

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ROY  
KIRKHAM & CO., LIMITED**

**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 Roy Kirkham & Co., Limited (“Roy Kirkham”). APS&EE and Roy Kirkham 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 Roy Kirkham 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 Roy Kirkham sold the Assorted Fine Bone China Pop Mug<sup>1</sup> (hereinafter, the “Products”) in the State of California causing users in California to be exposed to hazardous levels of Lead without providing “clear and reasonable warnings,” in violation of Proposition 65. Lead is listed as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On August 30, 2021, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to The TJX Companies, Inc. dba HomeGoods and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

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<sup>1</sup> The mug can also be described as “Roy Kirkham” mug with exterior decorations (of birds, flowers, and butterflies), HomeGoods style #563187.

### **1.3 No Admissions**

Roy Kirkham denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Roy Kirkham has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Roy Kirkham 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 or its counsel.


## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation Standard**

As of the Effective Date, Roy Kirkham shall not manufacture, distribute, supply, sell or offer for sale in California Products that contain more than 1.0 microgram of lead based on a wipe sample collected using NIOSH Method 9100 from the part of the Product that contains the Exterior Decorations, unless the Product is accompanied by a clear and reasonable warning as described below in Section 2.2. "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.

### **2.2 Proposition 65 Warnings**

**2.2.1** When a warning is required for Products under Section 2.1, Roy Kirkham shall provide a warning substantially similar the following:

 **WARNING:** This product can expose you to [*chemicals including*] lead, which is[*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](http://www.P65Warnings.ca.gov).

Roy Kirkham may use “chemicals including lead” in place of “lead” in the warning. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a black outline. Where the label, labeling, package, shelf tag or sign for the Products 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.**”

The Products shall carry said warning directly on each unit, 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. A Product that is sold by Roy Kirkham on the internet to persons located in California shall also provide the warning message by 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. For Products that Roy Kirkham provides for a downstream entity to sell on the internet, Roy Kirkham shall include an instruction that the entity comply with the warning requirements of this section.

### **2.3 Sell-through For Existing Inventory**

The injunctive requirements of Section 2 shall not apply to Products that Roy Kirkham distributed or sold prior to the Effective Date, which Products are subject to the releases provided in Section 4.1.

## **3. PAYMENTS**

### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, Roy Kirkham shall pay a total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHHA”), and

the remaining 25% (\$250.00) for APS&EE.

Roy Kirkham shall issue these payments collectively as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

### **3.2 Reimbursement Of APS&EE's Fees And Costs**

Roy Kirkham 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, in the amount of seventeen thousand dollars (\$17,000.00). Accordingly, along with the civil penalty described above in Section 3.1, Roy Kirkham shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of eighteen thousand dollars (\$18,000.00) within ten (10) business days of the Effective Date. Wire instructions have been exchanged between the parties' counsel.

## **4. RELEASES**

### **4.1 APS&EE's Release of Proposition 65 Claims**

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Roy Kirkham, its parents, subsidiaries, affiliates, divisions, shareholders, directors, members, officers, employees, representatives, agents, attorneys, and their predecessors, successors and assignees, franchisees, cooperative members and licensees, as well as each entity to whom Roy Kirkham directly or indirectly distributes or sells the Products, including but not limited to suppliers, distributors, wholesalers, customers, licensors, licensees, franchisees, cooperative members, and retailers, including without limitation The TJX Companies, Inc., its parents, subsidiaries, and affiliated companies under common ownership or control (all collectively, "Released Parties"), from any claims or allegations of violation arising under Proposition 65 pertaining to the failure to warn about exposures to lead from the Products that Roy Kirkham has distributed or sold prior to the Effective Date.

### **4.2 Waiver of Unknown Claims**

APS&EE acknowledges that it is familiar with California Civil Code Section 1542 which provides:

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.

APS&EE waives and relinquishes any right or benefit it has or may have under California Civil Code Section 1542 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. APS&EE acknowledges that it may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. APS&EE agrees 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><b>TO ROY KIRKHAM:</b></p> <p>Jeffrey Margulies, Esq.  Norton Rose Fulbright US LLP  555 South Flower Street  Forty-First Floor  Los Angeles, California 90071</p> <p>Ian Kirkham  Roy Kirkham &amp; Co Limited  Lascelles Street  Tunstall  Stoke on Trent  Staffordshire  ST6 5DB</p>	<p><b>TO APS&amp;EE:</b></p> <p>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.

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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:

January 6, 2022

By:

[Signature]  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:

5-1-22

By:

[Signature]  
Authorized Representative of Roy Kirkham & Co., Limited