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AFS ENTERPRISES, LLC

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF LOS ANGELES  
14

15 AFS ENTERPRISES, LLC, a California  
Limited Liability Company,

16 Plaintiff,

17 v.

18 NATIONAL MANUFACTURING CO.; and  
19 DOES 1 to 10, Inclusive,

20 Defendants.  
21  
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23  
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25  
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Case No. BC514614

[The Honorable John L. Segal]

**[PROPOSED] CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 1.1 This Consent Judgment is entered into by and between plaintiff AFS Enterprises, LLC  
3 (“AFS” or “plaintiff”) and Spectrum Brands, Inc. (“Spectrum”), which legal entity merged with  
4 defendant National Manufacturing Co. (“National”) on or about December 31, 2014. Spectrum and  
5 National are sometimes collectively referred to herein as “Defendant.” Plaintiff and Defendant are  
6 sometimes collectively referred to herein as the “parties.”

7 1.2 The products that are covered by this Consent Judgment are defined as coated brass  
8 hardware products, including but not limited to surface bolts, door hardware, security hardware and  
9 accessory products, which are manufactured, imported, distributed, sold and/or offered for sale in the  
10 State of California by Spectrum’s subdivisions within the Hardware and Home Improvement (“HHI”)  
11 division of Spectrum Brands, Inc. under various brand names, including but not limited to National  
12 Hardware, Kwikset, Pfister, Weiser, and Baldwin (collectively, the “Products,” or individually, a  
13 “Product”). For the avoidance of doubt, the terms “Products” and/or “Product” include all coated brass  
14 products currently manufactured by the HHI division of Spectrum Brands, Inc., along with all past and  
15 future manufacture of brass coated products by or on behalf of the HHI division, or any predecessor  
16 corporate entities that were or in the future are merged into Spectrum Brands, Inc., including but not  
17 limited to National Manufacturing Co., Kwikset Corporation, Price Pfister, Inc., Weiser Lock  
18 Corporation, and Baldwin Hardware Corporation. The terms “Products” and/or “Product” also include  
19 any brass coated product that is or has been manufactured by Tell Manufacturing, Inc., Tell Doors and  
20 Windows, LLC, Dai Neng U.S. Imports, LLC, Tell Sourcing, Inc., and National Openings, LLC, each  
21 of which are entities wholly-owned by Spectrum Brands, Inc. For further avoidance of doubt, products  
22 produced, sold or distributed by other divisions of Spectrum Brands, Inc. are not the subject of this  
23 Consent Judgment.

24 1.3 On February 19, 2013, AFS served National and various public enforcement agencies  
25 with a document entitled 60 Day Notice of Violation (the “Notice”). The Notice provided the  
26 recipients with notice that National was alleged to be in violation of California Health & Safety Code  
27 section 25249.6 for failing to warn consumers that the Products exposed users in California to lead.  
28

1           1.4       On September 17, 2013, AFS, individually and in the public interest pursuant to  
2 California Health & Safety Code section 25249.7(d), filed a First Amended Complaint against  
3 National for civil penalties and injunctive relief for violations of Proposition 65, based upon the  
4 alleged exposure to lead from the Products (the "Complaint").

5           1.5       Defendant denies the material, factual and legal allegations contained in AFS's Notice  
6 and Complaint, and maintains that the Products have been and are in compliance with all laws.  
7 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,  
8 finding, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or  
9 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or violation of  
10 law. However, this section shall not diminish or otherwise affect Defendant's obligations,  
11 responsibilities and duties under this Consent Judgment.

12           1.6       For purposes of this Consent Judgment only, the parties stipulate that this Court has  
13 jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in the  
14 County of Los Angeles, and that this Court has jurisdiction to enter and enforce the provisions of this  
15 Consent Judgment.

16           1.7       For purposes of this Consent Judgment, the term "Effective Date" shall mean the date  
17 upon which this Consent Judgment is entered by the Court.

18 **2.       INJUNCTIVE RELIEF – MANUFACTURING CONTROLS**

19           2.1       Within six (6) months from the Effective Date (the "Manufacturing Control Date"),  
20 Defendant will implement manufacturing controls or, where applicable, confirm the existence of  
21 current controls for the Products that are reasonably calculated to reduce the lead or lead dust on the  
22 surface of the Products immediately prior to packaging to a level that is at or below 1.25 micrograms,  
23 when analyzed pursuant to methodologies or methods utilized by federal or state government agencies  
24 for the purpose of determining surface contamination by lead and its compounds.

25           2.2       Within one (1) month from the Manufacturing Control Date, Defendant will provide  
26 to counsel for AFS a certification from an officer, director, employee or agent of Defendant that, as of  
27 the date of the certification and continuing into the future, Defendant has implemented  
28 or, where applicable, confirmed the existence of the manufacturing controls required by Section 2.1.

1           2.3       Within six (6) months from the Manufacturing Control Date (the “First Certification  
2 Date”), Defendant will provide to counsel for AFS a certification from an officer, director, employee  
3 or agent of Defendant that, based upon a random sampling of the Products as described in Section 2.5,  
4 the amount of lead or lead dust on the surface of the Products immediately prior to packaging is at or  
5 below 1.25 micrograms, when analyzed pursuant to methodologies or methods utilized by federal or  
6 state government agencies for the purpose of determining surface contamination by lead and its  
7 compounds. Defendant shall attach to the certification a copy of all analytical lab reports for the  
8 sampled products.

9           2.4       Within eighteen (18) months from the Manufacturing Control Date (the “Second  
10 Certification Date”), Defendant will provide to counsel for AFS a certification from an officer,  
11 director, employee or agent of Defendant that, based upon a random sampling of the Products as  
12 described in Section 2.5, the amount of lead or lead dust on the surface of the Products immediately  
13 prior to packaging is at or below 1.25 micrograms, when analyzed pursuant to methodologies or  
14 methods utilized by federal or state government agencies for the purpose of determining surface  
15 contamination by lead and its compounds. Defendant shall attach to the certification a copy of all  
16 analytical lab reports for the sampled products.

17           2.5       The parties acknowledge and agree that, for purposes of demonstrating compliance  
18 with Sections 2.3 and 2.4, Defendant will test five (5) randomly selected individual SKUs from the  
19 Products. For each randomly selected product, Defendant shall test five (5) individual units pursuant  
20 to a wipe test or methodology adopted by federal or state government agencies for the purpose of  
21 determining surface contamination by lead and its compounds. The parties acknowledge and agree  
22 that compliance with Sections 2.3 and 2.4 for the randomly-selected products shall constitute  
23 compliance with this Consent Judgment for the Products.

24           2.6       In the event it is determined by Defendant, following the tests set forth above, that  
25 lead or lead dust is present at a level above 1.25 micrograms on the surface of any tested product,  
26 Defendant will within a reasonable amount of time (a) determine the cause of the contamination,  
27 implement further manufacturing controls, and, for any affected product, provide further written  
28

1 certification of compliance with Sections 2.3 or 2.4 for the product, or (b) place the clear and  
2 reasonable warning provided for in Section 3 on any such product or products.

3 **3. INJUNCTIVE RELIEF – PRODUCT WARNINGS**

4 3.1 As an alternative to the injunctive relief set forth in Section 2, the parties acknowledge  
5 and agree that Defendant may elect to place the clear and reasonable warning set forth in Section 3.4  
6 on the Products or a Product in full and complete satisfaction of its obligations under this Consent  
7 Judgment (as regards the products or product for which a warning is utilized).

8 3.2 Each warning utilized as provided for in Sections 2.6 or 3.1 shall be prominently  
9 placed upon a product’s label or other labeling or displayed at the retail outlet with such  
10 conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling  
11 or display as to render it likely to be read and understood by an ordinary individual under customary  
12 conditions of purchase or use.

13 3.3 Each warning utilized as provided for in Sections 2.6 or 3.1 shall be provided in a  
14 manner such that the consumer or user understands to which specific product the warning applies, so  
15 as to minimize the risk of consumer confusion.

16 3.4 Product Labeling. The following warning statement shall be applied to the Products  
17 as provided for in Sections 2.6 and 3.1:

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

21 3.5 The word “WARNING” shall be in bold.

22 3.6 Bracketed language may be omitted at Defendant’s option.

23 3.7 Nothing in this section shall obligate Defendant to place the warning set forth in  
24 Section 3.4 on the Products, provided that Defendant complies with the injunctive relief provisions set  
25 forth in Section 2.

26 **4. PAYMENTS**

27 4.1 The parties acknowledge that AFS and its counsel offered to resolve this dispute  
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this

1 fee issue to be resolved after the other material terms of the agreement had been settled. AFS then  
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
3 finalized. The parties then attempted to (and did) reach an accord on the compensation due to AFS and  
4 its counsel under general contract principles and the private attorney general doctrine codified at  
5 California Code of Civil Procedure section 1021.5, for all work performed through the mutual  
6 execution of this agreement.

7 4.2 In settlement of all the claims referred to in this Consent Judgment, Defendant shall  
8 pay the following, within fifteen (15) days of entry of this Consent Judgment:

9 4.2.1 \$8,000 in civil penalties. The penalty payment will be allocated in accordance  
10 with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to  
11 the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining  
12 25% of the funds remitted to AFS.

13 4.2.2 \$65,000 to Law Office of Daniel N. Greenbaum as reimbursement for attorney  
14 fees and costs incurred in this matter.

15 4.2.3 The entry of this judgment satisfies all claims for civil penalties, attorney fees,  
16 costs, restitution, cy pres funding, or any other form of financial relief against Defendant.

17 4.3 Payments shall be delivered as follows:

18 4.3.1 All payments owed to AFS and its counsel, pursuant to Sections 3.1.1 and 3.1.2,  
19 shall be delivered to the following payment address:

20 Daniel N. Greenbaum  
21 Law Office of Daniel N. Greenbaum  
22 7120 Hayvenhurst Ave., Suite 320  
23 Van Nuys, CA 91406

24 4.3.2 All payments owed to OEHHA, pursuant to Section 3.1.1, shall be delivered  
25 directly to OEHHA (Memo line “Prop 65 Penalties”) at the following address:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazards Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

With a copy of the check payable to OEHHA mailed to Law Office of Daniel N. Greenbaum at the  
address set forth above in Section 3.2.1, as proof of payment to OEHHA.



1 **5. CLAIMS COVERED AND RELEASED**

2 5.1 AFS's Public Release of Proposition 65 Claims. AFS, acting on its own behalf and in  
3 the public interest, releases National and Spectrum and their parents, subsidiaries, affiliated entities  
4 under common ownership, directors, officers, employees, and attorneys ("Releasees"), and each entity  
5 to whom they directly or indirectly distribute or sell the Products including, but not limited to, their  
6 downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors  
7 and licensees and their respective affiliates and subsidiaries, if any ("Downstream Releasees"), for any  
8 claims or violations arising under Proposition 65 for alleged unwarned exposures to lead from the  
9 Products sold or distributed by National and/or Spectrum prior to the Second Certification Date.

10 5.2 Compliance with the Consent Judgment. Compliance with the terms of this Consent  
11 Judgment as set forth herein constitutes compliance with Proposition 65 with respect to exposures to  
12 lead from the Products.

13 5.3 AFS's Individual Release of Claims. AFS, acting in its individual capacity and on  
14 behalf of its past and current officers, directors, members, agents, employees, successors, assigns, and  
15 any other entity affiliated therewith, but *not* in its representative capacity in the public interest, also  
16 provides a release to National, Spectrum, Releasees, and Downstream Releasees which shall be  
17 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,  
18 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of AFS of any nature,  
19 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
20 actual exposures to lead in the Products sold or distributed for sale by National and/or Spectrum prior  
21 to the Second Certification Date.

22 AFS acknowledges that it is familiar with California Civil Code section 1542, which provides  
23 as follows:

24 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
25 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
26 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
27 **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
28 **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
**HER SETTLEMENT WITH THE DEBTOR.**

1 AFS, for its part and on behalf of its past and current officers, directors, members, agents, employees,  
2 successors, assigns, and any other entity affiliated therewith, but *not* in its representative capacity in  
3 the public interest, expressly waives and relinquishes any and all rights and benefits which he/it/they  
4 may have under, or which may be conferred on him/it/them by the provisions of California Civil Code  
5 section 1542, as well as under any other state or federal statute or common law principle of similar  
6 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released  
7 matters.

8 **6. COURT APPROVAL**

9 6.1 This Consent Judgment is not effective until it is approved and entered by the Court  
10 and shall be null and void if, for any reason, it is not approved and entered by the Court within one  
11 year after it has been fully executed by all parties.

12 **7. MODIFICATION OF CONSENT JUDGMENT**

13 7.1 This Consent Judgment may be modified by written agreement of AFS and  
14 Defendant, after noticed motion, and upon entry of a modified consent judgment by the court thereon.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided  
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by first-class  
18 mail on any party by the other party at the following addresses:

19 Spectrum Brands, Inc. and/or  
20 National Manufacturing Co.  
21 c/o Levi W. Heath  
22 Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067

AFS Enterprises, LLC  
c/o Daniel N. Greenbaum  
Law Office of Daniel N. Greenbaum  
7120 Hayvenhurst Ave., Suite 320  
Van Nuys, CA 91406

23 8.2 Any party, from time to time, may specify in writing to the other party a change of  
24 address to which all notices and other communications shall be sent.

25 **9. ADDITIONAL POST-EXECUTION ACTIVITIES**

26 9.1 AFS and Defendant agree to mutually employ their best efforts to support the entry of  
27 this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
28 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code section



1 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which AFS  
2 shall draft and file. If any third party objection to the noticed motion is filed, AFS and Defendant shall  
3 work together to file a joint reply and appear at any hearing before the Court. This provision is a  
4 material component of the Consent Judgment and shall be treated as such in the event of a breach.

5 **10. MISCELLANEOUS**

6 10.1 Severability. If, subsequent to the execution of this Consent Judgment, any of the  
7 provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the  
8 enforceable provisions remaining shall not be adversely affected.

9 10.2 Governing Law. The terms of this Consent Judgment shall be governed by the laws  
10 of the State of California and apply within the State of California. In the event that Proposition 65 is  
11 repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or if any of the  
12 provisions of this Consent Judgment are rendered inapplicable or no longer required as a result of any  
13 such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then  
14 Defendant shall provide written notice to Held of any asserted change in the law, and shall have no  
15 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
16 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant  
17 from any obligation to comply with any pertinent state or federal toxics control law.

18 10.3 Counterparts. This Consent Judgment may be executed in counterparts and by  
19 facsimile or PDF signature, each of which shall be deemed an original, and all of which, when taken  
20 together, shall constitute one and the same document. A facsimile or PDF signature shall be as valid as  
21 the original.

22 10.4 Compliance with California Health & Safety Code section 25249.7(f). AFS and its  
23 attorneys agree to comply with the reporting form requirements referenced in California Health &  
24 Safety Code § 25249.7(f).

1           10.5    Authority to Stipulate. Each signatory to this Consent Judgment certifies that he or  
2 she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to  
3 enter into an execute the Consent Judgment on behalf of the party represented and legally to bind that  
4 party.

5  
6 AGREED TO:

AGREED TO:

7  
8 Date: 4/2/2015

Date: 4/02/2015

9 By: *Alisa*

By: *Mark S. Bloom*

10 Name: Alisa Fried  
11 Title: Member  
AFS Enterprises, LLC

Name: *Mark S. Bloom*  
Title: *Vice president Engineering*  
Spectrum Brands, Inc.