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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 SHAPIRO METAL SUPPLY COMPANY, a)
14 corporation, and DOES 1 through 100,)
15 inclusive,)
16 Defendants.)

CASE NO. 20STCV10147

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Robert S. Draper
Dept.: 78
Compl. Filed: March 13, 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 Shapiro Metal Supply Company (“Shapiro”). APS&EE and Shapiro shall
5 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** APS&EE alleges that Shapiro is a company in the course of doing
11 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** APS&EE alleges that Shapiro sold Shapiro Metal Supply brass bars,
15 including 3/8” square bar (hereinafter the “Products”) in the State of California causing users in
16 California to be exposed to unsafe levels of Lead, without providing “clear and reasonable
17 warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning
18 requirements because it is listed by the State of California as known to cause cancer and birth
19 defects or other reproductive harm.

20 **1.2.2** On November 5, 2019, APS&EE provided a Sixty-Day Notice of
21 Violation (the “Notice”), along with a Certificate of Merit, to Shapiro and the various public
22 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
23 Products. On March 13, 2020, APS&EE, acting in the public interest, filed the instant action (the
24 “Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of
25 Proposition 65.

26 **1.3 No Admissions**

27 Shapiro denies all allegations in APS&EE’s Notice and maintains that the Products
28 have been, and are, in compliance with all laws, and that Shapiro has not violated Proposition 65.

1 This Consent Judgment shall not be construed as an admission of liability by Shapiro but to the
2 contrary as a compromise of claims that are expressly contested and denied. However, nothing in
3 this section shall affect the Parties' obligations, duties, and responsibilities under this Consent
4 Judgment.

5 **1.4 Compromise**

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

10 **1.5 Jurisdiction And Venue**

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

16 **1.6 Effective Date**

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

19 **2. INJUNCTIVE RELIEF AND REFORMULATION**

20 **2.1 Reformulation**

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

25 **2.2 Clear And Reasonable Warnings**

26 **2.2.1** For any Products that are not Reformulated Products, such Products shall
27 be accompanied by a clear and reasonable warning. Shapiro shall provide the following warning
28 statements as follows:

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

4 If Shapiro has reason to believe the Products may expose consumers to additional
5 chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals,
6 including Lead, which are” in the warning statement. The warning shall be accompanied by a
7 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
8 outline. Where the label for the product is not printed using the color yellow, the symbol may be
9 printed in black and white. The symbol shall be placed to the left of the text of the warning, in a
10 size no smaller than the height of the word “WARNING”.

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

17 **2.2.3 Phone Sales.** A Product that is sold by Shapiro via telephone to persons
18 located in California shall provide the warning message to the purchaser in a clearly stated voice
19 before the purchaser completes his or her purchase of the Product. For Products that Shapiro
20 provides for a downstream entity to sell via telephone, Shapiro shall include an instruction that
21 the entity comply with the warnings requirements of this section.

22 **2.2.4 Brick And Mortar Sales.** Should Shapiro sell the Products, or
23 intentionally cause to have the Products sold, from brick and mortar stores located in California,
24 then the Products shall carry said warning directly on each unit, label, package, or shelf tag, with
25 such conspicuousness as compared with other words, statements or designs as to render it likely
26 to be read and understood by an ordinary consumer prior to sale.

27 **3. PAYMENTS**

28 **3.1 Civil Penalty Pursuant To Proposition 65**

1 In settlement of all claims referred to in this Consent Judgment, Shapiro shall pay a total
2 civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health*
3 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California
4 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
5 (\$500.00) for APS&EE.

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

10
11 Lucas T. Novak, Esq.
12 LAW OFFICES OF LUCAS T. NOVAK
13 8335 W Sunset Blvd., Suite 217
14 Los Angeles, CA 90069

14 **3.2 Reimbursement Of APS&EE’s Fees And Costs**

15 Shapiro shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs
16 incurred in prosecuting the instant action, for all work performed through execution and Court
17 approval of this Consent Judgment. Accordingly, Shapiro shall issue a check or money order
18 made payable to “Law Offices of Lucas T. Novak” in the amount of fifteen thousand dollars
19 (\$15,000.00). Shapiro shall remit the payment within five (5) business days of the Effective
20 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

24 **4. RELEASES**

25 **4.1 APS&EE’s Release Of Shapiro**

26 APS&EE, in consideration of the promises and monetary payments contained herein,
27 hereby releases Shapiro, its parents, subsidiaries, affiliated companies under common ownership
28 or control, shareholders, directors, members, officers, employees, attorneys, successors and

1 assignees, and each entity in the downstream distribution chain of the Products (collectively
2 “Releasees”), from all Proposition 65 violation claims regarding failure to warn about lead
3 exposure from the Products that were distributed or sold by Shapiro in California before and up
4 to the Effective Date.

5 **4.2 Shapiro’s Release Of APS&EE**

6 Shapiro, by this Consent Judgment, waives all rights to institute any form of legal action
7 against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts,
8 successors and assignees for actions or statements made or undertaken, whether in the course of
9 investigating claims or seeking enforcement of Proposition 65 against Shapiro in this matter. If
10 any Releasee should institute any such action, then APS&EE’s release of said Releasee in this
11 Consent Judgment shall be rendered void and unenforceable.

12 **4.3 Waiver Of Unknown Claims**

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

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

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

28 **5. COURT APPROVAL**

Upon execution of this Consent Judgment by all Parties, APS&EE shall file a noticed

1 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
2 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
3 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
4 approval, the Parties and their respective counsel agree to mutually employ reasonable best
5 efforts to support the entry of this agreement in a timely manner, including cooperating on
6 drafting and filing any papers in support of the required motion for judicial approval.

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

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

14 **8. NOTICE**

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

17 TO SHAPIRO:

18 Yaakov Klein, Esq.
19 Frankel, Rubin, Klein, Siegel,
20 Payne & Pudlowski, P.C.
21 231 South Bemiston Ave
Suite 1111
Clayton, Missouri 63105

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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23 **9. COUNTERPARTS**

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

1 **9. 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: 8/25/20

10 By: [Signature]

11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 8/25/20

15 By: [Signature]

16 Sam Shapiro, President
Authorized Representative of Shapiro Metal Supply Company

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18
19 **IT IS SO ORDERED.**

20 Dated: _____

JUDGE OF THE SUPERIOR COURT