

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND ORCHARD SUPPLY COMPANY, 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 Orchard Supply Company, LLC, doing business as Orchard Supply Hardware (“OSH”). APS&EE and OSH 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.

1.2 Allegations

1.2.1 APS&EE alleges that OSH 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”).

1.2.2 APS&EE alleges that OSH sold a galvanized hardware cloth product identified as 23 Gauge, 1/4” Mesh, with Stock No. HC143610 and SKU 2637320 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to 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 by the California Office of Environmental Health Hazard Assessment as known to cause cancer and birth defects or other reproductive harm.

1.2.3 On July 25, 2017, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to OSH, Lowe’s Companies, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

OSH denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that OSH has not violated Proposition 65. OSH claims that the Products were manufactured and distributed exclusively by Shanghai Suntec Industries, Co., Ltd. ("Suntec"), and that Suntec had an obligation to OSH to identify and include Proposition 65 warnings, if any, required for the Product. Despite OSH's claim that it was Suntec's responsibility to provide warnings on the Products, OSH represents that Suntec has declined to participate in this Agreement. This Agreement shall not be construed as an admission of liability by OSH 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

Within ten (10) days after the Effective Date, OSH shall condition the purchase of the Products from Suntec, to be sold in California, on Suntec providing clear and reasonable Proposition 65 warnings as specified in the applicable "safe harbor" regulations or as such regulations may be amended in the future.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, OSH shall pay a total

civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

OSH shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,500.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$500.00. OSH shall remit the payments within twenty (20) 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

Consistent with the payment required by this Paragraph, OSH 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, OSH 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). OSH shall remit the payment within twenty (20) 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 OSH

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases OSH, its parents (including Lowe’s Home Centers, LLC, its parent, and all subsidiaries and affiliates thereof and their respective employees, agents and assigns), subsidiaries, shareholders, directors, members, officers, employees, agents,

attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s Notice regarding the Products sold and/or offered for sale by OSH in California before and up to the Effective Date.

4.2 OSH’s Release Of APS&EE

OSH, 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 in connection with the Proposition 65 claims asserted in APS&EE’s Notice regarding the Products, whether in the course of investigating claims or seeking enforcement of Proposition 65 against OSH 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. The waiver in this Paragraph, however, shall not extend to any claims that OSH may have against Suntec due to the alleged

failure to label the Products, provide a warning on the Products, or due to any other alleged violation of Proposition 65 and its implementing regulations.

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. NOTICE

All correspondence and notice 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 OSH: Tom Boer, Esq. Hunton & Williams LLP 50 California St., Suite 1700 San Francisco, CA 94111	TO APS&EE: Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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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.

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:

4/6/18

By:



Authorized Officer of APS&EE, LLC

AGREED TO:

Date:

04.04.2018

By:


Orchard Supply Company, LLC