

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 TKL Products Corp. (“**TKL**”), with KASB and TKL 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 TKL 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 TKL manufactures, imports, sells, and distributes for sale in California *TKL Profile™ Deluxe Universal Electric Profile™ Case, Part No.: TKL 4930 DLX* (the “**Products**”) containing di(2ethylhexyl) phthalate (“**DEHP**”), without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Notice of Violation

On June 23, 2022, KASB served TKL, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging TKL 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

TKL 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 TKL of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect TKL's obligations, responsibilities, and duties under this Agreement. TKL denies the allegations in the Notice insofar that they claim that TKL failed to provide requisite warnings under Proposition 65 with respect to the Products.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products TKL 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, 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"), contain any such chemical 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, TKL shall provide clear and reasonable warnings for all Products provided for sale to customers in or into 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) **Warning.** The Warning may consist of the following statement:

⚠️ WARNING: This product can expose you to di(2-ethylhexyl) phthalate (DEHP), which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short Form Warning

In lieu of the foregoing, TKL may elect to use the “short form” warning permissible by California law. TKL may, but is not required to, use the following short form warning in lieu of the warnings set forth in subsection 2.3(a) subject to the additional requirements in Section 2.3 as follows:

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

To the extent that the current Proposition 65 Foreign Language requirements are changed from the foregoing, TKL may elect to adhere to any such changes in lieu of that which is set forth herein.

(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. To the extent

that the current Proposition 65 Foreign Language requirements are changed from the foregoing, TKL may elect to adhere to any such changes in lieu of that which is set forth herein.

(d) Product Warnings

TKL shall affix a warning to the Product label or otherwise directly on all Products, that are not Reformulated Products, provided for sale to consumers located in California or to downstream entities who sell in or into California, such as 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 2.3(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. To the extent that the current Proposition 65 requirements for Product Warnings are changed, TKL may elect to adhere to any such changes in lieu of that which is set forth herein.

(e) Internet Warnings

If, after the Effective Date, TKL sells Products, via the internet, through its own website, affiliated websites or a third party website, to consumers located in California or to customers with nationwide distribution and e-commerce websites, TKL shall provide warnings for each Product both on the Product label in accordance with Section 2.3(d), and by prominently displaying , or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer 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. To the extent that the current Proposition 65 requirements for Internet Warnings are changed, TKL may elect to adhere to any such changes in lieu of that which is set forth herein. Where TKL sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, TKL will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), TKL agrees to pay a civil penalty of \$2,000 within five (5) business days of the Effective Date. TKL'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. TKL shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "Seven Hills LLP in Trust for KASB" 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.

TKL shall pay a total sum of \$18,500 for all fees and other costs incurred investigating, bringing this matter to TKL's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. The attorneys' fees and costs payments shall be made as detailed in subsection (a) and shall be deposited according to the schedule detailed there and subject to its terms.

(a) Attorneys' Fees & Costs: Installment Agreement Terms & Timing

TKL agrees to provide all attorneys' fees and costs payments due under this Agreement within five (5) business days of the Effective Date. The Parties agree the payment of attorneys' fees and costs, totaling \$18,500, shall be broken into three installment payments of \$6,166.66, \$6,166.67, and \$6,166.67. All payments under this Section shall be made in the form of individual checks payable to "Seven Hills LLP" and delivered to the address below, in Section 3.3. Upon receipt, Seven Hills LLP shall immediately deposit the initial payment of \$6,166.66. Seven Hills LLP agrees to hold the remaining payments and deposit them on the following schedule. Seven Hills LLP shall deposit the remaining (2) installment payments each roughly thirty days apart or on or about the 1st of each of the following months: July 2023 and August 2023.

TKL agrees and understands, should any installment payment due under this Section or this Agreement fail due to insufficient funds, KASB shall advise TKL in the manner set forth in Section 7, and will provide TKL ten (10) business days, calculated from the date notice is provided, to cure any non-compliance under this Agreement, pursuant to this Section, before any remaining payments become due and payable. In the event Seven Hills LLP incurs fees for any returned checks, TKL agrees to reimburse KASB's counsel for such fees.

TKL acknowledges that, until the last installment payment is deposited and clears with sufficient funds, KASB reserves the right to institute a proceeding under Proposition 65, including the filing of a complaint based on the allegations in the Notice, a suit based on breach of or failure to perform under a contract, or any other remedy allowable under law. In

the event any such action is brought, TKL retains all defenses and does not hereby waive any potential defenses.

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 TKL

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and TKL, 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 TKL, its parents, subsidiaries, affiliated entities under common ownership including: directors, officers, employees, attorneys, and each entity to whom TKL directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**"), based on their alleged failure to warn under Proposition 65 about alleged exposures to DEHP contained in the Products manufactured, distributed, sold and/or offered for sale by TKL and sold in or into California before the Effective Date.

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 TKL and sold in or into California, before the Effective Date (collectively, "**Claims**"), against TKL and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) to upstream 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 TKL nor (b) to Releasees who have been instructed by TKL pursuant to Section 2.3(e), to provide a warning on Products that are not Reformulated Products and have failed to do so. The Parties further agree that any third-party downstream entities that do not supply a warning shall not be released under this Section 4.1. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve TKL's Products.

4.2 TKL's Release of KASB

TKL, 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.

4.3 Mutual Waiver of California Civil Code § 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Except as provided in Section 4.1, KASB, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, in its respective individual capacity only and not in its representative capacity, and TKL, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties waive California

Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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.

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 TKL 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 TKL 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 TKL:

Thomas D. Dougherty, President
TKL Products Corp.
2551 Rte 1200
Oilville, VA 23129

For KASB:

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

With a copy to:

Mark Hanna, Esq.
Kinney Lisovicz Reilly & Wolff PC
299 Cherry Hill Rd.
PO Box 912 Suite 300
Parsippany, NJ 07054

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

To the extent required by law, 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: 06/05/2023

By: 

My Nguyen, Chief Operating Officer
Keep America Safe and Beautiful

AGREED TO:

Date: 6/2/23

By: 

Thomas D. Dougherty, President
TKL Products Corp.