

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and Yita LLC (“**Yita**”) with KASB and Yita 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. Yita 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 Yita manufactures, imports, sells and/or distributes for sale in California vinyl storage cases 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 Covered Product Description

The consumer products covered by this Settlement Agreement are vinyl storage cases containing DEHP and manufactured, imported, distributed, sold or offered for sale, in California, by Yita, specifically limited to the *Spare Tire Lug Wrench Jack Tool Kit; SKU XS0501W101*, referred to hereinafter as the “**Covered Products**.”

### 1.4 60-Day Notice of Violation

On October 21, 2020, KASB served Yita, Walmart, Inc., the California Attorney General,

and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”) alleging Yita violated Proposition 65 when it failed to warn its customers and consumers in California the Covered 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**

Yita denies the material, factual and legal allegations contained in the Notice and maintains all products it sold and distributed in California, including the Covered Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Yita 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 Yita 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 14, 2021.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Commitment to Reformulate**

Commencing on the Effective Date, and continuing thereafter, Yita agrees all Covered Products, as defined in Section 1.3, it manufactures, import, sells or distributes for sale in or into California shall be Reformulated Products, in accordance with and as defined by Section 2.2, below.

On or around November 6, 2020, Yita ceased manufacturing, importing, distributing, selling, or offering for sale all Covered Products. Yita removed from the internet all sales listings or webpages for Covered Products which are known to Yita and does not intend to manufacture, import, distribute, sell, or offer for sale the Covered Products in the future, unless they are Reformulated.

## **2.2 Reformulated Products Defined**

For purposes of this Agreement, “**Reformulated Products**” are defined as Covered Products which, if they contain di(2-ethylhexyl)phthalate (“**DEHP**”), have it in a maximum concentration 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.

For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC-CH-C1001.09.4 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.

## **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, Yita agrees to pay \$2,000 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, Yita agrees to pay a non-waivable civil penalty in two separate checks, made payable as follows: (1) “**OEHHA**” in the amount of \$1,500; and “**Keep America Safe and Beautiful**” in the amount of \$500, and delivered to the address in Section 3.3, below. KASB’s counsel shall deliver both **OEHHA**’s and KASB’s portions 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, Yita 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, Yita agrees to pay \$22,000 to KASB and its counsel for all reasonable fees and costs incurred in investigating, bringing this matter to the attention of Yita's management, and negotiating a settlement in the public interest. Yita's 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 Yita**

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Yita, 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 Yita, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Yita directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, including, without limitation,

Walmart, Inc., 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 Covered Products, as defined by Section 1.3, supra, distributed, sold or offered for sale by Yita, 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 Covered Products distributed, sold and/or offered for sale by Yita prior the Effective Date, as alleged in the Notice, against Yita and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Covered Products or any component parts thereof or any distributors or suppliers who sold the Covered Products or any component parts to Yita. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee not involving Yita's Covered Products.

#### **4.2 Yita's Release of KASB**

Yita, 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 Covered Products.

### **5. ENFORCEMENT**

In the event KASB has cause to believe Yita is in violation of this Agreement as it

specifically pertains to the Covered Products defined in Section 1.3, supra, KASB shall submit a writing detailing the alleged violation(s) and notifying Yita it is not in compliance with the Agreement, pursuant to Section 8, prior to issuing a new 60-Day Notice of Violation. Yita shall have sixty (60) days to respond and cure any problems, violations, issues, grievances or non-compliance stated by KASB as it pertains to Covered Products, before KASB initiates any legal or administrative actions or proceedings.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**7. 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 Covered Products specifically, then Yita 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 Covered Products are so affected. Nothing in this Agreement shall be interpreted to relieve Yita from its obligation to comply with pertinent state or federal toxics control laws.

**8. 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 Yita:

Cherry Tao  
President  
Yita LLC  
18220 80th PL S.  
Kent, WA 98032

With a Copy to:

Nicholas C. Moore, Esq.  
Farella Braun + Martel LLP  
235 Montgomery Street, 17th 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.

**9. 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.

**10. 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.

**11. MODIFICATION**

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

**12. 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.

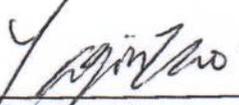
AGREED TO:

Date: 04/14/2021

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

AGREED TO:

Date: 4/14/2021

By:   
Cherry Tao, President  
Yita LLC