

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC
AND NOW DESIGNS, INC.**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Now Designs, Inc. (“Now Designs”) and APS&EE, LLC (“APS&EE”) (each individually referred to as a “Party” and collectively 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 Now Designs 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 Now Designs sold “Now Designs” mugs with exterior decorations, “Mug Cottage Floral” L003153, 0-64180-30136-4 (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 Now Designs and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

Now Designs denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Now Designs has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Now Designs 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, Now Designs shall not manufacture, distribute, sell, offer for sale, or cause to have the Products sold in California unless (a) the Product contains no 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, or (b) 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 For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Now Designs shall provide the following warning statements as follows:

"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 Now Designs has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. 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”.

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 Now Designs 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 Now Designs provides for a downstream entity to sell on the internet, Now Designs shall include an instruction that the entity comply with the warning requirements of this section.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Now Designs 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 (“OEHHHA”), and the remaining 25% (\$500.00) for APS&EE.

Now Designs 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

Now Designs shall reimburse APS&EE's reasonable experts' and attorneys' 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, Now Designs shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of nineteen thousand dollars (\$19,000.00), which includes the civil penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions have been exchanged between the Parties' counsel.

4. RELEASES

4.1 APS&EE's Release Of Now Designs

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Now Designs, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, including without limitation Danica Imports and its affiliated entities under common ownership or control as well as its downstream distributors, retailers, and franchisees, including Anawalt Lumber Co., Inc. (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding failure to warn about Lead exposure from the Products that Now Designs has caused to be sold and/or offered for sale in California before and up to the Effective Date.

4.2 Now Designs' Release Of APS&EE

Now Designs, 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 Now Designs in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party 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 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. 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 NOW DESIGNS: Kerry Shea, Esq. Davis, Wright Tremaine LLP 505 Montgomery St. Ste 800 San Francisco, CA 94111	TO APS&EE: Lucas T. 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: 11/3/22

By: 
 Authorized Representative of APS&EE, LLC

AGREED TO:

Date: Dec 20-2021

By: 
 Authorized Representative of Now Designs, Inc.