

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 Plaintiff,)
12 v.)
13 WHITECAP INDUSTRIES, INC., a)
14 corporation, WEST MARINE, INC., a)
15 corporation, and DOES 1 through 100,)
16 inclusive,)
17 Defendants.)

CASE NO. 22STCV37286

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Michael L. Stern
Dept.: 62
Compl. Filed: November 29, 2022

Unlimited Jurisdiction

17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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 Whitecap Industries, Inc. (“Defendant”), providing
5 terms which are inclusive of West Marine, Inc. as set forth herein. Plaintiff and Defendant 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 Defendant is a person in the course of doing business
12 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
13 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendant sold, distributed, and/or manufactured
16 brass cleats, including but not limited to S-0971BC, 17283110 (hereinafter, the “Products”) in
17 the State of California causing users in California to be exposed to hazardous levels of Lead
18 without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is
19 potentially subject to Proposition 65 warning requirements because it is listed as known to cause
20 cancer and birth defects or other reproductive harm.

21 **1.2.2** On August 29, 2022, Plaintiff sent a Sixty-Day Notice of Violation (the
22 “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
23 violation of Proposition 65 with respect to the Products. On November 29, 2022, Plaintiff, acting
24 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the
25 County of Los Angeles, alleging violations of Proposition 65.

26 **1.3 No Admissions**

27 Defendant denies all allegations in Plaintiff’s Notice and Complaint and maintains that
28 the Products have been, and are, in compliance with all laws, and that Defendant has not violated

1 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
2 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.
3 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities
4 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 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 Section 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**

20 **2.1 Reformulation Standard**

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

25 **2.2 Clear And Reasonable Warnings**

26 For any Products that are not Reformulated Products, such Products shall be
27 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
28 substantially similar to the following:

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

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

10 The Products shall carry said warning directly on each unit, label, or package, with such
11 conspicuousness as compared with other words, statements or designs as to render it likely to be
12 read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant
13 on the internet to persons located in California shall also provide the warning message by a
14 clearly marked hyperlink on the product display page, or otherwise prominently displayed to the
15 purchaser before the purchaser completes his or her purchase of the Product. For Products that
16 Defendant provides for a downstream entity to sell on the internet, Defendant shall include an
17 instruction that the entity comply with the warning requirements of this section.

18 In lieu of the preceding warning content and methods set forth above, Defendant may use
19 the warning content and method that complies with 27 CCR Section 25600 et. seq., as amended
20 August 30, 2016 and subsequently thereafter, pertaining to Proposition 65 warnings for the
21 Products.

22 **3. PAYMENTS**

23 **3.1 Civil Penalty Pursuant To Proposition 65**

24 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
25 total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in
26 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00)
27 for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the
28 remaining 25% (\$375.00) for Plaintiff.

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

5 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

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

13 **4. RELEASES**

14 **4.1 Plaintiff’s Release Of Defendant**

15 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
16 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
17 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
18 assignees, as well as its downstream distributors, retailers, and franchisees, including West
19 Marine, Inc. (collectively “Released Parties”), from any alleged Proposition 65 violation claims
20 asserted in Plaintiff’s Notice or Complaint regarding failure to warn about Lead exposure from
21 the Products sold by Defendant before and up to the Effective Date. With the Consent Judgment
22 having been entered as to all claims as against Defendant, and within ten (10) business days after
23 receipt of payment from Defendant as described in Section 3 above, Plaintiff shall file a request
24 for dismissal with prejudice of West Marine, Inc. and Does 1 through 100.

25 **4.2 Defendant’s Release Of Plaintiff**

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

1 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
2 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
3 Released Party in this Consent Judgment shall be rendered void and unenforceable.

4 **4.3 Waiver Of Unknown Claims**

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

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

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

20 **5. COURT APPROVAL**

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

28 **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

1 in full force and effect.

2 **7. GOVERNING LAW**

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

5 **8. NOTICES**

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

8 TO DEFENDANT: 9 Susan L. Caldwell, Esq. 10 Caldwell Law Group 11 9701 Wilshire Boulevard 12 10th Floor 13 Beverly Hills, CA 90212	8 TO PLAINTIFF: 9 Lucas T. Novak, Esq. 10 Law Offices of Lucas T. Novak 11 8335 W Sunset Blvd., Suite 217 12 Los Angeles, CA 90069
---	---

13 **9. COUNTERPARTS**

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

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

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: *J. Ludwig*

10 By: 4/3/23

11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 3/31/23

15 By: *[Signature]*

16 Authorized Representative of Whitecap Industries, Inc.

17
18 **IT IS SO ORDERED.**

19 Dated: _____

_____ **JUDGE OF THE SUPERIOR COURT**

20
21
22
23
24
25
26
27
28