

SETTLEMENT AGREEMENT

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Plaintiff, APS&EE, LLC (“Plaintiff”) and Defendant, Midwest Air Technologies, Inc. (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the “Parties.”

1.1.2 Plaintiff 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 Defendant is a corporation that 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

Plaintiff alleges that Defendant manufactured, distributed, sold, and/or offered to sell “Yard Gard” galvanized hardware cloth, including, without limitation: 23 Gauge, ¼ in. Mesh, 24 in. x 5 ft., 308231B, in the State of California causing users in California to be exposed to lead without providing a clear and reasonable warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. For purposes of this Agreement, the terms “Product” or “Products” shall mean and are defined as “Yard Gard” brand galvanized hardware cloth containing lead that is manufactured, sold or distributed for sale in California by Defendant.

Plaintiff served a sixty-day notice of violation dated September 20, 2016 (“60-Day Notice”), along with a Certificate of Merit, to Defendant and various public enforcement agencies regarding the alleged violation of Proposition 65.

1.3 No Admissions

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

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Defendant shall not distribute, sell, or offer for sale the Products in California unless (a) the galvanizing solution in which the Products are submerged has a lead content by weight of no more than 100 parts per million (0.01%), or (b) the Product is distributed, sold, or offered for sale by Defendant with a clear and reasonable warning as described in Section 2.2.

2.2 Clear And Reasonable Warnings

2.2.1 For Products manufactured before August 30, 2018, 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 birth defects

or other reproductive harm.

In the alternative, Defendant may use the following statement in lieu of the one set forth above:

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

2.2.2 For Products manufactured after August 30, 2018, whenever a clear and reasonable warning is required under Section 2.1, Defendant shall use the following warning with the capitalized and emboldened wording:

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.

If it has reason to believe the Products contain additional chemicals listed under Proposition 65, then Defendant may accomplish a clear and reasonable warning by using the following statement in lieu of the one set forth above:

WARNING: This product can expose you to chemicals including 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".

The warnings for Products manufactured after August 30, 2018 may be used by Defendant on any Products manufactured before that date.

2.2.3 Defendant agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary consumer prior to sale. For purposes of this Agreement, a clear and reasonable warning for the Products

shall consist of a warning that appears on the product, the product's package, label or other labeling as defined by Title 27, California Code of Regulations, § 25602.

2.3 Sell-through For Existing Inventory

The injunctive requirements of Section 2 shall not apply to Products that were manufactured or in the stream of commerce as of the Effective Date, which products are subject to the releases provided in Section 4.1.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Defendant shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00) for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% (\$375.00) for Plaintiff.

Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to "OEHHA" in the amount of \$1,125.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of \$375.00. Defendant 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 Plaintiff's Fees And Costs

Defendant shall reimburse Plaintiff'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, Defendant shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of sixteen thousand five hundred dollars (\$16,500.00). Defendant 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 Plaintiff's Release Of Proposition 65 Claims Against Defendant

Plaintiff, 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 Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, including MAT Holdings, Inc., as well as its downstream distributors, wholesalers, and retailers (collectively "Released Parties"), from any violation arising under Proposition 65 pertaining to the failure to warn about exposures to lead from the Products manufactured, sold or distributed for sale in California prior to the Effective Date, as alleged or otherwise asserted in the 60-Day Notice. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Defendant and Released Parties with regard to the alleged or actual failure to warn about exposures to lead from the Products manufactured, sold or distributed for sale in California after the Effective Date.

4.2 Defendant's Release Of Plaintiff

Defendant, and on behalf of all of the other Released Parties, by this Agreement, waives all rights to institute any form of legal action against Plaintiff, 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 Defendant in this matter.

4.3 Waiver Of Unknown Claims

Each of the Parties acknowledges that it is familiar with California Civil Code § 1542 which provides:

**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 California Civil Code § 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 Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

6. 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. 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 DEFENDANT: Levi W. Heath, Esq. Barnes & Thornburg LLP 2029 Century Park East Suite 300 Los Angeles, CA 90067	TO PLAINTIFF: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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9. INTEGRATION

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing.

10. 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 email, 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.

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 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: 12/21/2016

By: Robert J. Patton

Authorized Officer of Midwest Air Technologies, Inc.

AGREED TO:

Date: _____

By: _____

Authorized Officer of APS&EE, LLC

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AGREED TO:

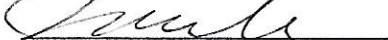
Date: _____

By: _____

Authorized Officer of Midwest Air Technologies, Inc.

AGREED TO:

Date: 1/3/17

By:  _____

Authorized Officer of APS&EE, LLC