

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**”), on the one hand, and Dynarex and Unifirst Corporation *dba* Medique Products (collectively, “**Dynarex**”), on the other, with KASB and Dynarex each individually referred to as a “**Party**” and, collectively, as the “**Parties**.**”** KASB is a California nonprofit corporation and is a person in the State of California proceeding in the public interest, pursuant to California Health & Safety Code §§ 25249.7(d), to ensure chemicals known to the State to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Dynarex 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 Dynarex manufactures, imports, sells and distributes for sale in California vinyl sphygmomanometer tubing containing di(2-ethylhexyl)phthalate (“**DEHP**”), including, but not limited to, the *Dynarex Sphygmomanometer with Zipper Case, Reorder No. 7107, UPC #6 16784 71071 6; UPC #3 47682 71901 2*, referred to hereinafter as the “**Products**,” without providing the health hazard warning 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 cancer, birth defects and other reproductive harm.

1.3 Notice of Violation

On December 9, 2020, KASB served Dynarex, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Dynarex violated Proposition 65 when it failed to warn its customers and consumers in California its Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Agreement, the term "**Effective Date**" shall mean July 19, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, Dynarex agrees each Product manufactured, imported, sold or distributed for sale in or into California shall be either:

- (a) Reformulated Products meeting the Reformulation Standard, as defined by Section 2.2; or
- (b) Products bear a clear and reasonable warning, as set forth in the following Sections 2.3 through 2.6.

2.2 Reformulation Standard & Reformulated Products Defined

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 each accessible component (i.e. any component that may be touched during a reasonably foreseeable use of the Product) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization ("**Reformulation Standard**").)

For purposes of compliance with this Reformulation Standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission ("**CPSC**") methodology CPSC-CH-C1001.09.4 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 the Effective Date, and continuing thereafter, for all Products manufactured, imported, sold, distributed or offered for sale in California that do not meet the Reformulation Standard, Dynarex shall provide clear and reasonable health hazard warnings. For purposes of this Agreement, a warning shall be deemed clear and reasonable if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

Each warning shall be prominently placed with such conspicuously 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warning:

 **WARNING:** This product can expose you to chemicals, including 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) Alternative Short-Form Warning:

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

The Parties agree, should Dynarex determine additional chemical endpoints need to be included in either of the above warnings, Dynarex may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

2.4 On-Product Warning Requirements

Dynarex shall affix or attach one of the foregoing Section 2.3 warnings on the Product

Label, packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. “Product Label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire short-form warning shall appear in at least 6-point type, and in no event shall any warning be smaller than the largest type size used for other consumer information on the Product.

A Warning or Alternative Short-Form Warning provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. 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 that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “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.

2.5 Internet and Catalog Product Warning Requirements

For all Products imported, distributed, sold or offered for sale by Dynarex via the internet to customers or consumers located in California after the Effective Date, Dynarex shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, and by prominently displaying the warning to customers prior to purchase or during the checkout process such that the consumer does not have to seek out the information being provided. For all Products not meeting the Reformulation Standard and sold or distributed for sale by Dynarex to downstream distributors or retailer sellers for sale in or into California, Dynarex agrees to provide consumer warning information, as defined by Section 2.3, *supra*, in compliance with Health & Safety Code §§ 25600 *et seq.* An asterisk or other identifying method must be utilized to identify which Products are subject to the Warning when products subject to the Warning appear near, or with, products that are not, so the purchaser clearly understands which Products

are subject to the Warning. The warning or a clearly marked hyperlink to the warning, using the word “WARNING” and given in conjunction with the sale of Products via the internet, shall appear on: (a) the same web page on which the Product is displayed; (b) the same web page as the order form for the Product; (c) on the same page as the price for any Product; or (d) on one or more web pages or pop-up 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 Product for which it is given in the same type size or larger than other consumer information provided for the Product. Warnings provided in conjunction with the sale of Products via the internet or catalog may use the Alternative Short-Form Warning, described supra in Section 2.2, if the warning appearing on the Product Label also utilizes the Alternative Short Form Warning.

In the event Dynarex sells Products that are not Reformulated Products via catalogs printed after the Effective Date, Dynarex agrees to comply with the foregoing warning requirements detailed in Sections 2.3 and 2.4. Any warning provided shall appear in a manner that clearly associates it with the particular Product that is the subject of the Warning.

2.6 Compliance with Warning Regulations

Dynarex may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Dynarex agrees to pay a civil penalty of \$2,500 within ten (10) business days of the Effective Date. Dynarex’s civil penalty payment will be allocated in accordance with 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. Dynarex shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Keep America Safe and Beautiful” in the amount of \$625, and delivered to the address in Section 3.3, below. KASB’s counsel shall deliver to OEHHA and KASB their respective portions of the penalty payments.

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 Effective Date, Dynarex agrees to issue a check in the amount of \$16,500 payable to “Seven Hills LLP” for all fees and costs incurred in investigating, bringing this matter to Dynarex’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: Kimberly Gates Johnson
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of Dynarex

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Dynarex, 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 Dynarex, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Dynarex directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including, without limitation, Amazon.com, Inc. , franchisees, cooperative members, and licensees, including but not limited to UniFirst Corporation d.b.a. Medique Products (collectively, “**Releasees**”), based on their failure to warn about alleged exposures to DEHP contained in Products manufactured, imported, distributed, sold and/or offered for sale by Dynarex in California prior to 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, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with respect to DEHP, DBP, DEHP, BBP, DIDP, and DnHP in Products manufactured, imported, distributed, sold and/or offered for sale by Dynarex, prior to the Effective Date (collectively, Claims), against Dynarex and Releasees.

The Parties further understand and agree 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 Dynarex. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Dynarex’s Products.

4.2 Dynarex’s Release of KASB

Dynarex, 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 Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dynarex 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 Dynarex 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 Dynarex:

Zalman Tenenbaum, Chief Executive Officer
Dynarex Corporation
10 Glenshaw Street
Orangeburg, NY 10962

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

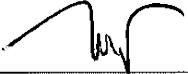
This Agreement may be modified only by a written agreement of the Parties.

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: 7/22/2021

By: 
Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 7/19/21

By: 
Zalman Tenenbaum, CEO
Dynarex Corporation