

# 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 EPPCO Enterprises, Inc. (“**EPPCO**”), with KASB and EPPCO 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. EPPCO 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 EPPCO manufactures, imports, sells, and distributes for sale in California vinyl fender covers containing diisononyl phthalate (“**DINP**”), including, but not limited to, *Isky Cams Fender Covers Model: FENDERCOVERS*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Fender covers 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 cancer.

### 1.3 Notice of Violation

On November 21, 2023, KASB served EPPCO, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging EPPCO 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

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

### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean July 31, 2024.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

### **2.1 Reformulated Products**

Commencing on the Effective Date and continuing thereafter, all Products EPPCO manufactures, imports, or purchases for sale or distribution 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.

#### **2.1.1 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain diisononyl phthalate ("**DINP**"), di(2-ethylhexyl) phthalate ("**DEHP**"), di-n-butyl phthalate ("**DBP**"), 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 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.

## 2.2 Interim Warnings

The following warnings for Products containing one or more chemical(s) in excess of the Reformulation Standard set forth in Section 2.2.1 shall be deemed in compliance with Title 27 California Code of Regulations § 25600, *et seq.*:

For Products containing DINP:

**⚠WARNING:** This product can expose you to 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).

For Products containing any other phthalate chemical(s):

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

For Products containing any other phthalate chemical(s) other than DINP:

**⚠WARNING:** This product can expose you to chemicals including [name of chemical or chemicals], 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](http://www.P65Warnings.ca.gov).

**2.2.1 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.

**2.2.2 Product Warnings.** EPPCO shall affix a warning to the Product label or otherwise directly on Products, provided for sale to consumers located in California or to downstream entities (a) who sell to consumers in California, (b) with retail outlets in California, (c) with e-commerce platform(s), or (d) with nationwide distribution. 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 2.2(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 if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

**2.2.3 Internet Warnings.** If, after the Effective Date, EPPCO sells Products, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, EPPCO shall provide warnings for each Product both on the Product label in accordance with Section 2.2(c), and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which 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. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products for which it is given in the same type size or larger than other consumer information provided for the Products. Where EPPCO sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, EPPCO will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

### **2.3 Customer Notification**

No later than the Effective Date, EPPCO shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each consumer in California to which it supplied Products between November 21, 2022, and the Effective Date; and (2) any other customer that is a retailer or distributor that has any inventory of Products which EPPCO supplied between November 21, 2020 and the Effective Date, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California

to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Products must either (1) be returned to EPPCO for a full refund or (2) have a label, attached to the packaging of each Product before it is sold in the California market or to a customer in California, expressly referring to the Product with the following warning statement:

**⚠WARNING:** This product can expose you to 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).

The foregoing warning 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. The entire warning shall appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. The Notification Letter shall enclose a shipping label with the return address and postage paid by EPPCO. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the foregoing warning statements.

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

#### **3.1 Initial Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), EPPCO agrees to pay a civil penalty of \$1,000 within five (5) business days of the Effective Date. EPPCO’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. EPPCO shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$750; and (b) “Seven Hills in trust for Keep America Safe and Beautiful” in the amount of \$250. EPPCO’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

### **3.2 Second Waivable Civil Penalty**

EPPCO shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be waived in its entirety, if, on or before August 30, 2024, an officer of EPPCO provides Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by EPPCO for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, and (b) customers with retail locations in California, nationwide distribution, or e-commerce websites, are Reformulated Products. Along with its attested declaration, EPPCO shall provide either a test result performed after the date of the Notice, evincing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2.1 or a statement from its supplier identifying the quantity, source location, and proximate prior usage of, and the actual Post-Consumer Material content of, the material purchased by EPPCO for use in the Products. Unless the second civil penalty is waived, on or before September 16, 2024, EPPCO shall issue a check made payable to "OEHHA" in the amount of \$1,875 and a check made payable to "Seven Hills in trust for Keep America Safe and Beautiful" in the amount of \$625.

### **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 EPPCO'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) days of the Effective Date, EPPCO agrees to issue a check in the amount of \$16,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to EPPCO's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

### 3.4 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 EPPCO

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and EPPCO, 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 EPPCO, its directors, officers, employees, attorneys, and each entity to whom EPPCO 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 DINP contained in the Products that were manufactured, distributed, sold by EPPCO 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 EPPCO'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 EPPCO before the Effective Date (collectively, "**Claims**"), against EPPCO and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend downstream to any Releasee who has been instructed by EPPCO pursuant to Sections 2.2.3 and 2.3 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 that does not involve EPPCO's Products.

#### **4.2 EPPCO's Release of KASB**

EPPCO, 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 EPPCO 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 EPPCO:

Barry Epstein, President  
EPPCO Enterprises, Inc.  
544 S. Green Road  
Cleveland, OH 44121

For KASB:

Laralei Paras, Esq.  
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.

**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:**

**AGREED TO:**

Date: 3/6/2025

By: \_\_\_\_\_

Lance Nguyen, CEO  
Keep America Safe and Beautiful

Date: 3/5/2025

By: \_\_\_\_\_

Barry Epstein, President  
EPPCO Enterprises, Inc.