

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND DARICE, 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 Darice, Inc. (“Darice”). APS&EE and Darice 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 Darice employs ten (10) or more employees and 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 Darice sold or made available for sale in the State of California, metal wire, including but not limited to 25ft, 7000-20, 9151/2018/03 (hereinafter collectively the “Products”) causing users in California to be exposed to 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 under that statute as known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2.2 On February 5, 2019, APS&EE served a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, to Darice, Jo-Ann Stores LLC (“Jo-Ann’s”) and all of the various public enforcement agencies authorized to prosecute violations of Proposition 65 regarding the alleged violation of Proposition 65 with respect to lead and the Products.

1.3 No Admissions

Darice denies on its own and Jo-Ann's behalfs all allegations in APS&EE's 60-Day Notice and Section 1.2.1 above and maintains that the Products have been, and are, in compliance with all laws, including Proposition 65. This Agreement shall not be construed as an admission of liability by Darice or Jo-Ann's 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 on behalf of 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


As of the Effective Date, Darice shall not manufacture, import or otherwise acquire Products for potential distribution to or sale in California unless (a) the galvanizing solution in which the Products are submerged has a lead content by weight of no more than 300 parts per million (0.03%) ("Reformulated Products"), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described in Section 2.2.¹

¹ Products previously manufactured for Darice that Darice has acquired prior to the Effective Date shall be deemed exempted from the requirements of Sections 2.1 and 2.2 above and may be sold through as previously manufactured, packaged or labeled.


2.2 Clear and Reasonable Warnings

2.2.1 For any Products that do not meet the requirements of Section 2.1, Darice shall ensure that they are labeled with a clear and reasonable Proposition 65 warning statement, which shall consist of either the Warning or Alternative Warning as described in subsections 2.2.1(a) or (b), respectively:

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

 **WARNING:** This product can expose you to chemicals including lead, which are 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.

(b) Darice may, but is not required to, use the alternative short-form warning as set forth in this subsection 2.2.1(b) (“Alternative Warning”) as follows:

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

A Warning or Alternative Warning provided pursuant to § 2.2.1 must have the word “**WARNING**” appear 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 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**” and appear in at least 7 point font. The Warning or Alternative Warning shall be affixed to or printed on the Products’ package or label and 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.

2.2.2 A Product that is sold by Darice on the internet shall also provide the Warning set forth in subsection 2.2.1 above on the product display page, by means of a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. If an Alternative Warning is provided on the package or label pursuant to

subsection 2.2.1 above, it may also be provided for internet sales in lieu of the Warning. For Products subject to Section 2.2 that Darice provides for a downstream retailer to sell on the internet, Darice shall request and include an instruction that the retailer provide the Warning or Alternative Warning, as the case may be, on the product display page, by means of a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Darice 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.

Darice 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. Darice 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

Darice 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, Darice shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty thousand five hundred dollars (\$20,500.00). Darice 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 Darice

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Darice, its parents, corporate affiliates, shareholders, directors, members, officers, employees, attorneys, successors and assignees (collectively "Released Parties"), as well as all downstream distributors and retailers of the Product (including, but not limited to Jo-Ann's), from any alleged Proposition 65 violation claims asserted in APS&EE's 60-Day Notice or Section 1.2.1 above. As between the Parties, compliance with the terms of this Agreement following the Effective Date shall be deemed to constitute compliance with Proposition 65 with respect to the Products.

4.2 Darice's Release Of APS&EE

Darice, on behalf of itself and 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 Darice 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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. NOTICES

All correspondence and notices 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 DARICE: Attn. Global Compliance Officer Darice Inc. 13000 Darice Parkway Strongsville, Ohio 44149 <i>with copies to:</i> General Counsel's Office 8000 Bent Branch Drive Irving, TX 75063 and Robert Falk, Esq. Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105</p>	<p>TO APS&EE: Lucas 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:

5/7/19

By:



Authorized Representative of APS&EE, LLC

AGREED TO:

Date:

5/6/2019

By:

DocuSigned by:
Navin Rao

9805A90D64D74C21
Authorized Representative of Darice, Inc.
Navin Rao