

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 Tokidoki, LLC (“**Tokidoki**”), with KASB and Tokidoki 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. Tokidoki 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 Tokidoki manufactures, imports, sells, and distributes for sale in California vinyl/PVC ID card holders containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *Dodgers LAD Lanyard, SKU TKMLB22LYRDLAD*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Vinyl/PVC ID card holders 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 or other reproductive harm.

1.3 Notice of Violation

On September 26, 2023, KASB served Tokidoki, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Tokidoki 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

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

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean September 20, 2024.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Tokidoki 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 2.1.1.

2.1.1 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 CPSCCH-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.

2.2 Certification to Compliance with Reformulation Standard

On or before thirty [30] days after the Effective Date, an officer of Tokidoki shall provide Seven Hills LLP with a written attested declaration stating, as of the Effective Date, and continuing thereafter, any and all Products manufactured or imported by Tokidoki for sale to (a) consumers in California directly including through its own website, affiliated websites or a third party website, and (b) customers with retail locations in California, nationwide distribution, or e-commerce websites, are Reformulated Products as defined by Section 2.1. Along with its attested declaration, Tokidoki shall provide a recent test result performed after the date of the Notice, evincing the Products were tested and analyzed according to the parameters set forth in the preceding Section 2.2 and are Reformulated Products. Failure to comply with this section shall render this agreement null and void.

2.3 Interim Clear and Reasonable Warnings

Commencing on or before the Effective Date, Tokidoki shall provide clear and reasonable warnings for all Products, that are not Reformulated Products remaining in its inventory, 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, designs, or devices 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.

2.3.1 Warning. The following warnings for Products containing DEHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall be deemed in compliance with Title 27 California Code of Regulations § 25600, et seq.:

⚠WARNING: This product can expose you to 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.

2.3.2 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.

2.3.3 On-Product Warning Requirements. Tokidoki shall affix a warning to the Product label or otherwise directly on each Product provided for sale to consumers located in California and to customers with retail outlets in California or nationwide distribution. For purposes of this Consent Judgment, “Product label” means a display of written, printed, or graphic material that is printed on or affixed to each of a Product or its immediate wrapper. The word “**WARNING:**” must be printed 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 that if the labeling does not use the color yellow, then the symbol may be in black and white. 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.

2.3.4 Internet Product Warning Requirements. For all Products sold in or into California through third-party websites over which Tokidoki has the ability to control the application of warnings, Tokidoki shall provide warnings for each Product, both on the Product label, in accordance with Section 2.3.3, 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. For third-party websites, as a condition of sale, Tokidoki shall notify its downstream customers the Products must be accompanied by a warning, prior to sale, in or into California, and shall supply the warning requirements in Section 2.3 and a sheet of white background, adhesive stickers each printed with the warning statement in Section 2.3.1.

2.4 Customer Notification

No later than the Effective Date, Tokidoki shall send a letter, electronic or otherwise (“**Notification Letter**”) to: (1) each consumer in California to which it supplied Products between September 26, 2022, and the Effective Date; and (2) any other customer that is a retailer or distributor that has any inventory of Products, which Tokidoki supplied between September 26, 2021, and the Effective Date, 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 birth defects or other reproductive harm. The Notification letter shall inform the recipient all Products must either be (1) returned to Tokidoki for a full refund or (2) sold in or shipped to California with (a) an On-Product Warning and (b) and Internet Warning which states:

⚠WARNING: This product can expose you to 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.

2.4.1 On Product Warning. The Notification Letter shall advise that the On Product Warning must be attached to a label on the packaging of each Product expressly referring to the Product before it is sold in the California market or shipped to a customer in California and shall supply the warning requirements, pursuant to this Section 2.3.1 as follows. The warning 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. 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. If the customer is a retailer or distributor of the Products, the Notification Letter shall include a sheet of white background, adhesive stickers with the forgoing warning statement.

2.4.2 Internet Warning. The Notification Letter shall advise Products sold through e-commerce platforms 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 this Section 2.4.2 as follows. The Internet Warning must be prominently displayed 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Tokidoki agrees to pay a civil penalty of \$3,000 within five (5) business days of the Effective Date. Tokidoki’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. Tokidoki shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$2,250; and (b) “**Seven Hills in trust for Keep America Safe and Beautiful**” in the amount of \$750. KASB’s counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Representations

Tokidoki represents that the sales data and/or knowledge of DEHP that it provided to KASB in negotiating this Agreement was truthful and a material factor upon which KASB relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, KASB discovers and presents to Tokidoki evidence demonstrating that the preceding representation was materially inaccurate, then Tokidoki shall have 30 days to meet and confer regarding KASB's contention. In the event the 30-day meet and confer period passes without any such resolution between KASB and Tokidoki, then KASB shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 4.2 of the Agreement pursuant to Code of Civil Procedure § 664.6. The prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as approved by the Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to enforce the settlement until the expiration of the nine (9) months following the Effective Date pursuant to Code of Civil Procedure § 664.6.

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, Tokidoki agrees to issue a check in the amount of \$18,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to Tokidoki'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 Tokidoki

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Tokidoki, 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 Tokidoki, its directors, officers, employees, attorneys, and each entity to whom Tokidoki directly or indirectly distributes or sells Products, including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "**Releasees**") from all claims for violations of Proposition 65 based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold by Tokidoki and/or offered for sale 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 by Tokidoki and/or offered for sale before the Effective Date (collectively, "**Claims**"), against Tokidoki and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither 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 Tokidoki nor downstream to any Releasee who has been instructed by Tokidoki pursuant to Section 2.3.4 and 2.4 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 Tokidoki's Products.

4.2 Tokidoki's Release of KASB

Tokidoki, 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 Tokidoki 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 Tokidoki 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 Tokidoki:

Michael M. Baranov, Esq.
Baranov & Wittenberg, LLP
1901 Avenue of the Stars, Suite 1040
Los Angeles, California 90067

For KASB:

Laralei Paras, Esq.
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: 09/03/2024

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: August 29, 2024

By: *Pooneh S. Mohajer*
Pooneh Mohajer-Shojaee, CEO
Tokidoki LLC