

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 UNIFIED SALES AND DISTRIBUTION,)
14 INC., a corporation, HD SUPPLY REPAIR &)
15 REMODEL LLC DBA HD SUPPLY HOME)
16 IMPROVEMENT SOLUTIONS, a limited)
17 liability company, and DOES 1 through 100,)
18 inclusive,)
19 Defendants.)

CASE NO. BC691319

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Richard Fruin
Dept.: 15
Compl. Filed: January 23, 2018

Unlimited Jurisdiction

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

1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between APS&EE, LLC (“APS&EE”) and Unified Sales and Distribution, Inc. (“USDI”).
5 APS&EE and USDI shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** APS&EE 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** APS&EE alleges that USDI is a person in the course of doing business as
11 the term is defined in California *Health & Safety Code* section 25249.6 et seq.
12 (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** APS&EE alleges that USDI sold the “USDI” brand of brass fittings and
15 valves, including 1/4" self-piercing saddle valve, 905372, 6-55354-91566-3 (hereinafter
16 collectively the “Products”) in the State of California causing users in California to be exposed to
17 hazardous levels of Lead, without providing “clear and reasonable warnings”, in violation of
18 Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is
19 listed as known to cause cancer and birth defect or other reproductive harm.

20 **1.2.2** On October 30, 2017, APS&EE sent a Sixty-Day Notice of Violation (the
21 “Notice”) to USDI, HD Supply Repair & Remodel, LLC dba HD Supply Home Improvement
22 Solutions (“HD Supply”), and the various public enforcement agencies regarding the alleged
23 violation of Proposition 65 with respect to the Products. On January 23, 2018, Plaintiff, acting in
24 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County
25 of Los Angeles, alleging violations of Proposition 65.

26 **1.3 No Admissions**

27 USDI denies all allegations in APS&EE’s Notice and Complaint and maintains that the
28 Products have been, and are, in compliance with all laws, maintains it is exempt from

1 Proposition 65 because it employed less than 10 employees at the time of the alleged wrongs,
2 and that USDI has not violated Proposition 65. This Consent Judgment shall not be construed as
3 an admission of liability by USDI but to the contrary as a compromise of claims that are
4 expressly contested and denied. However, nothing in this section shall affect the Parties’
5 obligations, duties, and responsibilities under this Consent Judgment.

6 **1.4 Compromise**

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

11 **1.5 Effective Date**

12 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
13 the Court.

14 **2. INJUNCTIVE RELIEF**

15 **2.1 Reformulation Standard**

16 As of the Effective Date, USDI shall not distribute for sale in California, sell or offer for
17 sale the Products in California unless (a) the Product contains no more than 100 parts per million
18 (0.01%) of Lead (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for
19 sale with a clear and reasonable warning as described below in Section 2.2.

20 **2.2 Proposition 65 Warnings**

21 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
22 USDI shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) or use a
23 warning with the capitalized and emboldened wording substantially similar to the following:

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

27 The warning shall be accompanied by a symbol consisting of a black exclamation point
28 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not

1 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
2 be placed to the left of the text of the warning, in a size no smaller than the height of the word
3 “WARNING”.

4 **2.2.2** Each unit shall carry said warning directly on each unit or its label,
5 package, shelf container or bin, with such conspicuousness as compared with other words,
6 statements or designs as to render it likely to be read and understood by an ordinary consumer
7 prior to sale. A Product that is sold by USDI on the internet shall also provide the warning
8 message by a clearly marked hyperlink on the product display page, or otherwise prominently
9 displayed to the purchaser before the purchaser completes his or her purchase of the Product.

10 **3. PAYMENTS**

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

12 In settlement of all claims referred to in this Consent Judgment, USDI shall pay a total
13 civil penalty of three thousand five hundred dollars (\$3,500.00) to be apportioned in accordance
14 with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,625.00) for State of
15 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
16 25% (\$875.00) for APS&EE.

17 USDI shall issue two (2) checks for the civil penalty: (1) a check or money order made
18 payable to “OEHHA” in the amount of \$2,625.00; and (2) a check or money order made payable
19 to “Law Offices of Lucas T. Novak” in the amount of \$875.00. USDI shall remit the payments
20 within five (5) business days of the Effective Date, to:

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 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

26 USDI shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs
27 incurred in prosecuting the instant action, for all work performed through execution of this
28 Consent Judgment. Accordingly, USDI shall issue total payment to “Law Offices of Lucas T.
Novak” in the amount of sixteen thousand five hundred dollars (\$16,500.00). USDI shall remit

1 the payment in three (3) installments as follows: (1) a check or money order in the amount of
2 \$5,500 within five (5) business days of the Effective Date, (2) a second check or money order in
3 the amount of \$5,500 within forty-five (45) calendar days of the Effective Date, and (3) a third
4 check or money order in the amount of \$5,500 within ninety (90) calendar days of the Effective
5 Date, to:

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

9 **4. RELEASES**

10 **4.1 APS&EE's Release Of USDI**

11 APS&EE, acting in its individual capacity, and in the public interest, in consideration of
12 the promises and monetary payments contained herein, hereby releases USDI, its parents,
13 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
14 assignees, as well as its downstream distributors, retailers, and franchisees (collectively
15 "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's
16 Notice or Complaint regarding failure to warn about exposures to Lead from the Products sold
17 and/or offered for sale by USDI in California before and up to the Effective Date. Compliance
18 with the injunctive relief terms of this Consent Judgment shall be deemed compliance with
19 Proposition 65 with respect to alleged exposures to Lead in the Products.

20 **4.2 USDI's Release Of APS&EE**

21 USDI, and on behalf of the Released Parties, by this Consent Judgment, waives all rights
22 to institute any form of legal action against APS&EE, its shareholders, directors, members,
23 officers, employees, attorneys, experts, successors and assignees for actions or statements made
24 or undertaken, whether in the course of investigating claims or seeking enforcement of
25 Proposition 65 against USDI in this matter.

26 **4.3 Waiver Of Unknown Claims**

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

1 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
3 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
4 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
5 OR HER SETTLEMENT WITH THE DEBTOR.”

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

13 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California.

28 ///

1 **8. NOTICES**

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

4 TO USDI: 5 Albert S. Israel, Esq. 6 A Professional Law Corp. 7 301 East Ocean Blvd. 8 Suite 1700 9 Long Beach, CA 90802	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------

9 **9. COUNTERPARTS**

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

15 ///
16 ///
17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 **10. 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: 8/23/18
10 By: [Signature]
11 Authorized Officer of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 8-18-18
15 By: [Signature]
16 Authorized Officer of Unified Sales and Distribution, Inc.

17
18 **IT IS SO ORDERED.**

19 Dated: _____
20 _____
21 JUDGE OF THE SUPERIOR COURT

22
23
24
25
26
27
28