

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 Plaintiff,)
12 v.)
13 ORIGIN POINT BRANDS, LLC, a limited)
14 liability company, and DOES 1 through 100,)
15 inclusive,)
16 Defendants.)
17)

CASE NO. BC656395

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Elizabeth A. White
Dept.: 48
Compl. Filed: April 5, 2017

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between Plaintiff, APS&EE, LLC (“Plaintiff”) and Defendant, Origin Point Brands, LLC
5 (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the
6 “Parties.”

7 **1.1.2** Plaintiff is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and
9 supporting environmentally sound practices, which includes promoting awareness of exposure to
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

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

14 **1.2 Allegations**

15 Plaintiff alleges that Defendant manufactured, distributed, sold, and/or offered to sell the
16 “Garden Zone” brand of galvanized hardware cloth, containing unsafe levels of lead, including,
17 without limitation 1/4in mesh, 2’x10’, Model 122410, 6-51082-10241-2, in the State of
18 California causing users to be exposed to lead without providing a clear and reasonable warning
19 required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical known to the
20 State of California to cause cancer and birth defects or other reproductive harm. For purposes of
21 this Consent Judgment, the terms “Product” or “Products” shall mean and are defined as “Garden
22 Zone” brand of galvanized hardware cloth containing lead that is manufactured, sold or
23 distributed for sale in California by Defendant.

24 A sixty-day notice of violation dated December 1, 2016 (“60-Day Notice”), along with a
25 Certificate of Merit, was provided by Plaintiff to Defendant and various public enforcement
26 agencies regarding the alleged violation of Proposition 65. Plaintiff, acting in the public interest,
27 subsequently filed the instant action in the Superior Court for the County of Los Angeles,
28 alleging violations of Proposition 65.

1 **1.3 No Admissions**

2 Defendant denies all allegations in Plaintiff’s 60-Day Notice and Complaint and
3 maintains that the Products have been, and are, in compliance with all laws, and that Defendant
4 has not violated Proposition 65. This Consent Judgment shall not be construed as an admission
5 of liability by Defendant but to the contrary as a compromise of claims that are expressly
6 contested and denied. However, nothing in this section shall affect the Parties’ obligations,
7 duties, and responsibilities under this Consent 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 and entered by
16 the Court.

17 **2. INJUNCTIVE RELIEF**

18 **2.1 Warning Requirement**

19 As of the Effective Date, except as provided in Section 2.1.1 below, Defendant shall not
20 distribute, sell, or offer for sale the Products in California unless each Product is distributed,
21 sold, or offered for sale with a clear and reasonable warning as described in Section 2.2.

22 **2.1.1 Existing Inventory**

23 The injunctive requirements of Section 2 shall not apply to Products that were
24 manufactured or in the stream of commerce as of the Effective Date, which products are subject
25 to the releases provided in Section 4.1.

26 **2.2 Clear And Reasonable Warnings**

27 **2.2.1** For Products manufactured before August 30, 2018, whenever a clear and
28 reasonable warning is required under Section 2.1, it shall state the following with the capitalized

1 and emboldened wording:

2 “**WARNING:** This product contains a chemical known to the State of California
3 to cause cancer and birth defects or other reproductive harm.”

4
5 **2.2.2** For Products manufactured after August 30, 2018, whenever a
6 clear and reasonable warning is required under Section 2.1, Defendant shall comply with
7 27 Cal. Code Regs. § 25601, *et seq.* (operative Aug. 30, 2018) and use the following
8 warning with the capitalized and emboldened wording:

9
10 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

11 The warning shall be accompanied by a symbol consisting of a black exclamation point
12 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
13 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
14 be placed to the left of the text of the warning, in a size no smaller than the height of the word
15 “WARNING”.

16 The warning stated in Section 2.2.2 for Products manufactured after August 30, 2018
17 may be used by Defendant on any Products manufactured before that date.

18 **2.2.3** Each unit shall carry said warning directly on each unit or its label or
19 package, with such conspicuousness as compared with other words, statements or designs as to
20 render it likely to be read and understood by an ordinary consumer prior to sale.

21 No later than August 30, 2018, a Product that is sold by Defendant on the internet shall
22 also provide the warning message by a clearly marked hyperlink on the product display page, or
23 otherwise prominently displayed to the purchaser before the purchaser completes his or her
24 purchase of the Product.

25 **3. PAYMENTS**

26 **3.1 Civil Penalty Pursuant To Proposition 65**

27 In settlement of all causes of action in Plaintiff’s Complaint, Defendant shall pay a total
28 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health*

1 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) paid to State of California
2 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
3 (\$1,000.00) paid to Plaintiff.

4 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
5 made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made
6 payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Defendant shall remit
7 the payments within five (5) business days of the Effective Date, to:

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

12 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

13 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
14 incurred in prosecuting the instant action, for all work performed through execution of this
15 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or
16 money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty-one
17 thousand dollars (\$21,000.00). Defendant shall remit the payment within five (5) business days
18 of the Effective Date, to:

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

23 **4. RELEASES**

24 **4.1 Plaintiff’s Release Of Proposition 65 Claims Against Defendant**

25 Plaintiff, acting in its individual capacity, its past and current agents, shareholders,
26 directors, members, officers, employees, attorneys, successors and assignees, and in the public
27 interest, in consideration of the promises and monetary payments contained herein, hereby
28 releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
employees, attorneys, successors and assignees, as well as Defendant’s downstream distributors,
wholesalers, and retailers (collectively “Released Parties”), from any violation arising under

1 Proposition 65 pertaining to the failure to warn about exposures to lead from the Products
2 manufactured, sold or distributed for sale in California prior to the Effective Date, as alleged or
3 otherwise asserted in the 60-Day Notice or Plaintiff's Complaint.

4 **4.2 Defendant's Release Of Plaintiff**

5 Defendant, and on behalf of all of the other Released Parties, by this Consent Judgment,
6 waives all rights to institute any form of legal action against Plaintiff, its shareholders, directors,
7 members, officers, employees, attorneys, experts, successors and assignees for actions or
8 statements made or undertaken, whether in the course of investigating claims or seeking
9 enforcement of Proposition 65 against Defendant in this matter.

10 **4.3 Waiver Of Unknown Claims**

11 Each of the Parties acknowledges that it is familiar with California Civil Code § 1542
12 which provides:

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

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

26 **5. COURT APPROVAL**

27 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
28 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
Judgment is not effective until it is approved and entered by the Court. It is the intention of the
Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such

1 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
2 support the entry of this agreement in a timely manner, including cooperating on drafting and
3 filing any papers in support of the required motion for judicial approval.

4 **6. SEVERABILITY**

5 Should any part or provision of this Consent Judgment for any reason be declared by a
6 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
7 in full force and effect.

8 **7. GOVERNING LAW**

9 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 **8. NOTICES**

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

15 **TO DEFENDANT:**

16 Michael C. Weed, Esq.
17 Orrick Herrington, et al.
18 400 Capitol Mall, Suite 3000
19 Sacramento, CA 95814

20 **TO PLAINTIFF:**

21 Lucas T. Novak, Esq.
22 Law Offices of Lucas T. Novak
23 8335 W Sunset Blvd., Suite 217
24 Los Angeles, CA 90069

25 **9. INTEGRATION**

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

28 **10. COUNTERPARTS**

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

1 **11. AUTHORIZATION**

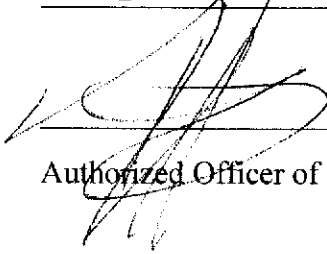
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and 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: _____

5.17.17

10
11 By: _____

 BASIL PENTON CSMO

Authorized Officer of Origin Point Brands, LLC

14 **AGREED TO:**

15 Date: _____

16
17 By: _____

Authorized Officer of APS&EE, LLC

20 **IT IS SO ORDERED.**

21
22 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 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:**

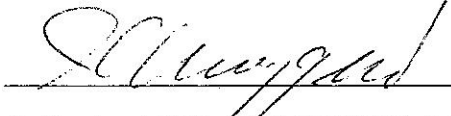
9 Date: _____

10
11 By: _____

12 Authorized Officer of Origin Point Brands, LLC

13
14 **AGREED TO:**

15 Date: 5/4/17

16
17 By: 

18 Authorized Officer of APS&EE, LLC

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____

JUDGE OF THE SUPERIOR COURT