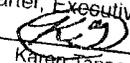


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Superior Court of California
County of Los Angeles

AUG 27 2018

Sherr R. Carter, Executive Officer/Clerk
By  Deputy
Karen Tapper

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

7 Attorney for Plaintiff, APS&EE, LLC

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

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13 v.)
14 UNIFIED SALES AND DISTRIBUTION,)
15 INC., a corporation, HD SUPPLY REPAIR &)
16 REMODEL, LLC DBA HD SUPPLY HOME)
17 IMPROVEMENT SOLUTIONS, a limited)
18 liability company, and DOES 1 through 100,)
19 inclusive,)
20 Defendants.)

CASE NO. BC691319
~~PROPOSED~~ CONSENT JUDGMENT
Judge: Hon. Richard Fruin
Dept.: 15
Compl. Filed: January 23, 2018

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“APS&EE”) and HD Supply Repair & Remodel, LLC dba HD Supply
5 Home Improvement Solutions (“HD Supply”). APS&EE and HD Supply shall hereinafter
6 collectively be referred to as the “Parties.”

7 **1.1.2** APS&EE is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and
9 supporting environmentally sound practices, which includes promoting awareness of exposure to
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** HD Supply is a person in the course of doing business as the term is
12 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** APS&EE alleges that HD Supply sold “USD” brand of brass fittings and
15 valves, including 1/4" self-piercing saddle valve, 905372, 6-55354-91566-3 (hereinafter
16 collectively the “Products”) in the State of California causing users in California to be exposed to
17 hazardous levels of Lead, without providing “clear and reasonable warnings”, in violation of
18 Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is
19 listed as known to cause cancer and birth defect or other reproductive harm.

20 **1.2.2** On October 30, 2017, APS&EE sent a Sixty-Day Notice of Violation (the
21 “Notice”) to HD Supply, Unified Sales and Distribution, Inc. (“USDI”), and the various public
22 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
23 Products. On January 23, 2018, Plaintiff, acting in the public interest, filed the instant action (the
24 “Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of
25 Proposition 65.

26 **1.3 No Admissions**

27 HD Supply denies all allegations in APS&EE’s Notice and Complaint and maintains that
28 the Products have been, and are, in compliance with all laws, and that HD Supply has not

1 violated Proposition 65. This Consent Judgment shall not be construed as an admission of
2 liability by HD Supply but to the contrary as a compromise of claims that are expressly contested
3 and denied. However, nothing in this section shall affect the Parties' obligations, duties, and
4 responsibilities under this Consent Judgment.

5 **1.4 Compromise**

6 The Parties enter into this Consent Judgment in order to resolve the controversy
7 described above in a manner consistent with prior Proposition 65 settlements and consent
8 judgments that were entered in the public interest and to avoid prolonged and costly litigation
9 between them.

10 **1.5 Effective Date**

11 The "Effective Date" shall be the date this Consent Judgment is approved and entered by
12 the Court.

13 **2. INJUNCTIVE RELIEF**

14 **2.1 Reformulation Standard**

15 As of the Effective Date, HD Supply shall not distribute for sale in California, sell or
16 offer for sale the Products in California unless (a) the Product contains no more than 100 parts
17 per million (0.01%) of Lead ("Reformulated Product"), or (b) the Product is distributed, sold, or
18 offered for sale with a clear and reasonable warning as described below in Section 2.2.

19 Alternatively, in the event that APS&EE executes a settlement with USDI that is approved by the
20 Court and resolves claims asserted in this action regarding alleged violations of Proposition 65 in
21 connection with the Products, and to the extent that there are any differences in the injunctive
22 relief between this Consent Judgment and a settlement with USDI, then HD Supply, in its sole
23 discretion, may implement the injunctive relief provisions in such settlement, and such
24 implementation shall be deemed compliance with this Consent Judgment.

1 **2.2 Proposition 65 Warnings**

2 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
3 HD Supply shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) or
4 use a warning with the capitalized and emboldened wording substantially similar to the
5 following:

6 **WARNING:** This product can expose you to Lead which is known to the State
7 of California to cause cancer and birth defects or other
8 reproductive harm. For more information go to
9 www.P65Warnings.ca.gov.

10 The warning shall be accompanied by a symbol consisting of a black exclamation point
11 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
12 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
13 be placed to the left of the text of the warning, in a size no smaller than the height of the word
14 “WARNING”.

15 **2.2.2** Each unit shall carry said warning directly on each unit or its label,
16 package, shelf container or bin, with such conspicuousness as compared with other words,
17 statements or designs as to render it likely to be read and understood by an ordinary consumer
18 prior to sale. A Product that is sold by HD Supply on the internet shall also provide the warning
19 message by a clearly marked hyperlink on the product display page, or otherwise prominently
20 displayed to the purchaser before the purchaser completes his or her purchase of the Product.

21 **3. PAYMENTS**

22 **3.1 Civil Penalty Pursuant To Proposition 65**

23 In settlement of all claims referred to in this Consent Judgment, HD Supply shall pay a
24 total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in
25 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00)
26 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
27 remaining 25% (\$375.00) for APS&EE.

28 HD Supply shall issue two (2) checks for the civil penalty: (1) a check or money order
made payable to “OEHHA” in the amount of \$1,125.00; and (2) a check or money order made

1 payable to “Law Offices of Lucas T. Novak” in the amount of \$375.00. HD Supply shall remit
2 the payments within five (5) business days of the Effective Date, to:

3 Lucas T. Novak, Esq.
4 LAW OFFICES OF LUCAS T. NOVAK
5 8335 W Sunset Blvd., Suite 217
6 Los Angeles, CA 90069

6 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

7 HD Supply shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs
8 incurred in prosecuting the instant action, for all work performed through execution of this
9 Consent Judgment. Accordingly, HD Supply shall issue a check or money order made payable to
10 “Law Offices of Lucas T. Novak” in the amount of sixteen thousand five hundred dollars
11 (\$16,500.00). HD Supply shall remit the payment within five (5) business days of the Effective
12 Date, to:

13 Lucas T. Novak, Esq.
14 LAW OFFICES OF LUCAS T. NOVAK
15 8335 W Sunset Blvd., Suite 217
16 Los Angeles, CA 90069

16 **4. RELEASES**

17 **4.1 APS&EE’s Release Of HD Supply**

18 APS&EE, acting in its individual capacity, and in the public interest, in consideration of
19 the promises and monetary payments contained herein, hereby releases HD Supply, its parents,
20 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
21 assignees, as well as its downstream distributors, retailers, and franchisees (collectively
22 “Released Parties”), from any alleged Proposition 65 violation claims asserted in APS&EE’s
23 Notice or Complaint regarding failure to warn about exposures to Lead from the Products sold
24 and/or offered for sale by HD Supply in California before and up to the Effective Date. This
25 Consent Judgment does not act as a release of Unified Sales And Distribution, Inc. Compliance
26 with the injunctive relief terms of this Consent Judgment shall be deemed compliance with
27 Proposition 65 with respect to alleged exposures to Lead in the Products.

28 **4.2 HD Supply’s Release Of APS&EE**

1 HD Supply, and on behalf of the Released Parties, by this Consent Judgment, waives all
2 rights to institute any form of legal action against APS&EE, its shareholders, directors, members,
3 officers, employees, attorneys, experts, successors and assignees for actions or statements made
4 or undertaken, whether in the course of investigating claims or seeking enforcement of
5 Proposition 65 against HD Supply in this matter.

6 **4.3 Waiver Of Unknown Claims**

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

9 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
12 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.”

13 Each of the Parties waives and relinquishes any right or benefit it has or may have under
14 Section 1542 of California Civil Code or any similar provision under the statutory or
15 non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such
16 rights and benefits. The Parties acknowledge that each may subsequently discover facts in
17 addition to, or different from, those that it believes to be true with respect to the claims released
18 herein. The Parties agree that this Consent Judgment and the releases contained herein shall be
19 and remain effective in all respects notwithstanding the discovery of such additional or different
20 facts.

21 **5. COURT APPROVAL**

22 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
23 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
24 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
25 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
26 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
27 support the entry of this agreement in a timely manner, including cooperating on drafting and
28 filing any papers in support of the required motion for judicial approval.

1 **6. SEVERABILITY**

2 Should any part or provision of this Consent Judgment for any reason be declared by a
3 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
4 in full force and effect.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **8. NOTICES**

9 All correspondence and notice required to be provided under this Consent Judgment shall
10 be in writing and delivered personally or sent by first class or certified mail addressed as follows:

11 TO HD SUPPLY: 12 HD Supply Legal Department 13 HD Supply, Inc. 14 3400 Cumberland Blvd. SE Atlanta, Georgia 30339 15 16 With a copy to: 17 Ann G. Grimaldi, Esq. 18 GRIMALDI LAW OFFICES 535 Mission Street, 14th Fl. San Francisco, CA 94105 19	20 TO APS&EE: 21 Lucas Novak, Esq. 22 Law Offices of Lucas T. Novak 23 8335 W Sunset Blvd., Suite 217 24 Los Angeles, CA 90069
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20 **9. COUNTERPARTS**

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

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1 **10. AUTHORIZATION**

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

7
8 **AGREED TO:**

9 Date: _____

10 By: _____

11 Authorized Officer of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: _____

15 By:  _____

16 Authorized Officer of HD Supply Repair & Remodel, LLC dba
17 HD Supply Home Improvement Solutions

18 **IT IS SO ORDERED.**

19 Dated: _____

20
21 JUDGE OF THE SUPERIOR COURT

1 **10. AUTHORIZATION**

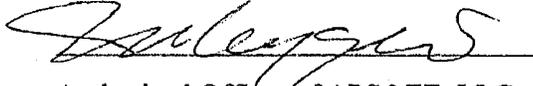
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment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

8 **AGREED TO:**

9 Date:

7/3/18

10 By:



11 Authorized Officer of APS&EE, LLC

12
13 **AGREED TO:**

14 Date:

7/3/18

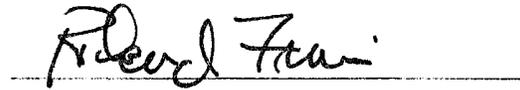
15 By:

16 Authorized Officer of HD Supply Repair & Remodel, LLC dba
17 HD Supply Home Improvement Solutions

18 **IT IS SO ORDERED.**

19 Dated:

8/27/18


20
21 JUDGE OF THE SUPERIOR COURT