

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND VALENCIA PIPE 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 Valencia Pipe Company (“VPC”). APS&EE and VPC 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 VPC 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 VPC distributed, sold or made available for sale in the State of California the “VPC” brand of galvanized pipe, including but not limited to ½” x 18” (hereinafter, the “Product(s)”) causing users in California to be exposed to hazardous 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 under that statute as known to the State of California to cause cancer and birth defects or other reproductive harm.

1.2.2 On September 2, 2021, APS&EE served a Sixty-Day Notice of Violation (“60-Day Notice”), along with a Certificate of Merit, to VPC, as well as Home Depot, U.S.A., Inc., Home Depot, Inc., and Home Depot Product Authority, LLC

(collectively, the “Home Depot entities”), and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

VPC denies all allegations in APS&EE’s 60-Day Notice and maintains that the Products have been, and are, in compliance with all laws, and that VPC has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by VPC 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 on behalf of 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.

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of 165 days after the Effective Date, VPC shall not sell, distribute, or cause the Products to be offered for sale in California unless (a) the galvanizing solution in which a Product is submerged has a lead content by weight of no more than 100 parts per million (0.01%), and the finished Product produces a test result no higher than a ratio of 1.0 microgram of lead per 100 square centimeters based on a wipe sample collected using NIOSH Method 9100 or equivalent (“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

2.2.1 Whenever a clear and reasonable warning is required under Section 2.1, VPC shall use a warning with the capitalized and emboldened wording substantially similar to the following:

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.

If VPC 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”.

The Products shall carry said warning directly on each unit, label, or package, 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 VPC on the internet 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 VPC provides for a downstream entity to sell on the internet (e.g., the Home Depot Entities), VPC shall include an instruction that the entity 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, VPC shall pay a total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with

Health and Safety Code section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,000.00) for APS&EE.

VPC shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. VPC 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

VPC 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, VPC 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). VPC 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 VPC

APS&EE, in consideration of the promises and monetary payments contained herein, hereby releases VPC, its parents, subsidiaries, affiliated companies, shareholders, directors, members, managers, officers, partners, agents, employees, representatives, attorneys, successors and assignees, as well as its downstream distributors, wholesalers, retailers, and franchisees, including the Home Depot entities (collectively, “Released

Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s 60-Day Notice regarding failure to warn about lead exposure from the Products sold or distributed by VPC for sale or potential sale in California before and up to 165 days after the Effective Date.

4.2 VPC’s Release Of APS&EE

VPC, 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 VPC in this matter. If any Released Parties 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.

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: 3/23/22

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

AGREED TO:

Date: 3/22/22

By: [Signature]
Authorized Representative of Valencia Pipe Company