

1 Daniel N. Greenbaum, Esq. (SBN 268104)  
LAW OFFICE OF DANIEL N. GREENBAUM  
2 14752 Otsego Street  
Sherman Oaks, CA 91403  
3 Telephone: (310) 200-2631  
4 Facsimile: (424) 243-7689  
Email: danielgreenbaumesq@gmail.com  
5 Attorney for AFS ENTERPRISES, LLC

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF LOS ANGELES  
9 CENTRAL DISTRICT

10 AFS ENTERPRISES, LLC, ) Case No.: BC515013  
Plaintiff, )  
11 vs. ) Unlimited Jurisdiction  
12 LDR Industries Inc., )  
Defendant ) *Honorable William F. Fahey*  
13 ) *Department 69*  
14 )  
15 ) **[PROPOSED] AMENDED**  
16 ) **CONSENT JUDGMENT**  
17 )

18  
19 **1. DEFINITIONS**

20 The products covered by this Consent Judgment shall be designated “Covered  
21 Products.” The Covered Products are LDR Industries Inc. pop-up drain assemblies.

22 The term “Effective Date” means the date this Consent Judgment is approved by the  
23 Superior Court of the State of California, County of Los Angeles – Central District.

24 The term “Listed Chemical” means lead and lead compounds.

25 The term “Parties” means Plaintiff AFS Enterprises, LLC (“AFS”) and Defendant LDR  
26 Industries Inc. (“LDR”).

27 The term “Execution Date” means the date on which this Consent Judgment is fully  
28 executed by both Parties.

1 **2. INTRODUCTION**

2 This Consent Judgment is entered into by and between Plaintiff AFS and Defendant  
3 LDR. AFS and LDR are collectively referred to as the “Parties.”

4 AFS is an company residing in California who is acting as a private enforcer pursuant to  
5 California Health & Safety Code § 25249.7(d).

6 For purposes of this Consent Judgment, LDR employs 10 or more persons and is a person  
7 doing business in California for the purpose of Proposition 65.

8 On or about March 22, 2013, AFS served LDR, Orchard Supply Hardware (“OSH”) and  
9 various public enforcement agencies with a document entitled “60-Day Notice of Violation”  
10 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that LDR and OSH were  
11 in violation of Proposition 65.

12 AFS’s Notice alleges that LDR and OSH have manufactured, distributed, and/or offered  
13 for sale in California certain plumbing accessories that expose consumers to lead and lead  
14 compounds without the requisite Proposition 65 warnings.

15 Lead and lead compounds (the “Listed Chemical”) are listed pursuant to Proposition 65  
16 as a chemical known to the State of California to cause cancer, birth defects and other  
17 reproductive harm.

18 The Notice alleges that LDR’s and OSH’s conduct violates Health & Safety Code  
19 §25249.6, the warning provision of Proposition 65.

20 On July 12, 2013, Plaintiff filed the action entitled AFS ENTERPRISES LLC VS LDR  
21 INDUSTRIES Case No. BC515013, alleging violations of Proposition 65.

22 LDR denies the material, factual, and legal allegations contained in the Notice and  
23 Complaint, and maintains that all products sold, distributed, or offered for sale in California have  
24 been and are in compliance with all laws, including, without limitation, Proposition 65.

25 The Parties enter into this Consent Judgment to resolve all Proposition 65 claims  
26 concerning LDR’s products set forth in AFS’s Notice and all Proposition 65 claims set forth in  
27 Plaintiff’s Complaint, including claims against LDR’s customer, OSH. By executing this  
28 Consent Judgment, the Parties do not admit any facts or conclusions or law.

1 It is the Parties' intent that nothing in this Consent Judgment shall be construed as an  
2 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor  
3 shall compliance with the Consent Judgment constitute or be construed as an admission by the  
4 Parties of any fact, conclusion of law, issue of law, or violation of law.

5 Upon approval of this Consent Judgment, the Parties waive their respective rights to a  
6 hearing or a trial on the allegations of the Complaint.

7 Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,  
8 argument, or defense the Parties may have in any other or future legal proceedings, except as  
9 provided in this Consent Judgment.

10 **3. INJUNCTIVE RELIEF**

11 Consumers come into contact with the covered Products and potential exposure when  
12 they install or repair the Covered Products.

13 Accordingly, Products that are shipped by LDR for sale or for use in California on or after  
14 180 days after the Effective Date shall include a warning as provided below.

15 Product Labeling. The following warning statement shall be applied to the Products:

16 "WARNING: This product contains [one or more] chemicals, including lead, known to  
17 the State of California to cause cancer, and birth defects or other reproductive harm.  
18 Wash hands after handling" [(California law requires this warning to be given to  
19 customers in the State of California.)]

20 Bracketed language may be omitted at LDR's option. LDR may add additional listed  
21 chemicals to the warning unless the Attorney General advised that the inclusion of such  
22 additional chemicals would render the warning misleading or constitute over warning.

23 **4. SETTLEMENT PAYMENTS**

24 **4.1 Civil Penalty**

25 LDR shall pay a total civil penalty payment of \$15,750.00, within ten (10) days of the  
26 Execution Date. California Health & Safety Code § 25249.12 (c) and (d) states that 75% of  
27 these funds are to be remitted to the State of California's Office of Environmental Health  
28 Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to the private

1 attorney general/enforcer for bringing this action in the public benefit.

2 Due to special circumstances in this case, specifically a ruling and order by the Court on  
3 May 27, 2014, Plaintiff AFS has chosen to waive its rights to receive 25% of the full civil  
4 penalty (i.e. \$15,750) that the Court ordered LDR to pay.

5 Based on the foregoing Court ruling and waiver by AFS, the civil penalty payments  
6 shall be apportioned as follows: (a) \$13,750.00 shall be remitted to OEHHA; and (b) \$2,000.00  
7 shall be remitted to Plaintiff AFS, both pursuant to the procedures set forth in Section 4.3.

#### 8 **4.2 Reimbursement of AFS's Fees and Costs**

9 The parties acknowledge that AFS and its counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this  
11 fee issue to be resolved after the material terms of the agreement had been settled. LDR  
12 expressed a desire to resolve the fee and cost issue after the other settlement terms had been  
13 agreed. The Parties then attempted to (and did) reach an accord on the compensation due to  
14 AFS and its counsel under general contract principles and the private attorney general doctrine  
15 codified at California Code of Civil Procedure § 1021.5, for all work performed in this matter,  
16 except fees that may be incurred on appeal.

17 On May 27, 2014, the Court determined that it would not permit Plaintiff to be  
18 compensated for its attorney's fees and costs in the amount negotiated with Defendant. Instead,  
19 the Court ordered that Plaintiff only receive 30% of the total settlement amount to compensate it  
20 for attorney's fees and costs.

21 Therefore, based on the foregoing legal principles and Court Order, LDR shall only be  
22 required to pay the amount of \$6,750.00 for attorney's fees and costs incurred investigating,  
23 litigating and enforcing this matter, including the fees and costs incurred (and yet to be  
24 incurred) negotiating, drafting, and obtaining approval of this Settlement Agreement in the  
25 public interest.

#### 26 **4.3 Payment Procedures**

27 All payments required by Sections 4.1 and 4.2 were made within ten (10) days of the  
28 Execution Date, specifically, on December 4, 2013, LDR sent in three checks made payable as

1 follows:

- 2 (a) one check to "OEHHA" in the amount of \$6,000.00;
- 3 (b) one check to "Law Office of Daniel N. Greenbaum in Trust for AFS Enterprises,  
4 LLC" in the amount of \$2,000.00;
- 5 (c) one check to "Law Office of Daniel N. Greenbaum" in the amount of \$14,500.00.

6 The funds in subsections (b) and (c) have been held in the trust account of the Law Office  
7 of Daniel N. Greenbaum ("LODNG") since received and deposited by Plaintiff's counsel. In  
8 accordance with the Court's Ruling of May 27, 2014, LODNG shall issue the following payment  
9 within ten (10) days of the Effective Date:

- 10 (a) one check to "OEHHA" in the amount of \$7,750.00 with the notation and/or cover  
11 letter that the payment is made with LDR's funds that were held in trust by LODNG  
12 pending the approval of this Consent Judgment by the Court.

13 **4.4 Issuance of 1099 Forms**

14 The Law Office of Daniel N. Greenbaum shall issue a 1099 form to the "Office of  
15 Environmental Health Hazard Assessment" (EIN: 68-0284486) in the amount of \$7,750.00.

16 **4.5 Issuance of Payments.**

17 **4.5.1** All payments owed to AFS, pursuant to Section 4.1, shall be delivered to  
18 the following payment address:

19 Daniel N. Greenbaum, Esq.  
20 Law Office of Daniel N. Greenbaum  
21 14752 Otsego Street  
22 Sherman Oaks, CA 91403

23 **4.5.2** All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section  
24 4.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following  
25 addresses:

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

1 With a copy of the checks payable to OEHHA mailed to the Law Office of Daniel N.  
2 Greenbaum at the address set forth above in 4.5.1, as proof of payment to OEHHA.

3 **5. CLAIMS COVERED AND RELEASED**

4 This Consent Judgment is a full, final, and binding resolution between AFS on behalf  
5 of itself, its past and current attorneys, agents, representatives, successors, assigns, and any  
6 other person acting in the public interest pursuant to Health & Safety Code § 25249.7(d) on  
7 the one hand; and LDR, and its parents, shareholders, divisions, subdivisions, subsidiaries,  
8 partners, sister companies, and affiliates, and their successors and assigns (“Defendant  
9 Releasees”), all entities to whom they directly or indirectly distribute or sell or have in the past  
10 directly or indirectly distributed or sold Covered Products, including but not limited to  
11 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and  
12 Defendant Releasees’ licensors and licensees, including but not limited to OSH (“Downstream  
13 Defendant Releasees”), on the other hand; regarding any violation of Proposition 65 that was  
14 or could have been asserted against LDR, Defendant Releasees, and Downstream Defendant  
15 Releasees, with respect to the failure to warn about exposures to lead and lead compounds in  
16 any Covered Products manufactured, shipped, distributed or sold by LDR, Defendant  
17 Releasees or Downstream Defendant Releasees prior to the Effective Date. The Parties  
18 further understand and agree that this release shall not extend upstream to any entities that  
19 manufactured the Covered Products or any component parts thereof for LDR or to any  
20 distributors or suppliers who sold the Covered Products or any component parts thereof to  
21 LDR.  
22

23 In further consideration of the promises and agreements herein contained, the injunctive  
24 relief commitments set forth in Section 3, and for the payments to be made pursuant to Section 4,  
25 AFS, on behalf of itself, its past and current agents, representatives, attorneys, including but not  
26 limited to the Daniel Greenbaum, Esq., successors, and/or assignees, hereby waives all rights to  
27 institute or participate in, directly or indirectly, any form of legal action and releases all claims,  
28 including, without limitation, all actions, and causes of action, in law or in equity, suits,

1 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,  
2 but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever,  
3 whether known or unknown, fixed, or contingent (collectively "Claims") that were brought on  
4 could have been brought against LDR, the Defendant Releasees, and the Downstream Defendant  
5 Releasees based on claims arising under Proposition 65 with respect to Listed Chemicals in the  
6 Covered Products, as such claims relate to the alleged failure to warn under Health & Safety  
7 Code Section 25249.6.

8 In furtherance of the foregoing, AFS on its own behalf hereby waives any and all rights  
9 and benefits which it now has, or in the future may have respecting the Covered Products,  
10 conferred upon it with respect to claims involving Covered Products by virtue of the provisions  
11 of Section 1542 of the California Civil Code, which provides as follows:

12  
13 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS  
14 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO  
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING  
16 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST  
17 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
18 WITH THE DEBTOR."

19 By executing this Consent Judgment, AFS understands and acknowledges that the  
20 significance and consequence of this waiver of California Civil Code Section 1542 is that even if  
21 AFS suffers future damages arising out of or resulting from, or related directly or indirectly to, in  
22 whole or in part, the Covered Products, including but not limited to any exposure to, or failure to  
23 warn with respect to exposure to lead or lead compounds from, the Covered Products, AFS will  
24 not be able to make any claim for those damages against LDR, Defendant Releasees, and all  
25 Downstream Defendant Releasees, and the successors and assigns of any of them, who may  
26 manufacture, use, maintain, distribute, retail or sell the Covered Products. Furthermore, AFS  
27 acknowledges that it intends these consequences for any such claims and any other claims which  
28 may exist as of the date of this release pertaining to the Covered Products listed in the Notice but  
which AFS does not know exist, and which, if known, would materially affect its decision to

1 enter into this Consent Judgment, regardless of whether its lack of knowledge is the result of  
2 ignorance, oversight, error, negligence, or any other cause.

3 On behalf of itself and Defendant Releasees, LDR waives all rights to institute any form of  
4 action against AFS, its attorneys, consultants, and representatives for all actions taken or  
5 statements made in the course of this Action prior to the date of the execution of this Consent  
6 Judgment.

7 Compliance with the terms of this Consent Judgment by LDR resolves any issue, now  
8 and in the future, raised by the parties to this Consent Judgment or any other person suing in  
9 the public interest pursuant to § 25249.7(d) concerning compliance by LDR, the Defendant  
10 Releasees, and the Downstream Defendant Releasees with the requirements of with  
11 Proposition 65 with respect to lead and lead compounds in any Covered Products that are  
12 manufactured, shipped, or sold by LDR, the Defendant Releasees, or the Downstream  
13 Defendant Releasees following the Effective Date.

14 For avoidance of doubt, the Parties expressly state that OSH is a third-party beneficiary  
15 of this Section 5.

16  
17 **6. DISMISSAL OF UNFAIR BUSINESS PRACTICES CLAIMS**

18 By executing this Consent Judgment, AFS agrees to dismiss pursuant to Code of Civil  
19 Procedure § 581 *et seq.*, with prejudice, the Second Cause of Action in the Complaint filed in  
20 this matter on July 12, 2013 related to allegations of Unlawful Business Practices under  
21 Californian Business and Professional Code section 17200 *et seq.*

22 **7. ENFORCEMENT**

23 Any Party may file suit to enforce the terms and conditions contained in this Consent  
24 Judgment, as provided in this paragraph. A Party may enforce any of the terms and conditions of  
25 this Consent Judgment only after that Party first provides 30 days written notice to the Party  
26 allegedly failing to comply with the terms and conditions of this Consent Judgment and attempts  
27 to resolve such Party's failure to comply in an open and good faith manner. The Parties agree  
28 that the requirements of this paragraph shall also apply to any alleged failures to comply with the

1 terms and conditions of this Consent Judgment by Downstream Defendant Releasees, in which  
2 case notice of such alleged failures shall be given to LDR.

3 **8. MODIFICATION**

4 This Consent Judgment may be modified from time to time by express written agreement  
5 of the Parties, with the approval of the Court, or by an order of this Court upon motion and in  
6 accordance with law. A Party seeking to modify this Consent Judgment shall attempt in good  
7 faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent  
8 Judgment. The Attorney General shall be served with notice of any proposed modification to  
9 this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

10 **9. ENTIRE AGREEMENT**

11 This Consent Judgment contains the sole and entire agreement and understanding of the  
12 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
13 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
14 and therein. No representations, oral or otherwise, express or implied, other than those  
15 specifically referred to in this Consent Judgment have been made by any Party hereto. No  
16 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding  
17 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions  
18 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other  
19 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

20 **10. GOVERNING LAW AND APPLICATION**

21 The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California and shall apply only to Covered Products that are sold or offered for sale in the State  
23 of California. In the event that Proposition 65 is repealed, preempted, or otherwise rendered  
24 inapplicable by reason of law generally, or as to the Covered Products, then LDR shall have no  
25 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
26 Covered Products are so effected.  
27

28 This Consent Judgment shall apply to and be binding upon AFS and LDR and its

1 divisions, subdivisions, and subsidiaries, and the Parties' successors and assigns.

2 The Parties, including their counsel, have participated in the preparation of this Consent  
3 Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
4 Consent Judgment was subject to revision and modification by the Parties and has been  
5 accepted and approved as to its final form by all Parties and their counsel.

6 *Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be*  
7 *interpreted against any Party as a result of the manner of the preparation of this Consent*  
8 *Judgment.*

9 **11. PROVISION OF NOTICE**

10 All notices required pursuant to this Consent Judgment and correspondence shall be sent  
11 to the following:

12 For AFS:

13 Daniel Greenbaum, Esq., 1467 South Holt Ave. #2, Los Angeles, CA 90035

14 For LDR:

15 Nathan Metcalf, Hanson Bridgett, LLP, 425 Market Street, 26<sup>th</sup> Floor, San Francisco, CA 94105

16 **12. ATTORNEY'S FEES**

17 A party who unsuccessfully brings or contests an action arising out of this Consent  
18 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs  
19 unless the unsuccessful party has acted with substantial justification. For purposes of this  
20 Consent Judgment, the term substantial justification shall carry the same meaning as used in the  
21 Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.  
22

23 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
24 pursuant to law.

25 **13. EXECUTION AND COUNTERPARTS**

26 The stipulations to this Consent Judgment may be executed in counterparts and by means  
27 of facsimile and/or portable document format (pdf), which taken together shall be deemed to  
28

1 constitute one document.

2 **14. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(t)**

3 AFS agrees to comply with the reporting form requirements referenced in California  
4 Health and Safety Code § 25249.7(f).

5 **15. COURT APPROVAL**

6 This Consent Judgment shall become effective upon entry by the Court. Plaintiff shall  
7 prepare and file a Motion for Approval of this Consent Judgment and Defendant LDR shall  
8 support entry of this Consent Judgment.

9 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and  
10 shall never be introduced into evidence or otherwise used in any proceeding for any purpose  
11 other than to allow the Court to determine if there was a material breach of the previous section.

12 **16. AUTHORIZATION**

13 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
14 party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
15 Consent Judgment on behalf of the party represented and legally bind that party.

16 ///

17 ///

18 ///

19 ///

20

21

22

23

24

25

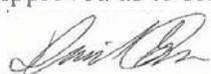
26

27

28

1 The undersigned have read, understand and agree to all of the terms and conditions of this  
2 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
3 costs.

4 AGREED TO: Dated: 6/10/14   
5 AFS Enterprises LLC

6  
7 Approved as to form  
8   
9 Daniel Greenbaum.

10 Dated: 6/10/14 LDR Industries . Inc.

11 By:  
12   
13 David Pollans, V.P. Finance

14  
15 Approved as to form.

16 Attorney for LDR.

17   
18  
19 Nathan Metcalf

20  
21  
22  
23  
24  
25  
26  
27  
28

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

**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between AFS Enterprises, LLC and LDR Industries, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of the Superior Court