

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 USA Industrials, Inc., previously doing business as USA Sealing, LLC (“**USA Industrials**”), with KASB and USA Industrials 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. USA Industrials 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 USA Industrials manufactures, imports, sells, and distributes for sale in California vinyl/PVC tubing containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *PVC Tubing for Fuels and Lubricants-3/4” ID x 1” OD x 10 ft. Long, Item: 55YL99, Mfr. Model: ZUSA-HT-1229, Barcode: U2 4155 0720*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC tubing 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 cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On February 22, 2024, KASB served USA Industrials, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging USA Industrials 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

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

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean the date that is ninety (90) days from the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products USA Industrials 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”), 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, USA Industrials shall provide clear and reasonable warnings ("Warning") for all Products that are not Reformulated Products provided for sale to customers in California for which a Warning is required under this Agreement or pursuant to Title 27 California Code of Regulations § 25600, et seq. Each Warning shall be prominently placed as to render it likely to be read and understood by an ordinary person 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) **Product Warnings.** Where a Warning is provided for any Products that are not Reformulated Products, USA Industrials shall affix that Warning to the Product label or directly on the Products, to the Product's immediate container or wrapper where the Products are sold, shipped, or distributed in bulk quantities, or in a manner authorized under California law. 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. Where a Warning is applied to bulk packaging for Products sold, shipped, or distributed to third-party retailers or e-commerce marketplaces, USA Industrials will advise them of the Warning requirements under this Agreement.

A Warning provided under Section 2.3(a) or (b) 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 yellow, the symbol may be in black and white. The Warning shall

appear in at least 6-point type and no smaller than the largest size used for other consumer information on the Products.

The Warning shall consist of the following statement:

⚠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.

(b) **Short-Form Warning.** As an alternative to the warning set forth in subsection 2.3(a), USA Industrials may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“Short-Form Warning”):

⚠WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

(c) **Internet Warnings.** If, after the Effective Date, USA Industrials sells Products that are not Reformulated Products via the internet to customers located in California, USA Industrials will prominently display Warnings for each such Product to the customer in accordance with subsection 2.3(a) or (b) and Title 27 California Code of Regulations § 25602(b), et seq. 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 in the same type size or larger than other consumer information provided for the Products 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. Where USA Industrials sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, USA Industrials will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

(d) **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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), USA Industrials agrees to pay a civil penalty of \$ 2,500.00 within ten (10) business days of the date this Agreement is fully executed by all Parties. USA Industrials' 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. USA Industrials shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$ 1,875.00; and (b) “**Seven Hills LLP in Trust for KASB**” in the amount of \$ 625.00. 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 ten (10) business days of the date this Agreement is fully executed by all Parties, USA Industrials agrees to issue a check in the amount of \$17,750 payable to “**Seven Hills LLP**” for all fees and costs incurred investigating, bringing this matter to USA Industrials' 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 USA Industrials**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and USA Industrials, 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 USA Industrials, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom USA Industrials 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 USA Industrials 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 USA Industrials, before the Effective Date (collectively, “**Claims**”), against USA Industrials 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 USA Industrials, nor (b) to Releasees who have been instructed by USA Industrials pursuant to Section 2.3(c) 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 USA Industrials' Products.

4.2 USA Industrials' Release of KASB

USA Industrials, 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 section 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 USA Industrials, in its individual capacity only, acknowledge and understand the significant and consequences of this specific waiver of California Civil Code section 1542. The parties expressly waive and relinquish any and all rights and benefits which they may have under, of 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 USA Industrials 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 USA Industrials 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 USA Industrials:

Blade Sorrentino, Executive Director
USA Industrials, Inc.
512 Sonwil Drive
Buffalo, NY 14225

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Sean Newland, Esq.
DLA Piper LLP
2525 East Camelback Road, Suite 1000
Phoenix, AZ 85016

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.

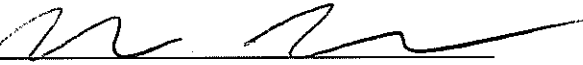
AGREED TO:

Date: 10/04/2024

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 10/4/2024

By: 
Blade Sorrentino, Executive Director
USA Industrials, Inc.