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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.)
DISCOUNT STEEL, INC., a corporation, and)
DOES 1 through 100, inclusive,)
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”). On March
28 8, 2021, Defendant filed in this action a Motion To Set Aside Default And Default Judgment

1 (“Motion To Set Aside Default”), and on March 23, 2021, Plaintiff filed an opposition to said
2 motion. The Motion To Set Aside Default is currently scheduled for August 2, 2021 in
3 Department 36 of the above-entitled Court. However, through approval of this Consent Judgment
4 only, the parties stipulate to vacate the default entered against Defendant, set aside the default
5 judgment, and vacate the August 2, 2021 hearing on the Motion To Set Aside Default. The
6 parties further stipulate that Plaintiff and Defendant shall file the appropriate documents in the
7 Minnesota Proceeding to dismiss that action with prejudice and to release the “Frozen Funds” (as
8 defined in the Stipulation Concerning Emergency Motion in the Minnesota Proceeding) to
9 Defendant, as described in section 4.1 below.

10 **1.3 No Admissions**

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

19 **1.4 Compromise**

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

23 **1.5 Jurisdiction and Venue**

24 For purposes of this Consent Judgment only, the Parties stipulate to vacate the default, set
25 aside the default judgment entered against Defendant, and that Plaintiff and Defendant shall file
26 the appropriate documents in the Minnesota Proceeding to dismiss that action with prejudice and
27 to release the “Frozen Funds”, and further stipulate that the above-entitled Court has jurisdiction
28 over Defendant as to the allegations in the Complaint, that venue is proper in Los Angeles

County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and Proposition 65.

1.6 Effective Date

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

2. INJUNCTIVE RELIEF

2.1 Reformulation Standard

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

2.2 Proposition 65 Warnings

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

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

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

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

1 **2.2.3 Phone Sales.** A Product that is sold by Defendant via telephone to persons
2 located in California shall provide the warning message to the purchaser in a clearly stated voice
3 before the purchaser completes his or her purchase of the Product.

4 **2.2.4 Brick And Mortar Sales.** Should Defendant sell the Products, or
5 intentionally cause to have the Products sold, from brick and mortar stores located in California,
6 then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with
7 such conspicuousness as compared with other words, statements or designs as to render it likely
8 to be read and understood by an ordinary consumer prior to sale.

9 **3. PAYMENTS**

10 **3.1 Civil Penalty Pursuant To Proposition 65**

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

17 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
18 made payable to “OEHHA” in the amount of \$13,500.00; and (2) a check or money order made
19 payable to “Law Offices of Lucas T. Novak” in the amount of \$4,500.00. Defendant shall remit
20 the payments 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 Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall
26 forward the payments to OEHHA and Plaintiff.

27 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

28 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
incurred in prosecuting the instant action (including the default judgment collection efforts in the

Minnesota Proceeding) for all work performed through execution and approval of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of fifty-nine thousand dollars (\$59,000.00). Defendant 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 Plaintiff’s Release Of Defendant

Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in Plaintiff’s Notice, Complaint, the above-referenced action or the Minnesota Proceeding, regarding failure to warn about exposure to lead from the Products sold by Defendant before and up to the Effective Date. Following successful payments by Defendant pursuant to Section 3 above, Plaintiff and Defendant shall file the appropriate documents in the Minnesota Proceeding to dismiss that action with prejudice and to release the “Frozen Funds” (as defined in the Stipulation Concerning Emergency Motion in the Minnesota Proceeding) to Defendant.

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

1 **4.2 Defendant's Release Of Plaintiff**

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

8 **4.3 Waiver Of Unknown Claims**

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

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

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

22 **5. COURT APPROVAL**

23 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
24 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
25 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
26 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
27 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
28 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.

6. SEVERABILITY

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

7. GOVERNING LAW

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

8. NOTICES

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

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

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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: May 10, 2021

11
12 By: 
13 Authorized Representative of APS&EE

14 **AGREED TO:**

15
16 Date: May 10, 2021

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

20
21 **IT IS SO ORDERED.**

22
23
24 Dated: _____
25 JUDGE OF THE SUPERIOR COURT