

# **SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND DOMETIC CORPORATION**

## **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 Dometic Corporation dba Sierra International, Inc. (“Dometic”). APS&EE and Dometic 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 Dometic 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 Dometic sold the “Sierra” brand of brass drain taps, including 18-4218D, ¼” block drain tap (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 September 2, 2021, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Dometic, West Marine, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

**1.2.3** No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.3 No Admissions**

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

**2.1 Reformulation**

As of the Effective Date, Dometic 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. Dometic shall provide the following warning statement, which is consistent with 27 Cal. Code Regs §25603(b):

**“WARNING: Cancer and Reproductive Harm.**  
**[www.P65Warnings.ca.gov](http://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** 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. A Product that is sold by Dometic 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 Dometic provides for a downstream entity to sell on the internet (e.g., West Marine), Dometic 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, Dometic 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.

Dometic 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 OEHHHA and APS&EE.

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

Dometic 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 eighteen thousand dollars (\$18,000.00). Accordingly, Dometic shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twenty thousand dollars (\$20,000.00), 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 Dometic**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Dometic, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, including West Marine, 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 sold by Dometic before and up to the Effective Date.

### **4.2 Dometic's Release Of APS&EE**

Dometic, 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 Dometic 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:

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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.

**4.4 Deemed Compliance with Proposition 65.** The parties agree that compliance by Dometic with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead from use of the Products.

**4.5 Public Benefit.** It is Dometic's understanding that the commitments it has agreed to herein, and actions to be taken by Dometic under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure §1021.5 and Admin. Code tit. 11, §3201. As such, it is the intent of Dometic that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Dometic for failure to provide a warning concerning exposure to lead prior to the use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Dometic is in material compliance with this Settlement Agreement.

**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:

<b>TO DOMETIC:</b> Daniel S. Hurwitz, Esq. Wilson Elser Moskowitz Edelman & Dicker LLP 555 S. Flower Street - Suite 2900 Los Angeles, CA 90071-2407	<b>TO APS&amp;EE:</b> 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.

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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: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 1/20/22

By:   
Authorized Representative of Dometic Corporation

**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:

1/24/22

By:

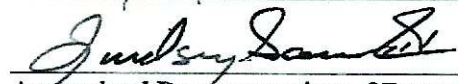
  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:

1/20/22

By:

  
Authorized Representative of Dometic Corporation