

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND EDMUND A.  
GRAY COMPANY**

**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 Edmund A. Gray Company (“EA Gray”). APS&EE and EA Gray 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 EA Gray 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 EA Gray sold Edmund A. Gray brass plumbing fittings (sometimes also referred to as bronze fittings), including ½ inch coupling #49001210, 535-700G (hereinafter the “Products”), in the State of California causing users in California to be exposed to lead, without providing adequate “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 February 24, 2021, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to EA Gray, Ewing Irrigation & Landscape Supply Company, Ewing Irrigation Products, Inc., and the various public



enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

### **1.3 No Admissions**

EA Gray denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that EA Gray has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by EA Gray 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 or its counsel. The second party to sign the Agreement shall have no more than five days to sign and return the fully executed agreement after receiving the first party's signature.

## **2. INJUNCTIVE RELIEF AND REFORMULATION**

### **2.1 Reformulation**

As of the Effective Date, EA Gray shall not purchase Products for sale in California unless (a) the Products are "lead free" as defined by California Health & Safety Code § 116875(e) ("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. As of six months after the Effective Date, EA Gray shall not sell Products in California unless the Products are "lead free" as defined by California Health & Safety Code § 116875(e) ("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. EA Gray shall provide the following warning statements (or other warnings consistent with 27 Cal. Code Regs. § 25601, et seq. operative August 30, 2018, or the applicable regulations governing such warnings) as follows:

**“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](http://www.P65Warnings.ca.gov).”

If EA Gray has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. 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”.

**2.2.2** The warning described in section 2.2.1 shall be presented 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. A Product that is sold by EA Gray on its internet web site to persons located in California 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 that EA Gray supplies, with knowledge or reasonable expectation that a downstream entity will sell the Products on the internet or in retail stores where shelf tags are required, EA Gray shall include an instruction so that the entity may comply with the warning requirements of this section.



**3. PAYMENTS**

**3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, EA Gray shall pay a total civil penalty of five thousand dollars (\$5,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,250.00) for APS&EE.

EA Gray shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$3,750.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$1,250.00. EA Gray 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**

EA Gray shall reimburse APS&EE’s reasonable experts’ and attorneys’ fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, EA Gray shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty-one thousand dollars (\$21,000.00). EA Gray 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 EA Gray**

APS&EE, acting in its individual capacity, in consideration of the promises and



monetary payments contained herein, hereby releases EA Gray, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees, including but not limited to Ewing Irrigation & Landscape Supply Company and Ewing Irrigation Products, Inc. (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding failure to warn about lead exposure from the Products sold by EA Gray before and up to the Effective Date.

#### **4.2 EA Gray's Release Of APS&EE**

EA Gray, 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 EA Gray in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party 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 EA GRAY: Gary M. Roberts, Esq. Dentons US LLP 601 South Figueroa Street Suite 2500 Los Angeles, CA 90017-5704	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.

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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.

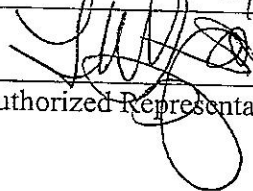
**AGREED TO:**

Date: 5/27/21

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 5/26/21

By:  L.C. GRAY, III, VP  
Authorized Representative of Edmund A. Gray Company

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