

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND A & B HOME, INC.

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 A & B Home, Inc. (“A & B Home”).

APS&EE and A & B Home 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 A & B Home is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that A & B Home sold the Gift Dog Mug, 2030, A0577, 0817, 1846734 (hereinafter the “Products”) in the State of California causing users in California to be exposed to lead without providing “clear and reasonable warnings” in violation of Proposition 65. Lead is listed as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2.2 On or about December 4, 2017, APS&EE served a 60-Day Notice of Violation (the “December 4 Notice”), along with a Certificate of Merit, on Tuesday Morning, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. On January 4, 2018, APS&EE served a Supplemental 60-Day Notice of Violation (the “January 4 Notice”), along with a Certificate of Merit, on A & B Home, A & B Home Group, Inc., Tuesday Morning, Inc.,

and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The December 4 Notice and the January 4 Notice shall hereinafter collectively be referred to as the “Notices.”

1.3 No Admissions

A & B Home denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that A & B Home has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by A & B Home but to the contrary as a compromise of claims that are expressly contested and denied. 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 the Agreement is delivered to each Party’s counsel.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of the Effective Date, A & B Home shall not distribute, supply, sell, or offer the Products for sale in California if they contain more than 1.0 microgram of lead per 100 square centimeter area based on a wipe sample collected using NIOSH Method 9100 as applied to the portion of the Product that contains the majority of the Exterior Decorations. (“Exterior Decorations” is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.)

If the Products do not meet this Reformulation Standard, then clear and reasonable Proposition 65 warnings must accompany each unit, as described below in Section 2.2.

2.2 Proposition 65 Warnings

2.2.1 Whenever a clear and reasonable warning is required under Section 2.1, A & B Home shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) and provide a warning substantially similar to the following, with the word “WARNING” capitalized and in bold-face type:

WARNING: This product can expose you to lead, 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.

If it has reason to believe the Products contain additional chemicals listed under Proposition 65, then A & B Home may use “chemicals including lead” in place of “lead.” The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

2.2.2 Each unit shall carry said warning directly on each unit, its label, or its package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, A & B Home shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and

the remaining 25% (\$500.00) for APS&EE.

A & B Home shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of \$1,500.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of \$500.00. A & B Home 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

3.2 Reimbursement Of APS&EE's Fees And Costs

A & B Home shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, A & B Home shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of eighteen thousand dollars (\$18,000.00). A & B Home 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 A & B Home

This Agreement is a full, final, and binding resolution between APS&EE, acting in its individual capacity, and A & B Home. APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases (a) A & B Home, its parents, subsidiaries, affiliated companies under common ownership or control (including but not limited to A & B Home Group, Inc.), shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as each entity to whom A & B

Home has directly or indirectly provided, distributed, or sold the Products (including but not limited to Tuesday Morning, Inc., Tuesday Morning Partners, Ltd., and Tuesday Morning Corporation); (b) all distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees of the entities identified in (a), above; and (c) all past and current owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns of the entities and individuals identified in (a) and (b), above (the released entities and individuals identified in (a), (b) and (c), above, are collectively referred to as “Releasees”), of any violation(s) or alleged violation(s) of Proposition 65 that has been, could have been or may in the future be asserted against the Releasees regarding failure to warn about exposure to lead arising in connection with the Products sold, shipped, and/or otherwise distributed by A & B Home prior to the Effective Date, even if sold by Releasees after the Effective Date.

4.2 A & B Home’s Release Of APS&EE

A & B Home, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Releasees, 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 A & B Home 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:

TO A & B HOME: William L. Hsiang, Esq. Shiang Law Firm Diamond Bar Metro Centre 3333 S. Brea Canyon Road Suite 216 Diamond Bar, CA 91765	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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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 document.

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

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.

AGREED TO:

Date: _____

By: _____
Authorized Officer of APS&EE, LLC

AGREED TO:

Date: 03/22/18

By:  _____
Authorized Officer of A & B Home, Inc.

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9. AUTHORIZATION

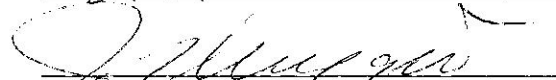
The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting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

AGREED TO:

Date:

3/26/18

By:



Authorized Officer of APS&EE, LLC

AGREED TO:

Date:

03/22/18

By:


Authorized Officer of A & B Home, Inc.