

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 GoodVac.com Corporation (“**GoodVac**”), with KASB and GoodVac 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. KASB alleges GoodVac is a responsible entity selling products for sale to consumers in the State of California and/or to one or more entities qualifying as 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 GoodVac manufactures, imports, sells and distributes for sale into California the Universal 25” Flexible Crevice Tool with Detachable Brush Head, X001O6QQUN, a flexible vacuum tool. The Universal 25” Flexible Crevice Tool with Detachable Brush Head, X001O6QQUN is referred to hereinafter as the “**Covered Product.**” KASB alleges the Covered Product contains di(2-ethylhexyl) phthalate (“**DEHP**”), and has been sold to California consumers without a health hazard warning that KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). 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 November 18, 2020, KASB served GoodVac, Amazon, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation, AG# 2020-03114 (“**Notice**”), alleging GoodVac violated Proposition 65 by failing to warn its customers and consumers in California that the Covered Product 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

GoodVac denies the material, factual, and legal allegations contained in the Notice, and maintains that all products it has sold or distributed for sale in California, including the Covered Product, 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 GoodVac of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect GoodVac's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date the Agreement is signed by both Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, any Covered Product GoodVac 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 a Reformulated Product, 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, a "Reformulated Product" is defined as a Covered Product which, if it contains di(2-ethylhexyl) phthalate ("**DEHP**") in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. 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

GoodVac shall provide clear and reasonable warnings for each and every Covered Product that does not qualify as a Reformulated Product provided for sale to consumers in 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, 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.

(a) **Warning.** The following warnings for a Covered Product containing DEHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall be deemed in compliance with Title 27 California Code of Regulations §25600, et seq.

 **WARNING:** This product can expose you to chemicals including 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.** GoodVac may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“**Short-Form Warning**”), and subject to the additional requirements in Sections 2.5, as follows:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

(c) **Foreign Language Requirement.** Where Goodvac provides a consumer product sign, label or shelf tag containing a warning or other consumer information in language(s) other than English, Goodvac must also provide the warning in the other language(s) in addition to English.

2.4 Product Warnings

GoodVac shall affix a warning to the Product label or otherwise directly on any Covered Product that does not qualify as a Reformulated Product provided for sale to consumers located in California and to 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 Covered 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. 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 Covered Product.

2.5 Internet Warnings

If, after the Effective Date, GoodVac sells any Covered Product via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers GoodVac knows or should know distribute and/or operate e-commerce websites that make the Covered Product available to consumers located in California, GoodVac shall provide warnings for each Covered Product both on the product label in accordance with Section 2.4, 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 Covered Product 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 Covered Product via the internet shall appear either: (a) on the same web page on which the Covered Product are displayed; (b) on the same web page as the virtual cart displaying the Covered Product; (c) on the same page as the price for the Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall be prominently placed with such conspicuousness, in the same type size or

larger than other consumer information provided for the Covered Product, as to render it likely to be read and understood by a purchaser during the checkout process before final purchase. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the product label also uses the Short-Form Warning content.

2.6 Additional Warnings Required or Permitted by Law or Regulation

In addition to the warning requirements set forth in Sections 2.3, 2.4, and 2.5, above, GoodVac may also use other warning and transmission method(s) set forth in 27 Cal. Code Regs. §§ 25601, 25602, 25603, et seq., and amended subsequently thereafter, that are applicable to the Covered Product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), GoodVac agrees to pay a civil penalty of \$2,500 within fourteen (14) business days of the Effective Date. GoodVac'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. GoodVac shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Seven Hills in trust for Keep America Safe & Beautiful" in the amount of \$625. KASB's counsel shall be solely responsible to 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 fourteen (14) days of the Effective Date, GoodVac agrees to issue a check in the amount of \$16,500 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to GoodVac’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

3.4 Tax Documentation

KASB agrees to provide IRS W-9 forms for each payee contemplated herein, including OEHHA, KASB, and Seven Hills LLP. The Parties acknowledge that GoodVac cannot issue any settlement payments pursuant to this section until after GoodVac receives the requisite W-9 forms.

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of GoodVac

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and GoodVac, of any violation 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 GoodVac, its past and present parents, subsidiaries, affiliated entities under common ownership, members, directors, officers, employees, attorneys, and each entity to whom GoodVac directly or indirectly distributes or sells the Covered Product, including, but not limited, Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including (collectively, “**Releasees**”), under Proposition 65 based on their failure to warn about alleged exposures to DEHP contained

in the Covered Product that were manufactured, distributed, sold and/or offered for sale by GoodVac 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 Covered Product manufactured, distributed, sold and/or offered for sale by GoodVac, before the Effective Date (collectively, “**Claims**”), against GoodVac and Releasees.

The Parties understand and agree this Section 4.1 release shall not extend to Releasees who have been instructed by Goodvac, pursuant to Section 2.5, to provide a warning on Products that are not Reformulated Products and have failed to do so.

4.2 GoodVac’s Release of KASB

GoodVac, 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 Covered Product.

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4.3 Waiver of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which 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.

Each of the Parties waives and relinquishes any right of benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

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 Covered Product, or should Proposition 65 warnings for DEHP no longer be required by law, then GoodVac shall have no further injunctive obligations pursuant to this Agreement, with respect to, and to the extent that, the Covered Product are so affected. Nothing in this Agreement shall be interpreted to relieve GoodVac 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 GoodVac:

Anne Marie Ellis
Buchalter
18400 Von Karman Avenue, Suite 800
Irvine, CA 92612-0514

For KASB:

Laralei Paras
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, 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: June 4, 2023

By: 

My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: _____

By: _____
Rocky Stevens, President,
GoodVac.com Corporation

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: _____

By: _____

My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: 07/06/23

By: 

Rocky Stevens, President,
GoodVac.com Corporation