to the alleged exposures to DEHP from the Products except that any retailer or distributor of the Products to which Mastercool provides the notice in Title 27, Cal. Code of Regulations, section 25602(b) and which does not provide the warning required by that section shall not be released for future sales of the Products.

2.2 Reformulated Products & Reformulation Standard Defined

For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if they contain 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 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.

(“**Reformulation Standard.**”)


2.3 Product Warnings

Commencing on or before the Effective Date, all Products Mastercool sells and/or distributes for sale in California shall bear a clear and reasonable warning (unless it is a Reformulated Product, as described in Section 2.2) in accordance with this Section and 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.** For the purposes of this Agreement, clear and reasonable warning for Products (except for Reformulated Products, as described in Section 2.2) shall contain one of the following statements, 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 is 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.

If Mastercool provides supplemental information referring to the Warning set forth in 2.3(a), such information must comply with Title 27 of the California Code of Regulations, Section 25601(e).

(b) **Foreign Language Requirement.** Where a consumer product sign, label or tag 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 accompanying warnings must also be provided in those languages, in addition to English.

(c) **On-Product Warning Requirements.** Mastercool 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 Agreement, “**Product label**” means a display of written, printed, or graphic material that is printed on or affixed to each of a 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. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the Products.

(d) **Catalog Warnings.** If, after the Effective Date, Mastercool prints new catalogs and sells Products through such catalogs to customers located in, with retail outlets located in, California or with nationwide distribution, Mastercool shall provide a warning for each Product both on the Product label, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased.

(e) **Internet Warning Requirements.** For all Products sold in or into California through third-party websites over which Mastercool has the ability to control the application of internet warnings, Mastercool shall provide warnings for each Product, both on the Product label, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. The warning or a clearly marked hyperlink to the warning, using the word “**WARNING**” and given in conjunction with the sale of Products via the internet, 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. For Products Mastercool sells, ships, or distributes to third-party retailers or e-commerce marketplaces after the Effective Date

of this Agreement, Mastercool will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

(f) **Non-Exclusive Warning Requirements.** If, after the Effective Date, the Office of Environmental Health Hazard Assessment (“OEHHA”) promulgates regulations requiring or permitting specific safe harbor warning text and/or methods of transmission different than those set forth above, that Mastercool may, at its discretion, utilize such other warning language and/or methods of transmission without being deemed in breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Agreement, Mastercool agrees to pay \$2,500 in civil penalties. Penalty payments shall be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (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 five (5) business days of the Effective Date, Mastercool agrees to pay a non-waivable civil penalty in two separate checks, made payable as follows: (1) “OEHHA” in the amount of \$1,875; and “Seven Hills in trust for Keep America Safe and Beautiful” in the amount of \$625, and delivered to the address in Section 3.3, below. KASB’s counsel shall deliver to KASB and to OEHHA their respective portions of the civil penalty payments.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge KASB and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized all other terms, the Parties negotiated a resolution of the compensation due to KASB and its 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 of this Agreement. Under these legal principles, within five (5) business days of the

Effective Date, Mastercool agrees to pay \$19,500 to KASB and its counsel for investigating, bringing this matter to the attention of Mastercool's management, and negotiating a settlement in the public interest. Mastercool's payment shall be in the form of a check made payable to "Seven Hills LLP" and delivered to the address appearing in the following Section 3.3.

3.3 Payment Address

All payments required by this Agreement shall be delivered to the following address:

Seven Hills LLP
c/o Laralei Paras
4 Embarcadero Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Proposition 65 Claims

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Mastercool, of any violation 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 Mastercool, its directors, officers, employees, attorneys, and each entity to whom Mastercool directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, including, without limitation Mastercool, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning under Proposition 65 about exposure to DEHP contained in Products distributed, sold or offered for sale by Mastercool, as alleged in the Notice, prior to the Effective Date.

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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to

DEHP in Products distributed, sold and/or offered for sale by Mastercool prior to the Effective Date, as alleged in the Notice, against Mastercool 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 suppliers who sold the Products or any component parts to Mastercool nor downstream to any Releasee who has been instructed by Mastercool pursuant to Section 2.3(e) to provide a warning and fails to do. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Mastercool's Products.

4.2 Mastercool's Release of KASB

Mastercool, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB, its attorneys and other representatives, for any actions taken or statements made, or could have been taken or made by, KASB, its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against Mastercool with respect to the Products.

5. SEVERABILITY

If, subsequent to the Effective Date, any of the provision of this Agreement is deemed by a court unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Agreement shall be governed by and apply within the laws of the State of California. If Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then Mastercool shall provide written notice to KASB 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 Mastercool from its obligation to comply with pertinent state or federal toxics control laws. The Parties agree that if OEHHA changes its warning regulations, then Mastercool may either conform with the revised law or continue to conform with the terms provided in this Agreement if the new implementing

regulations so allow. In doing so, Mastercool will be in compliance with this Agreement as long as it continues to fulfill any warning obligation unaffected by such new changes.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided by this Agreement shall be in writing and sent by: (i) first-class (registered or certified mail) return receipt requested; or (iii) overnight courier, to one party by the other at the following addresses:

For Mastercool:

Nima Nili, Operations Coordinator
Mastercool, U.S.A., Inc.
1 Aspen Drive
Randolph, NJ 07869

For KASB:

Laralei Paras, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Alexandra L. Lizano, Esq
Greenberg Traurig, LLP
400 Capitol Mall, 24th Floor
Sacramento, CA 95814

Any party, from time to time, may specify in writing to the other party a change of address to which all Notice and other communications shall be sent.

8. COUNTERPARTS AND SIGNATURES

This Agreement may be executed in counterparts and by pdf signature, which shall be deemed an original, and, when taken together, shall be deemed to constitute the same document.

9. REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)

KASB agrees to comply with the reporting requirements in Health & Safety Code § 25249.7(f).

10. MODIFICATION

This Agreement may only be modified by the written agreement of the Parties.

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11. **AUTHORIZATION**


The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Agreement. The undersigned further represent they are authorized to execute this Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: 07/04/2024

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 

By: **July 3, 2024**
Nima Nili, Operations Coordinator
Mastercool, U.S.A., Inc.