

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ema Bell (“Bell”) on the one hand, and Yoki Fashion International LLC and Yoki Fashion Inc. (collectively, “Yoki”) on the other hand. Together, Bell and Yoki are collectively referred to as the “Parties.” Bell is an individual who resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Bell alleges that Yoki is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Bell alleges that Yoki has exposed individuals to bisphenol A (BPA) from its sales of Yoki thrill red heels, #0796625837722 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description. The products covered by this Settlement Agreement are Yoki thrill red heels, # 0796625837722 (the “Products”) that have been allegedly imported, distributed, offered for sale and/or sold in California by Yoki.

1.4 Notices of Violation. On June 19, 2024, Bell served Burlington Stores, Inc., Burlington Coat Factory of Texas, Inc. (collectively, “Burlington”), and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “June Notice”) alleging that Burlington was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the June Notice.

On July 18, 2024, Bell served Burlington, Yoki, and various public enforcement agencies with a document entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “July Notice”) alleging that Yoki was in violation of California Health & Safety Code § 25249.6, for

failing to warn California consumers and customers that use of the Products will expose them to BPA. No public enforcer has diligently prosecuted the allegations set forth in the July Notice.

The June Notice and the July Notice are collectively referred to herein as, the “Notices.”

1.5 No Admission. Yoki denies the material factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all products that are or have been 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 Yoki 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 Yoki of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Yoki. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Yoki maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS

2.1 Reformulation of Products. Commencing within ninety (90) days after the Effective Date, and continuing thereafter, Products that Yoki directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, “Reformulated Products” are Products that are in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Products.

2.2 Reformulation Standard. “Reformulated Products” shall mean any Products subject to this Settlement Agreement that achieve a wipe test result equal to, or less than, 3 micrograms of BPA.


2.2.1 Wipe Test Protocol. The “Wipe Test Protocol” for determining if a Product is a Reformulated Product is as follows:

2.2.1(a) Accessible sample surface of Product is rubbed by wipe sample swabs/paper wetted with HPLC grade water heated to 98 °F two (2) times along longitudinal, latitudinal and diagonal orientation.

2.2.1(b) Wipe sample swabs/paper is extracted with methanol on wrist shaker for one (1) hour and analyzed by LC/MS/MS.

2.3 Clear and Reasonable Warning. Commencing within ninety (90) days after the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Yoki manufacturers, imports, distributes, sells, or offers for sale in California that is not a Reformulated Product. There shall be no obligation for Yoki to provide an exposure warning for Products that entered the stream of commerce within ninety (90) days after the Effective Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including bisphenol A (BPA), 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 Warning:** Yoki may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

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

2.4 A **Warning** or **Alternative Warning** provided pursuant to § 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** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the **Warning** or **Alternative Warning** is displayed 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 of purchase or use. The **Warning** or

Alternative 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 Product and shall be at least the same size as those other safety warnings. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Yoki shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”).

In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Yoki offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Yoki shall (a) post the **Warning** or **Alternative Warning** on its own website, if available, and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

2.5 Compliance with Warning Regulations. The Parties agree that Yoki shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California’s OEHHA applicable to the Product and the exposures at issue.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Yoki shall pay \$500.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty

remitted to OEHHA and the remaining 25% of the Penalty remitted to Bell. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below, and Brodsky Smith shall be responsible for distributing the appropriate amount to Bell and OEHHA. For all amounts due and owing that are not received within the payment times set forth below, Yoki shall pay a late civil penalty payment fee equal to \$25/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

3.1 Civil Penalty. By or before December 30, 2024, Yoki shall issue two (2) separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$375.00; and to (b) “Ema Bell” in the amount of \$125.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Bell and OEHHA, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

(b) Tax Documentation. Yoki agrees to provide a completed IRS 1099 for its payments to, and Bell agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) “Ema Bell” whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) “Brodsky Smith” (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) “Office of Environmental Health Hazard Assessment” 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Bell and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Bell and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Yoki shall reimburse Bell's counsel \$7,500.00 for fees and costs incurred as a result of investigating and bringing this matter to the attention of Yoki, and negotiating a settlement in the public interest.

Payment pursuant to this Section is as follows: Within ten (10) days of the Effective Date, Yoki shall issue two (2) settlement checks payable to "Brotsky Smith" for delivery to the address identified in § 3.2(a)(i), above. Each settlement check shall be dated for deposit on the 30th of each month beginning with December 30, 2024. The December 30, 2024 settlement check shall be in the amount of \$3,500.00. The final settlement check of \$4,000.00 shall be dated for deposit on January 30, 2025. Total payment pursuant to this Section shall equal \$7,500.00.

5. RELEASE OF ALL CLAIMS

5.1 Release of Yoki and Downstream Customers and Entities. This Settlement Agreement is a full, final and binding resolution between Bell, acting on her own behalf, and Yoki, of any alleged violation of Proposition 65 that was or could have been asserted by Bell or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for the failure to provide warnings for alleged exposures to BPA from use of the Products, and Releasers hereby release any such claims against (a) Yoki, including its equity owners, parents, subsidiaries, affiliates, sister companies, and related entities; (b) all upstream suppliers and downstream entities in the stream of commerce, and each entity to whom Yoki directly or indirectly distributes or sells the Products, including but not limited to distributors, wholesalers, customers, retailers (including but not limited to Burlington and its parent, subsidiary, and affiliate entities), franchisees, cooperative members, and licensees; and (c) all respective employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, agents, predecessors, successors, and assigns of any of

the entities identified in subsections (a) and (b), collectively referred to as the "Releasees"), from all claims for violations of Proposition 65 through ninety (90) days after the Effective Date based on exposure to BPA from use of the Products.

Releasors fully releases and waives any right to participate (directly or indirectly) in any litigation against the Releasees (as defined above) from all claims, actions, suits, demands, liabilities, damages, penalties, fees (including but not limited to attorneys' fees, investigator fees, and expert fees), costs, and expenses (collectively referred to as "Claims") that were asserted, or that could have been asserted, for any alleged violations of Proposition 65, or any other alleged violation of statutory or common law, arising from alleged exposures to BPA in the Products.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Bell, on behalf of herself, or the Releasors (as defined above), hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to BPA from use of the Products.

5.2 Yoki's Release of Bell. Yoki, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Bell, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Bell and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to BPA from use of the Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to the Products will develop or be discovered. Bell on behalf of herself only, on one hand, and Yoki, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims within 60 days after the Effective

Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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 HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HIS, WOULD HAVE MATERIALLY AFFECTED HIS OR HIS SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Bell and Yoki each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by Yoki with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to BPA from use of the Products.

5.5. Public Benefit. It is Yoki's understanding that the commitments it has agreed to herein, and actions to be taken by Yoki under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Yoki that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Yoki's failure to provide a warning concerning exposure to BPA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Yoki is in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Yoki shall provide written notice to Bell of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the place of incorporation, place of business, domicile of any of the Parties or physical locations of the individuals executing this Agreement at the time of execution. The Parties acknowledge that they have a right to consult an attorney.

8. NOTICES

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

For Yoki:

Jacob Naoulou, Esq.
Now Law & Associates, P.C.
2329 Nostrand Ave., Ste. 100
Brooklyn, NY 11210

For Bell:

Evan J. Smith
Brodsky Smith
Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

Either 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: 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 constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

11. MODIFICATION

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

12. ENFORCEMENT OF SETTLEMENT AGREEMENT

12.1 A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides sixty (60) days notice to the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's failure to comply in an open and good faith manner.

12.2 Notice of Violation. Prior to bringing any proceeding to enforce the terms of this Settlement Agreement, Bell shall provide a written notice of violation ("NOV") to Yoki that includes information sufficient for them to be able to understand and correct the violation, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store, website, or other place at which the product was available for sale to consumers, and (d) any other evidence or other support for the allegations in the NOV, including all test data obtained by Bell regarding the Product.

12.3 Notice of Election Response. Within thirty (30) days of receiving an NOV, Yoki shall serve a Notice of Election ("NOE") either contesting or not contesting the NOV.

12.3.1 Non-Contested NOV. Bell shall take no further action regarding the alleged violation against Yoki if Yoki serves a NOE that elects not to contest the NOV and meets one of the following conditions: (a) the Product was shipped by Yoki for sale in California before the Effective Date, or (b) since receiving the NOV, Yoki has taken corrective action by either taking all steps necessary to bring the sale of the Product into compliance under the terms of this Settlement

Agreement, or requesting that its customers in California remove the Products identified in the NOV from sale in California and destroy or return the Products to Yoki.

12.3.2 Contested NOV. If Yoki serves a NOE electing to contest the NOV, the provisions of this Section 12.3.2 shall apply.

(a) Yoki may request that the sample(s) of the Product tested by Bell be subject to confirmatory testing at an EPA or California accredited laboratory.

(b) If the confirmatory testing establishes that the Product does not contain BPA in excess of the levels allowed by this Settlement Agreement, Bell shall take no further action regarding the alleged violation. If the testing does not establish compliance as Reformulated Products, Yoki may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 12.3.1.

(c) If Yoki does not withdraw an NOE to contest the NOV to take action under 12.3.1 above, the Parties shall meet and confer for a period of no less than thirty (30) days before Bell may take action seeking to enforce the terms of this Settlement Agreement.

12.4 In any proceeding brought by either Party to enforce this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement 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.


This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, assigns and Releasees.

14. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement. Each of the individuals who executes this Agreement represents and warrants he/she has the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and has read, understood, and agreed to all the terms and conditions in this Agreement.


AGREED TO:

Date: 11/13/24
By: 
Ema Bell

AGREED TO:

Date: 11/14/24
By: 
Yoki Fashion International LLC

AGREED TO:

Date: 11/14/24
By: 
Yoki Fashion Inc.