

1 Lucas Novak (SBN 257484)  
2 LAW OFFICES OF LUCAS T. NOVAK  
3 8335 W Sunset Blvd., Suite 217  
4 Los Angeles, CA 90069  
5 Telephone: (323) 337-9015  
6 Email: lucas.nvk@gmail.com

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 )  
12 ) Plaintiff, )  
13 )  
14 ) v. )  
15 )  
16 ) FASTENER USA SYSTEMS, INC., a )  
17 ) corporation, and DOES 1 through 100, )  
18 ) inclusive, )  
19 )  
20 ) Defendants. )  
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CASE NO. 22STCV37581

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Jon R. Takasugi

Dept.: 17

Compl. Filed: November 30, 2022

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 Fastener USA Systems, 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 Fastener USA galvanized nails,  
15 including but not limited to 3”x10.5GA box nails (hereinafter, 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 August 25, 2022, 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 November 30, 2022, Plaintiff, acting  
23 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the  
24 County 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 Section 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 galvanizing solution in which a Product is  
22 submerged has a lead content by weight of no more than 100 parts per million (0.01%), and the  
23 finished Product produces a test result no higher than a ratio of 1.0 microgram of lead per 100  
24 square centimeters based on a wipe sample collected using NIOSH Method 9100 or equivalent  
25 ("Reformulated Products"), or (b) the Products are distributed, sold, or offered for sale with a  
26 clear and reasonable warning as described below in Section 2.2.

27 **2.2 Clear And Reasonable Warnings**

28 For any Products that are not Reformulated Products, such Products shall be

1 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement  
2 substantially similar to the following:

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

7 Or:

8 Any warning that substantially and materially complies with the method and content  
9 requirements of 27 CCR Section 25600 et. seq., and amended subsequently thereafter, or  
10 other text or methods authorized or mandated by those regulations, or other State of  
11 California regulations or legislation pertaining to Proposition 65 warnings related to such  
12 Products.

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

18 The Products shall carry said warning directly on each unit, label, or package, with such  
19 conspicuousness as compared with other words, statements or designs as to render it likely to be  
20 read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant  
21 on the internet to persons located in California shall also provide the warning message by a  
22 clearly marked hyperlink on the product display page, or otherwise prominently displayed to the  
23 purchaser before the purchaser completes his or her purchase of the Product. For Products that  
24 Defendant provides for a downstream entity to sell on the internet, Defendant shall include an  
25 instruction that the entity 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, Defendant shall pay a  
total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in  
accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00)

1 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the  
2 remaining 25% (\$375.00) for Plaintiff.

3 Defendant shall issue these payments collectively as part of the total payment described  
4 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the  
5 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective  
6 payments to OEHHA and APS&EE.

7 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

8 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs  
9 incurred in prosecuting the instant action for all work performed through execution and approval  
10 of this Consent Judgment, in the amount of sixteen thousand dollars (\$16,000.00). Accordingly,  
11 Defendant shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the  
12 amount of seventeen thousand five hundred dollars (\$17,500.00), which includes the civil  
13 penalty described in Section 3.1, within five (5) business days of the Effective Date. Wire  
14 instructions have been exchanged between the Parties’ counsel.

15 **4. RELEASES**

16 **4.1 Plaintiff’s Release Of Defendant**

17 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of  
18 the promises and monetary payments contained herein, hereby releases Defendant, its parents,  
19 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and  
20 assignees, as well as its downstream distributors, retailers, and franchisees (collectively  
21 “Released Parties”), from any alleged Proposition 65 violation claims asserted in Plaintiff’s  
22 Notice or Complaint regarding failure to warn about Lead exposure from the Products sold by  
23 Defendant before and up to the Effective Date.

24 **4.2 Defendant’s Release Of Plaintiff**

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

1 this matter. If any Released Party should institute any such action, then Plaintiff's release of said  
2 Released Party in this Consent Judgment shall be rendered void and unenforceable.

3 **4.3 Waiver Of Unknown Claims**

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

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

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

19 **5. COURT APPROVAL**

20 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
21 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
22 Judgment is not effective until it is approved and entered by the Court. It is the intention of the  
23 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such  
24 approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
25 support the entry of this agreement in a timely manner, including cooperating on drafting and  
26 filing any papers in support of the required motion for judicial approval.

27 **6. SEVERABILITY**

28 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.

1 **7. GOVERNING LAW**

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

4 **8. NOTICES**

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

7 <b>TO DEFENDANT:</b> 8 Tyler A. Kelly, Esq. 9 Ogden Law Firm 10 1535 J Street, Suite A 11 Modesto, CA 95354	<b>TO PLAINTIFF:</b> Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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12 **9. COUNTERPARTS**

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

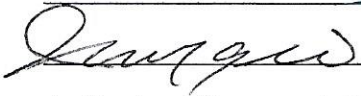
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1 **10. AUTHORIZATION**

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: 6/26/23

10 By: 

11 Authorized Representative of APS&EE, LLC

12  
13 **AGREED TO:**

14 Date: 06/23/2023 

15 By: Michael Baugus

16 Authorized Representative of Fastener USA Systems, Inc.

17  
18 **IT IS SO ORDERED.**

19 Dated: \_\_\_\_\_

JUDGE OF THE SUPERIOR COURT

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