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Attorney for Plaintiff, APS&EE, LLC

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

APS&EE, LLC, a limited liability company, )  
Plaintiff, )  
v. )  
EVANSVILLE SHEET METAL WORKS, )  
INC., a corporation, and DOES 1 through 100, )  
inclusive, )  
Defendants. )

CASE NO. 19STCV10221

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Elaine Lu

Dept.: 26

Compl. Filed: March 25, 2019

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 APS&EE, LLC (“APS&EE”) and Evansville Sheet Metal Works, Inc. (“ESMW”).  
5 APS&EE and ESMW 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** ESMW is a person in the course of doing business as the term is defined in  
11 California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

12 **1.2 Allegations**

13 **1.2.1** APS&EE alleges that ESMW sold brass bars, including but not limited to  
14 BSQ 1/2” square of all lengths (hereinafter collectively the “Products”) in the State of California  
15 causing users in California to be exposed to hazardous levels of Lead without providing “clear  
16 and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to  
17 Proposition 65 warning requirements because it is listed as known to cause cancer and birth  
18 defects or other reproductive harm.

19 **1.2.2** On December 10, 2018, APS&EE sent a Sixty-Day Notice of Violation  
20 (the “Notice”) to ESMW and the various public enforcement agencies regarding the alleged  
21 violation of Proposition 65 with respect to the Products. On March 25, 2019, Plaintiff, acting in  
22 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County  
23 of Los Angeles, alleging violations of Proposition 65.

24 **1.3 No Admissions**

25 ESMW denies all allegations (including, but not limited to, the material, factual, and  
26 legal allegations) in APS&EE’s Notice and Complaint and maintains that the Products have  
27 been, and are, in compliance with all laws, and that ESMW has not violated Proposition 65.  
28 Nothing in this Consent Judgment shall not be construed as an admission of any kind, finding,

1 conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent  
2 Judgment constitute or be construed as an admission of any fact, finding, conclusion of law,  
3 issue of law, or violation of law by ESMW; but to the contrary as a compromise of claims that  
4 are 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 After the Effective Date, ESMW 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%) by weight of Lead ("Reformulated Product"), or (b) the Product is distributed, sold, or  
19 offered for sale with a clear and reasonable warning in compliance with California law as  
20 described below in Section 2.2.

#### 21 **2.2 Proposition 65 Warnings**

22 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,  
23 ESMW shall use a warning that meets the requirements of Section 2.1(b) hereinabove. One such  
24 warning which is per se compliant with Section 2.1(b) shall be, with the capitalized and  
25 emboldened wording, substantially similar to the following:

26 **WARNING:** This product can expose you to Lead, which is known to the State  
27 of California to cause cancer and birth defects or other  
28 reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

6 **2.2.2 Internet Sales.** A Product that is sold by ESMW on the internet to persons  
7 located in California shall provide the warning message by a clearly marked hyperlink on the  
8 product display page, or otherwise prominently displayed to the purchaser before the purchaser  
9 completes his or her purchase of the Product. For Products that ESMW provides for a  
10 downstream entity to sell on the internet, ESMW shall include an instruction that the entity  
11 comply with the warnings requirements of this section.

12 **2.2.3 Phone Sales.** A Product that is sold by ESMW via telephone to persons  
13 located in California shall provide the warning message to the purchaser in a clearly stated voice  
14 before the purchaser completes his or her purchase of the Product. For Products that ESMW  
15 provides for a downstream entity to sell via telephone, ESMW shall include an instruction that  
16 the entity comply with the warnings requirements of this section.

17 **2.2.4 Brick And Mortar Sales.** Should ESMW sell the Products, or  
18 intentionally cause to have the Products sold, from brick and mortar stores located in California,  
19 then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with  
20 such conspicuousness as compared with other words, statements or designs as to render it likely  
21 to be read and understood by an ordinary consumer prior to sale.

### 22 **3. PAYMENTS**

#### 23 **3.1 Civil Penalty Pursuant To Proposition 65**

24 In settlement of all claims referred to in this Consent Judgment, ESMW shall pay a total  
25 civil penalty of Four Thousand and 00/100 dollars (\$ 4,000.00) to be apportioned in accordance  
26 with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of  
27 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
28 25% (\$1,000.00) for APS&EE.

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

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

### **3.2 Reimbursement Of APS&EE's Fees And Costs**

ESMW shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Consent Judgment. Accordingly, ESMW shall issue a check or money order made payable to "Law Offices of Lucas T. Novak" in the amount of Twenty-Three Thousand and 00/100 dollars (\$23,000.00). ESMW shall remit the payment within five (5) business days of the Effective Date, to:

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

## **4. RELEASES**

### **4.1 APS&EE's Release Of ESMW**

APS&EE, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases ESMW, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as each entity to whom ESMW directly or indirectly distributed or sold the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, licensors, licensees and franchisees (collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in APS&EE's Notice or Complaint regarding the Products sold and/or offered for sale by ESMW in California before and up to the Effective Date.

1           **4.2     ESMW's Release Of APS&EE**

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

7           **4.3     Waiver Of Unknown Claims**

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

10           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
15 DEBTOR OR RELEASED PARTY.

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

23           **5.     COURT APPROVAL**

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

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of  
7 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
8 reason of law generally or as to the Products, then ESMW may provide written notice to  
9 APS&EE of any asserted change in the law, and shall have no further injunctive obligations  
10 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so  
11 affected.

12 **8. NOTICES**

13 All correspondence and notice required to be provided under this Consent Judgment shall  
14 be in writing, and sent by: (i) personal delivery; (ii) first class, registered or certified mail, return  
15 receipt requested; or (iii) a recognized overnight courier addressed as follows:

16 TO ESMW:

17 President  
18 Evansville Sheet Metal Works, Inc.  
19 1901 West Maryland Street,  
20 Evansville, IN 47712

21 With a copy to:

22 Richard J. Wegener  
23 Faegre Baker Daniels LLP  
24 2200 Wells Fargo Center  
25 90 South Seventh Street  
26 Minneapolis, MN 55402

TO APS&EE:

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

25 Either Party may, from time to time, specify in writing to the other, a change of address to which  
26 all notices and other communications shall be sent.

27 **9. COUNTERPARTS**

28 This Consent Judgment may be executed in counterparts, each of which shall be deemed

1 an original, and all of which, when taken together, shall constitute the same document. Execution  
2 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
3 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
4 Judgment shall have the same force and effect as the originals.

5 **10. AUTHORIZATION**

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

11  
12 **AGREED TO:**

13 Date:

Aug. 11, 2019

14 By:

[Signature]

15 Authorized Representative of APS&EE, LLC

16  
17 **AGREED TO:**

18 Date:

July 31, 2019

19 By:

[Signature]

20 Authorized Representative of Evansville Sheet Metal Works, Inc.

21  
22 **IT IS SO ORDERED.**

23 Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT