

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between:

Michael DiPirro

(referred to herein as “DiPirro”) represented by his attorneys,

Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law; and,

EMC Development, Inc.

(referred to herein as “Noticed Party”) represented by its attorneys

Bick Law, LLP.

DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

DiPirro alleges that the Noticed Party manufactures, imports, sells, or distributes for sale, in the State of California products containing lead and lead compounds without first providing the clear and reasonable exposure warning required by Proposition 65. Lead and lead compounds is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and birth defects or other reproductive harm (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are Lead Anchors containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by the Noticed Party, including, but not limited to the:
Ebinger MSA7 3/8 Lead Anchors - 50/Box (the “Products”).

1.4 Notice of Violation

On or about December 23, 2024, DiPirro served Noticed Party, Gordon Electric Supply, Inc., and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of DiPirro’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of the DiPirro’s knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the day the final requisite signature is applied to the Settlement Agreement.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings. Commencing within thirty (30) days of the Effective Date for any of the Noticed Party’s Products that contain more than 0.009 percent (90 parts per million) of the Listed Chemical (which Noticed Party will determine through its own independent testing using a laboratory accredited by the State of California) and are shipped to any California resident consumer, or any agent, distributor, or affiliated company working on behalf of Noticed Party, for sale to California consumers, Noticed Party shall provide a clear and reasonable

warning on the label of each Product as set forth in Section 2.3.

There shall be no obligation for Noticed Party to provide a Proposition 65 for any Products already in the stream of commerce as of the Effective Date. Further, any Product already in the stream of commerce as of the Effective Date is expressly subject to the releases provided in Section 6 of this Agreement.

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

2.2 Internet Warnings. In addition to the warning specified in Section 2.1 above, for all Products that Noticed Party offers for sale directly to consumers in California via the internet, Noticed Party shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word “[California Prop 65] WARNING” (language in brackets optional) which then takes the user to a display of the warning set out in Paragraph 2.3.

2.3 Text of the Warning. The Noticed Party shall use one of the warning options set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product’s packaging):



WARNING: This product can expose you to chemicals including lead and lead compounds, which are 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.

Alternative Warning: Noticed Party may, but is not required to, use one of the alternative short-form warnings as set forth in this § 2.3 as follows:

1. Risk of cancer and reproductive harm from exposure to lead. See www.P65Warnings.ca.gov; or
2. Can expose you to lead, a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

3. PENALTIES & PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Noticed Party shall make a civil penalty payment of \$750 as a component of this settlement. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro. Within ten (10) business days of the Effective Date, Noticed Party shall issue two (2) separate checks for the Civil Penalty payment: (a) one to "OEHHA" in the amount of \$562.50; and one to (b) "Michael DiPirro" in the amount of \$187.50. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 5.1(a)(ii), below.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. The Noticed Party then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and

the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. The Noticed Party shall pay a total of \$ 37,250 for fees and costs incurred as a result of investigating, working with toxicology experts, bringing this matter to the Noticed Party's attention, document preparation, post-settlement compliance audit, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Noticed Party shall send a check payable to "Jeremy Fietz, Attorney at Law" in the amount of \$37,250.00 for delivery to the address identified in § 5(a)(i) below.

5. PAYMENT PROCEDURES

5.1 Payment.

(a) **Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to DiPirro, pursuant to § 3 shall be delivered to the following payment address:

Jeremy Fietz,
Attorney at Law
4241 Montgomery Drive, #123,
Santa Rosa CA 95405

(ii) All payments owed to OEHHHA (EIN: 68-0284486), pursuant to § 3 shall be delivered directly to OEHHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010.

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 "I" Street
Sacramento, CA 95814.

(b) **Copy of Payments to OEHHA.** Noticed Party agrees to provide DiPirro's counsel with a copy of the check payable to OEHHA, simultaneously with its penalty payment to DiPirro, to be delivered to the address provided in § 5(a), as proof of payment to OEHHA.

(c) **Tax Documentation.** Noticed Party agrees to provide a completed IRS 1099 for its payments to, and DiPirro agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) "Michael DiPirro" whose address and tax identification number shall be provided within three (3) calendar days of the Effective Date;
- (ii) "Jeremy Fietz, Attorney-at-Law" at the address provided in Section 5.1(a)(i); and
- (iii) "Office of Environmental Health Hazard Assessment" 1001 "I" Street, Sacramento, CA 95814.

For any payment that is returned for any reason, including insufficient funds, a payment must be made by Noticed Party in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any payment that is not actually received by the due date will also be subject to a 10% late fee.

6. CLAIMS COVERED AND RELEASED

6.1 DiPirro's Release of Noticed and Related Parties

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against any of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity, including, without limitation HydraPro, to whom either Noticed Party directly or

indirectly distributes or sells the Products (“Releasees”), including its downstream distributors and retailers including Gordon Electric Supply, Inc., but not including its upstream suppliers and manufacturers, for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Noticed Party and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Party prior to the Effective Date.

6.2 Noticed Party’s Release of DiPirro

Each Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6.3 California Civil Code § 1542.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the specific Product and Listed Chemical will develop or be discovered. The Parties acknowledge that the claims released in §§ 6.1 and 6.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims as to the specific Product and Listed Chemical. California Civil Code

§ 1542 reads 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.

DiPirro and Noticed Party each respectively acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then the Noticed Party may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Noticed Party from any obligation to comply with any pertinent state or federal toxics control laws.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For EMC Development, Inc.:

Todd Meyer
Sunbelt
Marketing
7400 Sunbelt
Drive SE
Austell, GA
30168

to:

Corrie Plant
Bick Law, LLP
520 Newport Center Drive, Ste. 750
Newport Beach, CA, 92660

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the parties to this agreement.

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13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 05/31/25

By: _____
Michael DiPirro

AGREED TO:

Date:

By: _____
EMC Development, Inc.
Print Name: _____
Title: _____

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 05/31/25

By: 

Michael DiPirro

AGREED TO:

Date: 05/31/25

By: 

EMC Development, Inc.

Print Name: JANNY LU

Title: President