

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND PEERLESS
INDUSTRIAL GROUP, INC.**

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Peerless Industrial Group, Inc. (“Peerless”) and APS&EE, LLC (“APS&EE”). APS&EE and Peerless shall hereinafter collectively be referred to as the “Parties” and each individually as a “Party”.

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 APS&EE alleges that Peerless 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 Peerless manufactures, distributes for sale and/or sells in California: galvanized Peerless/ACCO Anchor Chains containing Lead. 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. APS&EE alleges that Peerless failed to provide the health hazard warnings required by Proposition 65 for exposures to Lead.

1.2.2 The products covered by this Agreement are galvanized Peerless/ACCO Anchors Chains containing Lead that are manufactured, sold, or distributed for sale in California by Peerless (hereinafter referred to as “Products”).

1.2.3 On July 17, 2018, APS&EE served a Sixty-Day Notice of Violation (the “Notice”) to Peerless and the requisite public enforcement agencies alleging that Peerless violated Proposition 65 with respect to the Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.3 No Admissions

Peerless denies the material, factual, and legal allegations contained in APS&EE’s Notice and maintains that the Products have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Peerless of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Peerless. Nothing in this Agreement shall preclude Peerless from asserting any and all applicable defenses available to it in any future proceeding under Proposition 65 or otherwise. However, nothing in this Section shall affect Peerless’ 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; REFORMULATION & WARNINGS


2.1 Reformulation Standard

As of the Effective Date, Peerless shall not distribute, sell or offer for sale the Products in California unless (a) the galvanizing solution in which the Products are submerged contains no more than 100 parts per million (0.01%) of Lead (“Reformulated


Products”), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Proposition 65 Warnings

For any Products that are not Reformulated Products, such Products shall be accompanied by clear and reasonable Proposition 65 warnings provided with the following warning language and symbol:

 **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.

Or, if the warning is printed on or affixed to a Product or its immediate container, box or wrapper:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

The symbol depicted above shall consist 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 warning shall be provided 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.

In lieu of the preceding warning content and methods set forth above, Peerless may use any warning content and method that complies with Title 27, California Code of Regulations, § 25600 et seq., as amended August 30, 2016 and subsequently thereafter.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Peerless 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.

Peerless 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.

Peerless 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’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement Of APS&EE’s Fees And Costs

Peerless 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, Peerless shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of nineteen thousand dollars (\$19,000.00). Peerless 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

4. **CLAIMS COVERED AND RELEASED**

4.1 APS&EE's Release Of Proposition 65 Claims

This Agreement is a full, final, and binding resolution between APS&EE, in its individual capacity and *not* on behalf of the public, and Peerless, of any violation of Proposition 65 that was or could have been asserted by APS&EE, on its own behalf, or on behalf of its past and current agents, principals, employees, insurers, accountants, entities under its ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Peerless, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Peerless directly or indirectly distributes, ships or sells Products, including, but not limited to, West Marine, Inc. and downstream distributors, wholesalers, customers, retailers, if any, and their affiliates, franchisees, cooperative members, licensors, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to Lead contained in the Products manufactured, sold, or distributed for sale by Peerless in California before the Effective Date.

4.2 APS&EE's Individual Release of Claims

APS&EE, in its individual capacity only and *not* in its representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of APS&EE of any nature, character, or kind, but only to the extent that such legal action or claims arise under Proposition 65 with respect to Lead in the Products manufactured, imported, distributed, or sold by Peerless prior to the Effective Date.

4.3 Peerless' Release Of APS&EE

Peerless, and on behalf of the Releasees, 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 Peerless in this matter.

4.4 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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 Settlement Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

4.5 Public Benefit

The Parties enter into this Agreement with the understanding that the commitments made herein, and actions to be taken by Peerless under this Agreement, confer a significant benefit to 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 Peerless' intent by entering into this Agreement that to the extent any other private party initiates an

action against Peerless alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to Lead from Products manufactured, distributed, sold or offered for sale by Peerless in California, and subject to Peerless' material compliance with this Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products addressed under 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.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Peerless may provide written notice to APS&EE of any asserted change in the law and shall have no further injunctive obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

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:

<p>TO PEERLESS: George Kosidowski President Peerless Industrial Group, Inc. 1416 East Sanborn Street Winona, MN 55987-5349</p>	<p>TO APS&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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With a copy to: Rohit Sabnis, Esq. Burnham Brown P.O. Box 119 Oakland, CA 94604	
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Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

APS&EE and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. MODIFICATION

This Agreement may be modified only by written agreement of the Parties.

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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 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 Representative of APS&EE, LLC

AGREED TO:

Date: _____ 2/13/2019

By: _____
Authorized Representative of Peerless Industrial Group, Inc.

4814-5559-0280, v. 1

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 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: 2/14/19

By: [Signature]
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 2/13/2019

By: [Signature]
Authorized Representative of Peerless Industrial Group, Inc.

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