

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Consumer Protection Group, LLC and Anawalt Lumber Co.**

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC ("CPG"), on one hand, and Anawalt Lumber Co. ("ALC"), on the other hand, with CPG and ALC, collectively referred to as the "Parties."

#### **1.2 General Allegations**

CPG alleges that ALC manufactured, distributed, and offered consumer products for sale containing Lead, and that such products have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to cause developmental, male and female reproductive toxicity, and on October 1, 1992, the Governor added Lead to the list of chemicals known to the State to cause Cancer.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined in four separate Notices of Violation issued by CPG to ALC: ¾ (19mm) Slip Coupling – UPC number 054374509515; S/J Union – UPC 054374118137; ¾ Brass Tee – UPC 054374162543; and ¾ Brass Plug – UPC 05437416676 (the "Subject Products"), which ALC has sold, offered for sale or distributed in California containing Lead.

**1.4 Notice of Violations**

On February 8, 2019 (AG No. 2019-00299), CPG served ALC and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided ALC and such public enforcers with notice that ALC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to Lead.

On February 8, 2019 (AG No. 2019-00300), CPG served ALC, Lincoln Products and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided ALC and such public enforcers with notice that ALC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to Lead.

On February 8, 2019 (AG No. 2019-00303), CPG served ALC and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided ALC and such public enforcers with notice that ALC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to Lead.

On February 8, 2019 (AG No. 2019-00304), CPG served ALC, Do it Best Corp., and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with a document entitled "60-Day Notice of Violation" (the "Notice") that provided ALC and such public enforcers with notice that ALC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Subject Product exposed users in California to Lead; and to the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the abovementioned Notices.

**1.5 No Admission**

By execution of this Settlement Agreement, ALC, Do it Best Corp., Lincoln Products and each of their respective affiliates and subsidiaries, parents, directors, officers, agents, employees, attorneys, representatives, shareholders, successors, and assigns and each entity to whom ALC, Do it Best Corp., and Lincoln Products directly or indirectly distributes or sells the Subject Product, including but not limited to, downstream distributors, wholesalers, customers, retailers, marketplace retailers, franchisees, cooperative members and licensees (collectively, the "Releasees") do not admit any facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law, or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Releasees of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement, nor compliance with its terms, shall constitute or be construed, considered, offered, or admitted as evidence of an admission or evidence of

**fault, wrongdoing, or liability by the Releasees in any administrative or judicial proceeding or litigation in any court, agency, or forum. Except for the allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CPG or ALC may have against one another in any other pending legal proceeding as to allegations unrelated to the dispute or claims released herein. Notwithstanding the allegations in the Notices, Releasees maintain that they have not knowingly manufactured, or caused to be manufactured, the Subject Product for sale in California in violation of Proposition 65.**

**1.6 Effective Date**

**For purposes of this Settlement Agreement, the term "Effective Date" is defined as the date this Settlement Agreement is fully executed.**

**2. INJUNCTIVE RELIEF: WARNING**

**2.1 Reformulation Standards**

**"Reformulated Products" are defined as those Products containing Lead in concentrations less than 100 parts per billion (ppb) of Lead.**

**2.2 Commitment to Reformulate or Warn**

**As of the Effective Date, ALC shall not sell or offer the Subject Product for sale in the State of California unless they are Reformulated Products or ALC provides warnings that comply with Proposition 65 law.**

**2.3 Warning**

**The Subject Product shall be accompanied by a warning as described in Section 2.4 below as of the Effective Date. The warning requirements set forth in Section 2.4 below**

shall apply only to the Subject Product that are distributed, marketed, sold or shipped for sale in the State of California. ALC further agrees, promises and represents that, as of the Effective Date, to the extent it ships or sells any of the Subject Product in existing inventory that have not been reformulated, it will provide warnings that comply with Proposition 65 law. The warning requirement shall not apply to Product(s) that are already in the stream of commerce as of the Effective Date.

**2.4 Warning Language**

The warnings shall be provided in such a conspicuously and prominent manner that will assure the message is made available and likely to be read, seen, or heard by the consumer prior to or at the time of the sale or purchase. Where required, ALC shall provide Proposition 65 warnings as follows:

**⚠ WARNING:** This product can expose you to chemicals including Lead which is known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**Or**

**⚠ WARNING:** Cancer, Birth Defects or Reproductive Harm  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

This shall constitute compliance with Proposition 65 with respect to the chemical in the Subject Product for any Subject Product in existing inventory

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, ALC shall cause to be paid a total of Seven Thousand Seven Hundred Dollars (\$7,700.00) in civil penalties in accordance with this Section. The total civil penalties cover all four notices in the amounts as follows:

(1) Notice Number 2019-00304: Three Thousand Two Hundred Fifty Dollars (\$2,270.00) in civil penalties for UPC 05437416676;

(2) Notice Number 2019-00303: Three Thousand Seven Hundred Fifty Dollars (\$2,630.00) in civil penalties for UPC 054374162543;

(3) Notice Number 2019-00300: One Thousand Seven Hundred Fifty Dollars (\$1,225.00) in civil penalties for UPC 054374509515;

(4) Notice Number 2019-00299: Two Thousand Two Hundred Fifty Dollars (\$1,575.00) in civil penalties for UPC 054374118137

The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CPG. CPG's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

**4. REIMBURSEMENT OF FEES AND COSTS**

The Parties reached an accord on the compensation due to CPG and its counsel under the private attorney general doctrine and principles of contract law. Under these

legal principles, ALC shall reimburse CPG's counsel for fees and costs incurred as a result of investigating and bringing this matter to ALC's attention. ALC shall pay CPG's counsel Forty-Seven Thousand Three Hundred Dollars (\$47,300.00) for all attorney's fees, expert and investigation fees, and related costs associated with this matter and the Notice.

**5. PAYMENT INFORMATION**

Seven (7) days after the Effective Date, ALC shall make or cause to be made on its behalf a total payment of Fifty-Five Thousand Dollars (\$55,000.00) for the civil penalties and attorney's fees/costs by wire transfer to Plaintiff's counsel Blackstone Law APC:

Bank: First Republic Bank

Routing No.: 321081669

Account No.: 80006597266

Beneficiary: Blackstone Law APC IOLTA

Other than this payment, each side is to bear its own attorney's fees and costs.

**6. RELEASE OF ALL CLAIMS**

**6.1 Release of ALC Downstream Customers and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4, and 5 above, CPG, in its representative capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Subject Products, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses

(including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims") against (a) ALC (b) each of ALC's downstream distributors as well as its affiliates and suppliers of the Subject Products (including Lincoln Products and Do It Best Corp), wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) ALC's parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees").

CPG also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against ALC and the Releasees with regards to the Subject Product. CPG acknowledges that it is familiar with California Civil Code section 1542, 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.**



ALC in its capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until the full amount of payments set forth in above Sections 3, 4, and 5 are paid in full by or on behalf of ALC.

**6.2 ALC's Release of Consumer Protection**

ALC waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPG and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Subject Product. ALC represents that its signatory to this Settlement Agreement has full authority to enter into and legally bind ALC to this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within 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



**9. COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

CPG agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**11. ENTIRE AGREEMENT**


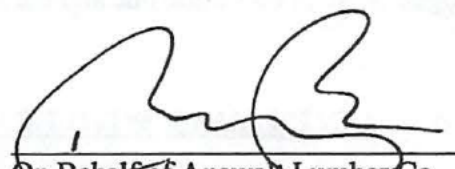
This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

**12. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

<b>AGREED TO:</b>	<b>AGREED TO:</b>
Date: July <u>11</u> , 2019	Date: July <u>11</u> , 2019
By: 	By: 
On Behalf of Consumer Protection Group, LLC	On Behalf of Anawalt Lumber Co.