

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 Tarps & Tie-Downs, Inc. (“**TTD**”), with KASB and TTD 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. TTD 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 TTD manufactures, imports, sells, and distributes for sale in California vinyl/PVC tarps containing diisononyl phthalate (“**DINP**”) including, but not limited to, the *super Heavy Duty Black Vinyl Tarps – 22 oz – 05x10’; SKU: V05F10FBK22*, without providing the health hazard warnings required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC tarps are referred to hereinafter as the “**Products.**” DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Notice of Violation

On October 6, 2022, KASB served Tarps & Tie-Downs, Inc., the California Attorney General, and the certain public prosecutors with a 60-Day Notice of Violation (“**Notice**”), alleging TTD violated Proposition 65 by failing to warn its customers and consumers in California that the Products can expose users to DINP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

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

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean March 1, 2024.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNING

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products TTD 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 those Products containing no more than 0.1 percent (1,000 parts per million) **DINP**, di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”), and di-n-hexyl phthalate (“**DnHP**”) in any vinyl component when analyzed by a laboratory certified and/or accredited by the State of California, a federal or the International Laboratory Accreditation Cooperation. For purposes of determining compliance with this reformulation standard, samples of vinyl components of Reformulated Products shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC-CH-C1001.09.3 or 4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by the State of California or federal agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

TTD 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) **Warning.** The Warning for DINP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of one of the following statements:

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

- or -

⚠ WARNING: This product can expose you to chemicals including diisononyl phthalate (DINP), which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Warning.** The Warning for DINP, DEHP, DIDP, DBP or BBP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of one of the following statements:

⚠ WARNING: This product can expose you to [diisononyl phthalate (DINP)], 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.

- or -

⚠ WARNING: This product can expose you to chemicals including [diisononyl phthalate (DINP)], which are 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.

The bracketed language in the proceeding warning must be changed according to the listed

phthalate chemical(s) in the product and the harms associated with exposure to the listed chemical(s). DEHP may be replaced with DINP, DBP, BBP and/or DnHP according to the harms caused by each chemical and whether one or more than one phthalate is contained in the Product.

(b) **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.

(c) **On-Product Warnings.** TTD shall affix a warning to the Product label or otherwise directly on Products provided for sale to consumers located in California and to customers with retail outlets in California, nationwide distribution or e-commerce platforms. 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 wrapper. A warning provided pursuant to section 2.3(a) 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 be set off from other surrounding information, enclosed in a box and appear in at least 6-point type but no smaller than the largest type size used for other consumer information on the Products.

(d) **Internet Warnings.** TTD shall provide warnings for each Product both on the Product label in accordance with Section 2.4(c), and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to consumers in California 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 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. For third-party websites, as a condition of sale, TTD shall notify the sellers the Products must be accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply the warning requirements, pursuant to Section 2.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), TTD agrees to pay a civil penalty of \$4,500 within five (5) business days of the Effective Date. TTD'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. TTD shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$3,375; and (b) "Seven Hills LLP in trust for Keep America Safe and Beautiful" in the amount of \$1,125. 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. Once the Parties finalized the other material settlement terms, they negotiated 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, TTD 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 TTD'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 TTD

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and TTD, of any violation 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 TTD, its partners, members, directors, officers, employees, attorneys, and each entity to whom TTD directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees including Tarps & Tie-Downs, Inc. (collectively, “**Releasees**”), based on their failure to warn under Proposition 65 about alleged exposures to DINP contained in the Products that were manufactured, distributed, sold and/or offered for sale by TTD in California before the Effective Date, as alleged in the Notice. The term “**Releasees**” shall also include Akon, LLC.

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 DINP, DEHP, DIDP, DBP or BBP in the Products

manufactured, distributed, sold and/or offered for sale by TTD, before the Effective Date (collectively, “**Claims**”), against TTD and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend upstream to manufacturers of the Products or any component parts thereof, distributors or suppliers who sold the Products or any component parts thereof to TTD nor downstream to any Releasee who has been instructed by TTD pursuant to Section 2.3(d) to provide a warning and fails to do. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve TTD’s Products.

4.2 TTD’s Release of KASB

TTD, 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. If Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then TTD 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 TTD 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 TTD:

Oh S. Lee, CEO
Tarps & Tie-Downs, Inc.
945 E. Lindsay Street
Stockton, CA, 95202

For KASB:

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

with a copy to:

Whitney Jones Roy
Sheppard Mullin
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071-1422

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: 06/30/2024

By:  _____

Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 6/27/2024

By:    _____

Oh S. Lee, CEO
Tarps & Tie-Downs, Inc.