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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.

ELCO, INC. dba METALS DEPOT, a  
corporation, and DOES 1 through 100,  
inclusive,

Defendants.

CASE NO. 19STCV10280

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Terry A. Green

Dept.: 14

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 (“Plaintiff”) and Elco, Inc. dba Metals Depot (“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** Solely for purposes of this action, Defendant is a person in the course of  
11 doing business as 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** Plaintiff alleges that Defendant sold brass bars, including but not limited  
15 to BRSQ (1/2” square) of all lengths (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 11, 2018, Plaintiff sent a Sixty-Day Notice of Violation (the  
21 “Notice”) to Defendant and the various public enforcement agencies regarding the alleged  
22 violation of Proposition 65 with respect to the Products. On March 25, 2019, Plaintiff, acting in  
23 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County  
24 of Los Angeles, alleging violations of Proposition 65.

25 **1.3 No Admissions**

26 Defendant denies all allegations in Plaintiff’s Notice and Complaint and maintains that  
27 the Products have been, and are, in compliance with all laws, and that Defendant has not violated  
28 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by

1 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.  
2 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities  
3 under this Consent Judgment.

#### 4 **1.4 Compromise**

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

#### 9 **1.5 Jurisdiction And Venue**

10 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled  
11 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper  
12 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of  
13 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and  
14 Proposition 65.

#### 15 **1.6 Effective Date**

16 The "Effective Date" shall be the date this Consent Judgment is approved and entered by  
17 the Court.

### 18 **2. INJUNCTIVE RELIEF**

#### 19 **2.1 Reformulation Standard**

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

#### 24 **2.2 Proposition 65 Warnings**

25 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,  
26 Defendant shall use a warning with the capitalized and emboldened wording substantially similar  
27 to one of the following:  
28

(Long-Form warning):



**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](http://www.P65Warnings.ca.gov).

Or,

(Short-Form warning):



**WARNING:** Cancer and Reproductive Harm –  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Or, any other form of warning that is consistent with the California Proposition 65 warning regulations in effect at the time the Product is produced, distributed or sold in California.

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

**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 page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product. The Short-Form Warning described in Section 2.2.1 may be used on the internet only if it is also provided on the Product. Defendant may alternatively provide internet warnings consistent with the California Proposition 65 warning regulations in effect at the time the Product is or sold to persons located in California. For Products that Defendant provides for a downstream entity to sell on the internet, Defendant shall include an instruction that the entity comply with the warnings requirements of this section.

**2.2.3 Phone Sales.** A Product that is sold by Defendant via telephone to persons who provide a California shipping address, Defendant shall provide the Long-Form warning message to the purchaser in a clearly stated voice before the purchaser completes his or her purchase of the Product. For Products that Defendant provides for a downstream entity to sell via telephone, Defendant shall include an instruction that the entity comply with the warnings

requirements of this section.

**2.2.4 Brick And Mortar Sales.** Should Defendant sell the Products, or intentionally cause to have the Products sold, from brick and mortar stores located in California, then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale. However, if Defendant opts to use the Short-Form warning, said warning must be provided on each Product or its immediate label or package; providing it solely on the shelf tag or sign is insufficient. Defendant may alternatively provide warnings consistent with Proposition 65 warning regulations in effect at the time of sale by Defendant.

### **3. PAYMENTS**

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

In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$750.00) for Plaintiff.

Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Defendant 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 Plaintiff’s Fees And Costs**

Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, 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 twenty-two thousand five hundred dollars (\$22,500.00). 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 any downstream distributors, retailers, franchisees, internet marketplaces and others (collectively “Released Parties”), from any alleged Proposition 65 violation claims that were asserted or could have been asserted in Plaintiff’s Notice or Complaint regarding exposure to Lead from the Products sold by Defendant prior to the Effective Date.

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

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

##### **4.3 Waiver Of Unknown Claims**

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

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

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

**5. COURT APPROVAL**

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

**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. In the event that Proposition 65 is repealed, preempted or is otherwise rendered inapplicable by reason of law generally, or as to the Products, Defendant may provide written notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

**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 ELCO:**

Charles E. Ledford, II  
President and CEO  
Elco Inc. dba Metals Depot  
4200 Revilo Road  
Winchester, KY 40391

**With copy to:**

Paul S. Rosenlund  
Duane Morris LLP  
One Market Plaza  
Spear Tower, Suite 2200  
San Francisco, CA 94105

**TO APS&EE:**

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

**9. MODIFICATION**

This Consent Judgment may be modified or amended only: (1) by written agreement of the Parties and upon entry of a Stipulation and Order by the Court thereon; or (2) upon a successful motion or application of any party which motion or application shall not be unreasonably opposed unless a material term affecting the opposing party is at issue.

**10. ATTORNEYS' FEES**

Except as otherwise provided in this Consent Judgment, each Party shall bear its own attorneys' fees and costs.

**11. 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.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions



1 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
2 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
3 interfere with the execution or performance of this Consent Judgment by said Party.  
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5 **AGREED TO:**

6 Date:

10/8/19

7 By:



8 Authorized Representative of APS&EE, LLC  
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10 **AGREED TO:**

11 Date:

10/7/19

12 By:



13 Authorized Representative of Elco, Inc. dba Metals Depot  
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15 **IT IS SO ORDERED.**

16 Dated: \_\_\_\_\_

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