

# 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 Koi Design LLC (“**Koi Design**”), with KASB and Koi Design 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. Koi Design 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 Koi Design manufactures, imports, sells, and distributes for sale in California vinyl/PVC bags containing diisononyl phthalate (“**DINP**”) including, but not limited to, *French Bull by Koi Stadium Tote Bag, Mfg. Style No. FA186-CNV, Barcode: 843515 467520*, and badge holders with vinyl components containing di(2-ethylhexyl) phthalate (“**DEHP**”), including, but not limited to, *Masked Smiley Badge Reel, SKU: A156-SMY, UPC: 8 43515 42054 9, RN# 121336*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC bags and badge holders with vinyl components are referred to hereinafter collectively as the “**Products.**” DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

### 1.3 Notices of Violation

On November 20, 2023, KASB served Koi Design, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”),

alleging Koi Design violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DINP. On April 29, 2024, KASB served the same parties and entities with a Supplemental 60-Day Notice of Violation (“**Supplemental Notice**”) alleging Koi Design violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. The Notice and Supplemental Notice shall be referred to hereinafter 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**

Koi Design 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 Koi Design of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Koi Design’s 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 OR WARNINGS**

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, all Products Koi Design 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 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 di(2-ethylhexyl) phthalate (“DEHP”) or diisononyl phthalate (“DINP”), contain 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. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“CPSC”) methodology CPSC-CH-C1001.09.3 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.


## **2.3 Clear and Reasonable Warnings**

Commencing on or before the Compliance Date, Koi Design shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in or into California in accordance with this Section. 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.

### **(a) Warnings**

#### **For Products containing DEHP:**

##### **Option 1:**

 **WARNING** [or] **CA WARNING** [or] **CALIFORNIA 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](http://www.P65Warnings.ca.gov).

**Option 2:**

**⚠️ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Risk of cancer and reproductive harm from exposure to di(2-ethylhexyl) phthalate (DEHP). See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Option 3:**

**⚠️ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose you to di(2-ethylhexyl)phthalate (DEHP), a carcinogen and reproductive toxicant. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Option 4:** The following warning statement may be used on Products manufactured and labeled prior to January 1, 2028:

**⚠️ WARNING:** Cancer and Reproductive Harm -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**For Products containing DINP:**

**Option 1:**

**⚠️ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Option 2:**

**⚠️ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Cancer risk from exposure to diisononyl phthalate (DINP). See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Option 3:**

**⚠️ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose you to diisononyl phthalate (DINP), a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Option 4:** The following warning statement may be used on Products manufactured and labeled prior to January 1, 2028:

**⚠️ WARNING:** Cancer -- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**(b) 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.

**(c) On-Product Warnings.**

Koi Design shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California, or e-commerce platforms with sales to consumers in California. 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(a) must print the one of the following warning phrases in all capital letters and in bold font: **WARNING [or] CA WARNING [or] CALIFORNIA WARNING**. The warning symbol to the left of the warning phrase 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 be set off from other surrounding information, enclosed in a box and appear in at least 6-point type.

**(d) Internet Warnings.**

For all Products sold in or into California through third-party websites over which Koi has the ability to control the application of warnings, Koi Design shall additionally prominently display the warning to customers on the internet website 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 warning phrase **WARNING [or] CA WARNING [or] CALIFORNIA WARNING** and given in conjunction with the sale of the Products via the internet, shall appear either: (a) on the same web page 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. If the on-Product Warning is one of the warning

statements set forth in Options 2-4 in Section 2.3, the Internet Warning may use the corresponding warning statement.

Where Koi Design sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces with sales into California, Koi Design will advise them of the internet warning requirements under this Agreement as a condition of sale of the Products.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Koi Design agrees to pay a civil penalty of \$2,750 within five (5) business days of the Effective Date. Koi Design'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. Koi Design shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$2,062.50; and (b) "Seven Hills LLP in Trust for Keep America Safe and Beautiful" in the amount of \$687.50. 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 Notices 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 (5) business days of the Effective Date, Koi Design agrees to issue a check in the amount of \$23,750 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Koi Design'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: Kimberly Gates Johnson  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 KASB's Release of Koi Design**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Koi Design, 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 Koi Design and each entity to whom Koi Design 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 DINP or DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Koi Design 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 DINP or DEHP in the Products manufactured, distributed, sold and/or offered for sale by Koi Design, before the Effective Date (collectively, “**Claims**”), against Koi Design and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) 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 Koi Design, nor (b) to Releasees who have been instructed by Koi Design pursuant to Sections 2.3(d) and 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 Koi Design’s Products.

#### **4.2 Koi Design’s Release of KASB**

Koi Design, 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. Nothing in this Agreement shall be interpreted to relieve Koi Design 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 Koi Design:

Matt Orr, Esq.  
Amin Wasserman Gurnani, LLP  
515 South Flower Street, 18<sup>th</sup> Floor  
Los Angeles, CA 90071

For KASB:

Kimberly Gates Johnson, Partner  
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, 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: 6/3/2025

By:   
Lance Nguyen, CEO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 6/2/2025

By:   
Jeremy Husk, CFO  
Koi Design LLC