

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, 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)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

Plaintiff,

v.

SPECTRUM BRANDS, INC., a corporation,
SPECTRUM BRANDS HHI, a corporation,
TRACTOR SUPPLY COMPANY, a
corporation, and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BC626619

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Deirdre Hill

Dept.: 49

Compl. Filed: July 12, 2016

Unlimited Jurisdiction

///

///

///

///

///

///

///

///

///

///

///

1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment is entered into by and between APS&EE, LLC
4 (“APS&EE”) and Spectrum Brands, Inc. (“Spectrum”). APS&EE and Spectrum may hereinafter
5 individually be referred to as a “Party” and collectively be referred to as the “Parties.”

6 **1.1.2** APS&EE states that it is an organization based in California with an
7 interest in improving human health and supporting environmentally sound practices, which
8 includes promoting awareness of exposure to toxic chemicals and reducing exposure to
9 hazardous substances found in consumer products.

10 **1.1.3** Spectrum employs ten (10) or more employees and is a person in the
11 course of doing business as the term is defined in California Health & Safety Code section
12 25249.6 *et seq.* (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** APS&EE alleges that Spectrum sold the National Hardware brand of
15 galvanized wire and braided wire in the State of California without providing “clear and
16 reasonable warnings”, in violation of Proposition 65, causing users in California to be exposed to
17 lead. Lead is potentially subject to Proposition 65 warning requirements because it is listed as
18 known to cause cancer and birth defects or other reproductive harm. For purposes of this
19 Consent Judgment, the terms “Product” or “Products” shall mean and are defined as the National
20 Hardware brand of galvanized wire and braided wire containing lead that are manufactured,
21 imported, sold, and/or distributed for sale in California by Spectrum, including, but not limited
22 to, National Hardware Strand Wire 20 Gauge x 100’ N267-013 2573BC, Galvanized Steel Wire
23 20 Gauge x 175’ N264-788 V2568, and Light-Duty Braided Wire 20 Gauge x 25’ N260-307
24 V2565.

25 **1.2.2** On January 18, 2016, APS&EE provided a sixty-day notice of violation,
26 along with a certificate of merit, to Spectrum and the various public enforcement agencies
27 regarding the alleged violation of Proposition 65 with respect to braided wire, including but not
28 limited to National Hardware 25’ N260-307 V2565. On March 25, 2016, APS&EE provided a

1 supplemental sixty-day notice of violation, along with a certificate of merit, to Spectrum and the
2 various public enforcement agencies regarding the alleged violation of Proposition 65 with
3 respect to braided wire. On April 29, 2016, APS&EE provided a second supplemental sixty-day
4 notice of violation, along with a certificate of merit, to Spectrum, Tractor Supply Company, and
5 the various public enforcement agencies regarding the alleged violation of Proposition 65 with
6 respect to the National Hardware brand of galvanized wire and braided wire. The sixty-day
7 notice of violation, supplemental sixty-day notice of violation, and second supplemental sixty-
8 day notice of violation shall collectively be referred to herein as the “Notices”.

9 **1.2.3** On July 12, 2016, in the public interest, APS&EE filed the Complaint in
10 this matter, alleging violation of Proposition 65 with respect to lead in the Products.

11 **1.3 No Admissions**

12 Spectrum denies all allegations in APS&EE’s Notices and Complaint and maintains that
13 the Products have been, and are, in compliance with all laws, and that Spectrum has not violated
14 Proposition 65. This Consent Judgment shall not be construed as an admission of liability, or of
15 any fact, finding, conclusion of law, issue of law, or violation of law by Spectrum, but to the
16 contrary as a compromise of claims that are expressly contested and denied. However, nothing
17 in this section shall affect the Parties’ obligations, duties, and responsibilities under this Consent
18 Judgment.

19 **1.4 Compromise**

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

24 **1.5 Effective Date**

25 The “Effective Date” shall be 60 calendar days after the date Plaintiff serves notice on
26 Spectrum that this Consent Judgment has been approved and entered by the Court.

27 ///

28 ///

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

3 After the Effective Date, Spectrum shall not distribute, sell and/or offer for sale the
4 Products in California unless (a) the galvanizing solution in which the Products are submerged
5 has a lead content by weight of no more than 100 parts per million (0.01%) when analyzed
6 pursuant to Environmental Protection Agency test method 3050B or equivalent, or (b) the
7 Product is distributed, sold, and/or offered for sale with a clear and reasonable warning as
8 described in Section 2.2 below.

9 **2.2 Proposition 65 Warnings**

10 If the Products do not meet the Reformulation Standard (as defined in Section 2.1 above),
11 then Spectrum shall not distribute, sell and/or offer for sale the Products in California without a
12 clear and reasonable Proposition 65 warning. For purposes of this Consent Judgment, for
13 Products manufactured before August 30, 2018, a clear and reasonable warning may be
14 accomplished by the following statement:

15 **WARNING:** This product contains lead, a chemical known to the
16 State of California to cause cancer and birth defects
or other reproductive harm. Wash hands after handling.

17 Alternatively, if it has reason to believe the Products contain additional chemicals
18 listed under Proposition 65, then Spectrum may use the following statement in lieu of the
19 one set forth above:

20 **WARNING:** This product contains chemicals known to the State
21 of California to cause cancer and/or birth defects or
22 other reproductive harm. Wash hands after handling.

23 For purposes of this Consent Judgment, for Products manufactured after August 30,
24 2018, a clear and reasonable warning shall be accomplished by the following statement:

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

27 Alternatively, if it has reason to believe the Products contain additional chemicals
28 listed under Proposition 65, then Spectrum may accomplish a clear and reasonable

1 warning by using the following statement in lieu of the one set forth above:

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

6 The warning language for Products manufactured after August 30, 2018 may also be used
7 by Spectrum on any Products manufactured before that date.

8 **2.2.1 Method of Transmission**

9 The warning statement shall be prominently displayed on the labeling (as defined in 27
10 Cal. Code Regs. § 25600.1 (operative Aug. 30, 2018)), the label, packaging, or box of the
11 Product, with such conspicuousness, as compared with other words, statements or designs as to
12 render it likely to be read and understood by an ordinary purchaser prior to sale. A Product that
13 is sold by Spectrum online shall also provide the warning message by a clearly marked hyperlink
14 on the product display page, or otherwise prominently displayed to the purchaser before the
15 purchaser completes his or her purchase of the Product(s).

16 **3. PAYMENTS**

17 **3.1 Civil Penalty Pursuant To Proposition 65**

18 In settlement of all claims referred to in this Consent Judgment, Spectrum shall pay a
19 total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
20 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
21 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
22 25% (\$1,000.00) for APS&EE.

23 Spectrum shall issue two (2) checks for the civil penalty: (1) a check or money order
24 made payable to “State of California Office of Environmental Health Hazard Assessment” in the
25 amount of \$3,000.00; and (2) a check or money order made payable to “Law Offices of Lucas T.
26 Novak” in the amount of \$1,000.00. Spectrum shall remit the payments within five (5) business
27 days after the date Plaintiff serves notice on Spectrum that this Consent Judgment has been
28 approved and entered by the Court, 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 APS&EE's Fees And Costs**

5 Spectrum shall reimburse APS&EE's reasonable experts' and attorney's fees and costs
6 incurred in prosecuting the instant action, for all work performed through execution and approval
7 of this Consent Judgment. Accordingly, Spectrum shall issue a check or money order made
8 payable to "Law Offices of Lucas T. Novak" in the amount of twenty three thousand five
9 hundred dollars (\$23,500.00). Spectrum shall remit the payment within five (5) business days
10 after the date Plaintiff serves notice on Spectrum that this Consent Judgment has been approved
11 and entered by the Court, to:

12 Lucas T. Novak, Esq.
13 LAW OFFICES OF LUCAS T. NOVAK
14 8335 W Sunset Blvd., Suite 217
15 Los Angeles, CA 90069

15 **4. RELEASES**

16 **4.1 APS&EE's Public Release Of Spectrum**

17 APS&EE, on its own behalf and on behalf of its past and current agents, representatives,
18 attorneys, successors, and assignees, and in the public interest in consideration of the promises
19 and monetary payments contained herein, hereby releases Spectrum, its parents, subsidiaries,
20 affiliated entities under common ownership, shareholders, directors, members, officers,
21 employees, attorneys, successors and assignees, and each entity to which Spectrum directly or
22 indirectly distributes or sells the Products including, without limitation, its downstream
23 distributors, retailers, and customers, including Tractor Supply Company (collectively "Released
24 Parties"), from any violation arising under Proposition 65 pertaining to the failure to warn about
25 exposures to lead from Products manufactured for sale, imported for sale, purchased for sale,
26 sold and/or offered or distributed for sale by Spectrum before and up to the Effective Date, as set
27 forth in the Notices.

1 **4.2 APS&EE’s Individual Release of Spectrum**

2 APS&EE, in its individual capacity only and not in its representative capacity, also
3 provides a release to Spectrum and the Released Parties which shall be effective as a full and
4 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys’ fees, damages, losses, claims, liabilities and demands of APS&EE of any nature,
6 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged
7 or actual exposures to lead in Products manufactured for sale, imported for sale, purchased for
8 sale, sold or distributed for sale by Spectrum before the Effective Date.

9 **4.3 Spectrum’s Release Of APS&EE**

10 Spectrum, on its own behalf, and on behalf of its past and current agents, representatives,
11 attorneys, successors, and assignees, hereby waives all rights to institute any form of legal action
12 against APS&EE, its shareholders, directors, members, officers, employees, and attorneys, for
13 actions or statements made or undertaken, whether in the course of investigating claims or
14 seeking enforcement of Proposition 65 against Spectrum in this matter.

15 **4.4 Waiver Of Unknown Claims**

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

18 “A general release does not extend to claims which the creditor does not know or
19 suspect to exist in his or her favor at the time of executing the release, which if
20 known by him or her must have materially affected his or her settlement with the
debtor.”

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

1 **5. COURT APPROVAL**

2 **5.1** Upon execution of this Consent Judgment by all Parties, APS&EE shall draft and
3 file a noticed Motion for Approval and Entry of Consent Judgment in the above-entitled Court.
4 This Consent Judgment is not effective until it is approved and entered by the Court. It is the
5 intention of the Parties that the Court approve this Consent Judgment, and in furtherance of
6 obtaining such approval, the Parties and their respective counsel agree to mutually employ their
7 best efforts to support the entry of this agreement in a timely manner.

8 **5.2** If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
9 and any and all prior agreements between the Parties as to the Notices or Complaint referenced
10 herein shall terminate and become null and void, and the action shall revert to the status that
11 existed prior to the execution date of this Consent Judgment; (b) no term of this Consent
12 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the
13 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in
14 evidence for any purpose in this action, or in any other proceeding; and (c) the Parties agree to
15 meet and confer to determine whether to modify the terms of the Consent Judgment and to
16 resubmit it for approval.

17 **6. SEVERABILITY**

18 Should, subsequent to the Court's approval and entry of this Consent Judgment as a
19 judgment, any part or provision of this Consent Judgment for any reason be declared by a Court
20 to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full
21 force and effect.

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California and shall apply within the State of California. In the event that Proposition 65 is
25 repealed, or is otherwise rendered inapplicable by reason of law generally or as to the Products,
26 then Spectrum may provide written notice to APS&EE of any asserted change in the law, and
27 shall have no further injunctive obligations pursuant to this Consent Judgment with respect to,
28 and to the extent that, the Products are so affected.

1 **8. NOTICES**

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

<p>5 TO SPECTRUM:</p> <p>6 General Counsel 7 Spectrum Brands, Inc. 8 3001 Deming Way 9 Middleton, WI 53562</p> <p>10 <u>With a copy to:</u></p> <p>11 Sarah R. Choi, Esq. 12 Dentons US LLP 13 1999 Harrison Street, Suite 1300 Oakland, CA 94612</p>	<p>5 TO APS&EE:</p> <p>6 Lucas T. Novak, Esq. 7 Law Offices of Lucas T. Novak 8 8335 W Sunset Blvd., Suite 217 9 Los Angeles, CA 90069</p>
--	---

14 **9. EXECUTION IN COUNTERPARTS**

15 This Consent Judgment may be executed in counterparts, each of which shall be deemed
16 an original, and all of which, when taken together, shall constitute the same document. Execution
17 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
18 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
19 Judgment shall have the same force and effect as the originals.

20 **10. MODIFICATION**

21 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
22 and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or
23 application of any Party, and the entry of a modified consent judgment thereon by the Court.

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

11. AUTHORIZATION

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

AGREED TO:

Date: _____

By: _____

Authorized Officer of APS&EE, LLC

AGREED TO:

Date: 2/3/2017

By: 

Authorized Officer of Spectrum Brands, Inc.

IT IS SO ORDERED.

Dated: _____

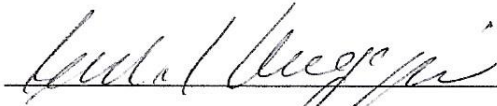
JUDGE OF THE SUPERIOR COURT

1 **11. 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: 2/1/17

10
11 By: 
12 Authorized Officer of APS&EE, LLC

13
14 **AGREED TO:**

15 Date: _____

16
17 By: _____
18 Authorized Officer of Spectrum Brands, Inc.

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____
23 _____
24 JUDGE OF THE SUPERIOR COURT