

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ORGILL, INC.

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 Orgill, Inc. (“Orgill”). APS&EE and Orgill 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 Orgill employs ten (10) or more employees and 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 Orgill sold ratchet tools, including but not limited to MintCraft ratchet tool with black handgrip (SKU 016-4053) (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 potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On February 19, 2016, a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, was provided by APS&EE to Orgill and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

Orgill denies all allegations in APS&EE's 60-Day Notice and maintains that the Products have been, and are, in compliance with all laws, and that Orgill has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Orgill 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 on behalf of 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's counsel.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of the Effective Date, Orgill shall not distribute, sell or offer for sale the Products in California unless such Product either (a) contains no more than 100 parts per million (0.01%) of lead when analyzed pursuant to Environmental Protection Agency test method 3050B or equivalent, or (b) is distributed, sold, or offered for sale with a clear and reasonable warning as described in Section 2.2.

2.2 Proposition 65 Warnings

Whenever a clear and reasonable warning is required under Section 2.1, it shall state the following with the capitalized and emboldened wording:

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and/or birth defects or other reproductive harm. **Wash hands after handling.**"

Alternatively, if it has reason to believe the Products contain additional chemicals

listed under Proposition 65, Orgill may elect to use the following warning statement in lieu of the one set forth above:

“WARNING: This product contains chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm.

Wash hands after handling.”

Each unit 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 Orgill from its web site to consumers 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.

Should the State of California revise or replace the regulations presently appearing at California Code of regulations Title 27, Article 6, so as to permit or require different warning language, then Orgill may use a warning that conforms to such revised regulations.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Orgill shall pay a total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$750.00) for APS&EE.

Orgill shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Orgill shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE's Fees And Costs

Orgill 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. Accordingly, Orgill shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of seventeen thousand dollars (\$17,000.00). Orgill shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

4. RELEASES

4.1 APS&EE's Release Of Orgill

APS&EE, acting in its individual capacity, its past and current agents, shareholders, directors, members, officers, employees, attorneys, successors and assignees, in consideration of the promises and monetary payments contained herein, hereby releases Orgill, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and customers (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's 60-Day Notice regarding the Products sold and/or offered for sale by Orgill in California before and up to the Effective Date.

4.2 Orgill's Release Of APS&EE

Orgill, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and on behalf of the Released Parties, 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 Orgill in this matter.

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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

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. NOTICES

All correspondence and notices 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 ORGILL: Bruce Nye, Esq. Adams Nye Becht LLP 222 Kearny Street, 7th Floor San Francisco, CA 94108	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
--	--

8. COUNTERPARTS

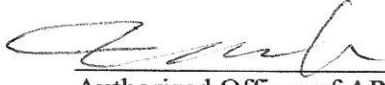
This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and 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: 5/17/16

By: 
Authorized Officer of APS&EE, LLC

AGREED TO:

Date: 5/16/16

By: 
Authorized Officer of Orgill, Inc.