

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND KEECO, LLC

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and Keeco, LLC (“Keeco”). APS&EE and Keeco shall hereinafter collectively be referred to as the “Parties”.

1.1.2 APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

1.1.3 Keeco is a person in the course of doing business as the term is defined in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that Keeco distributed, sold, and offered to sell Faux Leather Placemats, including 13in x 18in, Imit. Leather Mat Dark Brown 10216054, RN#59757, 0-51637-21654-8 (hereinafter the “Product(s)”) in the State of California causing users in California to be exposed to unsafe levels of Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”), without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is subject to Proposition 65 warning requirements because it is listed as known to cause cancer and reproductive toxicity.

1.2.2 On September 12, 2017, a Sixty-Day Notice of Violation (“Notice”), along with a Certificate of Merit, was provided by APS&EE to Keeco, Bed Bath & Beyond, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

Keeco denies and disputes all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Keeco has not violated Proposition 65. This Agreement shall not be construed as an admission of any fact, finding, issue of law, or violation of law or liability by Keeco; but to the contrary, is a compromise of claims that are expressly contested and denied and entered into to effect a full, final, and binding settlement of any and all claims related to the Notice between the Parties to avoid prolonged litigation. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of this Agreement is delivered to each Party's counsel.

2. INJUNCTIVE RELIEF

Keeco alleges that no later than April 2017, it stopped distributing the Products, and no later than November 1, 2017, Bed Bath & Beyond, Inc., stopped selling the Products. Keeco shall not distribute for sale in California, sell or offer for sale the Products in California unless the Products contain no more than 1000 parts per million (0.1%) of DEHP.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Keeco shall pay a total civil penalty of four thousand five hundred dollars (\$4,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75%

(\$3,375.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,125.00) for APS&EE.

Keeco shall satisfy its obligations to pay civil penalties by delivering two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” (EIN: 68-0284486, Memo line: “Prop 65 settlement AG 2017-02112”) in the amount of \$3,375.00; and (2) a check or money order made payable to “APS&EE, LLC” in the amount of \$1,125.00. Keeco shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

who shall timely deliver to the OEHHA the civil penalty check payable to OEHHA.

3.2 Reimbursement Of APS&EE’s Fees And Costs

Keeco shall reimburse APS&EE’s alleged reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure Section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Accordingly, Keeco shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of nineteen thousand five hundred dollars (\$19,500.00). Keeco shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 APS&EE’s Release Of Keeco

This settlement is a full, final and binding resolution between APS&EE and Keeco of any violation of Proposition 65 that was or could have been asserted by APS&EE on behalf of itself and its representatives or attorneys related to the Notice and/or the Products distributed and/or sold by Keeco in California before and up to the Effective Date, against Keeco and its directors, officers, employees, and attorneys. APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Keeco, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, including Bed Bath & Beyond, Inc. (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s Notice from the Products distributed and/or sold by Keeco in California before and up to the Effective Date.

4.2 Keeco’s Release Of APS&EE

Keeco, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against Keeco in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

All correspondence and Notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

<p>TO KEECO: Stephen P. Brunner, Esq. Attorney at Law 115 Sansome St., Suite 1250 San Francisco, CA 94104</p>	<p>TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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8. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same Agreement. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the fully-

executed Agreement shall have the same force and effect as the original.

9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

10. ISSUANCE OF 1099 FORMS

After this Agreement has been executed and the settlement funds have been transmitted to counsel, Keeco shall cause three separate 1099 forms to be issued, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Section 3.1;
- (b) The second 1099 shall be issued to APS&EE in the amount paid pursuant to Section 3.1, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to Lucas T. Novak, Esq., LAW OFFICES OF LUCAS T. NOVAK (EIN was provided) in the amount paid pursuant to Section 3.2.

11. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(F)

APS&EE shall comply with the reporting form requirements referenced in California Health & Safety Code §25249.7(f).

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12. MODIFICATION

This Agreement may be modified only by executed written agreement of the Parties or by court order.

ENTERED INTO AND AGREED TO:

Date: _____

By: _____
Authorized representative of APS&EE, LLC

ENTERED INTO AND AGREED TO:

Date: _____ 3/12/18

By: _____
Authorized representative of Keeco, LLC

12. **MODIFICATION**

This Agreement may be modified only by executed written agreement of the Parties or by court order.

ENTERED INTO AND AGREED TO:

Date: 3/9/2018

By: [Signature]
Authorized representative of APS&EE, LLC

ENTERED INTO AND AGREED TO:

Date: _____

By: _____
Authorized representative of Keeco, LLC