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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 Plaintiff,)
12 v.)
13 SPEEDY METALS, LLC, a limited liability)
14 company, and DOES 1 through 100, inclusive,)
15 Defendants.)
16)

FILED
Superior Court of California
County of Los Angeles
09/16/2020
Sherri R. Carter, Executive Officer / Clerk of Court
By: S. Temblador Deputy

CASE NO. 19STCV42657
~~PROPOSED~~ CONSENT JUDGMENT
Judge: Hon. Michelle Williams Court
Dept.: 74
Compl. Filed: November 26, 2019
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 (“Plaintiff”) and Speedy Metals, LLC (“Defendant”). Plaintiff and
5 Defendant shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** Plaintiff is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

10 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold brass bars, including but not limited
15 5/16’ square bar of all lengths (hereinafter collectively the “Products”) in the State of California
16 causing users in California to be exposed to hazardous levels of Lead without providing “clear
17 and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to
18 Proposition 65 warning requirements because it is listed as known to cause cancer and birth
19 defects or other reproductive harm.

20 **1.2.2** On September 6, 2019, Plaintiff sent a Sixty-Day Notice of Violation (the
21 “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
22 violation of Proposition 65 with respect to the Products. On November 26, 2019, Plaintiff, acting
23 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the
24 County of Los Angeles, alleging violations of Proposition 65. Default was entered against
25 Defendant on January 21, 2020; through approval of this Consent Judgment, it is intended in
26 part, to vacate the default entered against Defendant.

27 **1.3 No Admissions**

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

7 **1.4 Compromise**

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

12 **1.5 Jurisdiction and Venue**

13 For purposes of this Consent Judgment only, the Parties stipulate to vacate the default
14 entered against Defendant on January 21, 2020, that the above-entitled Court has jurisdiction
15 over Defendant as to the allegations in the Complaint, that venue is proper in Los Angeles
16 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
17 Judgment pursuant to California Code of Civil Procedure Section 664.6 and Proposition 65.

18 **1.6 Effective Date**

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

21 **2. INJUNCTIVE RELIEF**

22 **2.1 Reformulation Standard**

23 After the Effective Date, Defendant shall not distribute for sale in California, sell or offer
24 for sale the Products in California unless (a) the Product contains no more than 100 parts per
25 million (0.01%) of Lead ("Reformulated Product"), or (b) the Product is distributed, sold, or
26 offered for sale with a clear and reasonable warning as described below in Section 2.2.

27 **2.2 Proposition 65 Warnings**

28 **2.2.1** Whenever a clear and reasonable warning is required for the Products

under Section 2.1, Defendant shall use a warning with the capitalized and emboldened wording substantially similar to the following Long Form warning:

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

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

If the warning is placed directly on the Product or its immediate packaging then Defendant may opt to use the Short Form warning substantially similar to the following:

WARNING: Cancer and Reproductive Harm – www.P65Warnings.ca.gov

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

2.2.2 Internet Sales. A Product that is sold by Defendant on the internet to persons located in California shall provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. Defendant may use the Short Form warning as long as it is also placed directly on the Product or its immediate packaging. For Products that Defendant provides for a downstream entity to sell on the internet, Defendant shall include an instruction that the entity comply with the warnings requirements of this section.

2.2.3 Phone Sales. A Product that is sold by Defendant via telephone to persons located in California shall provide the Long-Form warning message to the purchaser in a clearly stated voice before the purchaser completes his or her purchase of the Product. For Products that

1 Defendant provides for a downstream entity to sell via telephone, Defendant shall include an
2 instruction that the entity comply with the warnings requirements of this section.

3 **2.2.4 Brick And Mortar Sales.** Should Defendant sell the Products, or
4 intentionally cause to have the Products sold, from brick and mortar stores located in California,
5 then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with
6 such conspicuousness as compared with other words, statements or designs as to render it likely
7 to be read and understood by an ordinary consumer prior to sale. However, if Defendant opts to
8 use the Short-Form Warning, said warning must be provided on each Product or its label or
9 package; providing it solely on the shelf tag is insufficient.

10 **2.3 Compliance with Proposition 65**

11 In addition to the warning text and transmission methods set forth above, for Products
12 that are not reformulated, Defendant may comply with this judgment by using other warning text
13 and transmission methods set forth in 27 Cal. Code Regs. § 25601, et seq., and amended
14 subsequently hereafter, or other text or methods authorized or mandated by those regulations, or
15 other State of California regulations or legislation pertaining to Proposition 65 warnings related
16 to such Products. In the event that Proposition 65 is repealed or is otherwise rendered
17 inapplicable or limited by reason of law generally, or as to the Products, Defendant shall provide
18 written notice to APS&EE of any asserted change in the law, and shall have no further
19 obligations pursuant to this judgment with respect to, and to the extent that, the Products are so
20 affected.

21 **3. PAYMENTS**

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

23 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
24 total civil penalty of three thousand five hundred dollars (\$3,500.00) to be apportioned in
25 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,625.00)
26 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
27 remaining 25% (\$875.00) for Plaintiff.

28 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order

made payable to "OEHHA" in the amount of \$2,625.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of \$875.00. Defendant shall remit the payments within five (5) business days of the Effective Date, to:

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

3.2 Reimbursement Of Plaintiff's Fees And Costs

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

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

4. RELEASES

4.1 Plaintiff's Release Of Defendant

Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's Notice or Complaint regarding the Products sold by Defendant to persons in California before and up to the Effective Date.

4.2 Defendant's Release Of Plaintiff

Defendant, by this Consent Judgment, waives all rights to institute any form of legal action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,

1 experts, successors and assignees for actions or statements made or undertaken, whether in the
2 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
3 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
4 Released Party in this Consent Judgment shall be rendered void and unenforceable.

5 **4.3 Waiver Of Unknown Claims**

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

8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASED PARTY.

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

6. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a

Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

7. GOVERNING LAW

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

8. NOTICES

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

TO SPEEDY METALS, LLC:

Speedy Metals, LLC
Att'n: Mr. Dale Steger,
President
2505 S. 162nd Street
New Berlin, WI 53151 and

Carmen N. Anderson, Esq.
von Briesen & Roper, s.c.
411 E. Wisconsin Ave.
Suite 1000
Milwaukee, WI 53202

TO APS&EE, LLC:

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

9. COUNTERPARTS

This Consent Judgment may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent 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 Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 4-29-2020

15 By: William Orme

16 Authorized Representative of Speedy Metals, LLC

17
18 **IT IS SO ORDERED.**

19 Dated: _____

20 JUDGE OF THE SUPERIOR COURT

1 **10. AUTHORIZATION**

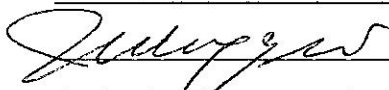
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3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and is not subject to any conflicting 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:

5/7/20

10 By:



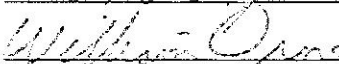
11 Authorized Representative of APS&EE, LLC
12

13 **AGREED TO:**

14 Date:

4-27-2020


15 By:



16 Authorized Representative of Speedy Metals, LLC
17

18 **IT IS SO ORDERED.**

19 Dated: 12/09/2020


JUDGE OF THE SUPERIOR COURT