

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, Scott Sprankle

RECEIVED
NOV 03 2015
ROOM 102

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 05 2016

Sherril R. Carter, Executive Officer/Clerk
By Anthony He, Deputy

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

10 SCOTT SPRANKLE, an individual,)
11 Plaintiff,)

12 v.)

13 PLUMBINGSUPPLY GROUP, LLC, a)
14 limited liability company, and DOES 1)
15 through 100, inclusive,)

16 Defendants.)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO. BC591562

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Elizabeth A. White

Dept.: 48

Compl. Filed: August 24, 2015

Unlimited Jurisdiction

///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///
///

1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Scott Sprankle
4 ("Plaintiff") and Defendant, PlumbingSupply Group, LLC ("Defendant"), with Plaintiff and
5 Defendant each individually referred to as a "Party" and collectively as the "Parties."

6 Plaintiff is a citizen of the state of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products.
10 Defendant employs ten (10) or more employees and is a "person in the course of doing business"
11 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, *California Health*
12 *& Safety Code* section 25249.6 *et seq.* ("Proposition 65").

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant sells brass plumbing fittings, including but not limited to
15 the Brass Pipe Fitting 3/4" Coupling (hereinafter, the "Covered Products") in the State of
16 California causing users in California to be exposed to lead and lead compounds without
17 providing a clear and reasonable warning required by Proposition 65. Lead and lead compounds
18 are listed pursuant to Proposition 65 as chemicals known to the State of California to cause
19 cancer and birth defects or other reproductive harm.

20 A sixty-day notice of violation dated June 4, 2015 ("60-Day Notice"), along with a
21 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
22 agencies regarding the alleged violation of Proposition 65. On August 24, 2015, in the public
23 interest, Plaintiff filed the instant action in the Superior Court for the County of Los Angeles,
24 alleging violations of Proposition 65.

25 ///
26 ///
27 ///
28 ///

1 **1.3 No Admissions**

2 Each of the undersigned hereby declare and represent that they understand and agree that
3 this settlement is a compromise of a doubted and disputed claim in whole or in part, and that
4 payment referred to herein is not to be construed as an admission of liability on the part of any
5 person or corporation released hereby, and said liability is expressly denied. However, nothing in
6 this section shall affect the Parties' obligations, duties, and responsibilities under this Consent
7 Judgment.

8 **1.4 Jurisdiction And Venue**

9 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
10 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
11 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
12 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and
13 Proposition 65.

14 **1.5 Effective Date**

15 The "Effective Date" shall be the date this Consent Judgment is approved by the Court.

16 **2. INJUNCTIVE RELIEF AND REFORMULATION**

17 **2.1 Reformulation**

18 Commencing on the Effective Date, and continuing thereafter, as to the Covered
19 Products, Defendant shall not sell in California any Covered Products containing more than 100
20 parts per million (0.01%) of lead when analyzed pursuant to Environmental Protection Agency
21 testing methodologies 3050B or equivalent without providing a clear and reasonable warning as
22 described in section 2.2 below.

23 **2.2 Clear And Reasonable Warnings**

24 **(a) Retail Store Sales.** Commencing on the Effective Date, and continuing
25 thereafter, for Covered Products that are distributed and/or sold by Defendant and sold in retail
26 stores located in California and do not meet the reformulation standard described in section 2.1
27 above, each unit not meeting said reformulation shall be accompanied by the following specific
28 warning with the capitalized and emboldened wording:

1 **“WARNING: This product contains lead, a chemical known to the State of**
2 **California to cause cancer, birth defects and other reproductive harm. Wash hands**
3 **after handling.”**

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

7 **(b) Internet Website Warning.** Commencing on the Effective Date, and
8 continuing thereafter, Covered Products sold by Defendant into California via the internet that do
9 not meet the reformulation standard described in section 2.1 shall be accompanied by a
10 Proposition 65 warning, either: (a) on the same web page on which a Covered Product is
11 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same
12 web page as the price for a Covered Product prior to sales completion; (d) on one or more web
13 pages displayed to a purchaser during the checkout process prior to sales completion; or (e) on a
14 web page with a conspicuous hyperlink from the product display page. The warning shall
15 contain the following capitalized and emboldened wording and shall appear with such
16 conspicuousness, as compared with other words, statements or designs as to render it likely to be
17 read and understood by an ordinary individual prior to sale:

18 **“WARNING: This product contains lead, a chemical known to the State of**
19 **California to cause cancer, birth defects and other reproductive harm. Wash hands**
20 **after handling.”**

21 Further, Defendant shall use reasonable efforts to notify and instruct its downstream
22 retailers, distributors, and wholesalers that sell or offer for sale Covered Products via the internet,
23 to comply with the warning requirements of this section. Plaintiff understands that Defendant
24 does not control third party websites. Therefore, so long as Defendant notifies and instructs its
25 known downstream retailers, distributors, and wholesalers to comply with this provision, and
26 instructs them to instruct all entities in the stream of commerce to comply with this provision,
27 Defendant shall be deemed in compliance with the warning requirements of Proposition 65 with
28 respect to internet sales of its Covered Products.

1 Plaintiff, acting in his individual capacity, his past and current agents, representatives,
2 attorneys, successors and assignees, and in the public interest, in consideration of the promises
3 and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries,
4 shareholders, directors, members, officers, employees, attorneys, successors and assignees, as
5 well as their downstream retailers, downstream distributors, and downstream wholesalers
6 ("Releasees") from the claims asserted in Plaintiff's Complaint and 60-Day Notice regarding
7 violation of Proposition 65 with respect to the Covered Products up to the Effective Date.

8 4.2 Defendant's Release Of Plaintiff

9 Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
10 employees, attorneys, successors and assignees waive all rights to institute any form of legal
11 action against Plaintiff, his past and current agents, representatives, attorneys, experts, successors
12 and assignees, for actions or statements made or undertaken, whether in the course of
13 investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter.

14 4.3 Waiver Of Unknown Claims

15 Each of the undersigned hereby agrees to and intends to release all claims which he may
16 have against the other Party released in connection with this action, whether or not the
17 undersigned knows or suspects the same to exist in his favor and, in this connection, the
18 undersigned expressly waives the provisions of Section 1542 of the California Civil Code, which
19 reads as follows:

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

23 The Parties acknowledge that each may subsequently discover facts in addition to, or
24 different from, those that it believes to be true with respect to the claims released herein. The
25 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
26 effective in all respects notwithstanding the discovery of such additional or different facts.

27 5. COURT APPROVAL

28 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed

1 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
2 Judgment is not effective until it is approved and entered by the Court and shall be null and void
3 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
4 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
5 Judgment.

6 **6. SEVERABILITY**

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

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the State of
12 California.

13 **8. NOTICES**

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

17 TO DEFENDANT:	17 TO PLAINTIFF:
18 Randall Bettencourt, Esq. 19 LAW OFFICE OF RANDALL S. 20 BETTENCOURT 21 75 Declaration Drive, Ste. 75 Chico, California 95973	Lucas T. Novak, Esq. LAW OFFICES OF LUCAS T. NOVAK 8335 W Sunset Blvd., Suite 217 Los Angeles, California 90069

22 **9. INTEGRATION**

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

25 **10. COUNTERPARTS**

26 This Consent Judgment may be executed in counterparts, each of which shall be deemed
27 an original, and all of which, when taken together, shall constitute the same document.
28

1 Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means
2 shall constitute legal and binding execution and delivery. Any photocopy of the executed
3 Consent Judgment shall have the same force and effect as the originals.

4 **11. AUTHORIZATION**

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: 10-1-2015
Printed Name: Aden B Cullens - President + CEO
By: Aden B Cullens
Authorized Officer of Defendant, PlumbingSupply Group, LLC

AGREED TO:

Date: 10/1/15
By: Scott Sprankle
Plaintiff, Scott Sprankle

IT IS SO ORDERED.

Dated: 1/5/16

Elizabeth Allen White
Elizabeth Allen White
JUDGE OF THE SUPERIOR COURT