

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 Triton Group LLC d.b.a. Peak Gear (“Triton”), with KASB and Triton 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. KASB alleges Triton 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 Triton manufactures, imports, sells, and distributes for sale in California PVC Bags containing di(2-ethylhexyl) phthalate (“DEHP”) and that it does so without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). The “Products” covered by this Agreement are specifically limited to, and defined as, the Peak Gear Clear Bag UPC #8 54497 00771 0 sold on the amazon.com website, bearing the specific Amazon Standard Identification Number or ASIN “B07V3GPZT9.” DEHP 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 January 20, 2021, KASB served Triton, Amazon.com, Inc. (“Amazon”), the California Attorney General and all requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”). In the Notice, KASB alleges Triton and Amazon violated Proposition 65 by failing to warn their customers and consumers in California the Products can expose users to DEHP. Triton is the supplier who sold or offered the Products for sale on amazon.com,

Inc.'s website. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.3 No Admission

Triton 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 the terms of this Agreement nor Triton's compliance with this Agreement shall constitute or be construed as an admission by Triton of any fact, finding, legal issue, or conclusion or violation of law. This section shall not, however, diminish or otherwise affect Triton's obligations, responsibilities, and duties under this Agreement.

1.4 Effective Date

For purposes of this Agreement, "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Triton 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 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-

C1001.09.4 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 (the “Reformulation Standard”).

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, Triton shall provide clear and reasonable warnings for all Products provided for sale to customers 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, 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.

(a) Warning. The Warning shall consist of the following statement:



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) Short-Form Warning. Triton 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 and 2.6, as follows:



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

(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, then Triton must provide the warning in those other language(s), in addition to English.

2.4 Product Warnings

Triton shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers with retail outlets in

California or nationwide distribution. “Product label” means a display of written, printed or graphic material printed on or affixed to each Product Triton sells or offers for sale in California or to such Products’ immediate packaging, 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, 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, Triton sells Products via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, Triton 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 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. 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. For third-party websites, as a condition of sale, Triton shall notify the sellers the Products must be accompanied by a warning,

prior to and as a condition of sale, in or into California, and shall supply the warning requirements, as detailed above.

3. MONETARY SETTLEMENT TERMS

3.1 Triton's Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), Triton agrees to pay a civil penalty of \$2,500.00 within five (5) business days of the Effective Date. Triton'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. Triton shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,875.00; and (b) "Keep America Safe & Beautiful" in the amount of \$625.00. KASB's counsel shall remit OEHHA and KASB's respective portions of Triton's civil penalty payment.

3.2 Triton's Reimbursement of KASB's 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 five (5) days of the Effective Date, Triton agrees to issue a check in the amount of \$15,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Triton'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 Triton and Amazon.com, Inc.

This Agreement is a full, final and binding resolution between KASB, as an individual nonprofit corporation and *not* on behalf of the public in California, and Triton, of any violation of Proposition 65 that was or could have been asserted by KASB on its own behalf or on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, against Triton, Amazon, or each of their respective parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Triton directly or indirectly distributes or sells the Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), based on the failure to warn, arising under Proposition 65, about alleged exposures to DEHP contained in Products sold on amazon.com, as specifically defined in Section 1.2, above, for Products manufactured, distributed, sold and/or offered for sale by Triton before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual nonprofit corporation and *not* on behalf of the public in California, on its own behalf and on behalf of 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 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 in Products, as specifically defined by and limited to Section 1.2, that were manufactured, distributed, sold and/or offered for sale on amazon.com by Triton prior to the Effective Date (collectively, "Claims")., against Triton, Amazon, and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entity that manufactured the Products or any component parts thereof, or any distributor or supplier who sold the Products or any component parts thereof to Triton, nor shall this Section 4.1 Release extend downstream to any Releasee who has been instructed by Triton to provide a warning pursuant to Section 2.5 and fails to 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 Triton's Products sold on amazon.com.

4.2 Triton's Release of KASB

Triton, on its own behalf and on behalf of 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 them 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 Triton may notify KASB in writing 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 Triton from its obligation to comply with any 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 Triton:

Nabil Rehman, President
Triton Group LLC d.b.a. Peak Gear
5307 Red Bug Lake Road, #169
Winter Springs, FL 32708

Atif Rehman, General Counsel
Triton Group LLC d.b.a. Peak Gear
7585 Brightwater Place
Oviedo, FL 32765

For KASB:

Laralei Paras, Esq.
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 OR ELECTRONIC SIGNATURES

This Agreement may be executed in counterparts and by electronic or facsimile 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 executed by all Parties hereto.

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: March 08, 2023

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 3/5/2024 | 6:45 PM EST

By: 
Nabil Rehman, President
Triton Group LLC d.b.a. Peak Gear