

PROPOSITION 65 SETTLEMENT AGREEMENT

NOTICE NUMBER 2020-03347

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe & Beautiful (“**KASB**”) and Waymil LLC *dba* The Jeweler’s Choice Tools (“**Waymil**”), with KASB and Waymil 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. Waymil is a responsible entity selling products for sale to consumers in State of California and/or to entities who are persons in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges that Waymil manufactures, imports, sells and distributes for sale, on behalf of Amazon.com, Inc. in or into California, tools with vinyl/PVC grips containing di(2-ethylhexyl) phthalate (“**DEHP**”), specifically, the *Flat Half Round Nose Jaws Plier ASIN: B01IPL90Q* without providing the health hazard warning KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). These specific tools with vinyl/PVC grips 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, birth defects and other reproductive harm.

1.3 Notice of Violation

On December 9, 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. Waymil 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

Waymil denies the material, factual, and legal allegations contained in the Notice, and maintains all products it 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 Waymil of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Waymil's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean March 24, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Waymil 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 containing di(2-ethylhexyl) phthalate ("**DEHP**") in a maximum concentration of less than 0.1 percent (1,000 parts per million) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use) 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

Commencing on or before the Effective Date, Waymil shall provide clear and reasonable warnings for all Products 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 Warning shall consist of the following statement:



WARNING: This product can expose you to DEHP, which is known to the State of California to cause cancer, birth defects and 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 the preceding subsection (a), Waymil may, but is not required to, use one of the following applicable short-form warnings (“**Short-Form**”), subject to the additional requirements set forth in the following Sections 2.4 and 2.5:



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



WARNING: Reproductive Harm- 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.

2.4 Product Warnings

Waymil 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 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 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, then 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.

2.5 Internet Warnings

If, after the Effective Date, Waymil sells Products via the internet, through its own website, affiliated websites or a third party website, such as Amazon.com, Inc., to consumers located in California or to customers with nationwide distribution and e-commerce websites, Waymil shall provide warnings for each 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 prior to or 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. Waymil may use one of the Short-Form warnings, described in Section 2.3(b,) for internet warnings, if the warning provided on the Product label also uses the Short-Form.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Waymil agrees to pay a civil penalty of \$2,500 within five (5) days of the Effective Date. Waymil’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. Waymil shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$625. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Reimbursement of Attorneys’ Fees and Costs; Terms; Installments

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. Waymil agrees to reimburse Seven Hills LLP a total of \$12,500 for all fees and costs incurred investigating, bringing this matter to Waymil’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9, in the form of a check payable to “Seven Hills LLP” within five (5) days of the Effective Date.

The Parties agree to the following payment schedule, with all checks under this Section 3.2 made payable to “Seven Hills LLP” and all checks due within five (5) days of the Effective Date to be deposited pursuant to the following payment schedule. Waymil shall remit three checks as follows: \$9,000, \$1,750, and \$1,750. The initial check of \$9,000 shall be payable and deposited within five (5) days of the Effective Date. The remaining two checks of \$1,750 shall also be remitted within five (5) days of the Effective Date and shall each be deposited on the 30th day of the following months, according to this schedule: May 30, 2023 and June 30, 2023, with the entire balance due under this Section and paid in full no later than June 30, 2023.

In the event any of the payments under this Section 3 fails due to lack of funds or failure to adhere to terms detailed herein, KASB and Seven Hills LLP reserve their rights under this agreement to pursue all available remedies at law, including breach of contract or any other

remedies that may apply. Failure to comply with Waymil's payment obligations herein shall render this agreement invalid, except that the statute of limitations shall not be negatively affected: The Parties specifically agree no time shall be deemed to pass for purposes of enforcing this agreement, its terms, or the alleged violations in the Notice, based on failure to adhere to this Section. By this Section, KASB reserves its rights to enforce the noticed violations and the legal claims and defenses related thereto.

3.3 Payments; Reporting

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

When this agreement is fully executed by the Parties, counsel for KASB shall deliver to Waymil, by electronic mail, a copy of the final Agreement and Federal Form W9s for all payees, allowing Waymil to comply with its year-end 1099 Federal reporting requirements. In return, Waymil shall provide a tracking number, communicating when payments are remitted.

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 Waymil

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Waymil, 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 Waymil, its past and present members, directors, officers, employees, attorneys, and each entity to whom Waymil directly or indirectly distributes

or sells Products, including, but not limited, Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including (collectively, “**Releasees**”), based on their failure to warn, arising under Proposition 65, about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Waymil 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 Waymil, before the Effective Date (collectively, “**Claims**”), against Waymil and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend 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 Waymil. The Parties further agree this Section 4.1 release shall not apply to any downstream entities selling the product who fail to provide a warning pursuant to Section 2. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Waymil’s Products.

4.2 Waymil’s Release of KASB

Waymil, 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. 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 Waymil 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 Waymil 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 Waymil:

Laura Garcia, CEO
Waymil LLC
6352 NW 99th Ave.
Doral, FL 33178

For KASB:

Kimberly Gates Johnson, Partner
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.

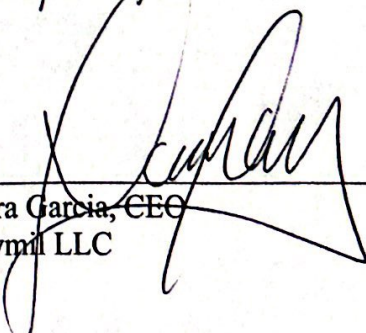
AGREED TO:

Date: 04/05/2023

By: 
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: 04/03/2023

By: 
Laura Garcia, CEO
Waymi LLC