

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Keep America Safe and Beautiful and Ella's Flats, LLC:**

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful ("KASB"), represented by its attorneys KJT Law Group, LLP on the one hand, and Ella's Flats, LLC ("Ella's"), on the other hand, with KASB and Ella's collectively referred to as the "Parties."

1.2. **General Allegations**

KASB alleges that Ella's distributed and offered for sale in the State of California Ella's Flats, containing lead and cadmium and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed lead and cadmium under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The products covered by this Settlement Agreement is defined as Ella's Flats, including but are not limited to, "Love What You're Eating – Ella's Flats – All Seed Savory Crisp; UPC #: 8 60003 30041 1" that Ella's has sold, offered for sale, manufactured, or distributed in California and that contain lead and cadmium. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On January 31, 2023, Keep America Safe and Beautiful served Ella's and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of

the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided Ella's and such public enforcers with notice that Ella's was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead and cadmium. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning Ella's compliance with Proposition 65. Specifically, Ella's denies the allegations contained in KASB's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Ella's of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Ella's of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ella's. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Ella's under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF:

2.1 Beginning 120 days after the Effective Date (“Compliance Date”), Ella’s shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day or to a “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day, unless it meets the warning requirements under Section 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Ella’s knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession of Ella’s prior to the Compliance Date and all claims as to such Covered Products are released in this Settlement Agreement.

For purposes of this Settlement Agreement, "Daily Lead Exposure Level" and the "Daily Cadmium Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead or cadmium per gram of product, multiplied by grams of product per serving of the product as stated on the label, multiplied by servings of the product per day stated on the label, which equals micrograms of lead or cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

2.2 Clear and Reasonable Warnings

If Ella’s is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning").

Option 1:

WARNING: Consuming this product can expose you to chemicals including lead and cadmium, which 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/food

Option 2:

WARNING: Cancer and Reproductive Harm – <http://www.p65warnings.ca.gov/food>

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. For purposes of this Settlement Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper. Notwithstanding the above, the content and method of transmission shall be provided in any form as authorized by Proposition 65 law or regulation effective on or after the Effective Date.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, Ella's shall pay (\$23,500.00) as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to Ella's attention.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION

25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, (\$2,000.00) shall be considered a "civil penalty." The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the

remaining 25% of the penalty shall be mailed to; payable to; “KJT Law Group, LLP”, to be forwarded to KASB.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, (\$21,500.00) shall be considered reimbursement of KASB’s attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law.

6. PAYMENT INFORMATION

Ella’s shall mail these payments within ten (10) business days following the Effective Date, at which time such payments shall be mailed to the following addresses respectively:

All payments owed to KASB and for attorneys’ fees, shall be payable and delivered to the following payment address:

KJT LAW GROUP LLP
230 N. Maryland Avenue, Suite 306
Glendale, CA 91206

All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics
Senior Accounting Officer -- MS 19-B
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street

Sacramento, CA 95814

7. **RELEASE OF ALL CLAIMS**

7.1. **Release of Ella's, Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, KASB, on behalf of itself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, 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 limited to, investigation fees, expert fees and attorneys' fees) against Ella's, and its respective equity owners, parents, subsidiaries, affiliates, sister and related companies, directors, officer, members, employees, attorneys, each upstream entity from whom the Covered Products were purchased by Ella's, and each entity to whom Ella's directly or indirectly distributes or sells the Covered Product – including, but not limited to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Amazon.com Services, LLC – for any alleged violations of Proposition 65, or any other alleged violations of statutory or common law, arising from alleged exposure to lead and cadmium in relation to the Covered Products, up through the Effective Date.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Products will develop or be discovered. This Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. KASB, in its capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of

11. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. DRAFTING

No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

14. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION

25249.7(F)

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

15. SEVERABILITY

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

16. 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.

17. ENFORCEMENT OF SETTLEMENT AGREEMENT

Either Party may bring an action to enforce the terms of this Settlement Agreement. A Party who unsuccessfully brings or contests an action arising out of this Settlement Agreement may be ordered by the court to pay the prevailing Party's reasonable attorney's fees and costs

IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.

Executed on 07/09/2023.

Keep America Safe and Beautiful



By: My Chi Nguyen - COO

Executed on 7.6.23.

Ella's Flats, LLC



By:

Its: **Manager**