

## PROPOSITION 65 SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by Keep America Safe & Beautiful (“**KASB**”) and Town Food Service Equipment Co., Inc. (“**Town Food**”), with KASB and Town Food 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. Town Food 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 Town Food manufactures, imports, sells and distributes for sale in California blanching baskets with vinyl grips containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *5"x7" Pasta & Blanching Basket SKU 42925, UPC 8 43784 00332 0, ASIN B003WKMIEG*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Blanching baskets with vinyl 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 birth defects and other reproductive harm.

#### 1.3 Notice of Violation

On March 3, 2021, KASB served Town Food, Amazon.com, Inc., the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Town Food violated Proposition 65 by failing to warn its customers and consumers in California that its Products 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**

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

#### **1.5 Effective Date**

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

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

#### **2.1 Reformulation Commitment**

Town Food redesigned its blanching baskets with a wooden handle to remove vinyl grips from any and all of its blanching baskets. As such, by the Effective Date and continuing thereafter, all blanching baskets Town Food manufactures, imports, and purchases for resale in or into California, directly or through one or more third parties, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

#### **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**") or di-n-hexyl phthalate ("**DnHP**"), contain any or all such chemicals each 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 Interim Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for all Products that do not meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2, which Town Food sells, ships, or distributes for sale in or into California, directly or through one or more third parties, Town Food shall provide clear and reasonable warnings 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 DEHP, which is known to the State of California to cause birth defects and other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**(b) Short-Form Warning.** Town Food 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:** Reproductive Harm - [www.P65Warnings.ca.gov](http://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, the warning must also be provided in the other language(s) in addition to English.

## **2.4 Product Warnings**

Town Food shall affix a warning to the Product label or otherwise directly on Products, that are not Reformulated Products, provided for sale 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(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 Products.

## **2.5 Catalog Warnings**

If Town Food sells Products, that are not Reformulated Products, through catalogs, Town Food shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Any warning provided in a catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog 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.

## **2.5 Internet Warnings**

If Town Food sells Products, that are not Reformulated Products, via the internet, Town Food shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer 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.

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

#### **3.1 Initial Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Town Food agrees to pay a civil penalty of \$500 within five (5) business days of the Effective Date. Town Food'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. Town Food shall issue payment in two checks made payable to: (a) "OEHHA" in the amount of \$375; and (b) "Keep America Safe & Beautiful" in the amount of \$125. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

#### **3.2 Second Waivable Civil Penalty**

Within twenty (20) business days of the Effective Date, Town Food shall pay a second civil penalty of \$1,000. The second civil penalty shall be waived in its entirety, if, within twenty (20) business days of the Effective Date, an officer of Town Food certifies to Town Food having sent a letter, electronic or otherwise ("Notification Letter") to: (1) each person or entity who purchased Products containing DEHP without a clear and reasonable warning between May 3, 2020 and the Effective Date; and (2) any retailer or distributor that Town Food reasonably understands or believes has any inventory of Products containing DEHP without a clear and reasonable warning available for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State

of California to cause birth defects or other reproductive harm. The Notification letter shall advise the recipient that such Products purchased between May 3, 2020 and May 3, 2022, may be returned for a full refund to Town Food at the address provided in the letter. The Notification letter to retailers or distributors shall state that each Product containing DEHP must have a label attached to the packaging of each Product, which contains one of the warning statements in Section 2.3 (a) or Section 2.3 (b), before it is sold in the California market or to a customer in California. The Notification Letter to retailers or distributors shall include a sheet of white background, adhesive stickers with one of the warning statements in Section 2.3 (a) or Section 2.3 (b). Unless the second civil penalty is waived, on or before the twentieth (20<sup>th</sup>) day after the Effective Date, Town Food shall issue two checks made payable to: (1) "OEHHA" in the amount of \$750; and (2) "Keep America Safe & Beautiful" in the amount of \$250.

### **3.3 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 five (5) business days of the Effective Date, Town Food agrees to issue a check in the amount of \$22,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Town Food's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

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### **3.4 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 Town Food**

This Agreement is a full, final and binding resolution among KASB, as an individual and *not* on behalf of the public, 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 Town Food, its past and present parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Town Food directly or indirectly distributes or sells Products, including, but not limited to, Amazon.com, Inc., downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Town Food 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 Town Food, before the Effective Date (collectively, “**Claims**”), against Town Food 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 Town Food. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Town Food’s Products.

#### **4.2 Town Food’s Release of KASB**

Town Food, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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 Town Food 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 Town Food 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 Town Food:

Timothy B. Cummiskey, General Counsel  
Town Food Service Equipment  
72 Beadel Street  
Brooklyn, New York 11222

For KASB:

Laralei Paras, 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**

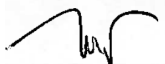
This Agreement may be modified only by a written agreement of the Parties.

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.

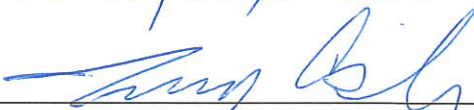
**AGREED TO:**

Date: 05/13/2022

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

**AGREED TO:**

Date: May 12, 2022

By:   
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Timothy B. Cumiskey, General Counsel  
Town Food Service Equipment Co., Inc.