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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 STZ INDUSTRIES, LLC, a limited liability )  
14 company, TRACTOR SUPPLY COMPANY, )  
15 a corporation, and DOES 1 through 100, )  
16 inclusive, )  
17 Defendants. )

CASE NO. 20STCV07714

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Dennis J. Landin

Dept.: 51

Compl. Filed: February 25, 2020

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment is entered into by and between APS&EE, LLC  
4 (“APS&EE”) and STZ Industries LLC (“STZ”). APS&EE and STZ shall hereinafter collectively  
5 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 STZ is a company in the course of doing business as  
11 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** APS&EE alleges that STZ sold LDR galvanized fittings, nipples, and  
15 pipe, including but not limited to 3/4 Tee, 313 T-34, 0-19442-14917-8 and 1x4 Nipple, 301 1x4,  
16 0-19442-15280-2 (hereinafter the “Products”) in the State of California causing users in  
17 California to be exposed to unsafe levels of lead, without providing “clear and reasonable  
18 warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning  
19 requirements because it is listed by the State of California as known to cause cancer and birth  
20 defects or other reproductive harm.

21 **1.2.2** On September 5, 2019, APS&EE provided a Sixty-Day Notice of  
22 Violation (the “Notice”), along with a Certificate of Merit, to STZ, LDR Global Industries LLC,  
23 Homewerks Worldwide LLC, Tractor Supply Company, and the various public enforcement  
24 agencies regarding the alleged violation of Proposition 65 with respect to the Products. Plaintiff  
25 subsequently filed the instant action (“Complaint”) in the Superior Court for the County of Los  
26 Angeles, alleging violations of Proposition 65.

27 **1.3 No Admissions**

1 STZ denies all allegations in APS&EE’s Notice and Complaint and maintains that the  
2 Products have been, and are, in compliance with all laws, and that STZ has not violated  
3 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by  
4 STZ but to the contrary as a compromise of claims that are expressly contested and denied.  
5 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities  
6 under this Consent Judgment.

7 **1.4 Compromise**

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

12 **1.5 Jurisdiction And Venue**

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

18 **1.6 Effective Date**

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

21 **2. INJUNCTIVE RELIEF AND REFORMULATION**

22 **2.1 Reformulation**

23 Within ninety (90) days of the Effective Date, STZ shall not sell, distribute, or cause the  
24 Products to be offered for sale in California unless (a) the galvanizing solution in which a  
25 Product is submerged has a lead content by weight of no more than 100 parts per million  
26 (0.01%), and the finished Product produces a test result no higher than a ratio of 1.0 microgram  
27 of lead per 100 square centimeters based on a wipe sample collected using NIOSH Method 9100  
28 or equivalent (“Reformulated Products”), or (b) the Products are distributed, sold, or offered for

1 sale with a clear and reasonable warning as described below in Section 2.2.

2 **2.2 Clear And Reasonable Warnings**

3 **2.2.1** For any Products that are not Reformulated Products, such Products shall  
4 be accompanied by a clear and reasonable warning. STZ shall provide the following warning  
5 statements as follows:

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

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

12 **2.2.2** The warning shall be provided directly on each Product or its label or  
13 package with such conspicuousness as compared with other words, statements or designs as to  
14 render it likely to be seen, read and understood by an ordinary individual prior to purchase. A  
15 Product that is sold by STZ on the internet shall also provide the warning message by a clearly  
16 marked hyperlink on the product display page, or otherwise prominently displayed to the  
17 purchaser before the purchaser completes his or her purchase of the Product. For Products that  
18 STZ provides for another entity to sell on the internet, STZ shall include an instruction that the  
19 retailer comply with the warning requirements of this section.

20 **3. PAYMENTS**

21 **3.1 Civil Penalty Pursuant To Proposition 65**

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

27 STZ shall issue two (2) checks for the civil penalty: (1) a check or money order made  
28 payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made payable

1 to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. STZ shall remit the payments  
2 within five (5) business days of the Effective Date, to:

3 Lucas T. Novak, Esq.  
4 LAW OFFICES OF LUCAS T. NOVAK  
5 8335 W Sunset Blvd., Suite 217  
6 Los Angeles, CA 90069

### 6 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

7 STZ shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs  
8 incurred in prosecuting the instant action, for all work performed through entry of this Consent  
9 Judgment. Accordingly, STZ shall issue a check or money order made payable to “Law Offices  
10 of Lucas T. Novak” in the amount of twenty-nine thousand dollars (\$29,000.00). STZ shall remit  
11 the payment within five (5) business days of the Effective Date, to:

12 Lucas T. Novak, Esq.  
13 LAW OFFICES OF LUCAS T. NOVAK  
14 8335 W Sunset Blvd., Suite 217  
15 Los Angeles, CA 90069

## 15 **4. RELEASES**

### 16 **4.1 APS&EE’s Release Of STZ**

17 APS&EE, acting in its individual capacity and in the public interest, in consideration of  
18 the promises and monetary payments contained herein, hereby releases STZ, its parents,  
19 subsidiaries, affiliated companies under common ownership or control, shareholders, directors,  
20 members, officers, employees, attorneys, successors and assignees, and each entity in the  
21 downstream distribution chain of the Products (including LDR Global Industries LLC,  
22 Homewerks Worldwide LLC, and Tractor Supply Company) (collectively “Releasees”), from all  
23 Proposition 65 violation claims regarding failure to warn about lead exposure from the Products  
24 that were distributed or sold by STZ in California, or that STZ made available for sale in  
25 California, before and up to the Effective Date.

### 26 **4.2 STZ’s Release Of APS&EE**

27 STZ, by this Consent Judgment, waives all rights to institute any form of legal action  
28

1 against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts,  
2 successors and assignees for actions or statements made or undertaken, whether in the course of  
3 investigating claims or seeking enforcement of Proposition 65 against STZ in this matter. If any  
4 Releasee should institute any such action, then APS&EE's release of said Releasee in this  
5 Consent Judgment shall be rendered void and unenforceable.

#### 6 **4.3 Waiver Of Unknown Claims**

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

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

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.

8 **8. NOTICE**

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

11 TO STZ: 12 13 Samir J. Abdelnour, Esq. 14 Hanson Bridgett 15 1676 N. California Blvd. Suite 620 Walnut Creek, CA 94596	TO APS&EE:  Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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17 **9. COUNTERPARTS**

18 This Consent Judgment may be executed in counterparts, each of which shall be deemed  
19 an original, and all of which, when taken together, shall constitute the same document. Execution  
20 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
21 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
22 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 Date: 3/18/20

10 By: 

11 Authorized Representative of APS&EE, LLC

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13  
14 **AGREED TO:**

15 Date: \_\_\_\_\_

16 By: \_\_\_\_\_

17 Authorized Representative of STZ Industries LLC

18  
19 **IT IS SO ORDERED.**

20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT



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.  
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8 **AGREED TO:**

9 Date: \_\_\_\_\_  
10

11 By: \_\_\_\_\_  
12 Authorized Representative of APS&EE, LLC  
13

14 **AGREED TO:**

15 Date: 3/18/20  
16

17 By: [Signature] VP FINANCE  
18 Authorized Representative of STZ Industries LLC

19 **IT IS SO ORDERED.**

20 Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 JUDGE OF THE SUPERIOR COURT  
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