

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND FERGUSON ENTERPRISES, LLC

1. RECITALS

1.1 The Parties

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between Ferguson Enterprises, LLC (“Ferguson”) and APS&EE, LLC (“APS&EE”) (each individually referred to as a “Party” and collectively 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 Ferguson 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 Ferguson sold 1) Galvanized Nipples¹ and 2) Lincoln Products brand of Furnace Keys, 762604, 054374006052 (“Furnace Keys”) in the State of California 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 listed as known to cause cancer and birth defects or other reproductive harm. The Galvanized Nipples and Furnace Keys shall hereinafter collectively be referred to as the “Products”.

1.2.2 On September 25, 2023, APS&EE sent a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to Ferguson, as well as

¹ See Appendix A for the list by SKU numbers of the Galvanized Nipples subject to this Agreement.

Anawalt Lumber & Materials Co., Lincoln Products, and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

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

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

As of the Effective Date, Ferguson shall not distribute, sell, offer for sale, or cause to have the Products sold in California unless (a) the galvanizing solution in which a Galvanized Nipple is submerged has a lead content by weight of no more than 100 parts per million (0.01%), the Furnace Keys contain no more than 100 parts per million (0.01%) of Lead, and the Products produce a test result no higher than 1.0 microgram of Lead based on a wipe sample collected using NIOSH Method 9100 or equivalent ("Reformulated Product"), or (b) the Product is accompanied by a clear and reasonable warning as described below in Section 2.2.

2.2 Proposition 65 Warnings

2.2.1 For any Products that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Ferguson shall provide a warning statement 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.”

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”. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language. Alternatively, the warning may be an on-product warning that complies with Title 27, California Code of Regulations § 25603(b) and (c). To the extent the warning statement used is clear and reasonable in accordance with Title 27, California Code of Regulations § 25600 *et seq.* (and as those regulations may hereafter be amended), it will be deemed substantially similar to the warning statement provided above.

2.2.2 The Products shall carry said warning directly on each unit, label, shelf tag, 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. The warning shall be able to withstand reasonable wear and tear where it is offered for sale such that the warning does not rub away or otherwise become illegible. If the warning is provided on a shelf tag, it shall follow the appropriate methods and content for shelf tags as described in 27 CCR section 25600, *et seq.* A Product that is sold by Ferguson 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 Ferguson provide for a downstream entity to sell on the internet, Ferguson 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, Ferguson shall pay a total civil penalty of six thousand dollars (\$6,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$4,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,500.00) for APS&EE.

Ferguson shall issue these payments as part of the total payment described below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of APS&EE’s Fees And Costs

Ferguson 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, in the amount of twenty-four thousand dollars (\$24,000.00). Accordingly, Ferguson shall collectively remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of thirty thousand dollars (\$30,000.00), which includes the civil penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions have been exchanged between the Parties’ counsel.

4. RELEASES

4.1 APS&EE’s Release Of Ferguson

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Ferguson, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as their downstream distributors, retailers, and franchisees, including

Anawalt Lumber & Materials Co. (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 that Ferguson has sold or caused to be sold in California before and up to the Effective Date.

4.2 Ferguson’s Release Of APS&EE

Ferguson, 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 Ferguson 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:

<p>TO FERGUSON: Brenda Radmacher, Esq. Akerman LLP 633 West Fifth Street, Suite 6400 Los Angeles, CA 90071</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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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:

By:

[Handwritten Signature] 3/28/2024

Authorized Representative of APS&EE, LLC

AGREED TO:

Date:

By:

DocuSigned by: *Julie Hutcheson* March 28, 2024 | 12:27 PM EDT

Assistant Secretary
Authorized Representative of Ferguson Enterprises, LLC

APPENDIX A

The list by SKU numbers of the galvanized nipples subject to this Agreement:

418240
418360
418480
419480
418180
419240
419360
416240
416480
416600
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414300
414360
414480
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414720
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415360
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415720