

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 Showa-Arch, Inc. (“**Showa-Arch**”), with KASB and Showa-Arch 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. Showa-Arch is an Illinois-based corporation that manufactures, imports, sells or distributes for sale durable consumer goods and is stepping into the shoes of Trimark USA, LLC *dba* Trimark United East (“**Trimark**”) for purposes of this Agreement. KASB alleges Trimark is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b), and KASB alleges Showa-Arch is a person in the course of doing business for purposes of this Agreement.

1.2 Consumer Product Description

KASB alleges Showa-Arch manufactured, imported, sold, and distributed for sale, to and through Trimark, in California, kitchen utensils with vinyl components containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, the *Culinary Essentials 859303 Coated Utility Tongs, Tan, 9"*; *SKU #: 39990; UPC #: 859303*, without providing the health hazard warning KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Such kitchen utensils with vinyl components 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 October 8, 2021, KASB served Trimark, Culinary Essentials, Chef’s Toys, LLC, the

California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Trimark violated Proposition 65 by failing to warn its customers and consumers in California that the Products supplied by Showa-Arch 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

Showa-Arch denies the 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 Showa-Arch of any fact, finding, conclusion of law, issue of law, or violation of law, including whether Showa-Arch is a person in the course of doing business, which Showa-Arch denies. This section shall not, however, diminish or otherwise affect Showa-Arch’s obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean October 14, 2022.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products Showa-Arch 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 be either: (a) Reformulated Products meeting the Reformulation Standard, defined in the following Section 2.2; or (b) Products bearing a clear and reasonable warning, pursuant to Sections 2.3 through 2.6.

2.2 Reformulation Standard 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) 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.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, and continuing thereafter, Showa-Arch shall provide clear and reasonable health hazard warnings for all Products Showa-Arch manufactures, imports, distributes, sells or offers for sale in California that do not qualify as Reformulated Products, pursuant to the Reformulation Standard. 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 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies to minimize the risk of consumer confusion. For purposes of this Agreement, the following warning 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 birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

(b) Alternative Short-Form Warning (“Short-Form”):

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

The Parties agree, should Showa-Arch determine additional chemical endpoints need to be included in either of the above warnings, Showa-Arch 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.*, pursuant to Section 2.6, below.

2.4 On-Product Warning Requirements

Showa-Arch shall affix one of the warnings provided in Section 2.3 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 warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product. Either the Warning or the Short-Form detailed in 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, 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 stating other safety warnings, if any, concerning use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

For all Products imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date, Showa-Arch 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. 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; and/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 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 sale of Products via the internet may use the Short-Form from Section 2.3, if the warning appearing on the Product Label also utilizes the Short Form.

2.6 Compliance with Warning Regulations

Showa-Arch may also 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), Showa-Arch agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. Showa-Arch'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. Showa-Arch shall issue its 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 and shall provide IRS Form W9s for all payees under this Agreement upon full execution.

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 five (5) days of the Effective Date, Showa-Arch agrees to issue a check in the amount of \$21,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Showa-Arch's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. Seven Hills LLP shall provide its IRS Form W9 to Showa-Arch, upon full execution of this Agreement by the Parties.

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 Showa-Arch

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Showa-Arch, 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 Showa-Arch, its parents, subsidiaries, affiliated entities under common ownership, including its directors, officers, employees, attorneys, and each entity to whom Showa-Arch directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers,

including without limitation Trimark and its parent companies, subsidiaries, officers, directors, shareholders, assigns, agents, and representatives, retailers, franchisees, cooperative members, and licensees (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 Showa-Arch 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 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 Showa-Arch, before the Effective Date (collectively, “**Claims**”), against Showa-Arch 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 Showa-Arch. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Showa-Arch’s Products.

4.2 Showa-Arch’s Release of KASB

Showa-Arch, on behalf of itself, its past and current agents, representatives, attorneys, successors, assignees, and Releasees, 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 Showa-Arch 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 Showa-Arch 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 Showa-Arch:

Sampath Ramesh, President
Showa-Arch Inc.
2011 Johns Drive
Glenview, IL 60025

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Abhishek K. Gurnani, Esq.
Amin Talati Wasserman, LLP
100 S. Wacker Dr., Ste 2000
Chicago, IL 60606

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.

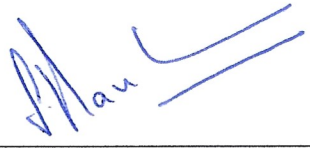
AGREED TO:

Date: 10/17/2022

By: 
Ngoc-Bich Voang Ho, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 10/17/22

By: 
Sampath Ramesh, President
Showa-Arch Inc.