

# PROPOSITION 65 SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe & Beautiful (“**KASB**”) and Utopia Towels, Inc. dba Utopia Deals (“**Utopia**”), with KASB and Utopia each individually referred to as a “**Party**” and collectively, as 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. Utopia 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 Utopia manufactures, imports, sells, and/or distributes for sale into California vinyl storage/packaging cases containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Utopia Bedding Hypoallergenic Mattress Protector (Twin)*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). Vinyl storage/packaging cases 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 birth defects and other reproductive harm.

### 1.3 Notice of Violation

On September 11, 2020, KASB served Amazon.com, Inc. (“**Amazon**”), the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Amazon violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to DEHP. Utopia is the supplier of the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

#### **1.4 No Admission**

Utopia denies the material, factual, and legal allegations contained in the Notice, and maintains that all products it has manufactured, sold and/or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including Proposition 65. Nothing in this Agreement shall constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Utopia of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Utopia's obligations, responsibilities, and duties under this Agreement.

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean the date on which the Agreement is fully executed.

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

#### **2.1 Reformulation or Warning Commitment**

Commencing on the Effective Date for all Products in Utopia's possession and continuing thereafter for all future Products Utopia 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 Sections 2.3 through 2.5. This term shall not apply to Products already in the stream of commerce on the Effective Date.

#### **2.2 Reformulation Standard**

For purposes of this Agreement, "**Reformulated Products**" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("**DEHP**"), di-n-butyl phthalate ("**DBP**"), diisononyl phthalate ("**DINP**"), butyl benzyl phthalate ("**BBP**"), di-isodecyl phthalate ("**DIDP**") and di-n-hexyl phthalate ("**DnHP**"), contain any or all such chemicals each in a maximum concentration of less than or equal to 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, a nationally

recognized accrediting organization, 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**

For those Products that do not comply with Section 2.2, Utopia shall provide clear and reasonable warnings for all Products ultimately sold to consumers in California in accordance with this Section as authorized by safe harbor warning regulations at Title 27 California Code of Regulations § 25600, et seq.<sup>1</sup> Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices 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.

**2.3.1 DEHP Warning.** The Warning for DEHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

**⚠WARNING:** This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

- or -

**⚠WARNING:** This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer or birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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<sup>1</sup> Should these warning safe harbor provisions be amended, Utopia’s compliance with the amended version of the regulations shall constitute compliance with this Agreement.

**2.3.2. Non-DEHP Phthalate Warning.** The Warning for DIDP, DBP, BBP and/or DnHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall comply with Title 27 California Code of Regulations§ 25600, et seq. Utopia may also use the short form warning set forth in Title 27 California Code of Regulations§ 25600, et seq. at its discretion.

**2.3.3. 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.

### **2.3.4 Product Warnings**

**2.3.4.1 On Product Warnings.** For Products that are not Reformulated Products, Utopia 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, e-commerce platforms 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) 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 the color yellow, the symbol may be in black and white.

**2.3.4.2 Internet Warnings.** Utopia shall also provide warnings for each Product that is not a Reformulated Product by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites, or by retail customers with e-commerce platforms, to California consumers 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 be in the same type size or larger than other consumer information provided for the Products.

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

#### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Utopia agrees to pay a civil penalty of \$10,000 within thirty (30) business days of the Effective Date. Utopia'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. Utopia shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$7,500; and (b) "Seven Hills LLP in trust for Keep America Safe & Beautiful" in the amount of \$2,500. 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, Utopia agrees to issue a check in the amount of \$28,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Utopia's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. The payments set forth in Section 3 are the exclusive payments due between the Parties.

### **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 Utopia**

This Agreement is a full, final and binding resolution between KASB, as an individual, and Utopia, 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 Utopia, its past and present parents, subsidiaries, affiliated entities under common ownership, predecessors, successors, members, directors, officers, employees, attorneys, and each entity to whom Utopia directly or indirectly distributes or sells Products, including, but not limited, Amazon.com, Inc., 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 and other Proposition 65 regulated phthalates contained in the Products that were manufactured by Utopia on or before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual 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 or other Proposition 65 regulated phthalates in the Products manufactured by Utopia on or before the Effective Date (collectively, “**Claims**”), against Utopia and Releasees. The Parties understand and agree this Section 4.1 release shall not extend to Releasees who have been instructed by Utopia pursuant to Section 2.3.4 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 Utopia’s Products.

#### **4.2 Utopia’s Release of KASB**

Utopia, 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 General Release**

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 reads 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, on behalf of itself only, and Utopia, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542. The Parties expressly waive and relinquish any and all rights and benefits that they may have under, or which may be conferred on them by 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.

#### **4.4 Public Interest**

The Parties understand that the commitments Utopia has agreed to herein, and actions to be taken by Utopia under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Utopia's failure to provide a Proposition 65 warning on the Products it has manufactured, distributed, and/or sold on or before the Effective Date, such private party action would not confer a significant benefit on the general public as to the Products addressed in this Settlement Agreement, provided that Utopia is in material compliance with this Agreement. The Parties agree that the understandings and intentions expressed in this Section are applicable only to the Notice and the Products at issue and are not to be construed as a general understanding or intention with respect to other products manufactured, distributed, sold or offered for sale in California by any other entity.

#### **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 or the application of law to the Products as alleged in the Notice, then Utopia 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 Utopia from its obligation to comply with any pertinent state or federal law or regulation.

**7. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

If a dispute arises with respect to either Party's compliance with the terms of this Agreement, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand. Any Party that fails to meet and confer or otherwise attempt in good faith to resolve any dispute arising under this Agreement prior to seeking judicial enforcement, shall forfeit any attorneys' fees and costs to which that Party may otherwise be entitled.

**8. NOTICE**

Unless specified herein, all correspondence and notice required by this Agreement shall be in writing and sent by electronic mail and be either (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 Utopia:

Will Wagner, Esq.  
Arnold & Porter Kaye Scholer LLP  
3 Embarcadero Center, 10<sup>th</sup> Floor  
San Francisco, CA 94111  
Will.Wagner@arnoldporter.com

For KASB:

Laralei Paras  
Seven Hills LLP  
4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
laralei@sevenhillsllp.com

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.

**9. 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.

**10. 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).

**11. 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.

**12. MODIFICATION**


This Agreement may be modified only by a written agreement of the Parties.

**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: 20/09/2023

By: 

My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 19-09-2023

By: 

Jabran Niaz, Chief Executive Officer  
Utopia Towels, Inc. dba Utopia Deals