

**SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND HALEX/SCOTT  
FETZER COMPANY**

**1. RECITALS**

**1.1 The Parties**

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between Halex/Scott Fetzer Company (“Halex”) 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 Halex 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 Halex sold Halex rigid elbow conduits, including but not limited to Item 64105, 051411641054 (hereinafter the “Products”) 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.

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

### **1.3 No Admissions**

Halex denies all allegations in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that Halex has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by Halex but to the contrary as a compromise of claims that are expressly contested and denied. Nothing in this Agreement shall be construed as an admission by Halex of any fact, conclusion of law, issue or law, or violation of law. 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**

Within 90 days after the Effective Date, Halex shall not distribute, sell, offer for sale, or cause to have the Products sold in California unless (a) the Products 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. This Section 2 shall not apply to any of the Products have already been distributed to California retailers prior to 90 days after the Effective Date.

## 2.2 Proposition 65 Warnings

2.2.1 For any Products that are sold in California after 90 days from the Effective Date of this Agreement and that are not Reformulated Products, such Products shall be accompanied by a clear and reasonable warning. Halex 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](http://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”. 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. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language.

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 Halex 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 Halex provide for a downstream entity to sell on the internet, Halex 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, Halex shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

Halex shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,500.00; and (2) for APS&EE’s portion, a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$500.00. Halex shall remit the payments within ten (10) business days of the Effective Date (and shall email carrier tracking information to APS&EE’s counsel), to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall forward the payments to OEHHA and Plaintiff.

#### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

Halex 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 seventeen thousand dollars five hundred (\$17,500.00). Halex shall remit the payment via check or money order within ten (10) business days of the Effective Date (and shall email carrier tracking information to APS&EE’s counsel), 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 Halex**

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases Halex, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as their downstream distributors, customers, retailers, and franchisees, including but not limited to Anawalt Lumber & Materials Co, and upstream vendors<sup>1</sup> (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 Halex has sold or caused to be sold in California before and up to the Effective Date. APS&EE also, in its individual capacity, on behalf of itself, 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, liability and demands of any nature, character or kind, against Halex and the Released Parties with regards to the Products sold by Halex prior to the Effective Date.

##### **4.2 Halex's Release Of APS&EE**

Halex, 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 Halex 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.

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<sup>1</sup> For the sake of clarity, such release of upstream vendors is limited to the Products they provided to Halex.

### **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 waive 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. MISCELLANEOUS**

The terms of this Agreement shall be governed by the laws of the State of California. This 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. This Agreement may be modified only by a written agreement signed by the Parties. The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood and agree to

all of the terms and conditions of this Agreement. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Halex shall provide written notice to APS&EE of any asserted change in the law, and shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, the Products are so affected.

**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><b>TO HALEX:</b> Frederick W. Kosmo Jr., Esq. Wilson Turner Kosmo LLP 402 W Broadway, Suite 1600 San Diego, CA 92101</p> <p>and</p> <p>Heidi Duncan Alten, Esq. Vice President &amp; General Counsel The Scott Fetzer Company 28800 Clemens Road Westlake, OH 44145</p>	<p><b>TO APS&amp;EE:</b> 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.

**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: \_\_\_\_\_  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: Michael Stuchos \_\_\_\_\_

By: President \_\_\_\_\_  
Authorized Representative of Halex Enterprises, LLC / Scott Fetzer Company



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: 2/24/2024

By:   
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: Michael Stuchos

By: President  
Authorized Representative of Halex Enterprises, LLC / Scott Fetzer Company