

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 Packed Party, Inc. (“**Packed Party**”), with KASB and Packed Party each individually referred to as a “**Party**” and, collectively, the “**Parties**.” KASB is a California-based non-profit organization purporting to proceed 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 Packed Party 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 Packed Party manufactures, imports, sells, and distributes for sale in California products with vinyl storage pouches containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Raining Confetti Umbrella*, UPC 8 10022 87158 4 (the “**Umbrella Pouch**”), without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). The Umbrella Pouch and other vinyl storage pouches in which, similar to the Umbrella Pouch, other Packed Party products are encased 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 April 14, 2022, KASB served Packed Party, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), in which KASB alleged that Packed Party 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. For

the purposes of this Agreement, Packed Party does not dispute this description of the contents of the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean April 30, 2023.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, Packed Party shall provide the Customer Notification pursuant to Section 2.4 and (1) all Products Packed Party 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 herein, or (2) all Products subject to Section 2.3 shall be accompanied by a clear and reasonable warning as required by that Section.

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 (collectively, the "**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 for Non-Reformulated Products

For Products shipped by Packed Party after the Effective Date to be sold in California by non-Packed Party Parties (as that term is defined in Section 4.1) and for Products sold on or after the Effective Date on Packed Party’s own website, Packed Party shall provide clear and reasonable warnings for all Products that contain Chemicals in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 herein provided for sale to customers in California (“**Non-Reformulated Products**”) in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be a “short form warning” in accordance with Cal. Code Regs. tit. 27, § 25603(b)(2), which shall be prominently displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use, or for catalog purchases, shall be provided in the catalog in a manner that clearly associates it with the specific Product to which the warning applies being purchased. If the “short form warning” is placed on a Product, it shall comply with Cal. Code Regs. tit. 27, § 25602(a)(4), meaning Packed Party shall affix a warning to the Product Label or otherwise directly on Non-Reformulated Products. 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.

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(a) **Warning.** The Warning for Non-Reformulated Products shall consist of the following statement:

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

The word “**WARNING:**” must appear 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.

(b) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information, as defined in Cal. Code Regs. tit. 27, § 25602(a)(4)(c), in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

2.4 Customer Notification

No later than the Effective Date, Packed Party shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each retailer or distributor in California to which it supplied Products between April 14, 2021 and the Effective Date; and (2) any other retailer or distributor that Packed Party reasonably understands or believes has any inventory of Non-Reformulated Products, which Packed Party supplied between April 14, 2021 and the Effective Date for sale to consumers in California as follows:

(a) For recipients who sell the Products in brick and mortar stores, the Notification Letter shall inform the recipient that all Products must have a label attached to the packaging of each Product, which contains the warning statement in Section 2.3(a) and (b), before it is sold in the California market or to a customer in California.

(b) For recipients who sell the Products online, the Notification Letter shall inform the recipient that the recipient’s website, affiliated websites, or a third party website, must have warnings for each Product in accordance with Section 2.3(a) and (b), before it is sold in the California market or to a customer in California.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Packed Party agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. Packed Party'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. Packed Party shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Seven Hills in trust for Keep America Safe and Beautiful" in the amount of \$500. KASB's counsel shall deliver to OEHHA and KASB their respective portions of the penalty payment.

3.2 Final Waivable Civil Penalty

Packed Party shall pay a second civil penalty of \$2,500. However, the second civil penalty shall be waived in its entirety, if, on or before July 31, 2023, an officer of Packed Party certifies, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by Packed Party for sale to consumers in California directly including through its own website, affiliated websites or a third party website, to customers with brick and mortar stores in California, and to customers with nationwide distribution or e-commerce platforms, are Reformulated Products as defined by Section 2.2. Along with its certification, Packed Party shall provide a test result performed on a finished Product after the Effective Date, showing the Products were tested and analyzed according to the parameters set forth in the Section 2.2 and meet the Reformulation Standard for Reformulated Products. Unless the second civil penalty is waived, on or before July 31, 2023, Packed Party shall issue a check made payable to "OEHHA" in the amount of \$1,875 and a check made payable to "Seven Hills LLP in trust for Keep America Safe and Beautiful" in the amount of \$625.

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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) days of the Effective Date, Packed Party agrees to issue a check in the amount of \$21,500 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Packed Party's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.4 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 Packed Party

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Packed Party, 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, and anyone acting or purporting to act on KASB's behalf ("KASB Parties"), against Packed Party, its subsidiaries, affiliated entities, including any of Packed Party's, Packed Party's subsidiaries', and affiliated entities' past and current investors, directors, officers, board members, employees, independent contractors,

agents, representatives, attorneys, successors, insurers, and/or assignees, attorneys, and each entity to whom Packed Party directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “Packed Party Parties”), from any and all claims for violations of Proposition 65 up through the Effective Date based on exposure to DEHP contained in any of the Products as set forth in the Notice.

In further consideration of the promises and agreements herein contained, KASB Parties as individuals and *not* on behalf of the public, hereby waive all of KASB Parties’ rights to institute or participate in, directly or indirectly, any form of legal action and release all claims that KASB Parties may have against Packed Party Parties, 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, attorneys’ fees, and costs, arising under or in connection with Proposition 65 (collectively, “**Claims**”) with respect to any of the Products containing any of the Chemicals (as defined in Section 2.2 herein) manufactured, distributed, sold and/or offered for sale and sold in or into California by any Packed Party Parties, before the Effective Date. The Parties agree that compliance with the terms of the Agreement constitutes compliance with Proposition 65.

The Parties further understand and agree that this Section 4.1 release shall neither extend 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 Packed Party (other than Packed Party Parties) nor extend to Releasees who have been instructed by Packed Party pursuant to Section 2.4 to provide a warning in conjunction with the sale of Non-Reformulated Products and have failed to do so.

4.2 Packed Party’s Release of KASB

Packed Party Parties hereby waive any and all claims against KASB Parties, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

4.3 California Civil Code § 1542 Waiver

California Civil Code Section 1542 ("Section 1542") states:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

The KASB Parties' and Packed Party Parties' respective releases, as set forth in Sections 4.1 and 4.2 above, extend to all rights granted under Section 1542, and the Parties hereby expressly waive such rights with respect to any Claims. The Parties understand that the facts upon which these releases are premised may hereafter turn out to be other than or different from the facts now known or believed by the Parties to be true. The Parties accept and assume the risk of the facts to be different than now known or believed to be true. The Parties agree that these releases shall be and remain in all respects effective and not subject to termination or rescission by virtue of any difference of facts.

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 Packed Party may provide KASB with written notice of any asserted change in the law, and shall have no further obligations (other than the payment of the monetary amounts in Section 3 herein) 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 Packed Party from its obligation to comply with any pertinent state or federal law or regulation.

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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 Packed Party:

Jordan Jones, CEO
Packed Party, Inc.
3205 Industrial Terrace, STE 200
Austin, TX 78758

For KASB:

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

with a copy to:

Stacy W. Harrison, Esq.
Orrick Herrington & Sutcliffe LLP
777 South Figueroa Street, Suite 3200
Los Angeles, CA 90017

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 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: 04/10/2023

By: 
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: APRIL 10, 2023

By: 
Jordan Jones, CEO
Packed Party, Inc.