

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This settlement agreement ("Settlement Agreement") is entered into by and between Keep America Safe and Beautiful ("KASB"), on the one hand, and Puka Creations, LLC; Hollywood Mega, Inc., ("Puka Creations, LLC") on the other hand, with KASB and Puka Creations, LLC each individually referred to as a "Party" and collectively as the "Parties."

1.2 General Allegations

KASB alleges in a 60-Day Notice of Violation dated January 4, 2023 (Insert AG #2023-00199), that Puka Creations, LLC sells and/or distributes Metallic Colo Fanny Packs - Pink, UPC #812297033636 in California that contain Di(2-ethylhexyl) Phthalate ("DEHP") without a warning required by Health and Safety Code §§ 25249.5 *et seq.* ("Proposition 65") (the "Notice"). DEHP is listed pursuant to Proposition 65 as a chemical known to cause cancer and birth defects or other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Metallic Colo Fanny Packs - Pink, UPC #812297033636, (hereinafter referred to collectively as the ("Product or Products")) that contains DEHP and that is manufactured, sold, or distributed for sale in California by Puka Creations, LLC.

1.4 Notice of Violation

On January 4, 2023, KASB served the Notice on Puka Creations, LLC, the California Attorney General and the other requisite public enforcers, alleging that Puka Creations, LLC and others violated Proposition 65 when they failed to consumers in California of the alleged exposures to DEHP from the Product.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Puka Creations, LLC denies the material, factual and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Puka Creations, LLC of any fact, finding, conclusion, issue of law or violation of law This Section shall not, however, diminish or otherwise affect Puka Creations, LLC's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which a complete and fully executed copy of this Settlement Agreement is exchanged by the Parties' counsel.

2. **INJUNCTIVE RELIEF**

2.1 **Reformulation Commitment**

Commencing on the Effective Date and continuing thereafter, the Product which Puka Creations, LLC manufactures, imports, sells, ships or distributes for sale 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 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3.

2.2 **Reformulation Standard**

For purposes of this Settlement Agreement, “Reformulated Products” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“DEHP”), contain any or all of such chemical in a maximum concentration of less than 0.1 (1,000.00 parts per million) 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-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies.

2.3 **Clear and Reasonable Warnings**

Puka Creations, LLC shall provide clear and reasonable warnings for all Products provided for sale to consumers in California in accordance with this Section and 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, so as to minimize the risk of consumer confusion.

(a) The Warning for the Products shall consist of one of the following statements:

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

The warning requirements set forth herein are imposed pursuant to the terms of this Settlement Agreement and are recognized by the Parties as not being the exclusive manner of providing a warning for the Products. Warnings may be provided as specified in the Proposition 65 regulations (Title 27, California Code of Regulations, section 25601, et seq.) in effect as of the Effective Date or as such regulations may be amended in the future and may include warnings for chemicals in addition to DEHP where appropriate. In addition, if and where appropriate, Puka Creations may follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2 or a similar procedure to provide warnings for the Products consistent with this Settlement Agreement.

(b) Short-Form Warning. Puka Creations may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (“Short-Form Warning”), and subject to the additional requirements in Section 2.5, as follows:

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

2.4 Product Warning

Commencing on or before the Effective Date, Puka Creations, LLC shall affix a warning to the Product label or otherwise directly on Products or on the Product’s immediate container, wrapper, or packaging for those Products provided for sale to consumers located in California and, where appropriate to customers with retail outlets in California. For purposes 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 2.3(a) or (b) 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. The warning shall consist of either the Warning or the Short Form described in subsection 2.3(a) or (b), respectively.

2.5 Internet Warnings

If, after the Effective Date, Puka Creations, LLC 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, Glad Lash shall provide warnings for the Products both on the Product label, in accordance with Section 2.4, and by prominently displaying, or requesting 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 prior to or 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. The internet warning may use the Short-Form Warning described in Section 2.3(b), if the warning provided on the Product label also uses the Short-Form.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code§ 25249.7(b)(2), Puka Creations, LLC agrees to pay Three Thousand Dollars and 00/100 (**\$3,000.00**) 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 the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by KASB. Within ten (10) days of the Effective Date, Puka Creations, LLC shall issue a check for the civil penalty payment to "OEHHA" in the amount of Two Thousand, Two Hundred Fifty Dollars and 00/100 (**\$2,250.00**) and shall wire to KASB the amount of Seven Hundred Fifty Dollars and 00/100 (**\$750.00**).

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

For United States Postal Delivery Service:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS 19B
Sacramento, CA 95812-4010

For Non-United States Postal Delivery Service:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street MS #19B
Sacramento, CA 95814

All penalty payments owed to KASB shall be sent via wire:

Wire & ACH Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: First Citizens Bank
Bank Address: 28641 Marguerite Parkway, Mission Viejo, CA. 92692
ACH Routing / ABA Number: 122037760
Wire Routing / ABA Number: 053100300
Account Number: 001064978459

For Further Benefit of: Civil Penalty Payment – P65-02-0002-L

3.2 Attorney 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 the work performed through the mutual execution and reporting of this Settlement Agreement to the Office of the California Attorney General. Within ten (10) days of the Effective Date, Puka Creations, LLC agrees to wire to KASB's counsel the amount of Twenty-Seven Thousand Dollars and 00/100 (\$27,000.00) for all fees and costs incurred investigating, bringing this matter to Puka Creation, LLC's attention, negotiating a settlement in the public interest, and reporting its terms to the Office of the California Attorney General pursuant to Section 9.

Wire & ACH Instructions:

Account Name: The Law Offices of Joseph R. Manning
Bank Name: First Citizens Bank
Bank Address: 28641 Marguerite Parkway, Mission Viejo, CA. 92692
ACH Routing / ABA Number: 122037760
Wire Routing / ABA Number: 053100300
Account Number: 001064978459

For Further Benefit of: Attorney's Fees and Costs – P65-02-0002-L

3.3 Tax Documentation

Puka Creations, LLC agrees to provide a completed IRS 1099 form for its payments to, and KASB and Manning Law agree to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Puka Creations, LLC cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Puka Creations, LLC receives the requisite W-9 forms from KASB's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Puka Creations, LLC

KASB, acting on its own behalf and *not* on behalf of the public, fully releases and discharges Puka Creations, LLC and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers, distributors (the "Defendant Releasees") and all entities to which Defendant Releasees directly or indirectly distribute or sell the Product, and any other distributors, wholesalers, customers, retailers, franchisees, licensors, and licensees, (collectively, the "Released Parties" and individually, a "Released Party"). KASB, on behalf of itself and its officers, directors, shareholders, employees, agents, parent companies, subsidiaries and divisions hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted base on or related to the handling, use, sale, distribution or consumption of the Product in California, as to any alleged violation of Proposition 65 or its implementing regulations,

including without limitation any failure to provide Proposition 65 warnings on the Products with respect to exposures to DEHP.

4.2 Puka Creations, LLC's Release of KASB

Puka Creations, LLC 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, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties, arising out of the Notice or relating to the Products, will develop or be discovered. KASB on behalf of itself only, and Puka Creations, LLC on behalf of itself only, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action, therefore. KASB and Puka Creations, LLC acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads 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.

5. SEVERABILITY

In the event that any of the provisions of this Settlement Agreement are held by a court of competent jurisdiction to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California, without regard to its conflicts of law principals.

7. NOTICES

When any Party is entitled to receive any notice under this Settlement Agreement, the notice shall be sent by first class mail or electronic mail to the address set forth in this Paragraph. Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by certified mail, return receipt requested. Said change shall take effect on the date the return receipt is signed by the Party receiving the change.

Notices shall be sent to:

For KASB

Joseph R. Manning, Jr.
Manning Law, APC

26100 Towne Center Drive
Foothill Ranch, CA. 92610

For Puka Creations, LLC:

Daniel Oliva
Oliva Law Group, P.C.
5132 York Blvd.
P.O. BOX 50792
Los Angeles, CA, 90050

in addition to a digital copy to: dani@olivaesq.com

For Hollywood Mega, Inc.

Daniel Oliva
Oliva Law Group, P.C.
5132 York Blvd.
P.O. BOX 50792
Los Angeles, CA, 90050

in addition to a digital copy to: dani@olivaesq.com

8. COUNTERPARTS: FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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. Signatures by scanned and emailed image or facsimile transmission shall have the same force and effect as original signature and as an electronic record adopted and executed by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

9. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7(f)

KASB and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code §25249.7(f).

10. MODIFICATION

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

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties

and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by, or relied on, any Party.

12. INTERPRETATION

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any Party, based upon the fact that one of the Parties and/or their counsel prepared or drafted any portion of this Agreement. The Parties waive the provisions of Civil Code § 1654. It is conclusively presumed that the Parties participated equally in the drafting of this Agreement.

13. AUTHORIZATION

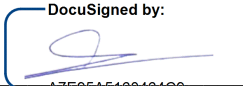
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

14. ENFORCEMENT

Any legal action to enforce this Settlement Agreement shall be brought in the county of Los Angeles of the State of California. KASB shall be entitled to recover its reasonable attorney's fees and costs that are reasonable and necessary to enforce the Settlement Agreement.

AGREED TO:


Date: 5/11/2023

By: 
DocuSigned by:
A7E95A5100464C9...

My Nguyen CEO
Keep America Safe and Beautiful

AGREED TO:


Date: 5/24/2023

By: 
ID PPYbuNcn8zVzcxq3XU1xskxC

Puka Creations, LLC

AGREED TO:

Date: 5/17/2023

By: 
ID uYx8WrTph7NuLTsWjtVLBp3T

Hollywood Mega, Inc.

eSignature Details

Signer ID: uYx8WrTph7NuLTsWjtVLBp3T
Signed by: Gil Zahavi
Sent to email: gilzahavi@att.net
IP Address: 104.11.223.89
Signed at: May 17 2023, 1:50 pm PDT

Signer ID: PPYbuNcn8zVzcxq3XU1xskxC
Signed by: Robert Puka
Sent to email: robert@pukacreations.com
IP Address: 107.185.85.12
Signed at: May 24 2023, 2:53 pm PDT