

1 BARBARA J. CHISHOLM (SBN 224656)
2 ALTSHULER BERZON LLP
3 177 Post Street, Suite 300
4 San Francisco, CA 94108
5 Tel: (415) 421-7151
6 Fax: (415) 362-8064
7 E-mail: bchisholm@altber.com

8 Attorneys for Plaintiff As You Sow

9 MARK S. PECHECK (SBN 116084)
10 VANESSA C. ADRIANCE (SBN 247464)
11 GIBSON DUNN & CRUTCHER
12 333 South Grand Avenue
13 Los Angeles, CA 90071
14 Tel: (213) 229-7754
15 Fax: (213) 229-6754
16 E-mail: vadriance@gibsondunn.com

17 Attorneys for Defendants E-Z Mix, Inc.; Angelus Block Co., Inc.;
18 Bonsal American, Inc.; and Oldcastle, Inc.

19 M. TAYLOR FLORENCE (SBN 159695)
20 LOCKE LORD LLP
21 500 CAPITOL MALL, SUITE 1800
22 Sacramento, CA 95814
23 Tel: (916) 930-2500
24 Fax: (916) 930-2501
25 E-mail: tflorence@lockelord.com

26 Attorneys for Defendants Basalite Concrete Products, LLC; Pacific
27 Coast Building Products, Inc.; Bonsal American, Inc.; and Oldcastle, Inc.

28 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

29 AS YOU SOW,
30 Plaintiff,
31
32 v.
33
34 BASALITE CONCRETE PRODUCTS, LLC, *et al.*,
35 Defendants.

Case Nos. RG12661017, RG13669447
**[PROPOSED] AMENDED CONSENT
JUDGMENT**
Complex Civil Cases

36 AS YOU SOW,
37 Plaintiff,
38
39 v.
40
41 E-Z MIX INC., *et al.*,
42 Defendants.

1 This Consent Judgment is entered into by and between Plaintiff As You Sow ("AYS") and
2 Defendants Basalite Concrete Products, LLC, Pacific Coast Building Products, Inc., Bonsal
3 American, Inc., and Oldcastle, Inc. ("Basalite Defendants"), and Defendants E-Z Mix, Inc.,
4 Angelus Block, Inc., Bonsal American, Inc., and Oldcastle, Inc. ("E-Z Mix Defendants"),
5 collectively "Joint Defendants" or "Defendants," to resolve claims against Defendants raised in
6 Plaintiff's Complaints filed in the above-captioned actions, which were filed on December 21,
7 2012, and March 1, 2013 (collectively, "Complaints"). This Consent Judgment shall be effective
8 upon entry. AYS and the Defendants (collectively, "the Parties") agree to the terms and
9 conditions set forth below.

10 **1. PARTIES AND COMPLAINTS**

11 1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of
12 the environment, the promotion of human health, the improvement of worker and consumer rights,
13 environmental education, and corporate accountability. AYS is based in Oakland, California and
14 is incorporated under the laws of the State of California.

15 1.2 a. Basalite Defendants, including Basalite Concrete Products, LLC, and
16 Pacific Coast Building Products, Inc., manufacture, distribute and/or sell various ready-mix dry
17 cement products including Sakrete® and Basalite brand products. The "Covered Basalite
18 Products" are identified in Attachment A. To the extent the Basalite Defendants identify
19 additional ready-mix dry cement products manufactured, distributed or sold by Basalite
20 Defendants prior to the Effective Date that they believe should be subject to the terms of this
21 Consent Judgment, they will provide information regarding those products to the Parties pursuant
22 to the notice provisions herein, and the Parties may agree to add those products to the list of
23 Covered Basalite Products if the products contain chromium (hexavalent compounds) (hereinafter
24 "chromium") and/or arsenic (inorganic compounds, including inorganic oxides) (hereinafter
25 "arsenic") and the normal intended use of the products would reasonably be expected to result in
26 exposures to such chemical(s) at levels requiring a warning pursuant to Proposition 65. Such
27 agreement shall not be unreasonably withheld, and Basalite shall be entitled to move the Court for
28 an amendment of this Consent Judgment to include any such products.



1 b. Basalite Defendants also include Bonsal American, Inc. and Oldcastle, Inc.,
2 which have a licensing agreement with Basalite Concrete Products, LLC, regarding the Sakrete-
3 brand products. Defendants assert that Bonsal American, Inc. and Oldcastle, Inc. do not
4 manufacture, distribute, or sell Covered Basalite Products in California.

5 1.3 a. E-Z Mix Defendants, including E-Z Mix, Inc. and Angelus Block Co., Inc.,
6 manufacture, distribute and/or sell various ready-mix dry cement products. The "Covered E-Z
7 Mix Products" are identified in Attachment B. To the extent the E-Z Mix Defendants identify
8 additional ready-mix dry cement products manufactured, distributed or sold by E-Z Mix
9 Defendants prior to the Effective Date that they believe should be subject to the terms of this
10 Consent Judgment, they will provide information regarding those products to the Parties pursuant
11 to the notice provisions herein, and the Parties may agree to add those products to the list of
12 Covered E-Z Mix Products if the products contain chromium and/or arsenic and the normal
13 intended use of the products would reasonably be expected to result in exposures to such
14 chemical(s) at levels requiring a warning pursuant to Proposition 65. Such agreement shall not be
15 unreasonably withheld, and E-Z Mix shall be entitled to move the Court for an amendment of this
16 Consent Judgment to include any such products.

17 b. E-Z Mix Defendants also include Bonsal American, Inc. and Oldcastle, Inc.,
18 which have a licensing agreement with E-Z Mix and Angelus Block Co., Inc. regarding the
19 Sakrete® brand products. Defendants assert that Bonsal American, Inc. and Oldcastle, Inc. do not
20 manufacture, distribute, or sell Covered E-Z Mix Products in the State of California.

21 1.4 AYS alleges in the Complaints that the Covered Basalite Products and Covered E-
22 Z Mix Products (collectively "Covered Products") contain chromium, or chromium and arsenic,
23 which are chemicals listed by the State of California as known to cause cancer, birth defects and
24 other reproductive harm, pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986
25 ("Proposition 65"), California Health and Safety Code §25249.5 *et seq.*

26 1.5 AYS sent 60-day Notices of Violation to the Defendants and public enforcers as
27 required by Health & Safety Code Section 25249.7, regarding listed chemicals contained in the
28 Covered Products. Specifically:

1 a. On September 12, 2012, AYS sent 60-day Notices of Violation to the
2 Basalite Defendants and to public enforcers as required by Health & Safety Code Section 25249.7,
3 alleging that the Basalite Defendants violated Proposition 65 by failing to provide clear and
4 reasonable warnings before exposing persons to chromium and arsenic contained in Sakrete®
5 High Strength Concrete Mix and Sakrete® Crack Resistant Concrete Mix.

6 b. On November 5, 2012, As You Sow sent 60-day Notices of Violation to the
7 Basalite Defendants and to public enforcers as required by Health & Safety Code Section 25249.7,
8 alleging that the Basalite Defendants violated Proposition 65 by failing to provide clear and
9 reasonable warnings before exposing persons to chromium and arsenic contained in Basalite®
10 Portland Cement.

11 c. On December 21, 2012, AYS sent 60-day Notices of Violation to the
12 Basalite Defendants and to public enforcers alleging that the Basalite Defendants violated
13 Proposition 65 by failing to provide clear and reasonable warnings before exposing persons to
14 chromium, or to chromium and arsenic, contained in Sakrete® Surface Bonding Cement,
15 Sakrete® Fast Setting Ultra-High Strength Concrete Mix, Sakrete® 5000 Plus High Strength
16 Concrete Mix, Sakrete® Maximizer Multi-Project Concrete Mix, Sakrete® One-Coat Fibered
17 Stucco Mix, Sakrete® Type S Masonry Mortar, Sakrete® Fence Post Concrete, Sakrete® Top 'n
18 Bond Concrete Patcher, Basalite® Plastic Cement, and Basalite® Concrete Mix.

19 d. On December 21, 2012, AYS sent 60-day Notices of Violation to the E-Z
20 Mix Defendants and to public enforcers alleging that the E-Z Mix Defendants violated Proposition
21 65 by failing to provide clear and reasonable warnings before exposing persons to chromium, or to
22 chromium and arsenic, contained in Sakrete® High Strength Concrete Mix, Sakrete® Crack
23 Resistant Concrete Mix, Sakrete® Surface Bonding Cement, Sakrete® Fast Setting Ultra-High
24 Strength Concrete Mix, Sakrete® 5000 Plus High Strength Concrete Mix, Sakrete® Maximizer
25 Multi-Project Concrete Mix, Sakrete® One-Coat Fibered Stucco Mix, Sakrete® Type S Masonry
26 Mortar, Sakrete® Fence Post Concrete, and Sakrete® Top 'n Bond Concrete Patcher.

27 1.6 AYS alleges that the Defendants have failed to provide clear and reasonable
28 warnings of the carcinogenic and reproductive hazards associated with the chromium and arsenic



1 contained in the Covered Products. Defendants allege that they are not obligated to include
2 Proposition 65 warnings on the Covered Products. Defendants further allege, without admitting
3 any requirement to do so, that they have begun providing Proposition 65 warnings on the Covered
4 Products. Nevertheless, the Parties have agreed to resolve their differences as set forth herein.

5 1.7 The Parties have agreed to enter into this Consent Judgment to settle claims with
6 regard to the Covered Products as set forth in Section 7.1 herein, and to avoid prolonged and
7 costly litigation.

8 1.8 By executing and complying with this Consent Judgment, neither Party admits any
9 facts or conclusions of law alleged in the Complaints, or the existence of any other statutory,
10 common law, or equitable claim or requirement relating to or arising from the sale or distribution
11 of Covered Products by the Defendants in California.

12 2. **EFFECTIVE DATE**

13 2.1 The "Effective Date" shall be the date of entry of this Consent Judgment.

14 3. **JURISDICTION**

15 3.1 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Defendants as to the allegations contained in the Complaints, venue is proper in
17 Alameda County, the Court has jurisdiction to enter this Consent Judgment as a resolution of
18 claims alleged in the Complaints, and the Court shall retain jurisdiction to enforce the Consent
19 Judgment.

20 4. **INJUNCTIVE RELIEF**

21 4.1 Beginning no later than 120 days from the Effective Date of this Consent
22 Judgment, all packaging for Covered Products manufactured, distributed or sold for sale or use in
23 the State of California shall provide the following warning statements:¹

24
25 PROPOSITION 65 WARNING: This product contains chemicals known to the State of
California to cause cancer, birth defects or other reproductive harm.

26
27 ¹ Warning statements containing the above language that also refer to the specific
chemical(s) contained in the Covered Products shall also be compliant with this Consent
28 Judgment.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROPOSICION 65 DE ADVERTENCIA. Este producto contiene químicos conocidos en el estado de California como causante de cáncer, defectos de nacimiento u otros daños reproductivos.

-or-

PROPOSICION 65 ADVERTENCIA --Este producto contiene químicos conocidos por el Estado de California que causan cáncer, defectos de nacimiento y otros danos al sistema reproductivo.

4.2 The warning statements required in Paragraph 4.1 shall be prominently affixed to or printed on the Covered Products' packaging and labeling and shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the Covered Products, or their packaging or labeling, as to render the warning statement likely to be read and understood by an ordinary individual under customary conditions of purchase and use.

4.3 The Parties agree, and the Court so finds, that the content and the placement of the warning statements as shown in Attachment C hereto meets the requirements of Paragraphs 4.1 and 4.2 of this Consent Judgment; provided, however, that the E-Z Mix Defendants agree that, in any orders placed for the printing or production of any packaging or labeling for Covered Products after the Effective Date, they will change the font size of the word "WARNING," as reflected on pages 4-7 of Attachment C so that the word is the same size as the words "Proposition 65."

4.4 Neither E-Z Mix, Inc. nor Angelus Block, Inc. currently produces, distributes or sells Sakrete® Surface Bonding Cement, Sakrete® One-Coat Fibered Stucco Mix, Basalite® Plastic Cement, Basalite® Concrete Mix, or Basalite® Portland Cement for use in California. In the event E-Z Mix, Inc. or Angelus Block, Inc. begins producing, distributing or selling any of these products for use in California, the company shall provide warnings in accordance with Paragraphs 4.1 and 4.2 of this Consent Judgment.

4.5 Neither Bonsal American, Inc. nor Oldcastle, Inc. currently produces, distributes or sells Covered Products for use in California. In the event Bonsal American, Inc. or Oldcastle, Inc.

1 begins producing, distributing or selling Covered Products for use in California, the company shall
2 provide warnings in accordance with Paragraphs 4.1 and 4.2 of this Consent Judgment.

3 **5. SETTLEMENT PAYMENTS**

4 5.1 Within 30 days of the Effective Date, the Defendants, with the exception of Pacific
5 Coast Building Products, Inc. and Basalite Concrete Products, LLC, shall pay \$5,000 in the form
6 of a check made payable to As You Sow as a civil penalty pursuant to Health and Safety Code
7 Section 25249.7(b). AYS shall remit seventy-five percent (75%) of this amount to the State of
8 California pursuant to Health and Safety Code Section 25249.12(b).

9 5.2 Within 30 days of the Effective Date, Defendants shall pay in the form of two
10 checks made payable to Altshuler Berzon LLP Attorney-Client Trust Account, the client trust
11 account of As You Sow's counsel, the total amount of \$115,000 (with \$75,000 payable by the
12 Basalite Defendants and \$40,000 payable by the E-Z Mix Defendants), which shall be allocated as
13 set forth in paragraphs 5.3 and 5.4.

14 5.3 In Lieu Payments: The Parties have agreed that, in view of the unique
15 circumstances of this case, the effect of the *People v. Ace Hardware* Consent Judgment to which
16 Pacific Coast Building Products, Inc. is a party, and the steps taken by the Basalite Defendants to
17 provide warnings on the Covered Products, that no civil penalty is appropriate with respect to
18 Pacific Coast Building Products, Inc. and Basalite Concrete Products, LLC. From the settlement
19 payment provided for in paragraph 5.2, \$45,000 shall be provided for deposit in the AYS
20 Environmental Enforcement Fund. These funds shall be used to reduce or remediate exposures to
21 toxic chemicals and to increase consumer, worker and community awareness of the health hazards
22 posed by toxic chemicals in California. In deciding among the grant proposals, the As You Sow
23 Board of Directors ("Board") takes into consideration a number of important factors, including:
24 (1) a nexus between the harm done in the underlying case(s), and the grant program work; (2) the
25 potential for toxics reduction, prevention, remediation, or education benefits to California citizens
26 from the proposal; (3) the budget requirements of the proposed grantee and the alternate funding
27 sources available to it for its project; and (4) the Board's assessment of the proposed grantee's
28 chances for success in its program work. AYS shall ensure that all funds will be disbursed and



1 used in accordance with AYS's mission statement, articles of incorporation, and bylaws and
2 applicable state and federal laws and regulations to promote awareness of and responses to the
3 health hazards posed by toxic chemicals in California. These payments shall not be construed as a
4 credit against the personal claims of absent third parties for restitution against the Defendants.

5 5.4 Attorneys' Fees and Costs: \$70,000 of the settlement payment provided for in
6 paragraph 5.2 shall be used to reimburse Plaintiff's attorneys' fees, investigation costs, and other
7 reasonable litigation costs and expenses.

8 **6. ENFORCEMENT OF CONSENT JUDGMENT**

9 6.1 The Parties may, by motion filed in this Court, enforce the terms and conditions of
10 this Consent Judgment. Prior to the filing of any such motion, in the event a dispute arises with
11 respect to any of the provisions of this Consent Judgment, the Parties shall meet and confer within
12 10 days after either Party receives written notice of an alleged violation of this Agreement. If As
13 You Sow is successful in enforcing this Consent Judgment, it shall be entitled to recover its costs
14 and reasonable attorneys' fees.

15 **7. WAIVER AND RELEASE OF CLAIMS & COVENANT NOT TO SUE**

16 7.1 Waiver and Release of Claims Against Defendants: Upon entry of this Consent
17 Judgment, as to those matters raised in the Complaints and in Plaintiff's Notices of Violation
18 brought in the public interest, Plaintiff, on its own behalf and on behalf of the public interest,
19 releases Defendants and waives any claims against Defendants for injunctive relief or damages,
20 penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs,
21 expenses, or any other sum incurred or claimed, for the alleged failure of Defendants to provide
22 clear and reasonable warnings under Proposition 65 and/or under Business and Professions Code
23 section 17200, *et seq.* about exposure to chromium and arsenic arising from the sale, distribution,
24 or use of any Covered Products sold, manufactured or distributed by Defendants in California
25 prior to the Effective Date. Compliance with this Consent Judgment by a Defendant shall
26 constitute compliance with Proposition 65 by that Defendant with respect to the presence of
27 chromium and arsenic in the Covered Products. Plaintiff agrees that any and all claims in the
28 Complaint are resolved with prejudice by this Consent Judgment.



1 7.2 Defendants' Waiver and Release of Plaintiff: Upon entry of this Consent
2 Judgment, Defendants release Plaintiff from and waive any claims against Plaintiff for injunctive
3 relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts,
4 and others), costs, expenses, or any other sum incurred or claimed, or which could have been
5 claimed for matters related to the Complaints.

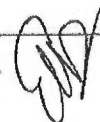
6 7.3 Matters Covered by this Consent Judgment: As to the Covered Products, this
7 Consent Judgment is a full, final, and binding resolution between the Plaintiff, acting on behalf of
8 itself and in the public interest pursuant to California Health and Safety Code Section 25249.7(d),
9 and Defendants for their alleged failure to provide clear and reasonable warnings in violation of
10 Proposition 65 of exposure to chromium and arsenic contained in the Covered Products sold,
11 manufactured or distributed by Defendants prior to the Effective Date.

12 7.4 As You Sow agrees that it will not initiate, maintain, prosecute or otherwise
13 participate in or support the institution, maintenance, or pursuit of any action or claim against
14 Defendants pursuant to Proposition 65 or California Business and Professions Code section 17200
15 *et seq.* based on an alleged failure to provide clear and reasonable warnings of exposure to
16 chromium and arsenic in the 1.5 lb. Sakrete® Set Accelerator product as currently constituted and
17 subject to current use instructions, and which was distributed or sold by Basalite Defendants for
18 consumer use before the Effective Date.

19 7.5 As You Sow and Defendants by signature of the Consent Judgment, hereby waive
20 any rights as set forth in Paragraphs 7.1, 7.2 and 7.4 above under California Civil Code Section
21 1542 with full knowledge and intent of doing so. California Civil Code Section 1542 states:

22 "1542. A general release does not extend to claims which the creditor does not know or
23 suspect to exist in his or her favor at the time of executing the release, which if known by him or
24 her must have materially affected his or her settlement with the debtor."

25 7.6 For purposes of paragraphs 7.1 through 7.3, the terms *Plaintiff* and *Defendants* are
26 defined as follows: The term *Plaintiff* includes As You Sow, in its individual capacity and in its
27 capacity acting in the public interest, and its successors, assigns, directors, privies and agents. The
28 term *Defendants* includes Basalite Concrete Products, LLC, Pacific Coast Building Products, Inc.,



1 E-Z Mix, Inc., Angelus Block, Inc., Bonsal American, Inc., and Oldcastle, Inc., any of their
2 corporate affiliates, including any and all corporate parents and subsidiaries; their directors,
3 officers, agents, attorneys, representatives, employees, licensors, licensees, partners, heirs,
4 predecessors, successors and assigns; and their suppliers and distributors of the Covered Products.

5 **8. GOVERNING LAW AND CONSTRUCTION**

6 8.1 This Consent Judgment shall be governed by, and construed in accordance with,
7 the laws of the State of California.

8 8.2 The Parties, including their counsel, have participated in the preparation of this
9 Consent Judgment which is the result of the joint efforts of the Parties. This Consent Judgment
10 was subject to revision and modification by the Parties and has been accepted and approved as to
11 form by the Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this
12 Consent Judgment shall not be interpreted against any Party as a result of the manner of the
13 preparation of this Consent Judgment.

14 **9. MODIFICATION OF CONSENT JUDGMENT**

15 9.1 This Consent Judgment may be modified only upon written agreement of the
16 Parties with approval of the Court, or pursuant to court order issued upon noticed motion of a
17 Party for good cause shown and upon entry of a modified Consent Judgment by the Court. Any
18 Party seeking to modify this Consent Judgment shall meet and confer in good faith with the other
19 Party prior to filing a motion to modify the Consent Judgment and attempt to resolve any
20 differences.

21 9.2 The Basalite Defendants' obligations pursuant to Section 4 are expressly
22 conditioned upon the Superior Court for the County of San Francisco granting a motion to modify
23 the Consent Decree entered in the case captioned *People v. Ace Hardware*, San Francisco Superior
24 Court Case No. 995893 (the "*Ace Hardware* Consent Decree"), to allow for the warnings required
25 by Section 4 above. The Basalite Defendants shall file such a motion seeking modification of the
26 *Ace Hardware* Consent Decree by no later than May 12, 2014. In the event such leave to modify
27 the *Ace Hardware* Consent Decree is not granted, this Consent Judgment shall become null and
28 void as between the Basalite Defendants and Plaintiff upon the election of Plaintiff and any of the



1 Basalite Defendants and upon written notice to all of the Parties to the Action pursuant to the
2 notice provisions herein, and shall not be introduced into evidence or otherwise used in any
3 proceeding for any purpose.

4 **10. COURT APPROVAL**

5 10.1 The Court shall either approve or disapprove of this Consent Judgment in its
6 entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the Parties
7 and their counsel. The Defendants agree not to oppose judicial approval of this Consent
8 Judgment.

9 10.2 In the event the Court fails to approve and order entry of the Consent Judgment
10 without any change whatsoever or the Consent Judgment is held to be invalid pursuant to an
11 appeal by the Attorney General in this matter (unless otherwise so stipulated by the Parties), this
12 Consent Judgment shall become null and void upon the election of any Party and upon written
13 notice to all of the Parties to the Action pursuant to the notice provisions herein, and shall not be
14 introduced into evidence or otherwise used in any proceeding for any purpose.

15 **11. ENTIRE AGREEMENT**

16 11.1 The Parties declare and represent that no promise, inducement or other agreement
17 has been made conferring any benefit upon any Party except those contained or provided for
18 herein and that this agreement contains the entire agreement pertaining to the subject matter
19 hereof. This agreement supersedes any prior or contemporaneous negotiations, representations,
20 agreements and understandings of the Parties with respect to such matters, whether written or oral.
21 The Parties acknowledge that each has not relied on any promise, representation or warranty,
22 expressed or implied, not contained or called for in this agreement.

23 **12. APPLICATION OF CONSENT JUDGMENT**

24 12.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
25 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.
26
27
28



1 13. **ATTORNEYS' FEES**

2 13.1 Except as specifically provided in this Consent Judgment, each Party shall bear its
3 own attorneys' fees and costs incurred in connection with Plaintiffs' 60-day Notices and claims
4 regarding Covered Products manufactured, distributed, and/or sold by Defendants.

5 14. **COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7**

6 14.1 Plaintiff shall comply with the reporting requirements referred to in Health and
7 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations
8 sections 3000-3008), and shall move for approval of this Consent Judgment pursuant to the terms
9 thereof.

10 14.2 Upon request by AYS, the Defendants shall provide declarations in support of a
11 motion to approve this Consent Judgment.

12 15. **PROVISION OF NOTICE**

13 15.1 All correspondence and notices required by this Consent Judgment to the Parties
14 shall be sent:

15 To Plaintiff As You Sow:

16 As You Sow Foundation
17 Attn: Danielle Fugere, President and Chief Counsel
18 1611 Telegraph Street, Suite 1450
19 Oakland, CA 94612

20 With a copy to:

21 Barbara Chisholm
22 Altshuler Berzon LLP
23 177 Post Street, Suite 300
24 San Francisco, CA
25 Tel.: (415) 421-7151

26 To Defendants:

27 Patrick W. Dennis
28 Mark S. Pecheck
Vanessa C. Adriance
Gibson Dunn & Crutcher
333 S. Grand Avenue
Los Angeles, CA 90071

M. Taylor Florence
Locke Lord LLP

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

500 Capitol Mall, Suite 1800
Sacramento, CA 95814
Tel.: (916) 930-2500

With a copy to:

Daniel Yanagihara
Pacific Coast Companies, Inc.
10600 White Rock Road, Building B-100
Rancho Cordova, CA 95670

Edward Antonini
Angelus Block
11374 Tuxford St
Sun Valley, CA 91352

16. EXECUTION IN COUNTERPARTS

16.1 This Consent Judgment may be executed in one or more counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

17. AUTHORIZATION

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

APPROVED AS TO FORM:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: June 19, 2014

ALTSHULER BERZON LLP

By



BARBARA J. CHISHOLM

Attorneys for Plaintiff AS YOU SOW

Dated: _____, 2014

LOCKE LORD LLP

By

M. TAYLOR FLORENCE

Attorney for Defendants Basalite Concrete Products, LLC;
Pacific Coast Building Products, Inc.; Bonsal American,
Inc.; and Oldcastle, Inc.

Dated: _____, 2014

GIBSON DUNN & CRUTCHER LLP

By

VANESSA C. ADRIANCE


Attorneys for Defendants E-Z Mix, Inc.; Angelus
Block Co., Inc.; Bonsal American, Inc.; and
Oldcastle, Inc.

SO AGREED:

Dated: 6/14, 2014

AS YOU SOW

By:



Name:

Andrew Berzov

Title:

CEO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2014

ALTSHULER BERZON LLP

By
BARBARA J. CHISHOLM

Attorneys for Plaintiff AS YOU SOW

Dated: June 23, 2014

LOCKE LORD LLP

By 
M. TAYLOR FLORENCE

Attorney for Defendants Basalite Concrete Products, LLC;
Pacific Coast Building Products, Inc.; Bonsal American,
Inc.; and Oldcastle, Inc.

Dated: _____, 2014

GIBSON DUNN & CRUTCHER LLP

By _____
VANESSA C. ADRIANCE

Attorneys for Defendants E-Z Mix, Inc.; Angelus
Block Co., Inc.; Bonsal American, Inc.; and
Oldcastle, Inc.

SO AGREED:

Dated: _____, 2014

AS YOU SOW

By:
Name:
Title: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2014

ALTSHULER BERZON LLP

By _____
BARBARA J. CHISHOLM

Attorneys for Plaintiff AS YOU SOW

Dated: _____, 2014

LOCKE LORD LLP

By _____
M. TAYLOR FLORENCE

Attorney for Defendants Basalite Concrete Products, LLC;
Pacific Coast Building Products, Inc.; Bonsal American,
Inc.; and Oldcastle, Inc.

Dated: June 18, 2014

GIBSON DUNN & CRUTCHER LLP

By 
VANESSA C. ADRIANCE

Attorneys for Defendants E-Z Mix, Inc.; Angelus
Block Co., Inc.; Bonsal American, Inc.; and
Oldcastle, Inc.

SO AGREED:

Dated: _____, 2014

AS YOU SOW

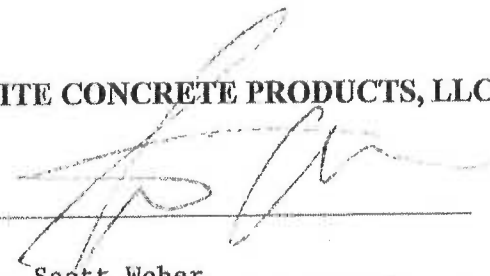
By: _____

Name: _____

Title: _____

1 Dated: _____, 2014

BASALITE CONCRETE PRODUCTS, LLC

2 By:  _____

3 Name: Scott Weber

4 Title: President

5
6 Dated: _____, 2014

PACIFIC COAST BUILDING PRODUCTS, INC.

7 By:  _____

8 Name: David J. Lucchetti

9 Title: President and CEO

10
11 Dated: _____, 2014

E-Z MIX, INC.

12 By: _____

13 Name: _____

14 Title: _____

15
16 Dated: _____, 2014

ANGELUS BLOCK CO., INC.

17 By: _____

18 Name: _____

19 Title: _____

20
21 Dated: _____, 2014

BONSAL AMERICAN, INC.

22 By: _____

23 Name: _____

24 Title: _____

25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2014

BASALITE CONCRETE PRODUCTS, LLC

By: _____

Name: _____

Title: _____

Dated: _____, 2014

PACIFIC COAST BUILDING PRODUCTS, INC.

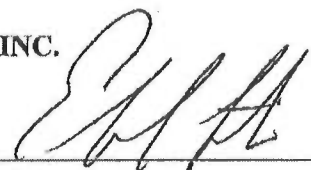
By: _____

Name: _____

Title: _____

Dated: June 17, 2014

E-Z MIX, INC.

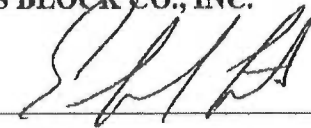
By: 

Name: Edward Antonini

Title: Vice President

Dated: June 17, 2014

ANGELUS BLOCK CO., INC.

By: 

Name: Edward Antonini

Title: President

Dated: _____, 2014

BONSAL AMERICAN, INC.

By: _____

Name: _____

Title: _____



1 Dated: _____, 2014

BASALITE CONCRETE PRODUCTS, LLC

2
3
4
5

By: _____
Name: _____
Title: _____

6 Dated: _____, 2014

PACIFIC COAST BUILDING PRODUCTS, INC.

7
8
9
10

By: _____
Name: _____
Title: _____

11 Dated: _____, 2014

E-Z MIX, INC.

12
13
14
15

By: _____
Name: _____
Title: _____

16 Dated: _____, 2014

ANGELUS BLOCK CO., INC.

17
18
19
20

By: _____
Name: _____
Title: _____

21 Dated: 6-23, 2014

BONSAL AMERICAN, INC.

22
23
24
25
26
27
28

By: David Maske
Name: J. DAVID MASKE
Title: PRESIDENT

1 Dated: June 19, 2014

OLDCASTLE, INC.

2
3 By: 

4 Name: William B. Miller
5 Title: VP and General Counsel

6 **IT IS SO ORDERED AND ADJUDGED:**

7 The Court hereby incorporates the terms of this Consent Judgment into this Order. If a
8 Party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this
9 matter.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: _____, 2014

JUDGE OF THE SUPERIOR COURT

ATTACHMENT A
TO CONSENT JUDGMENT

10lb Sakrete® Top and Bond Concrete Patcher
20lb Sakrete® Anchor Cement
10lb Sakrete® Leak Stopper
20lb Sakrete® Leak Stopper
40lb Sakrete® Polymeric Sand
10lb Sakrete® Fast Setting Cement Patcher
20lb Sakrete® Fast Setting Cement Patcher
40lb Sakrete® Fast Setting Cement Patcher
50lb Sakrete® Surface Bonding Cement
50lb Sakrete® Non-Shrink Construction Grout
50lb Sakrete® Fast Setting High Early Strength Concrete Mix
60lb Sakrete® High Strength Concrete Mix
80lb Sakrete® High Strength Concrete Mix
80lb Sakrete® Maximizer Concrete Mix
80lb Sakrete® 5000 Plus High Strength Concrete Mix
80lb Sakrete® Crack Resistant Concrete Mix
80lb Sakrete® One Coat Fibered Stucco Mix
80lb Sakrete® Scratch and Brown Stucco Mix
80lb Sakrete® Finish Coat Stucco White
60lb Sakrete® Type S Masonry Mortar Mix
80lb Sakrete® Type S Masonry Mortar Mix
47lb Basalite® Type II-V Cement
94lb Basalite® Type II-V Cement
Basalite® Concrete Mix
Basalite® Portland Cement
47lb Basalite® Plastic Cement
94lb Basalite® Plastic Cement
1/2 CF Sakrete® Lightweight Concrete Mix
2/3 CF Sakrete® Lightweight Concrete Mix
3/4 CF Sakrete® Lightweight Fence Post Mix
40lb Sakrete® Top and Bond Cement Patcher
50lb Sakrete® Fence Post Concrete Mix
80lb Sakrete® Finished Coat Stucco Grey
50lb Sakrete® All Purpose Sand
10lb Sakrete® Anchor Cement
50lb Sakrete® Glass Block Mortar
60lb Sakrete® Green Choice Concrete Mix
40lb Sakrete® NoMix Post Set
20lb Sakrete® Flo-Coat Concrete Resurfacer

ATTACHMENT B

TO CONSENT JUDGMENT

Sakrete® Fast Setting Ultra-High Strength Concrete Mix
Sakrete® 5000 Plus High Strength Concrete Mix
Sakrete® Maximizer Multi-Project Concrete Mix
Sakrete® Type S Masonry Mortar
Sakrete® Fence Post Concrete
Sakrete® Top 'n Bond Concrete Patcher
Sakrete® High Strength Concrete Mix
Sakrete® Crack Resistant Concrete Mix

ATTACHMENT C
TO CONSENT JUDGMENT

← 5 mm →

SAKRETE

TYPE S MASONRY MORTAR

Mezcla de Mortero Tipo S

60#

60# SAKRETE TYPE S MASONRY MORTAR

Mezcla de Mortero Tipo S

60#

60#

60#

60#

MORTAR

60#

60#

The Pro's Choice Since 1936

TYPE S MASONRY MORTAR

Mezcla de Mortero Tipo S

For laying brick, block and stone in load-bearing walls and below-grade construction

Just Add Water

60#

60#

MORTAR

TYPE S MASONRY
Mezcla de Mortero Tipo S

60#

Artwork Diagram FORSAC R-GDS-006

● Customer: Basalite concrete products llc. ● Size (mm) ● W:15.8 L:17.8 T&B:4.6 ● Colors

● Product: 60# Sakrete type S mortar ● Observation: Yellow ●

● ADA: PRC4685-4 ● Agrega recuadro de peligro y warning en cara 3 Black ●

● Type Bag: CVP Green ●

● Date: 31/05/2013

● Designer: Alexis Mella ● sentido Impresion: →

PROOF APPROVAL

Your signature is the approval for whole text and design of this artwork.

Approved

Approved with changes

Not approved, make changes

Remark: The artwork colors do not represent definitive colors. VºBº: / /2013

SAKRETE®

TYPE S MASONRY MORTAR

SAKRETE® Type S Masonry Mortar is a mixture of sand and masonry cement or sand, lime and portland cement. For laying brick, block and stone. For building or repairing chimneys, walls, planters and outdoor grills. For tuck pointing mortar joints and stuccoing walls. Meets ASTM Specification C 387 when used as directed. Complies with ASTM C 270 for Type S Masonry Mortar. Not to be used as a grout on traffic bearing surfaces.

JUST ADD WATER AND MIX

SAFETY PROCEDURES:

READ and UNDERSTAND the Material Safety Data Sheet (MSDS) before using this product. **WARNING:** Wear protective clothing and equipment. See HMIS block. For emergency information call CHEMTREC at 800-424-9300 or 703-527-3887 (outside USA). **KEEP OUT OF THE REACH OF CHILDREN.**

DIRECTIONS

READ ALL DIRECTIONS BEFORE STARTING WORK.

PREPARATION:

When laying new brick or block walls, first construct a sound footing below the frost line. When repairing mortar joints or stucco, remove all loose and foreign material. Dampen areas to be repaired just prior to application.

MIXING:

(Fig. 1) Empty contents into a mortar box, wheelbarrow or mechanical mixer. When mixing by hand, form a crater for adding water. (Fig. 2) Add approximately 4 quarts (3.8 L) of clean water per 60 lb. (27.2 kg) bag or enough to achieve a workable mix. If too stiff, add more water a little at a time. Excess water reduces strength and durability and can cause cracking. In cold weather use warm water to accelerate the set. Use cold water to slow the set in hot weather. Retempering impairs performance.

PLACEMENT:

(Fig. 3) When laying brick or block, butter the end with mortar before placing into a full bed of mortar. (Fig. 4) Tap into place while leveling. (Fig. 5) When tuck pointing mortar joints, place material in the joint with a pointing trowel and compact. Allow the newly placed material to set about 1 hour until the surface is thumb print hard before striking with a jointer tool. When repairing stucco, apply the material using a plasterer's hawk and trowel using enough pressure to completely fill and compact the material.

FINISHING:

Dress mortar joints with a joint tool. Texture stucco to match the surrounding area using a plasterer's trowel.

CURING:

In hot weather lightly dampen the material as needed to promote adequate curing. In cold weather adequately cover and keep from freezing for a minimum of 24 hours.

CAN BE PAINTED using an alkali resistant lime proof paint usually within 7 days provided the masonry is dry.

STORAGE:

Store material in a tightly closed container off the floor in a dry place.

PROPOSITION 65 WARNING
THIS PRODUCT CONTAINS CHEMICALS KNOWN
TO THE STATE OF CALIFORNIA TO CAUSE
CANCER, BIRTH DEFECTS
OR OTHER REPRODUCTIVE HARM.



1. Crata
Haga
la me



2. Add v
Agreg



3. Butto
Emba
de en



4. Tap in
trowel
Marti
palus



5. Point
with
Recal
y llen

HOW MUCH TYPE S MASONRY MORTAR DO YOU NEED?

For laying brick, block and stone

One 60 lb. (27.2 kg) bag of Sakrete Type S Masonry Mortar will lay approximately 30 common brick or 11 - 8 inch (200 mm) concrete masonry units. This does not allow for waste.

¿CUÁNTA MEZCLA DE MORTERO TIPO S NECESITA?

Para colocar ladrillos, bloques y piedra

Una bolsa de 60 lb. (27.2 kg) sirve para aproximadamente 11 bloques de concreto de 8 pulgadas (200 mm) y 30 ladrillos estándar. Esto no incluye el desperdicio.

El Mezcla de Mortero Tipo S Sakrete® es una mezcla de arena y cemento de mampostería o arena, cal y cemento portland. Para construir o reparar chimeneas, paredes, macetas y parrillas exteriores. Para recalcar juntas de mortero y estucar paredes. Encuentra los estándares de ASTM C 387 al usarse como se indica. Cumple con la norma ASTM C 270 para Mezcla de Mortero Tipo S. No debe usarse como lechada en superficies donde haya tráfico.

SÓLO HAY QUE AGREGAR AQUA Y MEZCLAR

INFORMACIÓN DE SEGURIDAD

LEA Y ENTIENDA bien la Hoja de Datos de Seguridad del Material (MSDS) antes de usar este producto.

ADVERTENCIA: Use ropa y equipo de protección. Vea la tabla de HMIS. Para obtener información en caso de emergencia llame a CHEMTREC al 800-424-9300 o al 703-527-3887 (fuera de los EE.UU.). **MANTENGA ALEJADO DEL ALCANCE DE LOS NIÑOS.**

INSTRUCCIONES

LEA TODAS LAS INSTRUCCIONES ANTES DE COMENZAR EL TRABAJO.

PREPARACIÓN:

Al colocar ladrillos nuevos o paredes de bloques, construya primero una base segura bajo la línea de escaracha. Al reparar juntas de mortero o estuco, retire todo el material suelto y foráneo. Humedezca las áreas a reparar justo antes de la aplicación.

MEZCLADO:

(Fig. 1) Vacíe el contenido en una caja de mortero, carretilla o mezcladora mecánica. Al mezclar manualmente, forme un hueco para añadir agua. (Fig. 2) Ponga aproximadamente 4 cuartos de galón (3.8 L) de agua limpia por bolsa de 60 lb. (27.2 kg) o suficiente para lograr una mezcla trabajable. Si está demasiado rígida, añada más agua de a poco. El exceso de agua reduce la resistencia y durabilidad y puede causar fisuras. En clima frío use agua tibia para acelerar el proceso de fraguado. Use agua fría para hacer más lento el proceso de fraguado en clima cálido. Retemplar afecta el rendimiento.

COLOCACIÓN:

(Fig. 3) Al colocar ladrillos o bloques, embadurne el extremo con mortero antes de colocarlos en un fecho completo de mortero. (Fig. 4) Martille en su sitio al nivelar. (Fig. 5) Al recalcar juntas de mortero, ponga material en la junta con una llana de punta y compacte. Deje que fragüe el material recién puesto aproximadamente 1 hora hasta que la superficie esté dura para marcar huellas digitales antes de golpear con un marcador de juntas. Al reparar el estuco aplique el material usando esparavel y llana de enyesar con suficiente presión para rellenar completamente y compactar el material.

TERMINADO:

Prepare las juntas de mortero con una herramienta de juntas. Texturice el estuco para que concuerde con el área circundante usando una llana de enyesado.

FRAGUADO:

En clima cálido moje ligeramente el material según se necesite para promover el fraguado correcto. Si hay baja temperatura cubra adecuadamente y evite que se congele por un mínimo de 24 horas.

PUEDA PINTARSE USANDO una pintura a prueba de cal resistente al álcali generalmente dentro de 7 días siempre y cuando la mampostería esté seca.

ALMACE NAMIENTO:

Guarde el material en un recipiente cerrado herméticamente, no en el suelo, y en un lugar seco.

PROPORCION ES DE ADVERTENCIA

ESTE PRODUCTO CONTIENE QUÍMICOS CONOCIDOS EN EL ESTADO DE CALIFORNIA COMO CAUSANTES DE CÁNCER, DEFECTOS DE NACIMIENTO U OTROS DAÑOS REPRODUCTIVOS.



HMIS Block
TYPE S MASONRY M
HEALTH
FLAMMABILITY
REACTIVITY
PERSONAL PROTECTION
WARNING! CAUSES IRRITATION with eyes, skin and clothing. We after handling. Exposure may re of the skin, eyes, or nasal passa in portland cement. When wet, i skin or eyes may result in irritati
FIRST AID: In case of eye coi immediately with plenty of wate minutes and get prompt medica skin, wash thoroughly with plan water. If irritation persists, get n attention. WARNING! HARMFUL
Avoid breathing dust. Keep cont Use with adequate ventilation. E exposure by inhalation over an e of time may result in the develo pulmonary diseases including p and silicosis. Crystalline Silica h classified by IARC and NTP as a

ENVIRONMENTAL ADVISORY:

Uncured or crushed cured cement is hazard, which may adversely affect f Dispose of construction debris contain including empty bags at a permitted disposal firm. Do not use crushed co a fill near an aquatic habitat.

The manufacturer warrants th In accordance with the manu any purpose other than for one (1) year from tr MERCHANTABILITY OR FIT TO THE DURATION OF THIS of defective product o CONSEQUENTIAL AND INCIDI

SAKRETE® and the background d Charlotte, NC 28273 ©2006. SAKRETE



605 Industrial Way • I www.bas

Proposition 65

WARNING - This product contains chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm.

Proposición 65

ADVERTENCIA - Este producto contiene químicos conocidos por el Estado de California que causan cáncer, defectos de nacimiento y otros daños al sistema reproductivo.

Proposition 65

WARNING - This product contains chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm.

Proposición 65

ADVERTENCIA - Este producto contiene químicos conocidos por el Estado de California que causan cáncer, defectos de nacimiento y otros daños al sistema reproductivo.

WARNING-

- **INJURIOUS TO EYES**
- **CAUSES SKIN IRRITATION**

Contains Portland Cement.

PRECAUCION-

- **Este producto causa daño a los ojos.**
- **Este producto causa irritación a**

PORTLAND CEMENT

CALPORTLAND

<p>CAUTION</p> <p>Este producto puede ser irritante para los ojos y la piel. Evite el contacto directo con los ojos y la piel. Si se produce un contacto, lavar inmediatamente con abundante agua. Mantener alejado de los niños.</p> <p>VER EL ENVASE ORIGINAL</p>	<p>Precaution 66</p> <p>Contiene un producto químico que puede ser irritante para los ojos y la piel. Evite el contacto directo con los ojos y la piel.</p>
<p>PRECAUTION</p> <p>Este producto puede ser irritante para los ojos y la piel. Evite el contacto directo con los ojos y la piel. Si se produce un contacto, lavar inmediatamente con abundante agua. Mantener alejado de los niños.</p> <p>VER EL ENVASE ORIGINAL</p>	<p>Precaution 66</p> <p>Contiene un producto químico que puede ser irritante para los ojos y la piel. Evite el contacto directo con los ojos y la piel.</p>

Packaged and Distributed By:



CALPORTLAND

PORTLAND CEMENT



INC.

TYPE-S

Prepección 66
 Prepección 66 es un producto químico
 diseñado para ser utilizado en el
 mantenimiento de superficies de
 concreto y otros materiales.

Prepección 66
 Prepección 66 es un producto químico
 diseñado para ser utilizado en el
 mantenimiento de superficies de
 concreto y otros materiales.

ADVERTENCIA:
 • IRRITANTE A LOS OJOS
 • CAUSA IRITACIÓN EN LA PIEL
 Contiene Peróxido de Hidrógeno,
 Litio y otros Color Pigmentos.
 • Evitar el Contacto o el Contacto
 con la Piel.
 • Lavar Thoroughly After
 Handling.
 • En caso de Contacto con los Ojos,
 lavar con Abundante Agua por 15
 Minutos.
 • Consultar a un Médico.

PRECAUCIÓN:
 • Este producto causa irritación a los
 ojos.
 • Este producto causa irritación a la
 piel.
 Contiene Peróxido de Hidrógeno,
 Litio, y otros pigmentos colorantes.
 • Evitar el contacto con los ojos y con
 la piel.
 • Evitar que los niños jueguen
 con este producto.
 • No hacer contacto con la piel.
 • Evitar que los niños jueguen
 con este producto.
 • Consultar a un médico.

KEEP OUT OF REACH OF CHILDREN

MANTENGALO LEJOS DE LOS NIÑOS.

PROPORTIONED IN ACCORDANCE WITH UBC TABLE No 21-15-B

CONFORMS TO A.S.T.M. C-270



Pre-Blended Dry Mortar

PACKAGED BY:
 E-Z Mix Inc.
 11450 Tuxford St
 Sun Valley, CA
 91352

601



INC.

TYPE-S