

# 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**”) on the one hand, and CMP Global Inc. (“**CMP Global**”) on the other hand, with KASB and CMP Global 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. CMP Global is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.6 et seq. (“**Proposition 65**”), and California Health & Safety Code § 25249.11(b), specifically.

### 1.2 Consumer Product Description

KASB alleges that CMP Global manufactures, imports, sells, and/or distributes for sale in California fender adjusters allegedly containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Dock Edge Fender Holder w/Adjuster-Black, Mfg# 91-536-F, UPC: 7 76113 91536 3*, without providing the health hazard warning that KASB alleges is required by Proposition 65. Fender adjusters are referred to hereinafter as the “**Products**.” 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 Notice of Violation

On January 18, 2024, KASB served CMP Global, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging CMP Global 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 the Notice.

#### **1.4 No Admission**

CMP Global denies the factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by CMP Global of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect CMP Global'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 CMP Global 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. 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.

#### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), contain such chemical 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.

### **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, CMP Global 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 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, 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 clearly associated with the specific Product to which the warning applies.

#### **(a) Warnings**

For the purposes of this Agreement, clear and reasonable warnings 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 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).

- or -

**⚠ WARNING:** Cancer and Reproductive Harm – [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) **Product Warnings**

CMP Global shall affix a warning to the Product label or otherwise directly on all Products, that are not Reformulated Products, provided for sale to consumers located in California or to downstream entities who sell in or into California, such as customers with retail outlets in California or 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 2.3(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 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.

(d) **Internet Warnings**

If, after the Effective Date, CMP Global sells Products, that are not Reformulated Products, via the internet, 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, CMP Global shall provide warnings for each Product both on the Product label in accordance with Section 2.3(c), and by prominently displaying a warning on its own website, or providing warning language for products sold on other websites not under the control of CMP Global in accordance with Title 27, California Code of Regulations, Section 25600.2. The warnings on these websites should be prominently displayed 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 CMP Global sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, CMP Global will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products in accordance with Title 27, California Code of Regulations, Section 25600.2.

**(e) Non-Exclusive Warning Requirements**

The Parties acknowledge that the warnings required by this section are not the exclusive methods of providing Proposition 65 warnings and agree 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 CMP Global may, at its discretion, utilize such other warning language and/or methods of transmission without being deemed in breach of this Settlement Agreement.

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), CMP Global agrees to pay a civil penalty of \$3,500 within thirty (30) business days of the Effective Date. CMP Global’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. CMP Global shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) “Seven Hills LLP in Trust for KASB” in the

amount of \$875. 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) business days of the Effective Date, CMP Global agrees to issue a check in the amount of \$19,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to CMP Global'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: Laralei Paras  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

### **4.1 KASB's Release of CMP Global**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and CMP Global, 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 CMP Global, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers,



employees, attorneys, and each entity to whom CMP Global 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 CMP Global 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 DEHP in the Products manufactured, distributed, sold and/or offered for sale by CMP Global, before the Effective Date (collectively, “**Claims**”), against CMP Global 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 CMP Global, nor (b) to Releasees who have been instructed by CMP Global pursuant to Section 2.3(d) 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 CMP Global’s Products.

#### **4.2 CMP Global’s Release of KASB**

CMP Global, 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 §1542**

The Parties acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and the Parties nevertheless waive California Civil Code §1542 as to any such unknown claims. California Civil Code section 1542 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.

KASB, in its individual capacity only, and CMP Global, in its individual capacity only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code §1542. The Parties expressly waive and relinquish any and all rights and benefits which they may have under, or which may be conferred on them, by the provisions of California 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 that they may lawfully waive such rights or benefits pertaining to the released matters.

#### **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 CMP Global 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 CMP Global from its obligation to comply with any pertinent state or federal law or regulation.

The Parties agree that if OEHHA changes its warning regulations, then CMP Global may either conform with the revised law or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow. In doing so, CMP Global 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 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 CMP Global:

Michael Szwez  
Vice President Marketing General Counsel  
CMP Group  
300 New Huntington Road  
Woodbridge, Ontario  
L4H 0R4, Canada

For KASB:

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

*With a copy to:*

Dale Stern, Esq.  
Downey Brand LLP  
621 Capitol Mall, 16th Fl.  
Sacramento, CA 95814

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. COMPUTING TIME**


In computing any period of time under this Agreement, where the last day of such period falls on a Saturday, Sunday, or Federal or State holiday, the period runs until the close of business on the next day that is not a Saturday, Sunday, or Federal or State holiday.

13. **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.

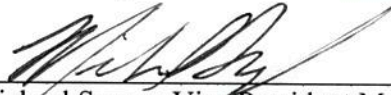
**AGREED TO:**

Date: 07/15/2024

By:   
Lance Nguyen, CEO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: July 10<sup>th</sup>, 2024

By:   
Michael Szwez, Vice President Marketing  
and General Counsel  
CMP Global Inc.