

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”), on the one hand, and Royal Industries Inc. (“**Royal Industries**”), on the other, with KASB and Royal Industries referred to individually as a “**Party**” and, collectively, as the “**Parties**”. KASB is a California nonprofit corporation, proceeding in the public interest, pursuant to California Health & Safety Code § 25249.7(d), to promote awareness of the health hazards posed by exposure to toxic chemicals and to ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed on or eliminated from products sold in California. Royal Industries employs ten or more persons and is a “person in the course of doing business”, as defined by California Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.2 General Allegations

KASB alleges Royal Industries manufactures, imports, sells and/or distributes for sale in California seats with vinyl upholstery containing di(2-ethylhexyl)phthalate (“**DEHP**”) and that it does so without providing the health hazard warning KASB alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3 Consumer Product Description

The consumer products covered by this Settlement Agreement are seats with vinyl upholstery containing DEHP and manufactured, imported, distributed, sold or offered for sale, in California, by Royal Industries, including, but not limited to, the *Royal Industries Replacement Bar Stool Seat; Model # ROY7711; ASIN #B001TACTS6; UPC #7 08879 01764 7* and the following SKUs: 718, 720, 7711, 7712, 7714, 7723, 8000, 8001, 8002, 9001 & 9002, referred to hereinafter as the “**Products**.”

1.4 60-Day Notice of Violation

On October 14, 2020, KASB served Royal Industries, KaTom Restaurant Supply, Inc., the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging Royal Industries violated Proposition 65 when it failed to warn its customers and consumers in California the Products expose users to DEHP, a reproductive toxicant and carcinogen. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Royal Industries denies the material, factual and legal allegations contained in the Notice and maintains all products it sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Royal Industries of any fact, finding, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Royal Industries of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “**Effective Date**” shall mean April 22, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing within 90 days of the Effective Date, and continuing thereafter, Royal Industries agrees all Products it manufactures, import, sells or distributes for sale in or into California shall be either: (1) Reformulated Products, in accordance with and as defined by Section 2.2, below; or (2) Products bearing a clear and reasonable health hazard warning, pursuant to Sections 2.3 through 2.7, below.

2.2 Reformulation Standard & Reformulated Products Defined

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**”) and/or di-n-hexyl phthalate (“**DnHP**”), have phthalate chemicals in maximum concentrations of less than 0.1 percent (1,000 parts per million) in each and every accessible component (i.e. a component that may be touched or utilized during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“**Reformulation Standard**”).)


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 accepted methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing within 90 days of the Effective Date, and continuing thereafter, for all Products manufactured, imported, sold, distributed or offered for sale that do not meet the Reformulation Standard, Royal Industries shall provide clear and reasonable health hazard warnings. For purposes of this Agreement, a warning shall be deemed clear and reasonable if it meets the criteria set forth in California Health & Safety Code § 25249.5 *et seq.* and title 27 California Code of Regulations (“Cal. Code Regs.”) § 25600 *et seq.*, as may be amended from time to time.

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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes of this Agreement, the following warnings shall be deemed clear and reasonable:

(a) Warning:

 **WARNING:** This product can expose you to chemicals, including 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

(b) Alternative Short-Form Warning:

 **WARNING:** Reproductive Harm- www.P65Warnings.ca.gov.

The Parties agree, should Royal Industries determine additional chemical endpoints need to be included in either of the above warnings, Royal Industries may modify the content of such warnings to address the new chemical, provided the revised warnings comply with title 27 Cal. Code Regs. § 25600 *et seq.*

2.4 On-Product Warning Requirements

Royal Industries shall affix one of the warnings provided in Section 2.3 on the Product Label, packaging or directly on each Product that is manufactured, imported, distributed, sold or otherwise provided for sale to consumers in California. “Product Label” is defined as a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in at least 6-point type, and in no event shall it be smaller than the largest type size used for other consumer information on the Product.

A Warning or Alternative Short-Form Warning provided pursuant to Section 2.3 must print the word “WARNING:” in all capital letters and in bold font, followed by a colon. 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 sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “WARNING:”. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Products and shall be at least the same size as those other safety warnings.

2.5 Internet Product Warning Requirements

For all Products imported, distributed, sold or offered for sale via the internet to customers located in California after the Effective Date, Royal Industries shall provide warnings for each Product, both on the Product label, in accordance with Section 2.4, 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. Warnings provided in conjunction with the sale of Products via the internet may use the Alternative Short-Form Warning, described supra in Section 2.2, if the warning appearing on the Product Label also utilizes the Alternative Short Form Warning.

2.6 Mail Order & Catalogue Warning Requirements

For all Products that are not Reformulated Products or do not meet the Reformulation Standard sold to consumers in California via mail order or a catalogue printed within 90 days of the Effective Date, Royal Industries agrees to provide a warning both on the Product label, in accord with Section 2.3, supra, and in the written text of the catalog, subject to the following additional requirements. Any mail order or catalogue warning provided by Royal Industries shall clearly associate the warning with the specific Product being purchased such that the consumer does not have to search for it in the general content of the catalogue. The warning shall be in the same type size or larger than other consumer information provided for the Product within the catalog and on the same page and in the same location as the display and/or description of the Product.

2.7 Compliance with Warning Regulations

Royal Industries may comply with the warning requirements of this Section by any other means authorized pursuant to Health and Safety Code 25249.5 *et seq.* and/or by adhering to the safe harbor guidelines published by the Office of Environmental Health Hazard Assessment as set forth in Title 27, Div. 4, Chap. 1, Ar. 6 of the California Code of Regulations, commencing at § 25600 *et seq.*, as may be amended from time to time.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Royal Industries agrees to pay \$4,000

in civil penalties. Penalty payments shall be allocated in accordance with Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by KASB.

Within five (5) days of the Effective Date, Royal Industries agrees to pay a non-waivable civil penalty in two separate checks, made payable as follows: (1) “OEHHA” in the amount of \$3,000; and “Keep America Safe and Beautiful” in the amount of \$1,000, and delivered to the address in Section 3.3., below. KASB’s counsel shall deliver OEHHA’s portion of the civil penalty payment.

3.2 Reimbursement of Attorneys’ Fees and Costs

The Parties acknowledge KASB and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized the non-monetary and injunctive terms, Royal Industries expressed a desire to resolve KASB’s attorneys’ fees and costs. The Parties then negotiated a resolution of the compensation due to KASB and its 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 of this Settlement Agreement.

Under these legal principles, within five (5) days of the Effective Date, Royal Industries agrees to pay \$19,250 to KASB and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Royal Industries’ management, and negotiating a settlement in the public interest. Royal Industries’ payment shall be delivered to the address listed in Section 3.3, below, in the form of a check made payable to “Seven Hills LLP.”

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

Seven Hills LLP
c/o Kimberly Gates Johnson
4 Embarcadero Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Royal Industries

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Royal Industries, 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 Royal Industries, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Royal Industries directly or indirectly distributes or sells Products, including, but not limited, to KaTom Restaurant Supply, Inc, as well as downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning about exposure to DEHP contained in Products distributed, sold or offered for sale by Royal Industries, as alleged in the Notice, prior to 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, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in Products distributed, sold and/or offered for sale by Royal Industries prior the Effective Date, as alleged in the Notice, against Royal Industries and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not 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 to Royal Industries. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Royal Industries' Products.

4.2 Royal Industries' Release of KASB

Royal Industries, 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 Settlement Agreement, any of the provision of this Settlement 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 and apply within the laws of the State of California. In the event Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then Royal Industries shall provide written notice to KASB 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 Royal Industries from its obligation to comply with pertinent state or federal toxics control laws.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided by this Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Royal Industries:

Jay Johnson, President
Royal Industries Inc.
4100 W. Victoria St.
Chicago, IL 60646

With a Copy to:

Daniel Herling, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C.
44 Montgomery St., 36th Floor
San Francisco, CA 94104

For KASB:

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

Any party, from time to time, may 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 SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall be deemed to constitute one and the same document.

9. **REPORTING PURSUANT TO HEALTH & SAFETY CODE § 25249.7(f)**

KASB agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f), and shall report this Settlement Agreement to the Attorney General's Office within five (5) days of the date this agreement is fully executed by the Parties.

10. **MODIFICATION**


This Settlement Agreement may only be modified by the written agreement of the Parties.

11. **AUTHORIZATION**

The undersigned represent they have the full authority to enter into and legally bind the entities that are the subject of this Settlement Agreement. The undersigned further represent they are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

Date: 05/05/2021

By: 
Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 5-4-2021

By: 
Jay Johnson, President
Royal Industries Inc.