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a California corporation

Assigned for All Purposes  
Judge Scott A Steiner

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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**  
10

MANFREDI, LEVINE, ECCLES, MILLER & LANSON, APC  
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WESTLAKE VILLAGE, CALIFORNIA 91362-3400

11 ADVANCED FIBERGLASS CONCEPTS, a  
California corporation,

Case No: 30-2024-01416858-CU-FR-NJC

12  
13 Plaintiff,

**COMPLAINT FOR:**

14 vs.

- (1) **PROMISSORY FRAUD;**
- (2) **BREACH OF CONTRACT;**
- (3) **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING;**
- (4) **CONVERSION;**
- (5) **MONEY HAD AND RECEIVED;**
- (6) **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 et seq.; AND**
- (7) **ACCOUNTING**

15 APG, LLC, a California limited liability  
company, dba AUTOMOTIVE  
16 PERFORMANCE GROUP; GEORGE  
17 PATRICK GEMAYEL, an individual; and  
DOES 1 through 20, inclusive,

18 Defendants.  
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26 Plaintiff ADVANCED FIBERGLASS CONCEPTS, INC, a California corporation  
27 (hereinafter, “**Plaintiff**” or “**AFC**”), hereby alleges as follows:  
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NATURE OF ACTION

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2 1. This action arises out of an unlawful and fraudulent scheme by Defendants George  
3 Patrick Gemayel and his company, APG, LLC, to defraud Plaintiff and embezzle money from  
4 Plaintiff that was specifically intended to pay for the fabrication and manufacture of hardtop roofs for  
5 2021 and later model year Ford Bronco vehicles (the “**Project**”). Defendants’ scheme spanned  
6 approximately three (3) years. Over the course of those years, Defendants induced Plaintiff to make  
7 further investments into the Project with promises and representations that turned out to be false or  
8 otherwise misleading, lulling Plaintiff along under the premise of a contract that Defendants never  
9 intended to abide by. In the end, Plaintiff suffered devastating harm to its business, including lost  
10 profits, demands by customers for return of their deposits for products and irreparable reputational  
11 harm.

PARTEIS

12  
13 2. Plaintiff is a corporation formed and existing by virtue of the laws of the State of  
14 California, with its principal place of business in Orange County, California. Plaintiff previously was  
15 a California limited liability company, but in 2019 Plaintiff was converted to a California corporation.

16 3. Plaintiff is informed and believes, and thereon alleges, that, at all relevant times,  
17 Defendant APG, LLC (“**APG**”), is a limited liability company organized and existing by virtue of the  
18 laws of the State of California and doing business as Automotive Performance Group, with its  
19 principal place of business located at 12570 Industry Street, Garden Grove, Orange County,  
20 California.

21 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant times,  
22 Defendant GEORGE PATRICK GEMAYEL (“**Gemayel**”) was and currently is an individual  
23 residing in Orange County, California. Plaintiff is informed and believes, and thereon alleges  
24 that, Gemayel is the sole member and manager of APG. APG and Gemayel are sometimes  
25 collectively referred to herein as “**Defendants.**”

26 5. Plaintiff is unaware of the true names and capacities of defendants named herein  
27 as DOES 1 through 20, inclusive, and has therefore sued said defendants by such fictitious  
28 names. Plaintiff will amend this complaint by inserting true names in lieu of the fictitious

1 names, together with apt and proper charging words, when the true names and capacities are  
2 ascertained. Plaintiff is informed and believes and thereon alleges that each of the defendants  
3 designated in this Complaint as a DOE is responsible and liable to Plaintiff in some manner for  
4 the events, happenings, and contentions referred to in this Complaint. All references in this  
5 Complaint to defendants shall be deemed to include DOE defendants.

6 6. Plaintiff is informed and believes and thereon alleges that each defendant named  
7 in this Complaint was at all times herein-mentioned, and now is, the agent and employee of  
8 each of the other defendants herein, and was at all such times acting within the course and scope  
9 of said agency and employment.

10 **ALTER EGO ALLEGATIONS**

11 7. Plaintiff is informed and believes and based thereon alleges that at all times  
12 mentioned herein, Gemayel is the sole and dominating owner and/or member of Defendant APG.

13 8. Plaintiff is informed and believes and based thereon alleges that at all times  
14 mentioned herein, Gemayel dominated and controlled APG. APG was merely an  
15 instrumentality, agent, conduit, or adjunct of Gemayel. As such, there is a “unity of interest” and  
16 ownership such that the individuality and/or separateness of each Defendant has ceased to exist.

17 9. Plaintiff is informed and believes and based thereon alleges that Gemayel  
18 commingled funds and other assets of APG and his funds, as well as other assets, for his own  
19 convenience and to assist in evading creditors and payment obligations.

20 10. Plaintiff is informed and believes and based thereon alleges that Gemayel diverted  
21 funds and other assets of APG to himself for purposes other than corporate use and for purposes  
22 of evading creditors and payment obligations.

23 11. Plaintiff is informed and believes and based thereon alleges that Gemayel treated  
24 the assets of APG as his own.

25 12. Plaintiff is informed and believes and based thereon alleges that Gemayel failed to  
26 adequately capitalize APG and/or transferred assets away from APG.

27 13. Plaintiff is informed and believes and based thereon alleges that Gemayel used  
28 APG as a mere shell, instrumentality, or conduit for a single venture or business. Accordingly,

1 Defendants Gemayel and APG are liable for the acts alleged in this Complaint as the alter ego of  
2 each other.

3 **JURISDICTION AND VENUE**

4 14. Jurisdiction and venue are proper in Orange County, California because the  
5 subject agreements and promises were made and entered into and the parties are situated in  
6 Orange County, California.

7 **FACTUAL ALLEGATIONS**

8 15. Established in 2017, Plaintiff AFC is a manufacturer, distributor and seller of  
9 fiberglass body panels and hardtops for offroad vehicles, utilizing molds from the best designers  
10 in the industry. Because of its commitment to quality and customer satisfaction, Plaintiff has  
11 earned stellar reviews on Google and Yelp and in other forums. APG and Gemayel are  
12 involved in a similar line of business.

13 16. In late 2021, Gemayel approached Plaintiff's owners, Tim Gerwatosky ("**Tim**")  
14 and John Gerwatosky ("**John**") (collectively, the "**Gerwatoskys**"), with a proposal for the  
15 Project and to "team up" to manufacture, distribute and sell hardtop roofs for 2021 and later  
16 model year Ford Bronco vehicles (the "**Hardtops**"), with Gemayel's company, APG, being  
17 responsible for arranging for the manufacturing of the Hardtops and Plaintiff responsible for the  
18 distribution and sale of the Hardtops. During a meeting with the Gerwatoskys at Rooster Café  
19 in Costa Mesa, California, on October 18, 2021, Gemayel asserted that the Hardtops would be  
20 so popular and in-demand that Plaintiff would not be able to handle the manufacturing load.  
21 Feedback from Plaintiff's customer base supported this claim. During that meeting, Gemayel  
22 made the following false promises and misrepresentations to the Gerwatoskys (hereinafter  
23 collectively referred to as the "**October 2021 Representations and Promises**"):

- 24 (a) Gemayel claimed that he had done business in China for years and, therefore, had  
25 the necessary contacts and partners for the Project. However, critically, Gemayel  
26 failed to disclose that he had never previously arranged for any manufacturing in  
27 China.  
28

- 1 (b) Gemayel represented to the Gerwatoskys that if Plaintiff AFC tooled up for and  
2 manufactured OEM quality Hardtops, APG would be able to produce and deliver  
3 1,000 units every two weeks, which would make the project extremely lucrative for  
4 Plaintiff. However, this representation was false, and Gemayel knew at the time that  
5 Defendants would not be able and had no intention to ever deliver such quantities.
- 6 (c) Gemayel represented to the Gerwatoskys that Plaintiff would only need to invest  
7 approximately \$300,000. This representation too was false.
- 8 (d) Gemayel represented that he could supply Hardtops for \$1,000 per unit. Gemayel  
9 was fully aware at the time he made this representation that it was false. Plaintiff  
10 later determined that it would cost \$3,000 to fabricate a Hardtop in United States and  
11 would cost even more if Plaintiff sourced the Hardtops through China.
- 12 (e) Gemayel falsely represented that he had Ford Bronco Hardtop wholesale buyers who  
13 were prepared to purchase 10,000 Hardtops. Gemayel, of course, refused to disclose  
14 the names of the wholesale buyers because they did not exist.
- 15 (f) Gemayel falsely stated that the customer pre-ordered Hardtops would be shipping in  
16 6-7 months from the pre-order launch date. Gemayel knew at the time that his  
17 company, APG, would never be able to have Hardtops shipped within 6-7 months or  
18 at all.
- 19 (g) Gemayel also expressly assured the Gerwatoskys that all manufacturers and  
20 suppliers APG would be using to fabricate and deliver the Hardtops would be “Tier  
21 1” suppliers. That, like so many of Gemayel’s promises and assurances, turned out  
22 to be blatantly false.

23 17. At the time Gemayel approached the Gerwatoskys with above proposal and  
24 promises about the Project, Plaintiff was experiencing growing pains and the idea of not having  
25 to worry about manufacturing the Hardtops was an extremely important selling point, and  
26 Gemayel knew this and, as alleged below, took advantage of this fact to his own personal  
27 advantage. The Gerwatoskys and Gemayel had previously recommended customers to  
28 Gemayel for work including (but not limited to) installation and painting of fiberglass

1 components so the Gerwatoskys trusted and had no reason to doubt the veracity of Gemayel’s  
2 promises and representations.

3 18. Ultimately, in late 2021, based on Gemayel’s salesmanship the October 2021  
4 Representations and Promises, Plaintiff and APG agreed on a “handshake” agreement for the  
5 production, distribution and sale of the Hardtops with Gemayel claiming that he had arranged  
6 for the necessary manufacturing through his contacts in China. Plaintiff and APG agreed that  
7 everything (tooling and profits) would be split 50/50. In the coming months and into early  
8 2022, Plaintiff was marketing the Hardtops to great fanfare, and demand for the Hardtops  
9 exploded. On February 7, 2022, in furtherance of the parties’ handshake agreement, Plaintiff  
10 and APG entered to a Memorandum of Understanding (“MOU”), a true and correct copy of  
11 which is attached hereto as Exhibit 1 and incorporated herein by reference.

12 19. At the beginning of the product development launch for the Project, Plaintiff  
13 provided funds of \$326,500.00 in early 2022, which was more than the \$300,000.00 that  
14 Gemayel had originally promised would be the maximum amount of funds required from  
15 Plaintiff (which APG agreed to match, but never did) to fulfill the obligations of the parties’  
16 agreement. At the same time, Gemayel proposed a 6–7-month lead time for one-piece and  
17 modular Hardtops, respectively, which Gemayel, as alleged above, knew was not possible at the  
18 time he made such representation. Defendants contracted with “Charlie” (a Chinese supplier) to  
19 organize all supply chain and manufacturing of the Hardtops, but who failed to provide the  
20 necessary commitment to the Project. Indeed, between the actions taken by Defendants and  
21 Charlie it is clear that the Project had no hope of actually being performed and completed,  
22 which was, at all material times, known to Gemayel. Sanlixin, the previous Chinese  
23 manufacturer commissioned by Defendants to produce the Hardtops, ultimately could not  
24 properly inject the tops with Plaintiff’s closed cell foam thereby causing warping of the few  
25 Hardtops produced.<sup>1</sup> Ultimately, the Chinese manufacturer suggestion did not fix the issue,  
26 which thereafter led to more broken promises as to when the product will be available.

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<sup>1</sup> According to Sanlixin, Defendants never placed the Hardtop order; otherwise, the entire 1,000 order would have  
been fulfilled in the third and/or fourth quarter of 2023.

1           20.     In addition, the Project was marred by other issues for which Defendants are  
2 responsible, including, without limitation, inaccurate insert design, rubber issues, and paint  
3 issues.

4           21.     From late 2021 through 2022, essentially no Hardtops were shipped. Plaintiff  
5 received a few units in late 2022 from China so that Plaintiff could install them on vehicles and  
6 show them at the SEMA Show, the largest automotive trade show in Las Vegas in early  
7 November 2022.

8           22.     In the meantime, on August 29, 2022, while Plaintiff waited for the Hardtops to  
9 be produced and shipped and relying on the promises and good faith of Defendants, Plaintiff  
10 entered into a formal distribution agreement with APG (the “**Distribution Agreement**”). A  
11 true and correct copy of the Distribution Agreement is attached hereto as **Exhibit 2** and  
12 incorporated herein by reference. The Distribution Agreement pertinently provided as follows:

- 13           • “3.1.2. **Minimum Shipments.** The Initial Minimum Shipments shall be two  
14           hundred fifty (250) units of [Hardtops]. Subsequent shipments, unless agreed to in  
15           advance, shall be not less than one 40-foot seagoing container per shipment,  
16           estimated to carry thirty-six (36) units of [Hardtops].”
- 17           • “3.1.3. **Filling Orders.** Manufacturer will use its **best efforts** [emphasis added] to  
18           fill the accepted orders as promptly as practicable, subject, however, to delays  
19           caused by Government orders or requirements, transportation conditions, labor or  
20           material shortages, strikes, riots, fires, or any other cause beyond [APG’s] control.  
21           In all cases, [APG] will use its best efforts to advise [Plaintiff] in advance of any  
22           inability to make full and timely delivery of any [Hardtops] which [Plaintiff] has  
23           previously ordered.”

24           23.     Over the course of the next year to eighteen (18) months after the Distribution  
25 Agreement was executed, Plaintiff continued to trust Defendants and expected Defendants to use  
26 their best efforts to fill all of Plaintiff’s orders. Unfortunately, as they had known all along,  
27 Defendants had no ability or intention of actually performing under the Distribution Agreement  
28 and filling and shipping Plaintiff’s orders.

1           24.     On March 16, 2023, after the Gerwatoskys expressed frustration with the progress  
2 of the Project, Gemayel sent an email to the Gerwatoskys which contained a production schedule  
3 and travel itinerary (the “**3/16/23 Email**”). In his 3/16/23 Email, Gemayel represented, among  
4 other things, that hundreds of Hardtops would be manufactured and shipped within weeks and  
5 that Gemayel would personally travel to China and “oversee everything” and “[would] not  
6 leave until several containers [of Hardtops] are loaded and in transit.” (emphasis added).  
7 Gemayel’s statements, promises and representations were false. Plaintiff is informed and  
8 believes, and thereon alleges, that Gemayel knew that the “production schedule” was bogus, that  
9 Defendants never intended to comply with any “production schedule.” The 3/16/23 Email was  
10 simply a means to placate the Gerwatoskys and induce them to continue contributing significant  
11 funds to the nonexistent Project. Except for a handful of Hardtops delivered in late 2022 and in  
12 April 2023, Plaintiff did not receive any Hardtops. However, based on the false assurances and  
13 promises in the 3/16/23 Email, Plaintiff made additional, significant payments to Defendants,  
14 including, without limitation, approximately \$110,000 in April 2023, nearly \$340,000 at the end  
15 of May 2023 and approximately \$300,000 in September 2023.

16           25.     Thereafter, it appears APG and the Chinese supplier (Charlie) found a new  
17 manufacturer at the beginning of November 2023, who allegedly promised a start date of  
18 December 25, 2023. Not surprisingly, when that date arrived, and instead of having begun  
19 production, the new manufacturer apparently had only just started looking at the project to  
20 consider taking it on. Prior to this, Gemayel represented to the Gerwatoskys that the  
21 manufacturer was in place and prepared to manufacture all of the requested Hardtops, and things  
22 would move quickly after December 25, 2023. This representation was blatantly false. In  
23 reliance on Defendants’ representation, Plaintiff had a press release prepared and sent to its  
24 customers with newly adjusted timelines that were given to them by Gemayel which, once again,  
25 were completely inaccurate. From January to the end of February 2024, there was very little  
26 communication with Chinese supplier, Charlie.

1           26.     In March 2024, Gemayel again made false representations to the Gerwatoskys for  
2 the sole purpose of placating them and inducing Plaintiff to pay additional sums to Gemayel and  
3 APG, including the following (hereinafter the “**March 2024 Representations and Promises**”):

- 4           (a) On March 25, 2024, Gemayel sent a text message to the Gerwatoskys stating that he  
5 was in China and had just shaken hands with the chairman of a mass production  
6 company and that mass production of Hardtops would commence within forty (40)  
7 days from receiving the necessary tooling;
- 8           (b) On March 27, 2024, Gemayel went so far as to drive to Plaintiff’s shop to debrief the  
9 Gerwatoskys on his alleged China trip and to request an additional \$440,000 for  
10 tooling (half of which Defendants should have paid) and \$69,640.00 for “Charlie’s”  
11 past charges and expenses.
- 12           (c) Plaintiff is informed and believes, and thereon alleges, that the March 2024  
13 Representations and Promises were false. Plaintiff is informed and believes, and  
14 thereon alleges, that Gemayel never traveled to China and arranged for mass  
15 production of the Hardtops.
- 16           (d) Based on the March 2024 Representations and Promises, the Gerwatoskys caused  
17 Plaintiff to pay Defendants an additional \$509,640.00.

18           27.     Over the course of approximately two (2) years from February 2022 through  
19 March 2024, Plaintiff paid Defendants nearly \$4.4 million to produce and ship hundreds of  
20 Hardtops in quantities identified and types described in various APG invoices. The following is  
21 a breakdown of the payments made by Plaintiff to APG:

- 22           1. APG Invoice 1505
- 23                 • 2/15/22: \$326,500
  - 24                 • 5/27/22: \$68,566.18
- 25           2. APG Invoice 1577
- 26                 • 8/31/22: \$238,000
- 27           3. APG Invoice 1576
- 28                 • 8/31/22: \$502,248.63
  - 2/21/23: \$251,124.32

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- 4. APG Invoice 1601
    - 10/20/22: \$1,140,470.06
    - 2/21/23: \$570,235.03
  - 5. Wiper Washer Assembly PO
    - 4/27/23: \$54,662.40
  - 6. Invoice 1640 - 12 Air Freight Tops (Useless tops)
    - 4/24/23: \$50,000
    - 4/25/23: \$14,619.36
  - 7. APG Invoice 1671
    - 5/31/23: \$339,772
  - 8. APG Invoice 1625
    - 9/11/23: \$250,000
  - 9. APG Invoice 1672
    - 9/15/23: \$55,000
  - 10. New Tooling Charges: \$509,640
    - 3/27/24: \$500,000
    - 3/28/24: \$9,640
- Total: \$4,370,837.98**

28. All Plaintiff received for the millions it paid to APG was a handful of hardtops in late 2022 for the Las Vegas car show which had quality issues and twelve Hardtops in April 2023 which were completely defective and useless as a result of warping caused by pressure from injected foam. To add insult to injury, on or about May 31, 2023, Gemayel thereafter self-servingly advised the Gerwatoskys that he was out of funds, and that Plaintiff had to pay an additional approximate \$339,772.00, to get the foam injection tooling necessary to correct the issue with the Hardtops, which Gemayel then promised would be finished in thirty (30) days; even that representation was not accurate as it took approximately ninety (90) days.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants converted and misappropriated significant amounts of the nearly \$4.4 million Plaintiff paid to Defendants. On or about August 31, 2022, Plaintiff paid Defendants \$502,248.63 pursuant to APG's invoice

1 no. 1576. At the time, Defendant Gemayel was being sued by Greenkraft, Inc., for fraud and  
2 other claims.<sup>2</sup> Shortly after Plaintiff made the \$502,248.63 payment, Gemayel settled the  
3 Greenkraft lawsuit. Plaintiff is informed and believes, and thereon alleges, that Gemayel used  
4 the \$502,248.63 received from Plaintiff to settle Greenkraft’s claims. Further, on or about May  
5 31, 2023, Plaintiff paid Defendants \$339,772.00 (half of which should have been paid by  
6 Defendants per the parties’ agreement) pursuant to invoice no. 1671. Immediately after  
7 receiving that payment, Plaintiff is informed and believes, and thereon alleges, that Defendants  
8 purchased one to two Ford Bronco vehicles and funded the development and inventory of his  
9 Bronco “Prorunner” product line (after claiming they had no money to fund their 50% share of  
10 the Hardtop Project) using the \$339,772.00 received from Plaintiff. Finally, on or about March  
11 15, 2024, Gemayel admitted that Defendants retained \$150,000 of Plaintiff’s funds to pay for  
12 Defendants’ own operating expenses. Plaintiff is informed and believes, and thereon alleges,  
13 that Defendants have converted and used other payments received from Plaintiff to fund  
14 Defendants’ own product line and other items for the sole benefit of Defendants.

15 30. Plaintiff, through the Gerwatoskys, repeatedly and consistently tried to  
16 communicate with Defendants as to all of the above-described issues, which Defendants  
17 routinely failed to substantively respond to in breach of section 3.1.3. of the Distribution  
18 Agreement. Plaintiff attempted to in good faith resolve the aforementioned issues to no avail.  
19 The line of communication deteriorated so much so that Defendants began concealing  
20 information from Plaintiff. For example, after late October/November 2023, Defendants advised  
21 Plaintiff that the Chinese manufacturer Defendants had suggested went bankrupt. However,  
22 Defendants refused to release the Chinese manufacturer’s name or the name of the supply chain  
23 company that was in charge for purposes of verification. Plaintiff is informed and believes, and  
24 thereon alleges, that Defendants refused to provide such information because they had never  
25 placed the order for the Hardtops that Plaintiff paid for.

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<sup>2</sup> The Greenkraft litigation was commenced in 2018 and styled *Greenkraft, Inc. v. George Patrick Gemayel and Gem Works, LLC*, Orange County Superior Court Case No. 30-2018-00979579-CU-FR-CJC.



1 would never be manufactured and delivered. Plaintiff reasonably relied on Defendants'  
2 Representations and Promises in making the payments to Defendants described above. Plaintiff  
3 had no reason to suspect that Defendants never intended to perform the Representations and  
4 Promises described above.

5 37. As a proximate result of the false Representations and Promises by Defendants,  
6 Plaintiff has been damaged in an amount to be proven at trial, which amount is well in excess of  
7 \$4,000,000, including, without limitation, lost future profits, funds expended by Plaintiff  
8 totaling nearly \$4.4 million, irreparable reputational damage, and demands by Plaintiff's  
9 customers for return of their deposits for Hardtop orders.

10 38. Plaintiff is informed and believes, and thereon alleges, that Defendants  
11 fraudulently, intentionally and maliciously engaged in the foregoing conduct with conscious  
12 disregard of Plaintiff's rights and interests. Accordingly, Plaintiff is entitled to recover an  
13 award of punitive damages pursuant to *Civil Code* §3294.

14 **SECOND CAUSE OF ACTION**

15 **(Breach of Contract Against Defendants APG, Gemayel and DOES 1-20)**

16 39. Plaintiff re-alleges and incorporates by reference each and every paragraph  
17 above, as though fully set forth in full.

18 40. Plaintiff and APG entered into the MOU and thereafter the Distribution  
19 Agreement. Pursuant to the MOU and the Distribution Agreement, Plaintiff placed orders for  
20 hundreds of Hardtops and paid Defendants for those orders. Further, the parties agreed that  
21 APG would equally share the cost for tooling and other items. Pursuant to invoices issued by  
22 APG, Plaintiff paid nearly \$4.4 million for orders for Hardtops, tooling and other items.

23 41. Plaintiff has performed each, every and all of the obligations and duties on its  
24 part to be performed under the terms of the MOU and Distribution Agreement described above,  
25 including but not limited to regarding payment of all agreed amounts due, except as to any  
26 obligation that has been excused due to the refusal or nonperformance on the part of  
27 Defendants.

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**FOURTH CAUSE OF ACTION**

**(Conversion Against Defendants APG, Gemayel and DOES 1-20)**

48. Plaintiff re-alleges and incorporates by reference each and every paragraph above, as though fully set forth in full.

49. As alleged hereinabove, on or about August 31, 2022, Plaintiff paid Defendants \$502,248.63 pursuant to APG's invoice no. 1576. At the time, Defendant Gemayel was being sued by Greenkraft, Inc., for fraud and other claims. Shortly after Plaintiff made the \$502,248.63 payment, Gemayel settled the Greenkraft lawsuit. Plaintiff is informed and believes, and thereon alleges, that Gemayel used the \$502,248.63 received from Plaintiff to settle Greenkraft's claims and for other personal purposes. Further, on or about May 31, 2023, Plaintiff paid Defendants \$339,772.00 pursuant to invoice no. 1671. Immediately after receiving that payment, Plaintiff is informed and believes, and thereon alleges, that Defendants used the \$339,772.00 to purchase two or three Ford Bronco vehicles (after claiming they had no money to fund their 50% share of the Hardtop Project). Finally, on or about March 15, 2024, Gemayel admitted that Defendants retained \$150,000 of Plaintiff's funds to pay for Defendants' own operating expenses. Plaintiff is informed and believes, and thereon alleges, that Defendants have used other payments received from Plaintiff to fund Defendants' own product line and other items for the sole benefit of Defendants.

50. As a result, Defendants had no right to keep the payments described in the immediately preceding paragraph and use the funds for their own benefit as alleged. Defendants' failure to return such moneys to Plaintiff constitutes conversion.

51. As a proximate result of Defendants' conversion, the total sum of \$990,020.63 is due, owing and unpaid, plus interest at the legal rate.

52. Plaintiff is informed and believes, and thereon alleges, that Defendants fraudulently, intentionally and maliciously engaged in the foregoing conduct with conscious disregard of Plaintiff's rights and interests. Accordingly, Plaintiff is entitled to recover an award of punitive damages pursuant to *Civil Code* §3294.

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**FIFTH CAUSE OF ACTION**

**(Money Had and Received Against Defendants APG, Gemayel and DOES 1-20)**

53. Plaintiff re-alleges and incorporates by reference each and every paragraph above, as though fully set forth in full.

54. Within the last three (3) years, Defendants, and each of them, received money from Plaintiff totaling \$4,370,837.98 that was intended for the benefit of Plaintiff. That money was not used for the benefit of Plaintiff, and Defendants, and each of them, have not returned the money to Plaintiff.

55. Defendants, and each of them, are indebted to Plaintiff and obligated to return to Plaintiff all monies received for Plaintiff's benefit in the amount of \$4,370,837.98.

56. No part of said sum has been paid to Plaintiff, despite Plaintiff's demands. As such, a sum of \$4,370,837.98 is now due, owing and unpaid, plus interest at the legal rate.

**SIXTH CAUSE OF ACTION**

**(Violation of *Business and Professions Code* Section 17200 Against Defendants APG, Gemayel and DOES 1-20)**

57. Plaintiff re-alleges and incorporates by reference each and every paragraph above, as though fully set forth in full.

58. As discussed above, Defendants APG and Gemayel, and Does 1-20, engaged in wrongful acts, omissions, and violations of law that constitute unfair business practices as defined by *Business and Professions Code* § 17200, et seq., as they are unlawful, fraudulent and/or unfair. Defendants committed fraudulent acts against Plaintiff and members of the public, including Plaintiff's customers, by, among other things, making the Representations and Promises.

59. Defendants never intended to perform the above Representations and Promises and knew that, in reliance on Defendants' Representations and Promises, Plaintiff would be marketing the Hardtops to the public and taking deposits from customers for Hardtops. In doing so, Defendants violated, *inter alia*, *Civil Code* §§ 1572, 1709 and 1701 and *Commercial Code* §§ 1103 and 1304. Defendants' conduct deceived the public in that Defendants knew Plaintiff

1 would reasonably rely on Defendants' false promises in marketing the Hardtops to the public  
2 and accepting payments from customers for the Hardtops.

3 60. Plaintiff has suffered injury in fact caused by Defendants' violation of its legally  
4 protected interests. Plaintiff has suffered significant monetary harm as result of Defendants'  
5 unlawful, fraudulent, and/or unfair practices, including, without limitation, lost profits and sales,  
6 funds expended by Plaintiff totaling nearly \$4.4 million, irreparable reputational damage, and  
7 demands by Plaintiff's customers for return of their deposits for Hardtop orders.

8 61. Plaintiff seeks all appropriate forms of relief against Defendants' unfair business  
9 practices, including, without limitation, restitution, and an accounting and a constructive trust  
10 over money in Defendants' accounts and money Defendants made from converting and  
11 misappropriating Plaintiff's funds.

12 **SEVENTH CAUSE OF ACTION**

13 **(Accounting Against Defendants APG, Gemayel and DOES 1-20)**

14 62. Plaintiff re-alleges and incorporates by reference each and every paragraph  
15 above, as though fully set forth in full.

16 63. Plaintiff is entitled to an accounting of the monies paid to Defendants under the  
17 agreements described above for the production and shipping of the Hardtops.

18 64. An accounting is made necessary by reason of, among other things, Defendants'  
19 failure to produce the Hardtops ordered by Plaintiff despite receiving millions of dollars from  
20 Plaintiff and Defendants' conversion of funds paid by Plaintiff.

21 65. Accordingly, Plaintiff demands a full accounting from Defendants of, among  
22 other things, the funds they received from Plaintiff in connection with the Project to  
23 manufacture and produce the Hardtops.

24 ///

25 ///

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27 ///

28 ///

1           **WHEREFORE**, Plaintiff prays for judgment against the Defendants and Does 1  
2 through 20, and each of them, as follows:

3           On the First Cause of Action:

- 4           1.     For compensatory damages according to proof at trial;  
5           2.     For restitution according to proof at trial;  
6           3.     For punitive damages;

7           On the Second Cause of Action:

- 8           1.     For compensatory damages according to proof at trial;  
9           4.     For restitution according to proof at trial;  
10          5.     For attorneys' fees;

11          On the Third Cause of Action:

- 12          6.     For compensatory damages according to proof at trial;  
13          7.     For restitution according to proof at trial;

14          On the Fourth Cause of Action:

- 15          8.     For compensatory damages according to proof at trial;  
16          9.     For restitution according to proof at trial;  
17          10.    For punitive damages;

18          On the Fifth Cause of Action:

- 19          11.    For compensatory damages according to proof at trial;  
20          12.    For restitution according to proof at trial;

21          On the Sixth Cause of Action:

- 22          13.    For compensatory damages according to proof at trial;  
23          14.    For restitution according to proof at trial;  
24          15.    For a constructive trust;

25          On the Seventh Cause of Action:

- 26          16.    For an accounting;

27          As to All Causes of Action:

- 28          17.    For costs of suit;

**MANFREDI, LEVINE, ECCLES, MILLER & LANSON, APC**  
3262 E. THOUSAND OAKS BLVD., SUITE 200  
WESTLAKE VILLAGE, CALIFORNIA 91362-3400

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- 18. For reasonable attorneys' fees; and
- 19. For all such other and further relief as the court may deem proper.

Dated: July 29, 2024

MANFREDI, LEVINE, ECCLES, MILLER & LANSON, APC

By:



Don E. Lanson  
David V. Hadek  
Attorneys Plaintiff ADVANCED  
FIBERGLASS CONCEPTS, a  
California corporation

## **Exhibit 1**

## Memorandum of Understanding

This Memorandum of Understanding ("MOU") is dated as of the 7<sup>th</sup> day of February 2022, is made and entered into by and among APG, LLC ("APG") on the one hand, and Advanced Fiberglass Concepts, LLC ("Advance") on the other. This MOU is to set forth the nonbinding understanding between the parties hereto. APG and Advance may hereinafter be collectively referred to as "Parties" and individually as "Party".

### RECITALS

**WHEREAS**, APG is a California limited liability company located at 12570 Industry Street, Garden Grove, California 92841. APG is in the business of vehicle modifications and manufacturing.

**WHEREAS**, Advance is a California limited liability company located at 2972 Century Place, Costa Mesa, California 92626. Advance is in the business of fiberglass manufacturing.

**WHEREAS**, the Parties intend to enter into an agreement wherein APG will manufacture aftermarket Bronco Hardtop parts for the 2021+ Ford Bronco vehicles ("Hardtop"). This Hardtop will be sold by Advance through its retail channels and the profits will be split equally 50-50. Moreover, Advance will pay its share of the engineering, design, and overhead in the manufacture of the Hardtop. This agreement will be drafted at a later time once the first prototype Hardtop has been completed and validation is complete, at which point the Parties will have final confirmed per part pricing and local delivery and fulfillment details resolved.

**WHEREAS**, the following numbered paragraphs reflect the Parties' understanding of the matters described but are not legally binding and do not impose an enforceable obligation on either Party to negotiate or conclude an agreement between one another on such terms. This is not a complete statement of all terms and conditions of the proposed transaction but provides a basis for further negotiations.

**NOW THEREFORE**, the parties agree as follows:

#### Section No. 1 PURPOSE AND NON-BINDING NATURE OF MOU

This MOU merely sets forth the intentions and current understandings of the Parties on the first above written date with respect to the vision of a possible joint venture business scheme by and between APG and Advance with respect to the manufacture and sale of the Bronco Hardtop. This MOU is deemed to be non-binding between the Parties except Section No. 2 herein, and under no circumstances will this MOU obligate APG or Advance to proceed further or enter into any of the potential definitive agreements by and between the Parties, which are expected to include a joint venture agreement or other legally binding contract ("Definitive Agreement"). The Parties will work together to structure the transactions in a manner that is tax-efficient and mutually beneficial. Each of the Parties, in their respective sole discretion, shall be entitled to make a decision as to whether or not it will proceed with further negotiations with the other Party under this MOU and the other Party irrevocably and unconditionally agrees to the exercise of such sole discretion. In no event shall any Party be entitled to claim any losses, damages, costs, expenses or whatsoever

arising out of failure to proceed with any Definitive Agreement or breach of pre-contractual good faith in connection with the Definitive Agreements.

## **Section No. 2 COVENANTS AND RESTRICTIONS**

By signing this MOU, the Parties agree that the following lettered paragraphs will constitute a legally binding and enforceable agreement between us. In consideration of the significant expenses that each Party will incur in pursuing a Definitive Agreement with respect to the purposes described herein and mutual undertakings described, we agree as follows:

(a) **Good-Faith Negotiations.** The Parties shall negotiate in good faith and make our best efforts to arrive at an agreement with respect to the purposes described herein at the earliest practicable time.

(b) **Expenses.** The Parties shall be solely responsible for expenses that each incurs in connection with the negotiations for the purposes described herein.

(c) **Termination.** Each Party shall have the right to terminate this MOU if no agreement with respect to the purposes described herein is reached by April 1<sup>st</sup> 2022. Following termination, neither party shall have any obligations under this MOU, other than the obligations assumed by each of the Parties under that certain Mutual Nondisclosure Agreement dated as of February 2<sup>nd</sup>, 2021 relating to "Confidential Information" (as defined in such Mutual Nondisclosure Agreement) exchanged by the Parties in the course of negotiations with respect to the purposes described herein.

(d) **Binding Effect.** This MOU is intended to be a confirmation of interest between the parties in pursuing negotiations for a Definitive Agreement based on the terms hereof and, except for the lettered paragraphs hereof, shall not constitute a binding agreement between the parties hereto. Neither party intends, by setting forth in this Memorandum of Understanding the provisions of a possible transaction, to create for itself or any other person, any legally binding obligation of liability. No subsequent oral agreement or conduct of the parties, including partial performance, shall be deemed to impose such obligation or liability. No agreement shall be binding unless and until each party has reviewed and approved (in its sole discretion) a written Definitive Agreement incorporating all the terms, conditions, and obligations of the parties; has had such agreement reviewed by legal counsel; and has duly executed and delivered such agreement. The legal rights and obligations of each party shall be only those that are set forth in the written Definitive Agreement.

(e) **Confidentiality.** The Parties agree that, without the other's prior written consent, each Party shall not disclose and keep confidential the terms of this MOU and the fact that discussions or negotiations are taking place and the contents thereof other than their respective directors, officers, employees and advisors (including but not limited to accountants and lawyers) who have confidentiality obligations, except as required by legal, regulatory or stock exchange requirements.

(f) **Cooperation with Respect to Public Statements.** Neither Party (including but not limited to its subsidiaries and affiliates) shall make public announcements and statements without

the prior approval of the other Party as to the content of this MOU. Such approval shall not be unreasonably withheld or delayed, in the event that the Party proposing to make such an announcement is required to do so by a legal, regulatory or stock exchange requirement.

(g) Entire Agreement. This MOU sets forth the entire agreement between the Parties with respect to the subject matter contemplated herein and the terms and conditions in this MOU supersede all prior oral or written understandings between the Parties with respect thereto. Any modifications of this MOU shall be in writing and signed by authorized representatives of the Parties.

(h) Non-Assignment. Each Party will not have the right to assign this MOU, any Definitive Agreements, and the rights and obligations hereunder, to any third parties or any of its existing or future subsidiaries, unless first obtaining the written consent of the other Party. Upon such assignment, each Party hereby agrees that such third party or subsidiary shall assume all of its rights and obligations hereunder as if such third party or subsidiary had been the original party hereunder, and neither Party shall be relieved of any rights and obligations hereunder absent written consent of the other Party.

(i) Governing Law and Disputes Resolution. This MOU shall be governed by, and construed in accordance with, the laws of the State of California, in the County of Orange.

IN WITNESS WHEREOF, the Parties have executed this MOU on the date first above written.

APG, LLC

By: George Patrick  
Name: George Patrick  
Title: Owner

ADVANCED FIBERGLASS CONCEPTS, LLC

By: [Signature]  
Name: Jim Cross  
Title: CEO

## **Exhibit 2**

## DISTRIBUTION AGREEMENT

THIS DISTRIBUTION AGREEMENT (“Agreement”) is made on Aug 29, 2022, 2022 by and between APG, LLC, a California limited liability company (“Manufacturer”) and **ADVANCED FIBERGLASS CONCEPTS, LLC**, a California limited liability company (“Distributor”).

### RECITALS:

**WHEREAS**, Manufacturer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California, with power to own property and carry on its business as it is now being conducted, and has its principal office and place of business at 12570 Industry Street, Garden Grove, California 92841;

**WHEREAS**, Manufacturer is engaged in the development, manufacture and sale of aftermarket automotive parts, components and accessories, including without limitation, the Products (as defined below), and other current and future products of a related use and nature from time-to-time manufactured and sold under trade names and trademarks owned by Manufacturer;

**WHEREAS**, Distributor is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of California, with power to own property and carry on its business as it is now being conducted and as contemplated by this Agreement, and has its principal office and place of business at 2972 Century Place, Costa Mesa, California 92626;

**WHEREAS**, Distributor represents that it possesses the requisite technical and support facilities, and the financial capability to promote the sale and use of the Products developed and manufactured by Manufacturer and is desirous of developing demand for, distributing and selling such products on an exclusive basis in the Territory defined in this Agreement;

**WHEREAS**, Manufacturer is desirous of having Distributor develop demand for, distribute and sell the Products in the Territory on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants contained in this Agreement, and intending to be legally bound, the parties agree as follows:

### ARTICLE 1. DEFINITIONS

1.1. **“Agreement”**. This Distribution Agreement between Manufacturer and Distributor.

1.2. **“Initial Minimum Shipment.”** The minimum allowable volume of the first shipment made pursuant to orders Manufacturer receives for the Products from Distributor. This initial order must be at least two-hundred and fifty (250) units of Product.

1.3. **“Manufacturer”.** APG, LLC, a California limited liability company, or its successor or assignee.

1.4. **“Minimum Shipments”.** Subsequent to the Initial Minimum Shipment, the minimum allowable volume of shipments made pursuant to orders Manufacturer receives for the Products from Distributor. Unless agreed to in advance, these shipments shall each be of least one 40-foot seagoing container, estimated to carry thirty-six (36) units of Product.

1.5. **“Product” or “Products”.** Aftermarket removable hardtop roof for the 2021 and later model year Ford Bronco vehicles developed and manufactured by Manufacturer.

1.6. **“Term”.** The meaning specified in Section 2.12 of this Agreement.

1.7. **“Distributor”.** Advanced Fiberglass Concepts, LLC, a California limited liability company.

1.8. **“Territory”.** Worldwide, as may be subsequently modified pursuant to the terms of this Agreement or with the mutual consent of the parties to this Agreement.

## **ARTICLE 2. DISTRIBUTORSHIP**

### **2.1. Exclusive Appointment.**

2.1.1. **Appointment.** Manufacturer appoints Distributor as the exclusive distributor for the wholesale distribution and retail sale of Products within the Territory. Notwithstanding the foregoing, Manufacturer reserves the right to distribute and sell, directly or indirectly, any of the Products within the Territory, and to use the same in connection with Manufacturer’s other products and services, including without limitation, Manufacturer’s Bronco ProRunner project.

2.1.2. **No Additional Appointment to be Made in Territory.** During the continuance of, and subject to the terms of this Agreement, Manufacturer shall not appoint any other or different person, firm, or corporation to distribute and sell Products in the Territory.

2.1.3. **New Products.** Manufacturer shall give Distributor the first right of refusal to carry and offer any and all new Products of Manufacturer in the Territory on an exclusive basis, subject to Manufacturer and Distributor reaching an agreement on the pricing, terms and minimum volume requirements applicable to these Products.

### **2.2. Exclusion.** Distributor may not, without the prior written consent of Manufacturer,

use the Products, or distribute or sell the Products to a third party, knowing that the third party intends to use the Products or any part of the Products in competition with Manufacturer's products and services (including, but not limited to, Manufacturer's Bronco ProRunner project), or to use or sell the Products outside of the Territory.

2.3. **Acceptance.** Distributor accepts the appointment to develop demand for and distribute and sell the Products within the Territory and will make all sales hereunder in accordance with this Agreement.

2.4. **Distributor's Efforts, Facilities, and Personnel.**

2.4.1. **Best Efforts.** Distributor will use its best efforts to promote demand for, distribute and sell the Products and will maintain adequate facilities, as well as adequate sales and field engineering personnel, for this purpose.

2.4.2. **Sales Volume Performance.** Distributor and Manufacturer shall, in good faith, determine a mutually agreeable minimum order requirement for Distributor on or before March 31, 2023, and thereafter Distributor shall use its best efforts and maintain sufficient working capital and demand for the Products to attain the minimum order requirement.

2.4.3. **Place of Business.** Distributor shall maintain a place of business and service department satisfactory to Manufacturer at all times, and Manufacturer shall have the right at all reasonable times during business hours to inspect Distributor's place of business and service department.

2.5. **Dealers, Salesmen, or Other Representatives.**

2.5.1. **Appointment of Dealers, Salesmen, or Other Representatives.** Distributor shall work and develop the Territory to the reasonable satisfaction of Manufacturer, and in doing so shall appoint dealers, salesmen, or other representatives to sell the Products.

2.5.2. **Agreements with Dealers, Salesmen, or Other Representatives.** Distributor shall file with Manufacturer a copy of each agreement entered into with dealers, salesmen, and other representatives defining the territory to be served, which agreements shall be on forms reasonably acceptable to Manufacturer.

2.5.3. **Notice of Termination.** Upon expiration or prior to termination of any such agreement for any cause, Distributor shall furnish Manufacturer with notice of the termination in order that Manufacturer's field personnel records will be up to date at all times.

2.6. **Delivery Service.** Distributor shall contract for or provide and maintain at its own expense an efficient delivery service for all of the Products to be used or delivered in the Territory, in accordance with instructions issued from time-to-time by Manufacturer.

2.7. **Technical Support.** Manufacturer may (but shall not be obligated) provide Distributor with information regarding Product application and installation, and any other

technical support and information as is available to Manufacturer, including, but not limited to, one copy of Product information, documentation, published manuals and media regarding the proper techniques for use and installation of the Products, each of which shall be on an authorized form or in an authorized medium suitable for duplication by Distributor. All documentation will be provided in the English language. Any costs of translation will be the responsibility of Distributor.

**2.8. Customer References.** Manufacturer and Distributor agree to exchange wholesale and end-user customer references, testimonials, completed project data, photographs, video tapes, and other materials useful in the promotion of the Products from time-to-time as these materials become available to Manufacturer or Distributor.

**2.9. Proprietary Rights and Confidential Information.**

**2.9.1. Ownership.** Manufacturer owns or controls, either outright or by virtue of licenses, substantial proprietary rights including trade secrets, trade names, trademarks, copyrights, licenses or sublicenses, and may also own or be licensee of patents or patents pending, all of which relate to the Products. Distributor shall not acquire by virtue of this Agreement any ownership interest whatsoever in Manufacturer's proprietary rights. Distributor covenants and agrees to diligently protect the proprietary rights of Manufacturer and shall not knowingly participate in or cause any infringement or other violation of these rights.

**2.9.2. Ownership of Marks.** Distributor acknowledges that Manufacturer is the exclusive owner of all right, title and interest in and to Manufacturer's registered and unregistered marks, which include, without limitation, the names "Automotive Performance Group", "APG" and certain other service marks, trademarks, trade dress and other commercial related symbols of Manufacturer. Distributor is not authorized to and shall refrain from entering into any relationship with, or sponsorship or endorsement arrangement concerning, any third party individual or entity where such relationship results in, involves, or purports to permit, the use or display by such third party of Manufacturer's name, or in connection with the offering or promotion of such third party's products, services, programs, beliefs or causes. Distributor is not authorized and agrees not to register any internet domain name that includes the terms "Automotive Performance Group", "APG" unless it has been authorized in writing by Manufacturer.

**2.9.3. Protection of Confidential Information.** The parties acknowledge that in the course of business under the terms of this Agreement, each may request access to confidential information of the other party, including without limitation, proprietary customer lists, technical information, financial information, marketing plans and strategy, and trade secrets. The parties expressly acknowledge and agree that this confidential information shall be protected and shall not be used, transferred, sold, or disclosed to any third party and shall not be used by either party for its gain through competition with the other party.

**2.9.4. Enforcement.** Notwithstanding the provisions of this Agreement regarding arbitration, in the event either party breaches any of the covenants and agreements contained in this Section 2.11, the aggrieved party shall have the right to commence legal proceedings and shall have the right, in addition to any action for damages, to seek specific performance (including

injunctive relief) of the covenants and agreements contained in this Section 2.11, without the requirement of posting a bond. In any equitable action, the prevailing party shall be entitled to collect its court costs and reasonable attorney's fees.

2.9.5. **Duration of Provisions.** The covenants and agreements contained in this Section 2.11 shall remain in effect following the termination or expiration of the Term of this Agreement.

2.10. **Term.** Unless earlier terminated as provided in this Agreement, this Agreement and the appointment of Distributor under this Agreement shall continue in full force for a period of one (1) year from the date of this Agreement and shall automatically renew for successive one (1) year periods, unless either party has given the other written notice of its election to terminate this Agreement at least ninety (90) days prior to the end of the then-current term.

### **ARTICLE 3. ORDERS AND OPERATIONS**

#### **3.1. Orders.**

3.1.1. **Procedures.** All orders Manufacturer receives for the Products from Distributor must be in writing and issued directly to Manufacturer, and all such orders are subject to acceptance by Manufacturer. If Manufacturer accepts an order, Manufacturer will notify Distributor of its acceptance by delivering confirmation of the order by way of an invoice which shall describe Manufacturer's estimated pricing for the order and other pertinent terms of sale. Manufacturer shall not be obligated to commence manufacturing for an order unless and until Distributor delivers the required non-refundable deposit described in Manufacturer invoice.

3.1.2. **Minimum Shipments.** The Initial Minimum Shipment shall be two hundred fifty (250) units of Product. Subsequent shipments, unless agreed to in advance, shall be not less than one 40-foot seagoing container per shipment, estimated to carry thirty-six (36) units of Product.

3.1.3. **Filling Orders.** Manufacturer will use its best efforts to fill the accepted orders as promptly as practicable, subject, however, to delays caused by Government orders or requirements, transportation conditions, labor or material shortages, strikes, riots, fires, or any other cause beyond Manufacturer's control. In all cases, Manufacturer will use its best efforts to advise Distributor in advance of any inability to make full and timely delivery of any Products which Distributor has previously ordered.

3.1.4. **Suggested Sales Price on Resale of Products.** Manufacturer shall furnish to Distributor a current list of suggested resale prices for the Products which Distributor has agreed to sell. However, Distributor is under no obligation to sell the Products at the prices specified in the price list nor any other price suggested by Manufacturer.

3.1.5. **Report of Sales.** In order for Manufacturer to have a complete record of all Products sold, Distributor shall furnish Manufacturer monthly, or at such intervals as Manufacturer

and Distributor shall otherwise agree, a report of all sales of the Products in the Territory.

3.1.6. **Change of Specifications.** Manufacturer reserves the right to change the specifications of any Product at any time without notice to Distributor. If any such change is made, Manufacturer may, but shall not be obligated to, make the change on any Products shipped thereafter on the orders of Distributor. In any case, Manufacturer shall not be obligated to make any change to any Products previously shipped to Distributor.

3.2. **Distributor Representations and Covenants.** Distributor represents, warrants and covenants:

3.2.1. That in rendering its sales and carrying out its other duties under this Agreement it will neither undertake nor cause or permit to be undertaken any activity that to its knowledge is illegal under the laws of the Territory or of the United States of America.

3.2.2. That it will make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect the transactions performed by it under this Agreement.

3.2.3. That it will abide by all applicable laws, ordinances, regulations, and guidelines including, without limitation, local, state and federal laws and regulations relating to all sales and conduct of Distributor hereunder.

3.2.4. That Distributor's advertising and promotion of the Products shall be completely factual and conform to the highest standards of lawful, ethical advertising.

3.2.5. That in all dealings with customers, potential customers, dealers, retailers, end-users, vendors, public officials, governmental agencies or entities, Manufacturer and the general public, Distributor shall adhere to the highest reasonable standards of business behavior, honesty, integrity, fair dealing and ethical conduct.

3.2.6. That Distributor shall refrain from any business or advertising practice which may expose Manufacturer to legal action or liability or adversely affect the reputation or image of Manufacturer.

3.3. **Payment Terms.**

3.3.1. **Pricing.** Distributor shall pay Manufacturer for the Products in accordance with Manufacturer's pricing as described on the acceptance invoice for Distributor's particular order(s). Pricing is subject to change while the Products for particular order(s) are being manufactured based on then-current cost of materials, freight and other factors which impact the cost of manufacturing. Manufacturer shall notify Distributor of any changes to pricing on pending order(s) by way of updated invoices.

3.3.2. **Terms of Payment.** Distributor shall pay Manufacturer in accordance with the terms of Manufacturer's invoice. Manufacturer shall not be obligated to commence manufacturing for an order unless and until Distributor delivers the required non-refundable deposit described in Manufacturer's invoice. Thereafter, upon completion of manufacture and shipment of the ordered Products to Manufacturer's facilities, Distributor shall be required to pay fifty (50%) of the balance remaining. Payment in satisfaction of applicable invoice(s) is due in full prior to Manufacturer's release and delivery of the Products to Distributor. All deposits and payments are non-refundable.

### 3.4. **Delivery.**

3.4.1. **Free on Board (“FOB”).** All Products ordered by Distributor shall be delivered free on board at Manufacturer’s facility (Garden Grove, California) or applicable port of entry, as described in Manufacturer’s invoice, at which time title and risk of loss or damage to Products shall pass to Distributor.

3.4.2. **U.S. Import and Port-of-Entry Customs Coordination.** If necessary, Manufacturer and Distributor shall cooperate fully in arranging U.S. import authority and port-of-entry customs clearing. The cost of U.S. import approval shall be borne by Manufacturer. All port-of-entry costs including, but not limited to, customs duties, fees and/or customs brokerage shall be the responsibility of Manufacturer.

## **ARTICLE 4. RETURNS, WARRANTY, INSURANCE AND INDEMNIFICATION**

4.1. **Return of Products.** Unless authorized or permitted by Manufacturer in advance, Manufacturer shall not be obligated to accept from Distributor any Products returned, nor to make any exchange of the Products, nor to credit Distributor for the Products, regardless of reason or cause thereof. Distributor shall not make any claim against Manufacturer for any damaged or defective Products.

4.2. **No Warranty.** All Products are sold on an “AS IS, WHERE-IS” basis without representations or warranties of any kind. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MANUFACTURER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW, EQUITY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

4.3. **Common Carriers Agents of Distributor.** Whenever Manufacturer delivers or causes to be delivered to a common carrier any Products ordered by Distributor, whether the particular carrier shall have been designated in the shipping or routing instructions of Distributor or not, Manufacturer shall not be responsible for any delays or damages in shipment and the common carrier is declared to be the agent of Distributor.

#### 4.4. **Insurance Requirements.**

4.4.1. (1) general commercial liability insurance in the amount of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate; and (2) product liability insurance providing protection (at a minimum, in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate) applicable to any claims for bodily injury, death or property damage, liabilities, damages, costs or expenses resulting from or arising out of any use, defects or alleged defects of the Products.

4.4.2. Distributor shall ensure that all such insurance required by this Section names Manufacturer as additional insured, contains a waiver by the insurance carrier of all subrogation rights against Manufacturer and other parties covered by the insurance and shall provide that Manufacturer and other covered parties receive 30 days prior written notice of termination, expiration, cancellation or modification of such insurance. Such insurance required by this subparagraph must be provided by an insurance company that has a current A.M. Best's rating of at least an A- and an A.M. Best's financial size category of at least XII. Distributor shall cause certificates of insurance, showing compliance with the requirements of this Section, to be deposited with Manufacturer on or before the effective date of this Agreement and any renewal of this Agreement. If requested by Manufacturer, Distributor shall provide Manufacturer a full and complete copy of any insurance policy required by this Section. If Distributor fails to obtain the required insurance coverage, Distributor authorizes Manufacturer to obtain such insurance coverage and to charge Distributor for the cost of such insurance. Nothing in this Section shall be construed to require Manufacturer to provide or make available to Distributor any type or amount of insurance, including worker's compensation insurance.

4.5. **Indemnification.** Distributor shall be solely and exclusively responsible for any fines, taxes, penalties, interest, costs, expenses, damages, loss or liability, of any kind or nature, arising out of any demands, suits, actions, proceedings or claims (collectively "Claims") relating to or arising out of Distributor's purchase, distribution and sale of the Products, or Distributor's other conduct or activities even if such Claims are brought or filed after termination or expiration of this Agreement, including without limitation, claims arising out of or relating to allegations of Manufacturer's or Distributor's negligence, recklessness, unintentional or intentional conduct, misconduct, or omissions. Distributor agrees to indemnify, defend and hold Manufacturer, its officers, directors, shareholders, members, managers, partners, attorneys, employees, agents, and insurers harmless from and against, and to reimburse them for, all fines, taxes, penalties, interest, costs, expenses, damages, loss or liability for which any of them are held liable or which they reasonably incur in connection with any Claims including, without limitation, the full amount of any general liability insurance deductible(s), actual and consequential damages, reasonable attorneys' fees, court costs, expert witness fees and litigation expenses. Manufacturer reserves the right to select the attorney(s) and the right to settle or defend any Claims in any manner or on any terms Manufacturer, in Manufacturer's sole discretion, deems appropriate. Distributor agrees to cooperate with Manufacturer in the defense of any Claims and agrees not to settle or compromise any Claims, without prior written consent of Manufacturer. Maintenance of any insurance required by this Agreement shall not relieve Distributor of Distributor's indemnification obligations under this Section. The obligations of Distributor under the provisions of this Section shall survive termination or expiration of this Agreement.

4.6. **Limitation of Liability.** IN NO EVENT SHALL MANUFACTURER BE LIABLE TO DISTRIBUTOR OR ANY OTHER PARTY FOR AMOUNTS REPRESENTING INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING FROM THE PERFORMANCE OR BREACH OF ANY TERMS OF THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN MADE AWARE OF THE POSSIBILITIES OF DAMAGES.

## **ARTICLE 5. TERMINATION**

5.1. **Right of Manufacturer to Cancel.** Manufacturer may immediately terminate this Agreement and any orders by giving written notice to Distributor in the event of: (i) the liquidation or insolvency of Distributor; (ii) the appointment of a receiver or similar officer for Distributor; (iii) an assignment by Distributor for the benefit of all or substantially all of its creditors; (iv) entry by Distributor into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations; (v) the filing of a petition in bankruptcy by or against Distributor under any bankruptcy or debtors' law for its relief or reorganization which is not dismissed within ninety (90) days; or (vi) Distributor ceasing to conduct business in the normal course.

5.2. **Termination for Cause.** In the event that either party materially or repeatedly defaults in the performance of any of its duties or obligations set forth in this Agreement, and such default is not substantially cured within ten (10) days after written notice is given to the defaulting party specifying the default, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this Agreement or the applicable purchase order relating to such default as of the date specified in such notice of termination.

5.3. **Applicability of Terms After Termination.** In the event of termination without cause, this Agreement shall remain applicable to any orders for Products which Distributor has previously placed prior to the date of termination.

5.4. **Repurchase of Products on Termination.** In the event of the termination of this Agreement by either party for any reason Manufacturer may at its option repurchase from Distributor at the net price paid by Distributor to Manufacturer, any Products on hand in Distributor's place of business or in the possession of Manufacturer or Distributor. On demand and the tender of the repurchase price, Distributor shall be obligated to promptly deliver the Products to Manufacturer. Manufacturer shall tender the repurchase price to Distributor within five (5) business days of receipt of the Products and reserves the right to reject any Products which it determines, in its sole discretion, are not in new condition.

5.5. **Survival of Terms.** Termination or expiration of this Agreement for any reason shall not release either party from any liabilities or obligations set forth in this Agreement which: (i) the parties have expressly agreed shall survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

**ARTICLE 6.**  
**MISCELLANEOUS**

6.1. **Independent Contractor.** Nothing contained in this Agreement shall be regarded as creating any relationship (including, without limitation, employer/employee, joint venture, partnership, shareholder, etc.) between Manufacturer and Distributor. Manufacturer shall not be liable to Distributor for any expenses incurred by Distributor, nor shall Distributor have authority to bind Manufacturer by any promise, contract or representation, unless specifically authorized in advance and in writing by Manufacturer to do so.

6.2. **Notices.** Any notice required to be given pursuant to this Agreement shall be given in writing and delivered to the party entitled to receive notice by hand delivery at any location or by registered mail, postage prepaid, at the address given on the first page of this Agreement, unless such party has notified the other party in writing of any change of address, after which notice shall be delivered to such new address. Notices so mailed shall be deemed to have been given as of the time of deposit in the United States mail.

6.3. **Entire Agreement.** The parties acknowledge that this is the complete and final expression of their mutual intent and agreement concerning the subject matters of this Agreement, and supersedes and cancels any and all previous or contemporaneous agreements, whether oral or in writing, between the parties relating to the Products, and no change or modification of this Agreement shall be valid unless such change or modification is in writing and is signed by all of the parties hereto.

6.4. **No Waiver.** No waiver of any breach of any provision or condition of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision or condition of this Agreement.

6.5. **Governing Law.** This Agreement and its terms shall be governed by the laws of the State of California without regard or reference to conflict of laws, and each party irrevocably agrees that exclusive jurisdiction and venue shall be in state or federal courts located in the County of Orange, California. If any action or proceeding is instituted to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs from the losing party.

6.6. **Severability.** The invalidity or unenforceability of any particular word, sentence, paragraph, section, subsection or provision of this Agreement shall not affect the validity or enforceability of the other words, sentences, paragraphs, sections, subsections or provisions of this Agreement and this Agreement shall be interpreted in all respects as if such invalid or unenforceable parts were omitted. Furthermore, if any restriction set forth in this Agreement is found by any court of competent jurisdiction to be unenforceable because it extends for too long of a period of time or over too great a range of activities or in too broad a geographic area, it shall be interpreted to extend only over the maximum period of time, range of activities or geographic area as to which may be enforceable.

6.7. **Force Majeure.** Manufacturer shall not be liable for any delay in performance,

nonperformance, delay in delivery of Products or for nondelivery of Products, in whole or in part, caused by the occurrence of any contingency beyond its reasonable control, including but not limited to war (whether an actual declaration thereof is made or not), sabotage, insurrection, rebellion, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor disputes, strikes, lockouts, inability to procure labor, services or materials, fire, accident, explosion, epidemic, pandemic, disease, illness, national/regional/local emergency, quarantine, governmental order, restriction, storm, flood or earthquake.

6.8. **No Liability.** Manufacturer shall have no liability under this Agreement for any damages suffered by Distributor or any third party, including but not limited to, damages for personal injuries or loss of profits, or consequential, exemplary, incidental or punitive damages, even if Manufacturer has been advised of the possibility of such damages


6.9. **Assignment.** This Agreement shall become binding upon and inure to the benefit of the parties, and their permitted successors and assigns. Notwithstanding the foregoing, this Agreement may not be assigned, pledged or otherwise transferred by Distributor. Manufacturer reserves the right to assign, pledge, or transfer this Agreement, provided that Distributor's rights and privileges granted in this Agreement shall not be adversely affected.

6.10. **Headings.** The headings in this Agreement are for convenience only and shall not affect its interpretation. All terms in this Agreement used in any one number or gender shall extend to mean and include any other number and gender as the facts, context or sense of this Agreement or any Section of this Agreement may require.

6.11. **Counterparts.** This Agreement shall be executed in two or more counterparts each of which shall be deemed to be an original document but all of which taken together shall constitute but one document.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first written above.

**MANUFACTURER:**  
APG, LLC  
A California Limited Liability Company

Sign:   
George Patrick (Aug 29, 2022 13:57 PDT)

Print: George Patrick

Title: Owner

**DISTRIBUTOR:**  
ADVANCED FIBERGLASS CONCEPTS, LLC  
A California Limited Liability Company

Sign:   
Tim Gerwatosky (Aug 29, 2022 13:56 PDT)

Print: Tim Gerwatosky

Title: CEO