

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, Isabel Ruggeri

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

10 ISABEL RUGGERI, an individual,)
11)
12 Plaintiff,)
13 v.)
14 MIDWEST FASTENER CORPORATION, a)
15 corporation, and DOES 1 through 100,)
16 inclusive,)
17 Defendants.)

CASE NO. BC616301

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Barbara A. Meiers
Dept.: 12
Compl. Filed: April 8, 2016

Unlimited Jurisdiction

18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between Plaintiff, Isabel Ruggeri
4 (“Plaintiff”), on the one hand, and Defendant, Midwest Fastener Corporation (“Defendant”), on
5 the other hand, with Plaintiff and Defendant each individually referred to as a “Party” and
6 collectively as the “Parties.”

7 Plaintiff is a citizen of the state of California with an interest in protecting the
8 environment, improving human health and the health of ecosystems, and supporting
9 environmentally sound practices, which includes promoting awareness of exposure to toxic
10 chemicals and reducing exposure to hazardous substances found in consumer products.
11 Defendant employs ten (10) or more employees and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California *Health*
13 *& Safety Code* section 25249.6 *et seq.* (“Proposition 65”).

14 **1.2 Allegations**

15 Plaintiff alleges that Defendant sells: (1) brass plumbing fittings, including but not
16 limited to brass male elbows #76347 (hereinafter “Brass Fittings”), and (2) metal wire products,
17 including but not limited to 25ft., LotYTG4637, #23552 (hereinafter “Metal Wire”). The Brass
18 Fittings and the Metal Wire shall hereinafter collectively be referred to as the “Covered
19 Products”. Plaintiff alleges that Defendant sells the Covered Products in the State of California
20 causing users in California to be exposed to lead and lead compounds without providing a clear
21 and reasonable warning required by Proposition 65. Lead and lead compounds are listed
22 pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and
23 birth defects or other reproductive harm.

24 On December 8, 2015, Plaintiff provided a 60-Day Notice of Violation to Defendant and
25 the various public enforcement agencies regarding the alleged Proposition 65 violations related
26 to the Brass Fittings. On January 28, 2016, Plaintiff provided a 60-Day Notice of Violation to
27 Defendant and the various public enforcement agencies regarding the alleged Proposition 65
28 violations related to the Metal Wire. The December 8, 2015 60-Day Notice of Violation and the

1 January 28, 2016 60-Day Notice of Violation shall hereinafter collectively be referred to as the
2 “Notices”.

3 Plaintiff subsequently filed the instant action in the Superior Court for the County of Los
4 Angeles, alleging the violations of Proposition 65.

5 **1.3 No Admissions**

6 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that
7 the Covered Products have been, and are, in compliance with all laws, and that Defendant has
8 not violated Proposition 65. This Agreement shall not be construed as an admission of liability
9 by Defendant but to the contrary as a compromise of claims that are expressly contested and
10 denied. However, nothing in this section shall affect the Parties’ obligations, duties, and
11 responsibilities under this Agreement.

12 **1.4 Jurisdiction And Venue**

13 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
14 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
15 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
16 this Consent Judgment pursuant to California Code of Civil Procedure (“CCP”) § 664.6 and
17 Proposition 65.

18 **1.5 Effective Date**

19 The “Effective Date” shall be the date this Consent Judgment is approved by the Court.

20 **2. INJUNCTIVE RELIEF AND REFORMULATION**

21 **2.1 Reformulation or Warning**

22 Brass Fittings: Defendant shall not distribute or sell any Brass Fittings after the Effective
23 Date directly to California consumers or to any downstream retailer, distributor, or wholesaler
24 that it knows or has reason to believe will sell or offer the Brass Fittings for sale to California
25 consumers unless such product either (a) contains no more than 300 parts per million (“ppm”) of
26 lead when analyzed pursuant to Environmental Protection Agency test method 3050B or
27 equivalent, or (b) is distributed or sold with a clear and reasonable warning as described in
28 Section 2.2.

1 Metal Wire: Defendant shall not distribute or sell any Metal Wire after the Effective Date
2 directly to California consumers or to any downstream retailer, distributor, or wholesaler that it
3 knows or has reason to believe will sell or offer the Metal Wire for sale to California consumers
4 unless such product either (a) contains no more than 100 parts per million (“ppm”) of lead when
5 analyzed pursuant to Environmental Protection Agency test method 3050B or equivalent, or (b)
6 is distributed or sold with a clear and reasonable warning as described in Section 2.2.

7 Distribution or sale “directly” to California consumers as described in Section 2.1 means
8 distribution or sale to California customers without the involvement, participation, or assistance
9 of any downstream distributor, retailer, or wholesaler.

10 **2.2 Clear And Reasonable Warnings**

11 Whenever a clear and reasonable warning is required under Section 2.1, that requirement
12 may be satisfied in any manner that complies with Proposition 65 statutes and regulations. One
13 such manner is to warn in compliance with the following safe harbor requirements. To qualify
14 for the safe harbor all of the following applicable elements shall be met:

15 **2.2.1 Text of Warning**

16 The warning shall state: “**WARNING:** This product contains a chemical known
17 to the State of California to cause cancer and birth defects or other reproductive harm.”

18 **2.2.2 Method of Transmission**

19 This statement shall be prominently displayed on the Covered Product, on the
20 packaging of the Covered Product, or on a box containing the Covered Product, with such
21 conspicuousness, as compared with other words, statements or designs as to render it
22 likely to be read and understood by an ordinary purchaser prior to sale. A Covered
23 Product that is sold by Defendant online shall also provide the warning message by a
24 clearly marked hyperlink on the product display page, or otherwise prominently
25 displayed to the purchaser before the purchaser completes his or her purchase of the
26 Covered Product(s).

27 **2.2.3 Notification of Warning Requirement**

28 Defendant shall notify all downstream retailers, downstream distributors, and

1 downstream wholesalers with whom Defendant has a direct contract by first-class or
2 certified mail, email, facsimile, or equivalent means, that any Covered Products that are
3 not reformulated pursuant to Section 2.1 or labeled with a Proposition 65 warning
4 pursuant to this section may not be sold in California stores or online to California
5 consumers without providing a clear and reasonable warning that complies with this
6 section. Such notification by Defendant shall include an instruction that the downstream
7 party provide a notification consistent with this section to all downstream parties with
8 whom it has a direct contract to sell Covered Products to California consumers.

9 **2.3 Compliance with Consent Judgment**

10 Compliance with the terms of this Consent Judgment by Defendant shall constitute
11 compliance with Proposition 65 by Defendant with respect to any alleged failure to warn about
12 lead and lead compounds in Covered Products manufactured, distributed, or sold by Defendant
13 after the Effective Date.

14 **2.4 Repeal of Warning Requirement**

15 Should Proposition 65 be repealed, and/or warnings for lead or lead compounds no longer
16 be required, Defendant shall have no further warning obligations pursuant to this Consent
17 Judgment.

18 **3. PAYMENTS**

19 **3.1 Civil Penalty Pursuant To Proposition 65**

20 In settlement of all causes of action in Plaintiff's Complaint, Defendant shall pay a total
21 civil penalty of five thousand dollars (\$5,000.00) to be apportioned in accordance with *Health*
22 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,750.00) for State of California
23 Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25%
24 (\$1,250.00) for Plaintiff.

25 Payment shall be made in the form of two (2) checks for the civil penalty: (1) a check or
26 money order made payable to "OEHHA" in the amount of \$3,750.00; and (2) a check or money
27 order made payable to "Law Offices of Lucas T. Novak" in the amount of \$1,250.00. Defendant
28 shall remit the payments within five (5) business days of the Effective Date, to:

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

4 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

5 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
6 incurred in prosecuting the instant action, for all work performed through execution of this
7 agreement and entry of this Consent Judgment, in a payment of twenty six thousand dollars
8 (\$26,000.00). Defendant shall issue a check or money order for this payment made payable to
9 "Law Offices of Lucas T. Novak" within five (5) business days of the Effective Date, to:

10 Lucas T. Novak, Esq.
11 LAW OFFICES OF LUCAS T. NOVAK
12 8335 W Sunset Blvd., Suite 217
13 Los Angeles, CA 90069

13 **4. RELEASES**

14 **4.1 Plaintiff's Release**

15 Plaintiff, acting in her individual capacity, her past and current agents, representatives,
16 attorneys, successors and assignees, and in the public interest, in consideration of the promises
17 and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries,
18 shareholders, directors, members, officers, employees, attorneys, successors and assignees, as
19 well as its downstream retailers, downstream distributors, and downstream wholesalers
20 ("Downstream Releasees"), including, without limitation, Menard, Inc., from any and all claims
21 of violation of Proposition 65 asserted in Plaintiff's Notices arising out of or relating to the
22 Covered Products up to the Effective Date.

23 **4.2 Defendant's Release**

24 Defendant, acting on behalf of itself, its parents, subsidiaries, shareholders, directors,
25 members, officers, employees, attorneys, successors and assignees, and on behalf of the
26 Downstream Releasees, waives all rights to institute any form of legal action against Plaintiff,
27 her past and current agents, representatives, attorneys, experts, successors and assignees, for
28 actions or statements made or undertaken, whether in the course of investigating claims or

1 seeking enforcement of Proposition 65 against Defendant in this matter.

2 **4.3 Waiver Of Unknown Claims**

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

5 "A general release does not extend to claims which the creditor does not know or
6 suspect to exist in his or her favor at the time of executing the release, which if
7 known by him or her must have materially affected his or her settlement with the
8 debtor."

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

18 **5. COURT APPROVAL**

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

26 **6. SEVERABILITY**

27 Subsequent to Court approval of this Consent Judgment, should any part or provision of
28 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or

1 unenforceable, the remaining portions and provisions shall continue in full force and effect.

2 **7. GOVERNING LAW**

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

5 **8. NOTICES**

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

9 TO DEFENDANT: 10 Julia Graeser, Esq. 11 BARG COFFIN LEWIS & TRAPP, LLP 12 350 California Street, 22nd Floor San Francisco, CA 94104	TO PLAINTIFF: Lucas Novak, Esq. LAW OFFICES OF LUCAS T. NOVAK 8335 W Sunset Blvd., Suite 217 Los Angeles, California 90069
---	--

13
14 **9. INTEGRATION**

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

17 **10. COUNTERPARTS**

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

20 Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means
21 shall constitute legal and binding execution and delivery. Any photocopy of the executed
22 Consent Judgment shall have the same force and effect as the originals.

23 **11. AUTHORIZATION**


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

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

AGREED TO:

Date: 4/15/16

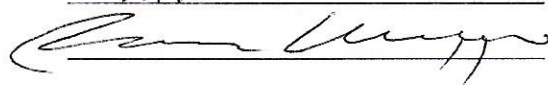
Printed Name: Andy DePree

By: 

Authorized Officer of Defendant,
Midwest Fastener Corporation

AGREED TO:

Date: 4/19/16

By: 

Plaintiff, Isabel Ruggeri

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT