

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and K-Tool Corporation of Michigan (“**K-Tool**”), with 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 K-Tool 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 K-Tool manufactures, imports, sells, and distributes for sale in California *tool pouches* which KASB alleges contain vinyl components containing **DEHP** without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). The tool pouches listed on **Exhibit 1** 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 reproductive harm.

1.3 Notice of Violation

On August 3, 2021, KASB served K-Tool, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging K-Tool 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

K-Tool 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, 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 K-Tool of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect K-Tool's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean November 30, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products K-Tool manufactures, imports, sells, ships, distributes, or purchases for sale to consumers in California, to customers with retail outlets in California, and to customers K-Tool knows or has reason to know sell the Products to consumers in California, 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 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 Clear and Reasonable Warnings

Commencing on or before the Effective Date, K-Tool 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) **DEHP Warning.** The Warning for Products containing DEHP, a phthalate chemical known to cause cancer and birth defects or other reproductive harm, in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Warnings for DEHP and DINP.** The Warning for Products containing DEHP and the phthalate chemical only known to cause cancer, DINP, each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or other reproductive harm, and DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(c) **Warnings for DEHP and one of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DEHP and one of the phthalate chemicals known to cause birth defects or other reproductive harm – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or other reproductive harm, and [DIDP], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP or DnHP, as appropriate, at K-Tool's option.

(d) Warnings for DEHP and two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP. The Warning for Products containing DEHP and *two* or more of the phthalate chemicals – DIDP, DBP, BBP and DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or other reproductive harm, and chemicals including [DIDP], which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warning may be changed to DBP, BBP, or DnHP, as appropriate, at K-Tool's option.

(e) Warnings for DEHP and DINP and one of the following phthalate chemicals: DIDP, DBP, BBP or DnHP. The Warning for Products containing DEHP and DINP and one of the following chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or other reproductive harm, DINP, which is known to the State of California to cause cancer, and [DIDP] which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as appropriate, at K-Tool's option.

(f) **Warnings for DEHP and DINP and two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DEHP, DINP and *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 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 and birth defects or other reproductive harm, DINP, which is known to the State of California to cause cancer, and chemicals including [DIDP] which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as appropriate, at K-Tool's option.

(g) **Warnings for DIDP, DBP, BBP or DnHP.** The Warning for Products containing DIDP, DBP, BBP or DnHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ WARNING: This product can expose you to [DIDP], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP or DnHP, as appropriate, at K-Tool's option.

(h) **Warnings for two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ WARNING: This product can expose you to chemicals including [DIDP], which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP or DnHP, as appropriate, at K-Tool's option.

(i) **DINP Warning.** The Warning for Products containing DINP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ WARNING: This product can expose you to DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(j) **Warnings for DINP and one of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DINP and one of the phthalate chemicals – DIDP, DBP, BBP or DnHP – in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ WARNING: This product can expose you to DINP, which is known to the State of California to cause cancer, and [DIDP] which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP or DnHP, as appropriate, at K-Tool's option.

(k) **Warnings for DINP and two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DINP and *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ WARNING: This product can expose you to DINP, which is known to the State of California to cause cancer, and chemicals including [DIDP] which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as appropriate, at K-Tool's option.

(l) **Short-Form Warning.** As an alternative or in addition to the forgoing warnings, K-Tool may, but is not required to, use the following applicable short-form warning(s), as follows:

For DEHP, DIDP, DBP, BBP or DnHP:

⚠WARNING: Reproductive Harm- www.P65Warnings.ca.gov.

For DEHP or DINP and DEHP, DIDP, DBP, BBP or DnHP:

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

For DINP:

⚠WARNING: Cancer - www.P65Warnings.ca.gov.

(m) **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.

(n) **Product Warnings**

K-Tool shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California. 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)-(k) 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.

(o) **Internet Warnings**

If, after the Effective Date, K-Tool sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the warning statement in Section 2.3(a)-(k) appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol

consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies. The internet warning may use the Short-Form Warning content described in Section 2.3(l) if the warning provided on the Product label also uses the Short-Form Warning content.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), K-Tool agrees to pay a civil penalty of \$2,000 within ten (10) business days of the Effective Date. K-Tool'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. K-Tool shall issue payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Keep America Safe and Beautiful" in the amount of \$500. KASB's counsel shall 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 ten (10) business days of the Effective Date, K-Tool agrees to issue a check in the amount of \$19,750 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to K-Tool'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

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of K-Tool

This Agreement is a full, final and binding resolution between KASB on the one hand, as an entity and *not* on behalf of the public, and K-Tool on the other hand, 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 K-Tool, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom K-Tool directly or indirectly distribute or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their failure to warn about alleged exposures to DEHP, DBP, DINP, BBP, DIDP or DnHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by K-Tool in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an entity 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, DBP, DINP, BBP, DIDP or DnHP in the Products manufactured, distributed, sold and/or offered for sale by K-Tool, before the Effective Date (collectively, “Claims”), against K-Tool, and Releasees. The Parties further understand and agree Section 4 releases shall not extend upstream to Releasees who have been instructed by PMI, pursuant to Section 2.4, to provide a warning on Products that are not Reformulated Products and have failed to do so.

4.2 K-Tool’s Release of KASB

K-Tool, 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 K-Tool 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 K-Tool 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 K-Tool:

Robert Geisinger, President
K-Tool Corporation of Michigan
45225 Five Mile Road
Plymouth, MI 48170

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Bert McBride, Esq.
Trenam Law
101 E. Kennedy Blvd., Suite 2700
Tampa, FL 33602

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

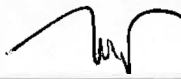
This Agreement may be modified only by a written agreement of the Parties.

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: 11/02/2022

By: 

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

AGREED TO:

Date: 10/29/22

By: 

Robert Geisinger, President
K-Tool Corporation of Michigan

Exhibit 1

9 Piece High Polish SAE Combination Wrench Set, Item No. KTI-41300

Wrench Set Combination 11 PC SAE Kit Bag, Item No. KTI-41011

Wrench Set Combination 9 PC Hi Polish with Kit Bag, Item No. KTI-41300