

## **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 Creative Co-Op, Inc. (“Creative Co-Op”), with KASB and Creative Co-Op 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. Creative Co-Op 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 Creative Co-Op manufactures, imports, sells, and distributes for sale in California tongs containing Lead, including, but not limited to, *Creative Co-op Gold Embossed, DF2521, UPC # 1 91009 29798 7; ASIN B084LNB66L*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). Tongs are referred to hereinafter as the “Products.” Lead 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 August 23, 2024, KASB served Creative Co-Op, the Office of the Attorney General of the State of California (“OAG”), and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In its Notice, KASB alleges Creative Co-Op violated Proposition 65 by failing to warn its customers and consumers in California the Products can expose users to Lead. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Creative Co-Op 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, comply with all laws. Neither any term of this Agreement nor Creative Co-op's compliance with its terms shall constitute or be construed as an admission by Creative Co-Op of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Creative Co-Op'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 the Parties.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

### **2.1 Commitment to Reformulate or Provide Warnings**

Commencing on the Effective Date and continuing thereafter, all Products Creative Co-Op 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., below or contain a clear and reasonable warning in compliance with Section 2.3, below.

### **2.2 Reformulation Standard**

For purposes of this Agreement, "Reformulated Products" are defined as Products which:

(a) contain no more than 300 parts per million ("ppm") (0.03%) lead by weight when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization ("Accredited Laboratory");

(b) the brass alloy from which the Products are made shall have no lead as an intentionally added constituent;

(c) the brass alloy from which the Products are made shall have a lead content by weight of no more than 0.03% (300 parts per million, or "300 ppm"); and

(d) the tested Product shall yield a test result of no more than 0.5 microgram of Lead on the Product's entire surface area when sampled pursuant to the NIOSH 9100 testing protocol by an Accredited Laboratory.

Lead concentration levels by weight pursuant to this Section 2.2 shall be determined in conformity with U.S. Environmental Protection Agency method 6020 and with inductively coupled plasma mass spectrometry (ICP-MS) equipment with a level of detection of 10 ppb meeting standard laboratory QA/QC requirements.

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

Commencing on the Effective Date and continuing thereafter, for all Products that are not Reformulated Products and are manufactured, imported, sold, distributed, packaged or offered for sale, in or into, California, Creative Co-Op shall provide clear and reasonable warnings to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Creative Co-Op shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the future.

For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

#### **(a) Warning Content:**

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

**⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** This product can expose you to Lead, 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

##### **Option 2:**

**⚠WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** This product can expose you to chemicals including Lead, 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, for Products manufactured and labeled prior to January 1, 2028:*

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

**(b) Short-Form Warning Content:** As an alternative to the warning set forth in the preceding subsection (a), Creative Co-Op may, but is not required to, use one of the following short-form warnings (“Short-Form”), subject to the additional requirements set forth in the following Sections (c) through (e):

**Option 1:**

**⚠ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose you to Lead, a carcinogen and reproductive toxicant. See

Or

**Option 2:**

**⚠ WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Risk of cancer or reproductive harm from exposure to Lead. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

*Or, for Products manufactured and labeled prior to January 1, 2028,*

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

The warning requirements set forth herein are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Prop. 65 regulations, in effect as of the Effective Date and/or as amended in the future. 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.

**(c) 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.

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

Creative Co-Op shall affix a warning to the Product label or otherwise directly on Products intended or provided for sale to consumers located in California and to customers with retail outlets in California, nationwide distribution, or e-commerce platforms. For the purposes 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 words "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 be set off from other surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the largest type size used for other consumer information on the Products.

Warnings provided pursuant to Section 2.3 by Creative Co-Op must print the words "WARNING:", "CA WARNING:", or "CALIFORNIA WARNING:" in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the warning must be a black exclamation point in a yellow equilateral triangle with a black outline, except, if the sign or label for the Products does not use the color yellow, then the symbol may be in black and white. The symbol must be in a size no smaller than the height of the words "WARNING:", "CA WARNING:", or "CALIFORNIA WARNING:" The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

**(e) Internet Warnings.**

For all Products manufactured, imported, distributed, sold or offered for sale via the internet to customers located in California, or sold in or into California by Creative Co-Op or its customers, directly or through third-party websites over which Creative Co-Op has the ability to control the application of warnings, Creative Co-Op shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and: (a) a warning on the Product

display page; (b) a clearly marked hyperlink using the word “WARNING” or words “CA WARNING” or “CALIFORNIA WARNING” on the product display page that links to the Product warning; or (c) by an otherwise prominently displayed warning provided to the purchaser prior to completing the purchase, such that the consumer does not have to seek out the information being provided. If the warning is provided using the Short-Form content, pursuant to Section 2.3(b), then the warning provided on the website may use the same content.

“Prominently displayed” is defined to mean the consumer does not have to search for it in the general content of the website. Where Creative Co-Op sells, ships, or distributes Products to third-party retailers, websites, or e-commerce marketplaces, Creative Co-Op 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), Creative Co-Op agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. Creative Co-Op’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. Creative Co-Op shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Seven Hills in trust for Keep America Safe and Beautiful” in the amount of \$500. Creative Co-Op’s counsel shall remit to OEHHA and KASB their respective portions of Creative Co-op’s civil penalty payment.

#### **3.2 Reimbursement of Attorneys’ Fees and Costs**

After the Parties reached an agreement on all other injunctive and monetary settlement terms, they negotiated and reached an accord on Creative Co-op’s reimbursement of a portion of KASB’s attorneys’ fees and costs of suit. They did so at arm’s-length and pursuant to general contract principles and the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5. Creative Co-op’s payment of KASB’s attorneys’ fees under this Section 3.2 shall cover all work performed through the mutual execution and reporting of this

Agreement to the OAG. Within five (5) days of the Effective Date, Creative Co-Op agrees to issue a check in the amount of \$17,250 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Creative Co-Op’s attention, negotiating a settlement in the public interest, and reporting its terms to OAG 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: Brian C. Johnson  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111

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

### **4.1 KASB’s Release of Creative Co-Op**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Creative Co-Op, 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 Creative Co-Op, its directors, officers, employees, attorneys, and each entity to whom Creative Co-Op 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 Lead contained in the Products manufactured, distributed, sold and/or offered for sale by Creative Co-Op 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 Creative Co-Op’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 Lead in the Products manufactured, distributed, sold and/or offered for sale by Creative Co-Op before the Effective Date (collectively, "Claims"), against Creative Co-Op and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend upstream to any individual or entity that manufactured the Products or any component parts thereof, or any distributor or supplier who provided the Products or any component parts thereof to Creative Co-Op. Nor shall this Section 4.2 release extend downstream to any Releasee instructed by Creative Co-Op pursuant to Sections 2.4 and 2.5 to provide a warning and who 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 Creative Co-Op's Products.

#### **4.2 Creative Co-Op's Release of KASB**

Creative Co-Op, 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 Creative Co-Op 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 Creative Co-Op:

Adam Schrier, President  
Creative Co-Op, Inc.  
6000 Freeport Avenue, Suite 101  
Memphis, TN 38141

For KASB:

Brian C. Johnson  
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 ELECTRONIC SIGNATURES**

This Agreement may be executed in counterparts and by electronic or facsimile signature(s), 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: 3/24/2025

By:   
Lance Nguyen, CEO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 3/18/25

By:   
Adam Schrier, President  
Creative Co-Op, Inc.