

## 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 Hodedah Import, Inc. (“**Hodedah**”), with KASB and Hodedah 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 Hodedah 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 Hodedah manufactures, imports, sells, and distributes for sale in California seats with vinyl upholstery containing di(2ethylhexyl) phthalate (“**DEHP**”), including, but not limited to, the *Hodedah Adjustable Bucket Black Swivel Office/Desk Chair; Model# HIC401-Z BLACK; UPC 8 12183 01216 5*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Seats with vinyl/PVC upholstery 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 June 23, 2022, KASB served Hodedah, The Home Depot, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Hodedah 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**

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

#### **1.5 Effective Date**

For purposes of this Agreement, "**Effective Date**" shall mean March 10, 2023.

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

#### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date, and continuing thereafter, Hodedah agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with and as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to the following Sections 2.3 through 2.7.

#### **2.2 Reformulated Products & 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) in each and every accessible component (i.e. a component that may be touched or utilized 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. ("**Reformulation Standard.**"). 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 accepted 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, Hodedah shall provide clear and reasonable health hazard warnings for all Products Hodedah manufactures, imports, distributes, sells or offers for sale in California that do not meet 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 prior to 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, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings 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](http://www.P65Warnings.ca.gov)

The Parties agree, should Hodedah determine additional chemical endpoints need to be included in the above warnings, Hodedah 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.*

**b. Foreign Language Requirement.** Where a consumer product sign, label or tag used to provide a warning includes “consumer information”, as the term is defined in Title 27 California Code of Regulations § 25600.1(c) (“**Consumer Information**”), in languages

other than English, then the accompanying warnings must also be provided in those languages, in addition to English

#### **2.4 On-Product Warning Requirements**

For all Products provided for sale to consumers located in California, or to customers with retail outlets in California, ecommerce platforms or nationwide distribution, Hodedah shall include the applicable warning statement in Section 2.3 (a) or (b) on the Product label affixed to the furniture product in the same manner as other consumer information or warning materials on Products. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the Products. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to each of the Products or its immediate container or wrapper.

Warnings provided pursuant to 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 that states other safety warnings, if any, concerning the 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 manufactured, imported, distributed, sold or offered for sale after the Effective Date via the internet to customers located in California, or sold in or into California through third-party websites over which Hodedah has the ability to control the application of warnings, Hodedah 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; 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.

## **2.6 Receipt Notice**

If, after the Effective Date, Hodedah ships Product(s) to customers in California, Hodedah shall also provide, or require downstream retailers or distributors to provide, on the sales receipt and packing slip, the following notice statement:

### **NOTICE:**

Some furniture products with vinyl upholstery in this shipment can expose you to chemicals known to the State of California to cause birth defects and other reproductive harm. Please check the product label for warning information. For more information go to: [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

A notice statement provided pursuant to this Section must print the word “NOTICE:” in all capital letters and in bold font. The entire notice statement shall appear in a type size of at least 12-point type and no smaller than the largest type size used for other consumer information on the on the sales receipt and packing slip.

## **2.7 Posted Notice Sign**

If, after the Effective Date, Hodedah ships Product(s) to customers with retail outlets in California, nationwide distribution or ecommerce platforms, Hodedah shall inform, or require downstream retailers or distributes to inform, customers that, if the customer sells, uses or offers the product for sale or use in a business establishment in the State of California, a sign no smaller

than 8 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no smaller than 28-point type which contains the following warning statement:

**NOTICE:**

Some furniture products with vinyl upholstery in this establishment can expose you to chemicals known to the State of California to cause cancer. Please check the product label for warning information. For more information go to: [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.8 Customer Notification**

Within sixty (60 days the Effective Date, Hodedah shall send a letter, electronic or otherwise (“**Notification Letter**”), to each customer in California to which it supplied Products between June 23, 2021 and the Effective Date. The Notification Letter shall advise the recipient the Products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. The Notification letter shall inform the recipient all Products must have a label attached to each Product, expressly referring to the Product which contains the warning statements in Sections 2.3 (a) and (b), before it is sold in the California market or to a customer located in California, and shall further inform customers that, if the customer sells, uses or offers the Product for use in a business establishment in the State of California, a sign no smaller than 8 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no smaller than 28-point type which contains the warning statement in Section 2.3(g).

**3. MONETARY SETTLEMENT TERMS**

**3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b), Hodedah agrees to pay a civil penalty of \$3,500 within five (5) business days of the Effective Date. Hodedah’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. Hodedah shall issue its payment in two checks made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) “Seven Hills LLP in Trust for KASB” in the amount of \$875. 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 five (5) days of the Effective Date, Hodedah agrees to issue a check in the amount of \$17,500 payable to “Seven Hills LLP” for all fees and costs incurred investigating, bringing this matter to Hodedah’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 Hodedah**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Hodedah, 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 Hodedah, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom Hodedah directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, including, without limitation, Home Depot, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on the failure to warn, arising under Proposition 65, about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Hodedah in California 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 Hodedah, before the Effective Date (collectively, “**Claims**”), against Hodedah 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 Hodedah. This Section 4.1 release shall also not extend to third-party websites not displaying the warnings. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Hodedah’s Products.

#### **4.2 Hodedah’s Release of KASB**

Hodedah, on behalf of itself, 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 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 Hodedah 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 Hodedah 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 Hodedah:

David Khadideh, VP of Sales  
Hodedah Import, Inc.  
2306 Coney Island Ave., 2<sup>nd</sup> Fl.  
Brooklyn, NY 11223

For KASB:

Kimberly Gates Johnson, 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: \_\_\_\_\_

By: \_\_\_\_\_

My Nguyen, CFO  
Keep America Safe and Beautiful

**AGREED TO:**

Date: 3/10/23

By:  \_\_\_\_\_

David Khadideh, Vice President  
Hodedah Import, Inc.

