

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 Tubby Todd Bath Co. LLC (“**Tubby Todd**”), with KASB and Tubby Todd 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 Tubby Todd 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 Tubby Todd manufactures, imports, sells, and distributes for sale in California vinyl/PVC travel bags containing di(2ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *The Travel Kit with Travel Bag, SKU: TRK-BUNDLE_WIBAG, Location: KY-010-01-B*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC travel bags 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 cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On November 4, 2022, KASB served Tubby Todd, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Tubby Todd 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

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

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

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, Tubby Todd shall not manufacture, import, sell, ship, or distribute for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces any Products unless such Products meet the Reformulation Standard for Reformulated Products, as defined by Section 2.3.

2.2 Sunset Provision

This Reformulation Commitment shall expire on Tubby Todd's acquisition by new ownership unaffiliated with its current ownership; provided, however, that notwithstanding the expiration of this Reformulation Commitment Tubby Todd shall not manufacture, import, sell, ship, or distribute for sale in or into California any Product except in compliance with Proposition 65. If after the Sunset Provision, Tubby Todd remains subject to Proposition 65 and

resumes sales of the Products that do not meet the Reformulation Standard, Tubby Todd shall comply with the warnings provisions of Section 2.4.

2.3 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 each in a maximum concentration of less than 0.1 percent (1,000 parts per million) 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 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.

2.4 Clear and Reasonable Warnings

If after the Sunset Provision, Tubby Todd resumes sales of Products that do not meet the Reformulation Standard at Section 2.3, Tubby Todd 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 following warnings for Products containing one or more chemical(s) in excess of the Reformulation Standard for Reformulated Products set forth in

Section 2.3 shall be deemed in compliance with Title 27 California Code of Regulations

§ 25600, *et seq.*:

⚠WARNING: This product can expose you to [chemicals including] [DEHP], which [is][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.

- or -

⚠WARNING: This product can expose you to [chemicals including] [DEHP], which [is][are] are known to the State of California to cause [cancer] [and] [birth defects or other reproductive harm] and [chemicals including] [DINP], which [is][are] are known to the State of California to cause [cancer]. For more information go to www.P65Warnings.ca.gov.

(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) Product Warnings

Tubby Todd shall affix a warning to the Product label or otherwise directly on Products, that are not Reformulated Products, provided for sale to consumers located in California and to 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 2.4(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 appear in at least 6-point type and no smaller than the largest type size used for other consumer information on the Products.

(d) Internet Warnings

If, after the Effective Date, Tubby Todd sells Products, that are not Reformulated 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, Tubby Todd 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 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.

2.5 Customer Notification

Within 30 days of the Effective Date, Tubby Todd shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each customer in California to which it supplied Products between November 4, 2021 and November 4, 2022; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Tubby Todd supplied between November 4, 2019 and November 4, 2022, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. The Notification letter shall offer recipients who verify their shipping information a new, Proposition 65-compliant Product free of charge. Such replacement Product shall meet the Reformulation Standard in Section 2.3, above.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Tubby Todd agrees to pay a civil penalty of \$5,000 within five (5) business days of the Effective Date. Tubby Todd'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. Tubby Todd shall issue its payment via two separate wire transfers or in two checks made payable to: (a) "OEHHA" in the amount of \$3,750; and (b) "Keep America Safe and Beautiful" in the amount of \$1,250. If payment is made by checks, KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment. By the Effective Date KASB shall provide Tubby Todd's legal counsel with KASB's wire transfer instructions and a completed IRS form W-9.

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, Tubby Todd agrees to pay the amount of \$20,000 by wire transfer or check payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Tubby Todd's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. By the Effective Date KASB shall provide Tubby Todd's legal counsel with Seven Hills LLP's wire transfer instructions and a completed IRS form W-9.

3.3 Payments

All payments payable and due under this Agreement are contingent upon KASB delivering to Tubby Todd's legal counsel the above-referenced wire transfer instructions and completed IRS form W-9, and shall either be sent via separate wire transfers to KASB, OEHHA, and Seven Hills or delivered as paper checks 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 Tubby Todd

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Tubby Todd, 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 Tubby Todd, its past and present parents, subsidiaries, affiliated entities under common ownership including: directors, officers, managers, members, employees, attorneys, and each downstream entity to whom Tubby Todd 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 failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by Tubby Todd in California before the Effective Date, as alleged in the Notice. The Parties understand and agree Section 4 releases shall not extend to any product sold after the Sunset provision unless such Product complies with the terms of this Agreement.

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 (collectively, "**Releasers**"), hereby waives all of Releasers' rights to institute or participate in, directly or indirectly, any form of

legal action and releases all claims that Releasors 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 the Products manufactured, distributed, sold and/or offered for sale by Tubby Todd, before the Effective Date (collectively, "**Claims**") against Tubby Todd and Releasees.

4.2 Tubby Todd's Release of KASB

Tubby Todd, 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 Tubby Todd 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 Tubby Todd 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 Tubby Todd:

Brian Williams, CEO
Tubby Todd Bath Co. LLC
1928 Kellogg Avenue
Carlsbad, CA 92008

For KASB:

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

With a copy to:

Sean Sherlock, Esq.
Snell & Wilmer
600 Anton Blvd., Suite 1400
Costa Mesa, CA 92626

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) and as otherwise required under Proposition 65.

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: 03/08/2023

By: 
My Nguyen, CFO
Keep America Safe and Beautiful

AGREED TO:

Date: Brian T Williams

By: 
Brian Williams, CEO
Tubby Todd Bath Co. LLC