

# SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND FERGUSON ENTERPRISES, 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 Ferguson Enterprises, Inc. (“Ferguson”). APS&EE and Ferguson 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 Ferguson 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 Ferguson sold the Proflo brand of brass fittings and valves, including but not limited to Proflo fitting PFMFUDD ½ OD x ½ MIP FLR Union (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to unsafe 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 December 8, 2016, a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, was provided by APS&EE to Ferguson, PL Sourcing, Inc., Anawalt Lumber Co., Inc., and various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

Ferguson 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 Ferguson has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Ferguson 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**

### **2.1 Reformulation Standard**

As of the Effective Date, Ferguson shall not distribute, sell or offer for sale the Products in California unless (a) the Product 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) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described in Section 2.2.

### **2.2 Proposition 65 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.

Wash hands after handling.”

If it has reason to believe that the Products contain additional chemicals listed under Proposition 65, Ferguson may elect to use the word “chemicals” in place of “lead, a chemical”.

**2.2.2** For Products manufactured after August 30, 2018, whenever a clear and reasonable warning is required under Section 2.1, Ferguson 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](http://www.P65Warnings.ca.gov).

If it has reason to believe the Products contain additional chemicals listed under Proposition 65, then Ferguson 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](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 warnings for Products manufactured after August 30, 2018 may be used by Ferguson on any Products manufactured before that date.

**2.2.3** 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 Ferguson on the internet 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.

### **3. PAYMENTS**

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

In settlement of all claims referred to in this Agreement, Ferguson shall pay a total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,000.00) for APS&EE.

Ferguson shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Ferguson shall remit the payments within seven (7) 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**

Ferguson 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, Ferguson shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty-two thousand dollars (\$22,000.00). Ferguson shall remit the payment within seven (7) 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 Ferguson**

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 Ferguson, its parents, subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors and retailers, including Anawalt Lumber Co., Inc. (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 Ferguson in California before and up to the Effective Date.

##### **4.2 Ferguson's Release Of APS&EE**

Ferguson, 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 Ferguson 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:

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|--|--|
| <p>TO FERGUSON:<br/>Brenda K. Radmacher, Esq.<br/>Wood Smith Henning &amp;<br/>Berman LLP<br/>505 N. Brand Blvd.<br/>Suite 1100<br/>Glendale, CA 91203</p> | <p>TO APS&amp;EE:<br/>Lucas Novak, Esq.<br/>Law Offices of Lucas T. Novak<br/>8335 W Sunset Blvd., Suite 217<br/>Los Angeles, CA 90069</p> |
|--|--|

**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:

March 17, 2017

By:

[Signature]  
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date:

\_\_\_\_\_

By:

\_\_\_\_\_  
Authorized Officer of Ferguson Enterprises, Inc.

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: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: 3/20/2017

By:   
Authorized Officer of Ferguson Enterprises, Inc.  
DAVID N. MEEKER, ASST. SECRETARY