

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Ya Ya Creations, Inc. (“**Ya Ya**”) and Keep America Safe and Beautiful (“**KASB**”) with Ya Ya and KASB 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 ensure chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are either disclosed or eliminated from products sold in California. Ya Ya is a “person in the course of doing business,” as defined by Health & Safety Code § 25249.11(b), for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”).

1.2 General Allegations & Consumer Product Description

KASB alleges Ya Ya manufactures, distributes, sells and/or offers for sale to consumers in California seats with vinyl upholstery containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *White Resin Folding Chair with Vinyl Padded Seat, SKU: FURN FOLD01 WHT*, without providing the health hazard warning required by Proposition 65. Seats with vinyl upholstery are referred to hereinafter as the “**Products.**” DEHP is listed as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

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

1.4 No Admission

Ya Ya denies the factual and legal allegations contained in the Notice and maintains all products it manufactured, sold, and distributed for sale, in or into California, including the Products, have been and are in compliance with all laws. Nothing in this Agreement shall be

construed as an admission by Ya Ya 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 Ya Ya 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.

1.5 Effective Date

For purposes of this Agreement, the term “**Effective Date**” shall mean May 31, 2024.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate the Products

Commencing on the Effective Date, and continuing thereafter, Ya Ya agrees all Products it sells in or into California shall be Reformulated Products, in accordance with and as defined by Section 2.2, or be accompanied by clear and reasonable warnings set forth in section 2.3.

2.2 Reformulated Products

For purposes of this Agreement, “**Reformulated Products**” are defined as Products which, if they contain DEHP, contain any such chemical 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-C1001.09.4 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. (“**Reformulation Standard**”)

2.3 Clear and Reasonable Warnings

Commencing on or before the Execution Date, Ya Ya shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to (a) customers in California and (b) customers with locations in California, nationwide distribution, or e-commerce platforms 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, or designs 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. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning or notice must also be provided in the other language(s) in addition to English.

(a) **DEHP Warning.** The Warning for DEHP in excess of the Reformulation Standard set forth in Section 2.2 shall consist of the following statement:

⚠WARNING: This product can expose you to di(2-ethylhexyl) phthalate (DEHP), a chemical 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/furniture.

A warning provided pursuant to this Section 2.4(a) 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, then the symbol may be in black and white.

(b) **Product Label Warnings**

Ya Ya shall include the warning statement in Section 2.4(a) on the Product label affixed to the Products in the same manner as other consumer information or warning materials on the Products. 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. For purposes of this Consent Judgment, “**Product label**” means a display of written, printed, or graphic material that is printed on or affixed to a Product.

(c) **Internet Warning**

Ya Ya shall also provide the warning statement in Section 2.4(a) by prominently displaying the warning on e-commerce platforms or requiring the warning to be prominently displayed on third party e-commerce platforms, or by downstream retailers or distributors with e-commerce platforms, to the consumer during the purchase of any 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: (i) on the same web page on which each Product is displayed; (ii) on the same web page as the virtual cart displaying each Product; (iii) on the same page as the price for each Product; or (iv) 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 each Product for which it is given in the same type size or larger than other consumer information provided for each Product.

(d) Catalog Warning

If, after the Effective Date, Ya Ya prints new catalogs and sells Products, that are not Reformulated Products, via mail order through such catalogs to customers located in California, Ya Ya shall also provide the warning statement in Section 2.4(a) for each Product in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of each Products.

(e) Receipt Notice

For each Products, sold or shipped to customers located in California, Ya Ya shall also provide, or require downstream retailers or distributes to provide, on the sales receipt and packing slip, the following notice statement:

NOTICE:

Some furniture products with vinyl upholstery in this shipment can expose you to chemicals known to the State of California to cause cancer. Please check the product label for warning information. For more information go to: www.P65Warnings.ca.gov/furniture.

A notice statement provided pursuant to this Section must print the word “**NOTICE:**” in all capital letters and in bold font. The entire notice statement shall appear in a type size of at least 12-point type and no smaller than the largest type size used for other consumer information on the on the sales receipt and packing slip.

(f) Posted Notice Sign

Ya Ya shall inform, or require downstream retailers or distributors to inform, customers that, if the customer sells, uses or offers the product for sale or use in a business establishment in the State of California, a sign no smaller than 8 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no smaller than 28-point type which contains the following warning statement:

NOTICE:

Some furniture products with vinyl upholstery in this establishment can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. Please check the product label for warning information. For more information go to: www.P65Warnings.ca.gov/furniture.

2.4 Customer Notification

No later than the Effective Date, Ya Ya shall send a letter, electronic or otherwise (“**Notification Letter**”) to each customer in California to which it supplied Products between September 23, 2022, and the Effective Date. The Notification Letter shall advise the recipient that each Product must have a label attached to each Product expressly referring to the Product, which contains the warning statement in Section 2.4(a), before it is sold in the California market or to a customer in California, and shall further inform customers that, if the customer sells, uses or offers the Product for use at an event such as a wedding salon in the State of California, a sign no smaller than 8 1/2 by 11 inches must be displayed at each public entrance and at each point of usage, and printed in no smaller than 28-point type which contains the warning statement in Section 2.4(f).

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 Agreement, Ya Ya agrees to pay \$2,500 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, Ya Ya agrees to pay a non-waivable civil penalty in two separate checks, made payable as follows: (1) “OEHHA” in the amount of \$1,875; and “Seven Hills in trust for Keep America Safe and Beautiful” in the amount of \$625, and delivered to the address in Section 3.3, below. KASB’s counsel shall deliver to KASB and to OEHHA their respective portions of the civil penalty payments.

3.2 Representations

Ya Ya represents the information about sales data, product reformulation and/or any knowledge of DEHP in the Products it provided to KASB in negotiating this Agreement was truthful and acknowledges such information was a material factor upon which KASB relied to determine the civil penalty assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, KASB discovers and presents evidence demonstrating the preceding representation was materially inaccurate, then Ya Ya shall have 30 days to meet and confer regarding KASB’s contention. If the 30-day meet and confer period passes without any such resolution between KASB and Ya Ya, then KASB shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 3.2 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.

3.3 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, thereby leaving the issue to be resolved after the Parties settled the material terms of this Agreement. Shortly after the Parties finalized all other terms, the Parties 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 Agreement. Under these legal principles, within five (5) days of the Effective Date, Ya Ya agrees to pay \$18,500 to KASB and its counsel for investigating, bringing this matter to the attention of Ya Ya’s management, and negotiating a settlement in the public interest. Ya

Ya's payment shall be in the form of a check made payable to "Seven Hills LLP" and delivered to the address appearing in the following Section 3.3.

3.4 Payment Address

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

Seven Hills LLP
c/o Laralei Paras
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of Ya Ya

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Ya Ya, of any violation 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 Ya Ya, its directors, officers, employees, attorneys, and each entity to whom Ya Ya directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, including, without limitation Ya Ya, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on alleged exposures to DEHP and the failure to provide a warning under Proposition 65 about exposure to DEHP contained in Products distributed, sold or offered for sale by Ya Ya, 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 Ya Ya prior the Effective Date, as alleged in the Notice, against Ya Ya 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 suppliers who sold the Products or any component parts to Ya Ya nor downstream to any Releasee who has been instructed by Ya Ya pursuant to Section 2.3(c) 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 not involving Ya Ya's Products.

4.2 Ya Ya's Release of KASB

Ya Ya, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against KASB, its attorneys and other representatives, for any actions taken or statements made, or could have been taken or made by, KASB, its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against Ya Ya with respect to the Products.

5. SEVERABILITY

If, subsequent to the Effective Date, any of the provision of this Agreement is deemed by a court 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. If Proposition 65 is repealed or is otherwise rendered inapplicable, by reason of law generally, or no longer required as to the Products specifically, then Ya Ya 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 Ya Ya from its obligation to comply with pertinent state or federal toxics control laws.

7. NOTICE

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

For Ya Ya:

Mitchell Su, CEO
Ya Ya Creations, Inc.
13155 Railroad Avenue
City of Industry, CA 91746

For KASB:

Laralei Paras, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

Whitney Jones Roy, Esq
SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP
333 South Hope Street, 43rd Floor
Los Angeles, CA 90071

Any party, from time to time, may specify in writing to the other party a change of address to which all Notice and other communications shall be sent.

8. COUNTERPARTS AND SIGNATURES

This Agreement may be executed in counterparts and by pdf signature, which shall be deemed an original, and, when taken together, shall be deemed to constitute the same document.

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

KASB agrees to comply with the reporting requirements in Health & Safety Code § 25249.7(f).

10. MODIFICATION

This 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 Agreement. The undersigned further represent they are authorized to execute this Agreement and have read, understood, and agree to all of the terms and conditions contained herein.

AGREED TO:

Date: 05/27/2024

AGREED TO:

Date: _____

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

By: _____
Mitchell Su, CEO
Ya Ya Creations, Inc.

For Ya Ya:

Mitchell Su, CEO
Ya Ya Creations, Inc.
13155 Railroad Avenue
City of Industry, CA 91746

For KASB:

Laralei Paras, Esq.
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

With a copy to:

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AGREED TO:

Date: _____

By: _____

Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 5/24/2024

By:  _____

Mitchell Su, CEO
Ya Ya Creations, Inc.