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Lucas Novak (SBN 257484)  
 LAW OFFICES OF LUCAS T. NOVAK  
 8335 W Sunset Blvd., Suite 217  
 Los Angeles, CA 90069  
 Telephone: (323) 337-9015  
 Email: lucas.nvk@gmail.com

Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company, )

Plaintiff, )

v. )

DISCOUNT STEEL, INC., a corporation, and )  
 DOES 1 through 100, inclusive, )

Defendants. )

CASE NO. \_\_\_\_\_

**PLAINTIFF'S COMPLAINT FOR  
 CIVIL PENALTIES AND INJUNCTIVE  
 RELIEF**

(Health & Safety Code § 25249.6 et seq.)

Judge:

Dept.:

Compl. Filed:

Unlimited Jurisdiction

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## **INTRODUCTION**

1. This Complaint is brought by Plaintiff, APS&EE, LLC (“Plaintiff”) in the public interest of the citizens of the State of California, a representative action to enforce the People’s right to be informed of the presence of lead (“Lead”), a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, found in brass bars sold by Defendants.

2. The purpose of this Complaint is to remedy Defendants’ continuing failure to warn California residents about the risk of exposure to the Lead in the brass bars manufactured, distributed, sold, and/or offered for sale to consumers in California.

3. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell the brass bars containing dangerous levels of the Lead, including, without limitation: Discount Steel MTO-1 1/2” square; the brass bars come in all lengths and include flat bars, rectangular bars, round bars, square bars, and hexagon bars of various thicknesses and widths. The products described in this paragraph shall hereinafter be referred to as the “Products”.

4. Children and adults are exposed to the Lead when they use, touch, handle, play with, repair, maintain, or install the Products.

5. Hazardous levels of the Lead are found in the accessible surface areas of the Products manufactured, distributed, sold, and/or offered for sale by Defendants to consumers in California.

6. California Health and Safety Code section 25249.6 et seq. (“Proposition 65”) provides in pertinent part: “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...”

7. Studies repeatedly conclude that exposure to the Lead is hazardous to the health of children and adults. Children are especially vulnerable to the toxic effects of Lead. Accordingly, California has listed the Lead as a chemical known to the state to cause cancer and birth defects or other reproductive harm, and therefore subject to Proposition 65 warning requirements.

8. Defendants have and continue to manufacture, distribute, sell, and/or offer to sell the Products without the required warnings. Defendants' conduct violates the warning requirements of Proposition 65.

## PARTIES

9. Plaintiff is an organization based in California acting in the public interest. Plaintiff brings this action in the public interest pursuant to California Health and Safety Code section 25249.7(d).

10. Defendant, DISCOUNT STEEL, INC. is a person in the course of doing business within the meaning of California Health and Safety Code section 25249.11. DISCOUNT STEEL, INC. manufactures, distributes, and/or sells the Products for sale and use in California.

11. DOES 1 through 100 are each a person in the course of doing business within the meaning of California Health and Safety Code section 25249.11. DOES 1 through 100 manufacture, distribute, and/or sell the Products for sale and use in California. The true names of DOES 1 through 100 are unknown to Plaintiff at this time. When their identities are discovered, Plaintiff's Complaint shall be amended to reflect their true names.

12. The defendants identified in paragraphs 10-11 shall collectively be referred to herein as “Defendants”.

## JURISDICTION AND VENUE

13. This Court has jurisdiction over this action pursuant to California Health and Safety Code section 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California Constitution Article VI, Section 10, because this lawsuit is based on a cause not given by statute to other trial courts. Moreover, this action belongs in unlimited jurisdiction since the amount in controversy exceeds \$25,000 and Plaintiff seeks permanent injunctive relief.

14. This Court has jurisdiction over Defendants because each is a person, firm, corporation, or association with sufficient minimum contacts in the State of California, or otherwise purposefully avails itself to the California market as to render jurisdiction by the California courts consistent with traditional notions of fair play and substantial justice.

1           15.     Venue is proper in Los Angeles County Superior Court because one or more  
2 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
3 and/or because Defendants conducted, and continue to conduct, business in this County with  
4 respect to the Products.

5                                   **FIRST CAUSE OF ACTION**

6                                   **(Violations of Health & Safety Code Section 25249.6 et seq.)**

7           16.     Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,  
8 Paragraphs 1 through 15, inclusive.

9           17.     On December 10, 2018, a sixty-day notice of violation (the “Notice”), along with  
10 a Certificate of Merit, was provided to DISCOUNT STEEL, INC. and the various public  
11 enforcement agencies with respect to the Proposition 65 violations related to Lead in the  
12 Products. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d),  
13 confidential factual information sufficient to establish the basis for the Certificate of Merit was  
14 provided to the California Attorney General.

15           18.     None of the public prosecutors with the authority to prosecute Proposition 65  
16 violations has commenced and/or is diligently prosecuting the causes of action against  
17 Defendants based on the claims asserted in Plaintiff’s Notice.

18           19.     By placing the Products into the stream of commerce, each Defendant is a person  
19 in the course of doing business within the meaning of Health & Safety Code section 25249.11.

20           20.     Defendants knew and intended that consumers, including children, will use,  
21 touch, handle, play with, repair, maintain, or install the Products.

22           21.     Defendants knew that the Products contain Lead. Defendants, who are in the  
23 business of marketing brass, also should have known or have constructive knowledge that the  
24 Products contain Lead from widespread media coverage and/or other channels of information  
25 concerning the presence of Lead in brass.

26           22.     Lead is a chemical listed by the State of California as known to cause cancer and  
27 birth defects or other reproductive harm.

28           23.     Defendants’ Products contain sufficient quantities of the Lead such that

1 consumers, including children, who use, touch, handle, play with, repair, maintain, or install the  
2 Products are exposed to unsafe levels of Lead. Lead is present in the Products in such a way as to  
3 expose individuals to Lead, as exposure is defined by 27 CCR section 25602(b): "...that results  
4 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable  
5 use..." Exposure occurs through inhalation, ingestion and/or dermal contact during the  
6 reasonably foreseeable use of the Products.

7         24. Defendants knew or should have known that the reasonably foreseeable use of the  
8 Products exposes individuals to Lead through inhalation, ingestion and/or dermal contact.

9         25. Defendants failed to provide a "clear and reasonable warning" to individuals in  
10 the State of California who were or could become exposed to Lead during the reasonably  
11 foreseeable use of the Products.

12         26. Defendants advertise themselves as national suppliers of the Products. Any person  
13 with internet access is free to purchase the Products, no business account required. All that  
14 person needs to do is add the Products of any quantity to his/her cart and then check out. That  
15 consumer could be intending to use the Products for decorating, constructing cabinets, home  
16 projects, marine projects, crafts, art projects, or all other foreseeable uses, and Defendants have  
17 no control over how the products are used after they sell them. It is common knowledge that  
18 online sales are displacing brick and mortar sales, and Defendants advertise sales from their  
19 website(s) to all consumers; for example, the Discountsteel.com website states: "we welcome all,  
20 from Fortune 500 companies to the do-it-yourselfer."

21         27. By committing the acts alleged in this Complaint, Defendants have violated  
22 California Health & Safety Code section 25249.6 et seq. by knowingly and intentionally  
23 exposing individuals to Lead without first giving clear and reasonable warnings to such  
24 individuals regarding the toxicity of Lead.

25         28. As a result of Defendants' wrongful conduct, individuals in the State of California  
26 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the  
27 reasonably foreseeable use of the Products without a "clear and reasonable warning", and have  
28 suffered and continue to suffer harm, each and every day since at least December 10, 2015.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for judgment against Defendants as follows:

3 1. That the Court, pursuant to California Health & Safety Code section 25249.7(b),  
4 assess civil penalties against Defendants in the amount of \$2,500 per day for each violation  
5 alleged herein;

6 2. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
7 preliminarily and permanently enjoin Defendants from manufacturing, distributing, or offering  
8 the Products for sale in California without providing “clear and reasonable warnings” as defined  
9 by 27 CCR section 25601;


10 3. That the Court, pursuant to California Health & Safety Code section 25249.7(a),  
11 order Defendants to take action to stop ongoing unwarned exposures to Lead resulting from use  
12 of Products sold by Defendants;

13 4. That the Court, pursuant to California Code of Civil Procedure section 1021.5, or  
14 any other applicable theory, grant Plaintiff’s reasonable attorneys’ fees and costs of suit; and

15 5. Such other and further relief as may be just and proper.  
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17 Dated: March 15, 2019

LAW OFFICES OF LUCAS T. NOVAK

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19 By: 

20 LUCAS T. NOVAK  
21 Attorney for Plaintiff, APS&EE, LLC  
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