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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)
12 Plaintiff,)
13 v.)
14 DISCOUNT STEEL, INC., a corporation, and)
15 DOES 1 through 100, inclusive,)
16 Defendants.)

CASE NO. 19STCV08963

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Gregory W. Alarcon
Dept.: 36
Compl. Filed: March 15, 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 (“Plaintiff”) and DISCOUNT STEEL, INC. (“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** Plaintiff alleges that Defendant is a person in the course of doing business
11 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
12 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold goods or products containing brass
15 such as a “MTO-1 1/2” square bar (hereinafter collectively the “Products”), in the State of
16 California causing users in California to be exposed to hazardous levels of Lead without
17 providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially
18 subject to Proposition 65 warning requirements because it is listed as known to cause cancer and
19 birth defects or other reproductive harm.

20 **1.2.2** On December 10, 2018, Plaintiff alleges that it sent a Sixty-Day Notice of
21 Violation (the “Notice”) to Defendant and the various public enforcement agencies regarding the
22 alleged violation of Proposition 65 with respect to the Products. On March 15, 2019, Plaintiff,
23 acting in the public interest, filed the instant action (the “Complaint”) in the Superior Court for
24 the County of Los Angeles, alleging violations of Proposition 65. On July 22, 2019, the Court
25 entered default against Defendant. Default judgment was entered against Defendant on
26 December 12, 2019. Plaintiff took action to transfer the default judgment to Minnesota and, in
27 doing so, initiated a separate proceeding in Minnesota (the “Minnesota Proceeding”). Through
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1 approval of this Consent Judgment, it is intended in part, to vacate the default entered against
2 Defendant, set aside the default judgment, and dismiss with prejudice the Minnesota Proceeding.

3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff's Notice and Complaint and maintains that
5 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
6 Proposition 65. Defendant also denies that it received actual notice of the Notice, that the
7 Complaint was properly served, the default and judgment for default were properly entered, and
8 the Minnesota Proceeding was properly commenced. This Consent Judgment shall not be
9 construed as an admission of liability by Defendant but to the contrary as a compromise of
10 claims that are expressly contested and denied. However, nothing in this section shall affect the
11 Parties' obligations, duties, and responsibilities under this Consent Judgment.

12 **1.4 Compromise**

13 The Parties enter into this Consent Judgment in order to resolve the controversy
14 described above, including the above-referenced action and the Minnesota Proceeding, and to
15 avoid prolonged and costly litigation between them.

16 **1.5 Jurisdiction and Venue**

17 For purposes of this Consent Judgment only, the Parties stipulate to vacate the default, set
18 aside the default judgment entered against Defendant, and dismiss with prejudice the Minnesota
19 Proceeding, and further stipulate that the above-entitled Court has jurisdiction over Defendant as
20 to the allegations in the Complaint, that venue is proper in Los Angeles County, and that this
21 Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to
22 California Code of Civil Procedure Section 664.6 and Proposition 65.

23 **1.6 Effective Date**

24 The "Effective Date" shall be the date this Consent Judgment is approved and entered by
25 the Court, and written notice of entry of the Consent Judgment is provided to Defendant's
26 counsel listed below in Section 8.

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

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

7 **2.2 Proposition 65 Warnings**

8 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
9 Defendant shall use a warning with the capitalized and emboldened wording substantially similar
10 to the following:

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

14 If Defendant has reason to believe the Products may expose consumers to additional
15 chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals,
16 including Lead, which are” in the warning statement. The warning shall be accompanied by a
17 symbol consisting of an exclamation point in a yellow equilateral triangle. Where the label for
18 the product is not printed using the color yellow, the symbol may be printed in black and white.

19 **2.2.2 Internet Sales.** A Product that is sold by Defendant on the internet to
20 persons located in California shall provide the warning message by a clearly marked hyperlink
21 on the product display or order page, or otherwise prominently displayed to the purchaser before
22 the purchaser completes his or her purchase of the Product.

23 **2.2.3 Phone Sales.** A Product that is sold by Defendant via telephone to persons
24 located in California shall provide the warning message to the purchaser in a clearly stated voice
25 before the purchaser completes his or her purchase of the Product.

26 **2.2.4 Brick And Mortar Sales.** Should Defendant sell the Products, or
27 intentionally cause to have the Products sold, from brick and mortar stores located in California,
28 then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with

1 such conspicuousness as compared with other words, statements or designs as to render it likely
2 to be read and understood by an ordinary consumer prior to sale.

3 **3. PAYMENTS**

4 **3.1 Civil Penalty Pursuant To Proposition 65**

5 In settlement of all claims referred to in this Consent Judgment, including the above-
6 referenced action and the Minnesota Proceeding, Defendant shall pay a total civil penalty of
7 eighteen thousand dollars (\$18,000.00) to be apportioned in accordance with *Health and Safety*
8 *Code* section 25249.12(c)(1) and (d), with 75% (\$13,500.00) for State of California Office of
9 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$4,500.00) for
10 Plaintiff.

11 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
12 made payable to “OEHHA” in the amount of \$13,500.00; and (2) a check or money order made
13 payable to “Law Offices of Lucas T. Novak” in the amount of \$4,500.00. Defendant shall remit
14 the payments within five (5) business days of the Effective Date, to:

15 Lucas T. Novak, Esq.
16 LAW OFFICES OF LUCAS T. NOVAK
17 8335 W Sunset Blvd., Suite 217
18 Los Angeles, CA 90069

19 Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall
20 forward the payments to OEHHA and Plaintiff.

21 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

22 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
23 incurred in prosecuting the instant action (including the default judgment collection efforts in the
24 Minnesota Proceeding) for all work performed through execution and approval of this Consent
25 Judgment. Accordingly, Defendant shall issue a check or money order made payable to “Law
26 Offices of Lucas T. Novak” in the amount of fifty-nine thousand dollars (\$59,000.00). Defendant
27 shall remit the payment within five (5) business days of the Effective Date, to:

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

1 **4. RELEASES**

2 **4.1 Plaintiff's Release Of Defendant**

3 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
4 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
5 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
6 assignees, as well as its downstream distributors, retailers, and franchisees (collectively
7 "Released Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's
8 Notice, Complaint, the above-referenced action or the Minnesota Proceeding, regarding failure to
9 warn about exposure to lead from the Products sold by Defendant before and up to the Effective
10 Date. Following successful payments by Defendant pursuant to Section 3 above, Plaintiff shall
11 dismiss with prejudice the Minnesota Proceeding.

12 Plaintiff, acting in its individual capacity, represents and warrants that Defendant's
13 alleged failure to warn about lead exposure from brass goods or products sold in California is the
14 only alleged Proposition 65 violation by Defendant of which Plaintiff or its counsel are aware.
15 In addition, Plaintiff further represents and warrants that, other than the Notice, Plaintiff and its
16 counsel have not served, and have no plans to serve, any other notice regarding any other alleged
17 Proposition 65 violation by Defendant. Plaintiff covenants not to assert or file any lawsuit
18 relating to any alleged claim against Defendant for any alleged violation of Proposition 65 up to
19 and including the Effective Date of this Agreement.

20 **4.2 Defendant's Release Of Plaintiff**

21 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
22 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
23 experts, successors and assignees for actions or statements made or undertaken, whether in the
24 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
25 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
26 Released Party in this Consent Judgment shall be rendered void and unenforceable.

27 **4.3 Waiver Of Unknown Claims**

28 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil

1 Code which provides as follows:

2 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
3 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
4 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
5 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
6 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR OR RELEASED PARTY.

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

15 **5. COURT APPROVAL**

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

23 **6. SEVERABILITY**

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

27 **7. GOVERNING LAW**

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

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

5 TO DISCOUNT STEEL, INC.:	TO APS&EE, LLC:
6 Antony Buchignani, Esq.	Lucas T. Novak, Esq.
7 THEODORA ORINGHER, P.C.	Law Offices of Lucas T. Novak
8 1840 Century Park East, Suite 500	8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90067	Los Angeles, CA 90069

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10 **9. COUNTERPARTS**

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

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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
10 Date: 4/15/21

11
12 By: 
13 **Authorized Representative of APS&EE**

14 **AGREED TO:**

15
16 Date: April 15, 2021

17
18 By: 
19 **Authorized Representative of Discount Steel, Inc.**

20
21 **IT IS SO ORDERED.**

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23
24 Dated: _____

25 **JUDGE OF THE SUPERIOR COURT**