

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND STONEWALL KITCHEN, LLC

## 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 Stonewall Kitchen, LLC (“Stonewall Kitchen”). APS&EE and Stonewall Kitchen 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 Stonewall Kitchen 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 Stonewall Kitchen sold Michel Design Works mugs with exterior decorations, including but not limited to “Honey & Clover” mug, Style # MUG007, 6-08666-73487-3 (hereinafter, the “Products”), in the State of California causing users in California to be exposed to 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 29, 2022, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Stonewall Kitchen and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

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

shall provide the following warning statements as follows:

**“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](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”.

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

In lieu of the preceding warning content and methods set forth above, Stonewall Kitchen may use any warning content and method that complies with Title 27, California Code of Regulations, section 25600 et seq., as amended August 30, 2016 and subsequently thereafter.

### **3. PAYMENTS**

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

In settlement of all claims referred to in this Agreement, Stonewall Kitchen 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 (“OEHHA”), and the remaining 25% (\$250.00) for APS&EE.

Stonewall Kitchen 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**

Stonewall Kitchen 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 fourteen thousand dollars (\$14,000.00). Accordingly, along with the civil penalty described above in Section 3.1, Stonewall Kitchen shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of fifteen thousand dollars (\$15,000.00) 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 Stonewall Kitchen**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Stonewall Kitchen, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees (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 Stonewall Kitchen has sold and/or caused to be sold in California before and up to the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, APS&EE, on behalf of itself, its

past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that it may have as of the Effective Date, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorney's fees, expert fees, and investigation fees, and costs) damages, losses, liabilities, and demands against any and all of the Released Parties relating to or arising from the Products.

#### **4.2 Stonewall Kitchen's Release of APS&EE**

Stonewall Kitchen, 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 Stonewall Kitchen 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 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.

Each of the Parties 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. 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 Consent Judgment 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**

Compliance by Stonewall Kitchen with this Agreement constitutes compliance with Proposition 65 with respect to exposure to Lead from the Exterior Decorations of the Products.

#### **4.5 Public Benefit**

It is the Parties' understanding that the commitments Stonewall Kitchen has agreed to herein, and actions to be taken by Stonewall Kitchen under this Agreement, would confer a significant public benefit to the general public, as set forth in California Civil Procedure Code section 1021.5. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Stonewall Kitchen not providing a warning concerning exposure to Lead from the Exterior Decorations of the Products it has distributed, sold, or offered for sale in California, such private party action would not confer a significant benefit on the general public as those Products addressed in this Agreement, provided that Stonewall Kitchen is in material compliance with this 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Stonewall

Kitchen shall provide written notice to APS&EE of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

**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 STONEWALL KITCHEN: David Barnes, Esq. Arnold &amp; Porter Three Embarcadero Center 10<sup>th</sup> Floor San Francisco, CA 94111</p>	<p>TO APS&amp;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. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

APS&EE agrees to comply with the reporting requirements referenced in California Health & Safety Code section 25249.7(f).

**10. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within in.

**11. 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: July 4/16

By: John Stiker, CEO  
Authorized Representative of Stonewall Kitchen, LLC



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**AGREED TO:**

Date: 1/11/23

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 

By: John Stiker, CEO  
Authorized Representative of Stonewall Kitchen, LLC