

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND WHALECO,
INC. D/B/A TEMU**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between WhaleCo Inc. d/b/a Temu (“Temu”) and APS&EE, LLC (“APS&EE”) (each individually referred to as a “Party” and collectively as the “Parties”).

1.1.2 APS&EE alleges that it 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 Temu is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (the “Act” or “Proposition 65”).

1.2 Allegations

1.2.1 APS&EE alleges that Temu sold 1) brass hose nozzles, including but not limited to Item ID MR04857, and 2) tape measures, including but not limited to Item ID LY04506 (hereinafter collectively, 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 June 1, 2023, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Temu and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

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

As of the Effective Date, Temu shall request and require any person or entity selling or offering for sale on the temu.com website for potential sale in California ("Third-Party Sellers") Products that contain more than 100 parts per million (0.01%) of Lead to (1) provide a clear and reasonable warning on the Product label or labeling that satisfies Section 25249.6 of the Act, and (2) provide written notice to Temu stating that the Product being sold or offered for sale on the temu.com website may result in exposure to Lead.

2.2 Proposition 65 Warnings

2.2.1 For any Products sold or offered for sale directly to California consumers via the temu.com website for which Temu has received written notification from a Third-Party Seller, or for which it has Actual Knowledge, as that term is defined

in 27 CCR § 25600.2(f), that the Product may cause a consumer exposure to Lead, Temu shall provide an Internet warning for such Products by including the warning set forth below, prominently displayed to the California purchaser, on one or more of the following: (a) on the Product display page; or (b) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a clearly marked hyperlink prominently displayed to the California purchaser using the words “California Prop 65 WARNING” which then takes the user to a display of the warning 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.”

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 Option to Delist or Stop Sales. On or before the Effective Date, Temu may, at its option, comply with the injunctive requirements of this Section 2 by delisting a Product from temu.com such that the item is then unavailable in general or for online sale for shipment to an address in California.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

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

Temu 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

Temu 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 thirteen thousand five hundred dollars (\$13,500.00). Accordingly, Temu shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of fourteen thousand five hundred dollars (\$14,500.00), which includes the civil penalty described in Section 3.1, 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 Temu

APS&EE, acting in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases and discharges Temu, its parents, subsidiaries, and affiliated entities under common ownership, and each of their past, present, and future shareholders, directors, members, officers, employees, partners, agents, representatives, attorneys, successors, and assignees (collectively "Released Parties") and each person or entity to whom Released Parties directly or indirectly distributes or sells, or in the past directly or indirectly distributed or sold, the Products, including, but not limited to, any downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors, and licensees, and each of their past, present, and future shareholders, directors, members, officers, employees, partners, agents, representatives, attorneys, successors, and assignees (collectively, Downstream Releasees), from any alleged Proposition 65 violation claims regarding failure to warn

about Lead exposure from the Products sold by Temu 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 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 attorneys' fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands, against any and all of the Released Parties and Downstream Releasees arising from or relating to failure to warn about Lead exposure from the Products that Temu has listed on its platform, sold, or caused to be sold in California before and up to the Effective Date.

4.2 Temu's Release Of APS&EE

Temu, 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 Temu in this matter. If any Released Party or Downstream Releasee should institute any such action, then APS&EE's release of said Released Party or Downstream Releasee 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.

7. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

8. 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:

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| <p>TO TEMU: Aaron Belzer, Esq. Seyfarth Shaw LLP 2029 Century Park East Suite 3500 Los Angeles, CA90067</p> <p>With a copy to: Whaleco Inc. Legal 31 St. James Ave. Suite 355 Boston, MA 02116</p> | <p>TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p> |
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9. COUNTERPARTS

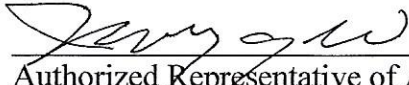
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

10. 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.

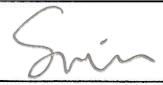
AGREED TO:

Date: 10/12/2023

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: Oct 17th, 2023

By: 
Authorized Representative of Whaleco Inc. dba Temu

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