

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND MASTER
HALCO, 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 Master Halco, Inc. (“Master Halco”).

APS&EE and Master Halco 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 APS&EE alleges that Master Halco is a company 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 Master Halco sold Master Halco hanger bolts/wood post bolts/anchor bolts, including 7” #382317, 039404111258 (hereinafter 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 by the State of California as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On May 3, 2019, APS&EE provided a Sixty-Day Notice of Violation (the “May 3rd Notice”), along with a Certificate of Merit, to Master Halco, Itochu International, Inc., and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. On July 9, 2019,

APS&EE provided a Supplemental Sixty-Day Notice of Violation (the “July 9th Notice”), along with a Certificate of Merit, to Master Halco, Itochu International, Inc., HD Supply Repair and Remodel LLC dba HD Supply Home Improvement Solutions (“HD Supply”), and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The May 3rd Notice and the July 9th Notice shall hereinafter collectively be referred to as the “Notices”.

1.3 No Admissions

Master Halco denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that Master Halco has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Master Halco 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 AND REFORMULATION

2.1 Reformulation

As of the Effective Date, Master Halco shall not distribute, sell or offer for sale Products in California unless (a) the galvanizing solution in which the Product is submerged has a lead content by weight of no more than 100 parts per million (0.01%), (“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 Clear And Reasonable Warnings

2.2.1 For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Master Halco shall provide the following warning statements as follows:

“WARNING: These products (galvanized, including electro-galvanized, steel fencing products), 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.

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”. If an on-product warning is provided, the text of the warning shall be in accordance with 27 CCR § 25603(b)&(c).

2.2.2 The warning shall be provided directly on each Product or its label, package, shelf tag or sign with such conspicuousness as compared with other words, statements or designs as to render it likely to be seen, read and understood by an ordinary individual prior to purchase.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, Master Halco shall pay a total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$750.00) for APS&EE.

Master Halco shall issue two (2) checks for the civil penalty: (1) a check or

money order made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Master Halco shall remit the payments within five (5) 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

Master Halco 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, Master Halco 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). Master Halco shall remit the payment within five (5) 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 Master Halco

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases Master Halco, its parents (including Itochu International, Inc.), subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and each entity in the downstream distribution chain of the Products (including retailers like HD Supply), and their respective parents, subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees (collectively “Releasees”), from all Proposition 65 violation

claims regarding the Products that were distributed or sold by Master Halco in California, or that Master Halco made available for sale in California, before and up to the Effective Date.

4.2 Master Halco's Release Of APS&EE

Master Halco, and on behalf of its parents (including Itochu International, Inc.), subsidiaries, affiliated companies under common ownership or control, shareholders, directors, members, officers, employees, attorneys, successors and assignees, 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 Master Halco in this matter. If any Releasee should institute any such action, then APS&EE's release of said Releasee in this Agreement shall be rendered void and unenforceable.

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 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 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. 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 MASTER HALCO: Shelley Hurwitz, Esq. Holland & Knight LLP 400 South Hope Street 8th Floor Los Angeles, California 90071	TO APS&EE: Lucas T. 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: 1/28/20

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: _____

By: _____
Authorized Representative of Master Halco, Inc.

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: January 30, 2020

By: 

Authorized Representative of Master Halco, Inc.