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

10 APS&EE, LLC, a limited liability company, )  
11 Plaintiff, )  
12 v. )  
13 SOUTHWIRE COMPANY, LLC, a limited )  
14 liability company, and DOES 1 through 100, )  
15 inclusive, )  
16 Defendants. )  
17 )

CASE NO. 23STCV17353

**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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1 requirements of Proposition 65.

2 **PARTIES**

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

6 10. Defendant, SOUTHWIRE COMPANY, LLC is a person in the course of doing  
7 business within the meaning of California Health and Safety Code section 25249.11.  
8 SOUTHWIRE COMPANY, LLC manufactures, distributes, and/or sells the Products for sale  
9 and use in California.

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

15 12. The defendants identified in paragraphs 10-11 shall collectively be referred to  
16 herein as "Defendants".

17 **JURISDICTION AND VENUE**

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

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

28 15. Venue is proper in Los Angeles County Superior Court because one or more

1 occurrences of the wrongful conduct occurred, and continues to occur, in Los Angeles County,  
2 and/or because Defendants conducted, and continue to conduct, business in this County with  
3 respect to the Products.

4 **FIRST CAUSE OF ACTION**

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

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

8 17. On April 3, 2023, Plaintiff served a Sixty-Day Notice of Violation with a  
9 Certificate of Merit (the “Notice”), to SOUTHWIRE COMPANY, LLC and the various public  
10 enforcement agencies with respect to the Proposition 65 violations related to Lead in the  
11 Products. In addition, on said date, in compliance with Health & Safety Code section 25249.7(d),  
12 confidential factual information sufficient to establish the basis for the Certificate of Merit was  
13 provided to the California Attorney General. On July 13, 2023, Plaintiff served a Supplemental  
14 Sixty Day Notice of Violation with a Certificate of Merit and the aforementioned allegations and  
15 added Home Depot U.S.A., Inc. d/b/a Contractors’ Warehouse as an alleged violator.

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

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

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

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

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

1 23. Defendants’ Products contain sufficient quantities of the Lead such that  
2 consumers, including children, who use, touch, mouth, handle, play with, repair, maintain, clean  
3 and/or install the Products are exposed to unsafe levels of Lead. Lead is present in the Products  
4 in such a way as to expose individuals to Lead, as exposure is defined by 27 CCR section  
5 25600.1(e): “...that results from a person’s acquisition, purchase, storage, consumption, or any  
6 reasonably foreseeable use...” Direct and indirect exposure occurs through inhalation, ingestion  
7 and/or dermal contact during the reasonably foreseeable use of the Products.

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

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

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

17 27. As a result of Defendants’ wrongful conduct, individuals in the State of California  
18 have been exposed to Lead through the inhalation, ingestion and/or dermal contact during the  
19 reasonably foreseeable use of the Products without a “clear and reasonable warning”, and have  
20 suffered and continue to suffer harm, each and every day since at least April 3, 2022.

21 **PRAYER FOR RELIEF**

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

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

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

1 by 27 CCR section 25601;


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

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

7 5. Such other and further relief as may be just and proper.

8  
9 Dated: July 24, 2023

LAW OFFICES OF LUCAS T. NOVAK

10  
11 By: 

12 LUCAS T. NOVAK  
13 Attorney for Plaintiff, APS&EE, LLC  
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