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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 BEEHIVE PIPE PRODUCTS, LLC, a limited)
14 liability company, STANDARD PLUMBING)
15 SUPPLY COMPANY, INC., a corporation,)
16 and DOES 1 through 100, inclusive,)
17 Defendants.)

CASE NO. 20STCV15975

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Patricia D. Nieto

Dept.: 24

Compl. Filed: April 27, 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 (“Plaintiff”), on the one hand, and Beehive Pipe Products, LLC and Standard Plumbing Supply
5 Company, Inc. (collectively “Defendants”), on the other hand. Plaintiff and Defendants shall
6 hereinafter collectively be referred to as the “Parties”.

7 **1.1.2** Plaintiff is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and
9 supporting environmentally sound practices, which includes promoting awareness of exposure to
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** Plaintiff alleges that Defendants are companies in the course of doing
12 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.
13 (“Proposition 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendants sold Beehive Pipe Products galvanized
16 fittings, including but not limited to ¾” x 5” (hereinafter the “Products”), in the State of
17 California causing users in California to be exposed to unsafe levels of lead, without providing
18 “clear and reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to
19 Proposition 65 warning requirements because it is listed by the State of California as known to
20 cause cancer and birth defects or other reproductive harm.

21 **1.2.2** On January 23, 2020, Plaintiff provided a Sixty-Day Notice of Violation
22 (the “Notice”), along with a Certificate of Merit, to Defendants and the various public
23 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
24 Products. On April 27, 2020, Plaintiff filed the instant action (“Complaint”) in the Superior
25 Court for the County of Los Angeles, alleging violations of Proposition 65.
26

27 **1.3 No Admissions**

28 Defendants deny all allegations in Plaintiff’s Notice and Complaint and maintain that the
Products have been, and are, in compliance with all laws, and that Defendants have not violated

1 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
2 Defendants but to the contrary as a compromise of claims that are expressly contested and
3 denied. However, nothing in this section shall affect the Parties' obligations, duties, and
4 responsibilities under this Consent 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 Defendants as to the allegations in the Complaint, that venue is
13 proper in Los Angeles County, and that this Court has jurisdiction to enter and enforce the
14 provisions of this Consent Judgment pursuant to California Code of Civil Procedure ("CCP")
15 § 664.6 and 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 and continuing thereafter, Defendants shall not sell, distribute, or
22 cause the Products to be offered for sale in California unless (a) the galvanizing solution in
23 which a Product is submerged has a lead content by weight of no more than 100 parts per million
24 (0.01%), and the finished Product produces a test result no higher than a ratio of 1.0 microgram
25 of lead per 100 square centimeters based on a wipe sample collected using NIOSH Method 9100
26 or equivalent ("Reformulated Products"), or (b) the Products are distributed, sold, or offered for
27 sale with a clear and reasonable warning as described below in Section 2.2.

28 **2.2 Clear And Reasonable Warnings**

1 **2.2.1** For any Products that are not Reformulated Products, such Products shall
2 be accompanied by a clear and reasonable warning. Defendants shall provide the following
3 warning statements as follows:

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

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

13 **2.2.2** The warning shall be provided directly on each Product, its label, or
14 package, with such conspicuousness as compared with other words, statements or designs as to
15 render it likely to be seen, read and understood by an ordinary individual prior to purchase. For
16 Products that Defendants provide for retailers to sell in open containers at brick and mortar stores
17 in California, Defendants shall provide shelf tag warnings to the retailers with instructions to
18 post the warnings in close proximity to the point of display of the Products, with such
19 conspicuousness as compared with other words, statements or designs as to render it likely to be
20 seen, read and understood by an ordinary individual prior to purchase. A Product that is sold by
21 Defendants on the internet shall also provide the warning message by a clearly marked hyperlink
22 on the product display page, or otherwise prominently displayed to the purchaser before the
23 purchaser completes his or her purchase of the Product. For Products that Defendants provide for
24 another entity to sell on the internet, Defendants shall include an instruction that the retailer
25 comply with the warning requirements of this section.

26 **3. PAYMENTS**

27 **3.1 Civil Penalty Pursuant To Proposition 65**

28 In settlement of all claims referred to in this Consent Judgment, Defendants shall pay a
total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with

1 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of
2 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
3 25% (\$750.00) for Plaintiff.

4 Defendants shall issue two (2) checks for the civil penalty: (1) a check or money order
5 made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made
6 payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Defendants shall remit
7 the payments within five (5) business days of the Effective Date, to:

8
9 Lucas T. Novak, Esq.
10 LAW OFFICES OF LUCAS T. NOVAK
11 8335 W Sunset Blvd., Suite 217
12 Los Angeles, CA 90069

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14 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

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

20
21 Lucas T. Novak, Esq.
22 LAW OFFICES OF LUCAS T. NOVAK
23 8335 W Sunset Blvd., Suite 217
24 Los Angeles, CA 90069

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26 **4. RELEASES**

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28 **4.1 Plaintiff’s Release Of Defendants**

Plaintiff, acting in its individual capacity and in the public interest, in consideration of the
promises and monetary payments contained herein, hereby releases Defendants, their parents,
subsidiaries, affiliated companies under common ownership or control, shareholders, directors,
members, officers, employees, attorneys, successors and assignees, and each entity in the
downstream distribution chain of the Products (collectively “Releasees”), from all Proposition
65 violation claims regarding failure to warn about lead exposure from the Products that were

1 distributed or sold by Defendants in California, or that Defendants made available for sale in
2 California, before and up to the Effective Date.

3 **4.2 Defendants' Release Of Plaintiff**

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

10 **4.3 Waiver Of Unknown Claims**

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

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

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

26 **5. COURT APPROVAL**

27 Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a noticed
28 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

1 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
2 support the entry of this agreement in a timely manner, including cooperating on drafting and
3 filing any papers in support of the required motion for judicial approval.

4 **6. SEVERABILITY**

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

8 **7. GOVERNING LAW**

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

11 **8. NOTICE**

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

14 TO DEFENDANTS: 15 Robert Heft, Esq. 16 Daley & Heft 17 462 Stevens Ave, Suite 201 18 Solano Beach, CA 92075	14 TO PLAINTIFF: 15 Lucas T. Novak, Esq. 16 Law Offices of Lucas T. Novak 17 8335 W Sunset Blvd., Suite 217 18 Los Angeles, CA 90069
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20 **9. COUNTERPARTS**

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

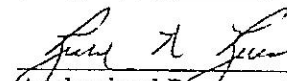
8 **AGREED TO:**

9 Date: 8/26/20

10 By: 
11 Authorized Representative of APS&EE, LLC
12


13
14 **AGREED TO:**

15 Date: August 26, 2020

16 By: 
17 Authorized Representative of Beehive Pipe Products, LLC
18

19 **AGREED TO:**

20 Date: August 26, 2020

21 By: 
22 Authorized Representative of Standard Plumbing Supply Company, Inc.
23

24
25 **IT IS SO ORDERED.**

26 Dated: _____

27 _____
28 JUDGE OF THE SUPERIOR COURT