

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND THE KEENEY MANUFACTURING COMPANY

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”), on the one hand, and The Keeney Manufacturing Company (“Keeney”) on the other hand. APS&EE and Keeney 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 APS&EE alleges that Keeney is a company 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 Keeney and/or Do it Best Corp. and Do it Best Commerce Company (collectively “The DIB Entities”) sold the Do It Ice Maker Kit, including 25’, 0-09326-42257-2 (hereinafter the “Products”) in the State of California causing users in California to be exposed to unsafe levels of lead, without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On December 18, 2017, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to The DIB Entities and the various public enforcement agencies regarding the alleged violation of Proposition 65

with respect to the Products. The DIB Entities subsequently tendered the Notice to Keeney, the manufacturer of the Products. On May 11, 2018, APS&EE provided a Supplemental Sixty-Day Notice of Violation (the “Supplemental Notice”), along with a Certificate of Merit, to Keeney, The DIB Entities, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The Notice and the Supplemental Notice shall hereinafter collectively be referred to as the “Notices”.

1.3 No Admissions

Keeney denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that Keeney has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Keeney 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 AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Keeney shall not distribute, sell or offer for sale Products in California unless (a) the Products contain no more than 100 parts per million (0.01%) of lead (“Reformulated Products”), or (b) the Products are distributed, sold, or

offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Clear And Reasonable Warnings

2.2.1 For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Keeney shall provide the following warning statements (or other warnings consistent with 27 Cal. Code Regs. § 25601, et seq. operative August 30, 2018, or the applicable regulations governing such warnings) as follows:

“WARNING: This product can expose you to chemicals, including 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.”

OR

“WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov

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 Consistent with 27 Cal. Code Regs. § 25601, et seq. operative August 30, 2018, the Products shall carry said warning directly on each unit or its label or 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, Keeney shall collectively pay a total civil penalty of two thousand dollars (\$2,000) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500) for State

of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500) for APS&EE.

Keeney 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; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$500. Keeney shall remit the payments within five (15) 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

Keeney 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, Keeney shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of seventeen thousand five hundred dollars (\$17,500). Keeney 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 Keeney and The DIB Entities

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Keeney, its parents, subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees, (collectively “Releasees”) and all entities to whom Releasees, directly or indirectly, provide, distribute, or sell the Products, including, but not limited to, suppliers, distributors,

wholesalers, customers, purchasers, retailers, franchisees, cooperatives, cooperative members, licensees or any other person in the course of doing business, and the successors and assigns of any of them, who may use, maintain, purchase, distribute or sell any of the Products or who directly or indirectly provide, distribute, drop-ship, bill through or sell the Products, including but not limited to, Do it Best Corp., an Indiana Corporation, and Do it Best Commerce Company, LLC and their subsidiaries, parent companies, affiliated companies under common ownership, cooperative members, Members of Do it Best Corp. and their shareholders, officers, directors, employees, attorneys, representatives, subsidiaries, parent companies, successors and assigns (collectively referred as “Downstream Releasees”) from any violations of Proposition 65 or claimed violations of Proposition 65 that has been, could have been or may in the future be asserted against the Releasees and Downstream Releasees and arising out of or related to the claims asserted in APS&EE’s Notices regarding the failure to warn about exposure to lead in the Products sold and/or offered for sale by Keeney before and up to the Effective Date, even if the Products are sold by Downstream Releasees after the Effective Date.

4.2 Keeney’s Release Of APS&EE

Keeney, and on behalf of the released parties, by this Agreement, waive 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 Keeney and/or the DIB Entities in this matter. If any Releasee or Downstream Releasee should institute any such action, then APS&EE’s release of said Releasee or Downstream Releasee in this Agreement shall be rendered void and unenforceable.

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 KEENEY: Roger A. Cerda, Esq. Alston & Bird LLP 333 South Hope St., 16th Floor Los Angeles, CA 90071</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 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: 8/1/18

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

AGREED TO:

Date: 8/1/2018

By: [Signature]
Authorized Representative of The Keeney Manufacturing Company
v/p Controller