

FILED

Superior Court of California
County of Los Angeles

RECEIVED

MAR 05 2014

ROOM 102

MAY 16 2014

Sherri B. Carter, Executive Officer/Clerk

By Denise Gonzalez Deputy

1 Lucas Novak (SBN 257484)
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069
5 Telephone: (323) 337-9015
6 Email: lucas.nvk@gmail.com

7 Attorney for Plaintiff, Darren Kenny

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

10 DARREN KENNY, an individual,)
11)
12 Plaintiff,)
13)
14 v.)
15 ANAWALT LUMBER CO., INC., a)
16 corporation, LINCOLN PRODUCTS, a)
17 corporation, and DOES 1 through 100,)
18 inclusive,)
19 Defendants.)

CASE NO. BC523094

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Mitchell L. Beckloff

Dept.: "51"

Compl. Filed: October 1, 2013

Unlimited Jurisdiction

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Darren Kenny
4 (“Plaintiff”) and Defendants, Anawalt Lumber Co., Inc. and Lincoln Products (collectively,
5 “Defendants”). Plaintiff and Defendants shall hereinafter collectively be referred to as the
6 “Parties.”

7 Plaintiff is a citizen of the state of California with an interest in protecting the
8 environment, improving human health and the health of ecosystems, and supporting
9 environmentally sound practices, which includes promoting awareness of exposure to toxic
10 chemicals and reducing exposure to hazardous substances found in consumer products.

11 Defendants each employ ten (10) or more employees, and each is a person in the course of doing
12 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.
13 (“Proposition 65”).

14 **1.2 Allegations**

15 Plaintiff alleges that Defendants manufactured, distributed, supplied, and/or sold brass
16 plumbing products known as Lincoln Products Brass Flare Fittings which include pipes, nipples,
17 plugs, caps, nuts, unions, reducing unions, swivels, tees, adapters, and elbows (hereinafter, the
18 “Products”) in the State of California causing users in California to be exposed to hazardous
19 levels of lead without providing “clear and reasonable warnings”, in violation of Proposition 65.
20 Lead is subject to Proposition 65 warning requirements because it is listed as known to cause
21 cancer, birth defects and other reproductive harm.

22 On July 27, 2013, a sixty-day notice of violation (“60-Day Notice”), along with a
23 Certificate of Merit, was provided by Plaintiff to Defendants and various public enforcement
24 agencies regarding the alleged violation of Proposition 65 with respect to the Products.

25 On October 1, 2013, in the interest of the general public, Plaintiff filed the instant action in the
26 Superior Court for the County of Los Angeles, alleging violation of Proposition 65 with respect
27 to the Products.

28 ///

1 **1.3 No Admissions**

2 Defendants deny all allegations in Plaintiff’s 60-Day Notice and Complaint, and maintain
3 that the Products have been, and are, in compliance with all laws, and that Defendants have not
4 violated Proposition 65. This Consent Judgment shall not be construed as an admission of
5 liability by Defendants but to the contrary as a compromise of claims that are expressly contested
6 and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and
7 responsibilities under this Consent Judgment.

8 **1.4 Jurisdiction And Venue**

9 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court
10 has jurisdiction over Defendants as to the allegations of the Complaint, that venue is proper in
11 Los Angeles County, and that this Court has jurisdiction to enter and enforce this Consent
12 Judgment pursuant to California *Code of Civil Procedure* section 664.6.

13 **1.5 Effective Date**

14 The “Effective Date” shall be the date upon which this Consent Judgment is entered by
15 the Court.

16 **2. INJUNCTIVE RELIEF AND REFORMULATION**

17 **2.1 Reformulation**

18 As of the Effective Date, Defendants shall not sell or offer for sale in California any of
19 the Products containing more than 100 parts per million (0.01%) of lead when analyzed pursuant
20 to Environmental Protection Agency testing methodologies 3050B or equivalent without
21 providing “clear and reasonable warnings” as described in paragraph 2.2 below.

22 **2.2 Clear And Reasonable Warnings**

23 If any of the Products does not meet the reformulation standard described in paragraph
24 2.1 above, each unit not meeting said reformulation shall be accompanied by the following
25 specific warning with the capitalized, emboldened and italicized wording:

26 **“WARNING: This product contains chemicals, including lead, known to the**
27 **State of California to cause cancer, birth defects and other reproductive harm. *Do***
28 ***not use in connection with drinking water. Wash hands after handling.*”**

1 Each unit shall carry said warning directly on each unit or its label or package, near the
2 product name, price, or UPC code, in a manner reasonably calculated to be seen by the ordinary
3 consumer.

4 **3. PAYMENTS**

5 **3.1 Civil Penalty Pursuant To Proposition 65**

6 In settlement of all causes of action in Plaintiff's Complaint, Defendants shall
7 collectively pay a total civil penalty of five thousand dollars (\$5,000.00) to be apportioned in
8 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750) paid
9 to State of California Office of Environmental Health Hazard Assessment, and the remaining
10 25% (\$1,250) paid to Plaintiff.

11 Defendants shall issue two (2) checks for the civil penalty: (1) a check or money order
12 made payable to "Office of Environmental Health Hazard Assessment" in the amount of \$3,750;
13 and (2) a check or money order made payable to "Law Offices of Lucas T. Novak in Trust for
14 Darren Kenny" in the amount of \$1,250. Defendants shall remit the payments within five (5)
15 business days of the Effective Date, to:

16 Lucas T. Novak, Esq.
17 LAW OFFICES OF LUCAS T. NOVAK
18 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

19 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

20 Defendants shall collectively reimburse Plaintiff's reasonable experts' and attorney's fees
21 and costs incurred in prosecuting the instant action, for all work performed through execution of
22 this agreement and entry of this Consent Judgment. Accordingly, Defendants shall issue a check
23 or money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty
24 thousand dollars (\$20,000.00). Defendants shall remit the payment within five (5) business days
25 of the Effective Date, to:

26 Lucas T. Novak, Esq.
27 LAW OFFICES OF LUCAS T. NOVAK
28 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

1 **4. RELEASES**

2 **4.1 Plaintiff's Release Of Defendants**

3 Plaintiff, acting in his individual capacity, his past and current agents, representatives,
4 attorneys, successors, and/or assignees, and in the interest of the general public, in consideration
5 of the promises and monetary payments contained herein, hereby releases Defendants, their
6 parents, subsidiaries, shareholders, directors, members, officers, employees, and attorneys, from
7 the claims asserted in Plaintiff's Complaint regarding violation of Proposition 65 with respect to
8 the Products.

9 **4.2 Defendants' Release Of Plaintiff**

10 Defendants, by this Consent Judgment, waive all rights to institute any form of legal
11 action against Plaintiff, his past and current agents, representatives, attorneys, experts,
12 successors, and/or assignees, for actions or statements made or undertaken, whether in the course
13 of investigating claims or seeking enforcement of Proposition 65 against Defendants in this
14 matter.

15 **4.3 Waiver Of Unknown Claims**

16 Each of the Parties acknowledges that it is familiar with Section 1542 of California *Civil*
17 *Code* which provides as follows:

18 "A general release does not extend to claims which the creditor does not know or
19 suspect to exist in his or her favor at the time of executing the release, which if
20 known by him or her must have materially affected his or her settlement with the
21 debtor."

22 Each of the parties waives and relinquishes any right or benefit it has or may have under
23 Section 1542 of California *Civil Code* or any similar provision under the statutory or non-
24 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
25 and benefits pertaining to the claims in this Consent Judgment. The Parties acknowledge that
26 each may subsequently discovery facts in addition to, or different from, those that it believes to
27 be true with respect to the claims released herein. The Parties agree that this Consent Judgment
28 and the releases contained herein shall be and remain effective in all respects notwithstanding the

1 discovery of such additional or different facts.

2 **5. COURT APPROVAL**

3 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
4 Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This Consent
5 Judgment is not effective until it is approved and entered by the Court and shall be null and void
6 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
7 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
8 Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel
9 agree to mutually employ their best efforts to support the entry of this agreement in a timely
10 manner, including cooperating on drafting and filing any papers in support of the required
11 motion for judicial approval.

12 **6. SEVERABILITY**

13 Subsequent to Court approval of this Consent Judgment, should any part or provision of
14 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
15 unenforceable, the remaining portions and provisions shall continue in full force and effect.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of
18 California.

19 **8. NOTICES**

20 All correspondence and notices required to be provided under this Consent Judgment
21 shall be in writing and delivered personally or sent by first class or certified mail addressed as
22 follows:

23 **TO DEFENDANTS:**

24 Brenda K. Radmacher, Esq.
25 Sonia J. Taylor, Esq.
26 WOOD, SMITH, HENNING & BERMAN
27 LLP
28 505 North Brand Blvd., Ste 1100
Glendale, CA 91203

TO PLAINTIFF:

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

1 **9. INTEGRATION**

2 This Consent Judgment constitutes the entire agreement between the parties with respect
3 to the subject matter hereof and may not be amended or modified except in writing.

4 **10. COUNTERPARTS**

5 This Consent Judgment may be executed in counterparts, each of which shall be deemed
6 an original, and all of which, when taken together, shall constitute the same document. Execution
7 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
8 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
9 Judgment shall have the same force and effect as the originals.

10 **11. AUTHORIZATION**

11 The undersigned are authorized to execute this Consent Judgment on behalf of their
12 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
13 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
14 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
15 interfere with the execution or performance of this Consent Judgment by said party.

16

17 **AGREED TO:**

18 Date: 3/4/2014

19 By: [Signature]

20 Authorized Agent of Defendant, Lincoln Products

21

22 **AGREED TO:**

23 Date: _____

24 By: _____

25 Authorized Agent of Defendant, Anawalt Lumber Co., Inc.

26 ///

27 ///

28 ///

1 **9. INTEGRATION**

2 This Consent Judgment constitutes the entire agreement between the parties with respect
3 to the subject matter hereof and may not be amended or modified except in writing.

4 **10. COUNTERPARTS**

5 This Consent Judgment may be executed in counterparts, each of which shall be deemed
6 an original, and all of which, when taken together, shall constitute the same document. Execution
7 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
8 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
9 Judgment shall have the same force and effect as the originals.

10 **11. AUTHORIZATION**

11 The undersigned are authorized to execute this Consent Judgment on behalf of their
12 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
13 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
14 Consent Judgment and not subject to any conflicting obligation which will or might prevent or
15 interfere with the execution or performance of this Consent Judgment by said party.

16
17 **AGREED TO:**

18 Date: _____

19 By: _____

20 Authorized Agent of Defendant, Lincoln Products

21
22 **AGREED TO:**

23 Date: 2-28-2014

24 By: [Signature]

25 Authorized Agent of Defendant, Anawalt Lumber Co., Inc.

26 ///

27 ///

28 ///

1 **AGREED TO:**

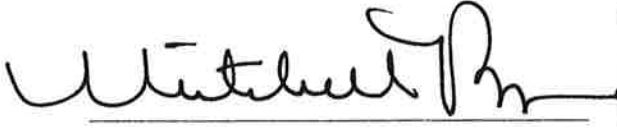
2 Date: 2/29/14

3 By: Darren Kenny

4 Plaintiff, Darren Kenny

5
6 **IT IS SO ORDERED.**

7
8 Dated: 5-16-14



JUDGE OF THE SUPERIOR COURT

MITCHELL L. BECKLOFF, Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28