

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

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

10	SCOTT SPRANKLE, an individual,)	CASE NO. BC591562
11)	
11	Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
12	v.)	
13	PLUMBINGSUPPLY GROUP, LLC, a)	Judge: Hon. Elizabeth A. White
14	limited liability company, and DOES 1)	Dept.: 48
14	through 100, inclusive,)	Compl. Filed: August 24, 2015
15)	
15	Defendants.)	Unlimited Jurisdiction
16)	
17)	

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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.

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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 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
4 civil penalty of two thousand five hundred dollars (\$2,500.00) to be apportioned in accordance
5 with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,875.00) paid to State
6 of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the
7 remaining 25% (\$625.00) paid to Plaintiff.

8 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
9 made payable to "Law Offices of Lucas T. Novak in Trust for OEHHA" in the amount of
10 \$1,875.00; and (2) a check or money order made payable to "Law Offices of Lucas T. Novak in
11 Trust for Scott Sprankle" in the amount of \$625.00. Defendant shall remit the payments within
12 five (5) business days of the Effective 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

17 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

18 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
19 incurred as a result of, among other things, investigating, bringing this matter to the attention of
20 Defendant's management, negotiating a settlement in the public interest, complying with all
21 reporting obligations, and securing the approval of this Consent Judgment in court. Accordingly,
22 Defendant shall issue a check or money order made payable to "Law Offices of Lucas T. Novak"
23 in the amount of twelve thousand five hundred dollars (\$12,500.00). Defendant shall remit the
24 payment within five (5) business days of the Effective Date, to:

25 Lucas T. Novak, Esq.
26 LAW OFFICES OF LUCAS T. NOVAK
27 8335 W Sunset Blvd., Suite 217
28 Los Angeles, CA 90069

29 **4. RELEASES**

30 **4.1 Plaintiff's Public Release Of Proposition 65 Claims Against Defendant**

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	18 Lucas T. Novak, Esq. 19 LAW OFFICES OF LUCAS T. NOVAK 20 8335 W Sunset Blvd., Suite 217 21 Los Angeles, California 90069

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23 **9. INTEGRATION**

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

26 **10. COUNTERPARTS**

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

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 **AGREED TO:**

12 Date: 10-1-2015
13 Printed Name: Aden B Cullens - President & CEO
14 By: Aden B Cullens
15 Authorized Officer of Defendant, PlumbingSupply Group, LLC

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17 **AGREED TO:**

18 Date: 10/1/15
19 By: Scott Sprankle
20 Plaintiff, Scott Sprankle

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22 **IT IS SO ORDERED.**

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24 Dated: _____

JUDGE OF THE SUPERIOR COURT

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