

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 Pedego, LLC (“**Pedego**”), with KASB and Pedego 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 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. Pedego 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 Pedego manufactures, imports, sells, and distributes for sale in California bags with vinyl/PVC components containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Pedego, Pannier Bag, SKU: 81003*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Bags with clear vinyl/PVC components are referred to hereinafter as the “**Products,**” with a bag with one or more clear vinyl/PVC components being referred to hereinafter as a “**Product**”. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm for exposures to DEHP in excess of certain concentrations.

1.3 Notice of Violation

On November 4, 2022, KASB served Pedego, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Pedego violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. To the parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Pedego 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 applicable 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 Pedego of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Pedego's obligations, responsibilities, and duties as set forth with specificity in this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean five (5) days following the execution of this Settlement Agreement by the Parties.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

For purposes of this Agreement, "**Reformulated Products**" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), the maximum concentration of DEHP shall be less than 0.1 percent (1,000 parts per million) by weight when analyzed by a laboratory certified or accredited by the State of California, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation ("ILAC"). For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using methodologies generally accepted by federal or state government agencies to determine phthalate content in a solid substance.

2.2 General Clear and Reasonable Warnings Requirements

Beginning on the Effective Date, and continuing thereafter, Pedego shall not sell in California, import for sale in California, or permit distribution for sale in California, Products that are not Reformulated Products unless such Products are accompanied by clear and

reasonable warnings for all such Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. As used in this Settlement Agreement, “distribute for sale in California” means to directly ship Product(s) into California, to sell Product(s) to consumers in California through an e-commerce platform, or to sell Products to a retailer or distributor Pedego knows or reasonably should know will sell in or into California. 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.

2.2.1 Option 1. The Product warning may state:

⚠ WARNING: This product can expose you to chemicals, including di(2-ethylhexyl) phthalate (DEHP), 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.

2.2.2 Option 2. The Product warning may state:

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

The pictogram specified in Section 2.3.1 and 2.3.2 shall be in yellow with a black exclamation mark, *provided however*, the pictogram may be white instead of yellow if the Product label does not contain the color commonly referred to as yellow.

2.2.3 Option 3. If the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting specific safe harbor warning text and/or methods of transmission for DEHP different than those set forth above, Pedego shall be entitled to use such other specific safe harbor warning text and/or methods of transmission without being deemed in breach of this Agreement.

2.3 Grace Period for Existing Inventory of Covered Products

Given the consideration in the form of the civil penalty payment set forth in Section 3.1, the injunctive requirements of Section 2 shall not apply to Products that are already in the stream

of commerce as of the Effective Date, without regard to when such Products were, or are in the future, distributed or sold to customers. As a result, the obligations of Pedego, or any Releasees do not apply to these Products manufactured on or prior to the Effective Date of this Settlement Agreement, and are expressly subject to the releases provided in Section 4.

2.4 Compliance with Warning Regulations

Pedego shall be deemed to be in compliance with warning requirements pursuant to this Settlement Agreement by complying with warning requirements set forth in Section 2.3.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to California Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Pedego agrees to pay seven thousand five hundred dollars (\$7,500.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to OEHHA and the remaining 25% of the penalty amount retained by KASB. Within twenty-one (21) days of the Effective Date, Pedego shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the amount of (\$5,625.00) and (b), and Seven Hills LLP in trust for Keep America Safe and Beautiful in the amount of (\$1,875.00).

3.2 Civil Penalty Payment Addresses

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to KASB shall be sent to:

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

3.3 Attorney Fees and Costs

Within twenty-one (21) days of the Effective Date, Pedego shall pay the total of twenty-one thousand five hundred dollars (\$21,500.00) to KASB and its counsel as a complete reimbursement for KASB's attorney's fees and costs incurred in investigating, bringing this matter to the attention of Pedego and negotiating a settlement. Pedego's payment shall be delivered in the form of one check for twenty-one thousand five hundred dollars (\$21,500.00) payable to "Seven Hills LLP". All payments required under Section 3.2 shall be delivered to:

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

3.4 Tax Documentation

Pedego agrees to provide a completed IRS 1099 for its payments to, and KASB agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Pedego cannot issue any settlement payments pursuant to Section 3.1 through 3.5 above until after Pedego receives the requisite W-9 forms from KASB's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Pedego

This Settlement Agreement is a full, final, and binding resolution between KASB, on its own behalf and not on behalf of the public interest, and Pedego, and its past and present shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, and their predecessors, successors and assigns, and each downstream entity to whom Pedego directly or indirectly distributed or sold the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Pedego Releasees") of any violation of Proposition 65 that was or could have been asserted by KASB, on its own behalf, on behalf of its past, or current -agents, representatives, attorneys, successors and assignees, against Pedego based on any alleged failure to warn about exposures to DEHP in the Product manufactured, sold or distributed for sale in California before the Effective Date or during the Grace Period set forth in Section 2.4 herein, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB on its own behalf and not on behalf of the public, and on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Pedego including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees of any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the future arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in the Product manufactured, distributed, sold or offered for sale by Pedego, before the Effective Date or during the Grace Period set forth in Section 2.4 herein.

The Parties further understand and agree this Section 4.1 release shall not extend to Releasees who have been instructed by Pedego, pursuant to Section 3.2, to provide a warning on Products that are not Reformulated Products and have failed to do so.

4.2 Pedego's Release of KASB

Pedego on its own behalf and on behalf of 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 by KASB and its attorneys and other representatives, provided such statements are not subject to a Confidentiality Agreement between the Parties, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in connection with the Product.

4.3 Mutual Release of Known and Unknown Claims

Except as provided in Sections 4.1 and 4.2, 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 Pedego, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, each provide a general release of the other which shall be effective as a full and final accord and satisfaction, as a bar to all claims of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged violations of Proposition 65 with respect to the Products manufactured, distributed, sold or offered for sale by Pedego, before the Effective Date. KASB and Pedego each acknowledge that they are each familiar with Section 1542 of the California Civil Code, which provides 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.

4.4 Public Benefit

It is the understanding of the Parties that the commitments Pedego has agreed to herein, and the actions to be taken by Pedego under this Settlement Agreement, confer a public benefit to the general public as set forth in California Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201.

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. Nothing in this Agreement shall be interpreted to relieve Pedego 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 Pedego:

Kristin Larson, Esq.
Stradling Yocca Carlson & Rauth
800 Anacapa Street, Suite A
Santa Barbara, CA 93101

For KASB:

Laralei Paras, 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 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: 05/09/2023

By: 
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: 05/11/2023

By: 
~~Donald DiCostanzo, CEO~~ *Jon Jenks, VP Finance*
Pedego, LLC