

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND WORLD AND  
MAIN (CRANBURY), LLC**

**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 World and Main (Cranbury), LLC (“World and Main”). APS&EE and World and Main 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** World and Main 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 World and Main sold “KC Professional” brand of hand tools, including 16oz #96600 hammer, 16oz #96605 hammer, and 7” #95505 pliers (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to unsafe levels of Lead, Di (2-ethylhexyl) Phthalate also known as Bis (2-ethylhexyl) Phthalate (“DEHP”), and/or Di-n-Butyl Phthalate (“DBP”) (collectively the “Listed Chemicals”), without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm; DEHP is potentially subject to Proposition 65 warning requirements because it is listed as known to cause cancer and

reproductive toxicity, developmental, male; DBP is potentially subject to Proposition 65 warning requirements because it is listed as known to cause birth defects and other reproductive harm.

**1.2.2** On March 6, 2017, a Sixty-Day Notice of Violation (“March 6 Notice”), along with a Certificate of Merit, was provided by APS&EE to World and Main (Cranbury), LLC, World and Main, LLC, Amazon.com, LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to KC Professional brand of hammers. On May 23, 2017, a Sixty-Day Notice of Violation (“May 23 Notice”), along with a Certificate of Merit, was provided by APS&EE to World and Main (Cranbury), LLC, World and Main, LLC, Amazon.com, LLC, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to KC Professional brand of pliers. The March 6 Notice and the May 23 Notice shall hereinafter collectively be referred to as the “Notices”.

### **1.3 No Admissions**

World and Main denies all material factual and legal allegations in APS&EE’s Notices and maintains that, to the best of its knowledge, the Products that are or have been sold and distributed in California, have been and are in compliance with all laws. Notwithstanding such allegations, World and Main maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65. Nothing in this Agreement shall be construed as an admission by World and Main of any fact, finding, issue of law, or violation of law, such being specifically denied by World and Main. 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 Standards**

#### **2.1.1 Reformulation**

Commencing no later than six (6) months after the Effective Date (the “Compliance Date”), World and Main shall not distribute, sell or offer for sale a Product in California unless (a) the Product contains no more than 100 parts per million (0.01%) of lead, and no more than 1000 parts per million (0.1%) of DEHP or DBP (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

**2.1.2** The requirements in this Section 2 shall not apply to any Product that as of the Compliance Date is in the stream of commerce or is otherwise in World and Main’s inventory stock as of the Compliance Date.

### **2.2 Proposition 65 Warnings**

**2.2.1** Subject to Section 2.1.2 and commencing as of the Compliance Date, for any Product that is not a Reformulated Product, such Product shall be accompanied by a clear and reasonable warning. Such warning shall be prominently placed in relation to the Product with such conspicuousness when compared to other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. World and Main shall provide the following warning statements (or other warnings consistent with applicable regulations governing such warnings) on the unit packaging of such Product, on the Labeling (as defined in 27 Cal. Code Regs., section 25600.1, operative Aug. 30, 2018) of such Product, shelf tag, or affixed to the Product, as applicable. Any Product sold by World and Main 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.

For Products manufactured before August 30, 2018:

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

For Products manufactured on or after August 30, 2018:

**WARNING:** This product can expose you to chemicals, including [lead and/or DEHP and/or DBP]<sup>1</sup>, which are 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 for Products manufactured on or after August 30, 2018 shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline, provided, however, that where the label or shelf tag 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”.

Notwithstanding the foregoing, the warning required for Products manufactured on or after August 30, 2018 may be used by World and Main on any Products manufactured before that date.

### **3. PAYMENTS**

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

In settlement of all claims referred to in this Agreement, World and Main shall pay a total civil penalty of four thousand five hundred dollars (\$4,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,375.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,125.00) for APS&EE.

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<sup>1</sup> In accordance with 27 Cal. Code Regs., section 25603, operative Aug. 30, 2018, the warning must expressly identify at least one of the Listed Chemicals present in the Product, as applicable.

World and Main shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$3,375.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$1,125.00. World and Main shall remit the payments within ten (10) 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

APS&EE agrees that it or a duly appointed representative shall timely mail or otherwise deliver the check made payable to “OEHHA” to the Office of Environmental Health Hazard Assessment. APS&EE shall provide to World and Main proof of such mailing or delivery to OEHHA.

### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

World and Main shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action and negotiating a settlement, for all work performed through execution of this Agreement under general contract principals and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5. Accordingly, World and Main shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty-six thousand dollars (\$26,000.00). World and Main shall remit the payment within ten (10) 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

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#### **4. RELEASES**

##### **4.1 APS&EE's Release Of World and Main**

This Agreement is a full, final, and binding resolution between APS&EE, acting in its individual capacity, and World and Main, of any violation of Proposition 65 that was or could have been asserted by APS&EE or on behalf of its past and current agents, shareholders, directors, members, officers, employees, attorneys, successors and assignees for failure to provide warning for alleged exposures to Lead, DEHP, and/or DBP contained in the Products, and in consideration of the promises and monetary payments contained herein, APS&EE hereby releases any such claims against World and Main, its parents, subsidiaries, affiliated entities, shareholders, directors, members, officers, agents, employees, attorneys, successors and assignees, including but not limited to World and Main, LLC, and each entity to whom World and Main directly or indirectly distributes or sells the Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees, including but not limited to Amazon.com, LLC (collectively "Released Parties"), from any claims for violation of Proposition 65 regarding failure to warn about exposure to Lead, DEHP, and/or DBP from the Products sold and/or offered for sale by World and Main before and up to the Effective Date.

##### **4.2 World and Main's Release Of APS&EE**

World and Main, 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 World and Main 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.

#### **4.4 Deemed Compliance with Proposition 65**

Material compliance by World and Main with this Agreement constitutes compliance with Proposition 65 by the Released Parties with respect to exposures to Lead, DEHP, and/or DBP in the Products.

#### **4.5. Public Benefit**

It is World and Main’s understanding that the commitments it has agreed to herein, and actions to be taken by World and Main under this Agreement, would confer a significant benefit on the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Code Regs., tit. 11, section 3201. As such, it is the intent of World and Main that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to World and Main’s failure to provide a warning concerning exposure to Lead, DEHP, and/or DBP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Agreement, provided

that World and Main is in material compliance with this Agreement.

**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 but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Agreement being contrary to the intent of the Parties in entering into this Agreement.

**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:

<p>TO WORLD AND MAIN: Joshua A. Bloom, Esq. Meyers Nave 555 12th Street, Suite 1500 Oakland, CA 94607</p>	<p>TO APS&amp;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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**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.

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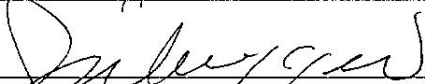


**9. AUTHORIZATION**

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: 10/10/17

By:   
Authorized Officer of APS&EE, LLC

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer of World and Main (Cranbury), LLC

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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: October 9, 2017

By: Dave Garrity  
Authorized Officer of World and Main (Cranbury), LLC

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