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

6 **1.1.2** Plaintiff is an organization based in California with an interest in
7 protecting the environment, improving human health and the health of ecosystems, and
8 supporting environmentally sound practices, which includes promoting awareness of exposure to
9 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

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

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant manufactured, distributed, sold, and/or offered to sell the
15 (1) “Garden Zone” brand of galvanized hardware cloth, including, without limitation 1/4in mesh,
16 2’x10’, Model 122410, 6-51082-10241-2; and (2) the “Blue Hawk” brand of galvanized
17 hardware cloth, including, without limitation 23 gauge, 3ft x 10ft, #0492389, 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 Amended Consent Judgment, the terms “Product” or “Products” shall mean and are defined
22 as “Garden Zone” brand and “Blue Hawk” brand of galvanized hardware cloth containing lead
23 that is manufactured, sold or distributed for sale in California by Defendant.

24 A sixty-day notice of violation dated December 1, 2016 (“December 1, 2016 Notice”),
25 along with a Certificate of Merit, was provided by Plaintiff to Defendant and various public
26 enforcement agencies regarding the alleged violation of Proposition 65 related to the “Garden
27 Zone” brand of galvanized hardware cloth. Plaintiff, acting in the public interest, filed the instant
28 action in the Superior Court for the County of Los Angeles on April 5, 2017, alleging violations

1 of Proposition 65. On May 17, 2017, the parties executed a consent judgment resolving all
2 claims related to the “Garden Zone” brand of galvanized hardware cloth, and on July 21, 2017,
3 the Court signed and entered judgment pursuant to the terms of that consent judgment.

4 Following investigations occurring near the end of 2017 and into early 2018, Plaintiff
5 discovered the alleged Proposition 65 violations related to the “Blue Hawk” brand of galvanized
6 hardware cloth. Accordingly, on April 3, 2018, Plaintiff served a sixty-day notice of violation
7 (“April 3, 2018 Notice”), along with a Certificate of Merit, to L G Sourcing, Inc. (“L G
8 Sourcing”), Lowe’s Home Centers, LLC (“Lowe’s”), and the various public enforcement
9 agencies regarding the alleged violations of Proposition 65 related to the “Blue Hawk” brand of
10 galvanized hardware cloth. Defendant subsequently contacted Plaintiff stating that it was
11 responsible for the “Blue Hawk” brand of galvanized hardware cloth and would therefore be
12 defending L G Sourcing and Lowe’s. The December 1, 2016 Notice along with the April 3, 2018
13 Notice shall hereinafter be referred to as the “Notices.”

14 **1.3 No Admissions**

15 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that
16 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
17 Proposition 65. This Amended Consent Judgment shall not be construed as an admission of
18 liability by Defendant but to the contrary as a compromise of claims that are expressly contested
19 and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and
20 responsibilities under this Amended Consent Judgment.

21 **1.4 Jurisdiction And Venue**

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

27 **1.5 Effective Date**

28 The “Effective Date” shall be the date this Amended Consent Judgment is approved and

1 entered by the Court.

2 **2. INJUNCTIVE RELIEF**

3 **2.1 Warning Requirement**

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

7 **2.1.1 Existing Inventory**

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

11 **2.2 Clear And Reasonable Warnings**

12 **2.2.1** For Products manufactured before August 30, 2018, whenever a clear and
13 reasonable warning is required under Section 2.1, it shall state the following with the capitalized
14 and emboldened wording:

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

17
18 **2.2.2** For Products manufactured after August 30, 2018, whenever a
19 clear and reasonable warning is required under Section 2.1, Defendant shall comply with
20 27 Cal. Code Regs. § 25601, *et seq.* (operative Aug. 30, 2018) and use the following
21 warning with the capitalized and emboldened wording:

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

23
24 The warning shall be accompanied by a symbol consisting of a black exclamation point
25 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
26 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
27 be placed to the left of the text of the warning, in a size no smaller than the height of the word
28 “WARNING”.

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

3 **2.2.3** Each unit shall carry said warning directly on each unit or its label or
4 package, with such conspicuousness as compared with other words, statements or designs as to
5 render it likely to be read and understood by an ordinary consumer prior to sale.

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

10 **3. PAYMENTS**

11 **3.1 Civil Penalty Pursuant To Proposition 65**

12 Pursuant to the terms of the consent judgment entered on July 21, 2017, Plaintiff and
13 Defendant acknowledge that Defendant has already paid a civil penalty of four thousand dollars
14 (\$4,000.00) regarding the alleged Proposition 65 violations related to the “Garden Zone” brand
15 of galvanized hardware cloth. Regarding the alleged Proposition 65 violations related to the
16 “Blue Hawk” brand of galvanized hardware cloth, Defendant shall pay a total civil penalty of
17 four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health and Safety Code*
18 section 25249.12(c)(1) and (d), with 75% (\$3,000.00) paid to State of California Office of
19 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$1,000.00) paid
20 to Plaintiff.

21 Defendant shall issue two (2) checks for the civil penalty related to the “Blue Hawk”
22 brand of galvanized hardware cloth: (1) a check or money order made payable to “OEHHA” in
23 the amount of \$3,000.00; and (2) a check or money order made payable to “Law Offices of
24 Lucas T. Novak” in the amount of \$1,000.00. Defendant shall remit the payments within five (5)
25 business days of the Effective Date, to:

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

1 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

2 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
3 incurred in prosecuting the instant action, for all work performed through execution of this
4 agreement and entry of this Amended Consent Judgment. Pursuant to the terms of the consent
5 judgment entered on July 21, 2017, Plaintiff and Defendant acknowledge that Defendant has
6 already paid twenty-one thousand dollars (\$21,000.00). Accordingly, Defendant shall issue an
7 additional check or money order made payable to “Law Offices of Lucas T. Novak” in the
8 amount of sixteen thousand dollars (\$16,000.00). Defendant shall remit the payment within five
9 (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 Of Proposition 65 Claims Against Defendant**

15 Plaintiff, acting in its individual capacity, its past and current agents, shareholders,
16 directors, members, officers, employees, attorneys, successors and assignees, and in the public
17 interest, in consideration of the promises and monetary payments contained herein, hereby
18 unconditionally releases and forever discharges Defendant, its parents, subsidiaries,
19 shareholders, directors, members, officers, employees, attorneys, successors and assignees, as
20 well as Defendant’s downstream distributors, wholesalers, and retailers, including L G Sourcing,
21 Lowe’s and Lowe’s parent and subsidiaries and affiliates thereof and their respective employees,
22 agents, and assigns (collectively “Released Parties”), from any violation arising under
23 Proposition 65 pertaining to the failure to warn about exposures to lead from the Products
24 manufactured, sold or distributed for sale in California prior to the Effective Date, as alleged or
25 otherwise asserted in the Notices or Plaintiff’s Complaint.

26 **4.2 Defendant’s Release Of Plaintiff**

27 Defendant, and on behalf of all of the other Released Parties, by this Amended Consent
28 Judgment, waives all rights to institute any form of legal action against Plaintiff, its shareholders,

1 directors, members, officers, employees, attorneys, experts, successors and assignees for actions
2 or statements made or undertaken, whether in the course of investigating claims or seeking
3 enforcement of Proposition 65 against Defendant in this matter.

4 **4.3 Waiver Of Unknown Claims**

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

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
8 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
9 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
10 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
11 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
12 HER SETTLEMENT WITH THE DEBTOR.

11 Each of the Parties waives and relinquishes any right or benefit it has or may have under
12 California Civil Code § 1542 or any similar provision under the statutory or non-statutory law of
13 any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits.

14 The Parties acknowledge that each may subsequently discover facts in addition to, or different
15 from, those that it believes to be true with respect to the claims released herein. The Parties
16 agree that this Amended Consent Judgment and the releases contained herein shall be and remain
17 effective in all respects notwithstanding the discovery of such additional or different facts.

18 **5. COURT APPROVAL**

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

27 **6. SEVERABILITY**

28 Should any part or provision of this Amended Consent Judgment for any reason be

1 declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions
2 shall continue in full force and effect.

3 **7. GOVERNING LAW**

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

6 **8. NOTICES**

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

10 TO DEFENDANT: 11 Michael C. Weed, Esq. 12 Orrick Herrington, et al. 13 400 Capitol Mall, Suite 3000 14 Sacramento, CA 95814	10 TO PLAINTIFF: 11 Lucas T. Novak, Esq. 12 Law Offices of Lucas T. Novak 13 8335 W Sunset Blvd., Suite 217 14 Los Angeles, CA 90069
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15 **9. INTEGRATION**

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

18 **10. COUNTERPARTS**

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

25 **11. AUTHORIZATION**

26 The undersigned are authorized to execute this Amended Consent Judgment on behalf of
27 their respective Parties. Each Party has read, understood, and agrees to all of the terms and
28 conditions of this Amended Consent Judgment. Each Party warrants to the other that it is free to

1 enter into this Amended Consent Judgment and not subject to any conflicting obligation that will
2 or might prevent or interfere with the execution or performance of this Amended Consent
3 Judgment by said party.
4

5 **AGREED TO:**

6 Date: 2.29.18

7
8 By:  BASIL PEYTON

9 Authorized Officer of Origin Point Brands, LLC
10

11 **AGREED TO:**

12 Date: 7/20/18

13
14 By: 

15 Authorized Officer of APS&EE, LLC
16

17 **IT IS SO ORDERED.**
18

19 Dated: _____

20 JUDGE OF THE SUPERIOR COURT
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