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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10	APS&EE, LLC, a limited liability company,)	CASE NO. 23STCV17353
11)	
11	Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
12)	
12	v.)	Judge: Hon. Upinder S. Kalra
13	SOUTHWIRE COMPANY, LLC, a limited)	Dept.: 51
14	liability company, and DOES 1 through 100,)	Compl. Filed: July 24, 2023
14	inclusive,)	
15)	Unlimited Jurisdiction
15	Defendants.)	
16)	

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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 Southwire Company, LLC (“Defendant”). Plaintiff and
5 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 Madison Electric brand of rigid elbow
15 conduits, including 1/2”, 3/4”, and 1” (hereinafter, the “Products”), in the State of California
16 causing users in California to be exposed to 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 as known to cause cancer and birth defects or other reproductive
19 harm.

20 **1.2.2** On April 3, 2023, Plaintiff sent a Sixty-Day Notice of Violation (the
21 “April 3rd Notice”) to Defendant and the various public enforcement agencies regarding the
22 alleged violation of Proposition 65 with respect to the Products. On July 13, 2023, Plaintiff sent a
23 Supplemental Sixty-Day Notice of Violation (the “July 13th Notice”) to Defendant as well as
24 Home Depot U.S.A., Inc. d/b/a Contractors’ Warehouse and the various public enforcement
25 agencies regarding the alleged violation of Proposition 65 with respect to the Products. The April
26 3rd Notice and the July 13, 2023 Notice shall hereinafter collectively be referred to as the
27 “Notices”. On July 24, 2023, Plaintiff, acting in the public interest, filed the instant action (the
28 “Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of

1 Proposition 65 against Defendant and Does 1 through 100. On November 16, 2023, Plaintiff
2 amended the Complaint by substituting Home Depot U.S.A., Inc. d/b/a Contractors' Warehouse
3 for Doe 1.

4 **1.3 No Admissions**

5 Defendant denies all allegations in Plaintiff's Notices and Complaint and maintains that
6 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
7 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
8 Defendant but to the contrary as a compromise of claims that are expressly contested and denied.
9 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities
10 under this Consent Judgment.

11 **1.4 Compromise**

12 The Parties enter into this Consent Judgment in order to resolve the controversy
13 described above in a manner consistent with prior Proposition 65 settlements and consent
14 judgments that were entered in the public interest and to avoid prolonged and costly litigation
15 between them. Nothing in this Consent Judgment nor compliance with this Consent Judgment
16 shall constitute or be construed as an admission by any of the Parties or by any of their
17 respective officers, directors, shareholders, employees, agents, parent companies,
18 subsidiaries, divisions, franchisees, licensees, customers, suppliers, distributors, wholesalers,
19 or retailers of any fact, issue of law, or violation of law.

20 **1.5 Jurisdiction and Venue**

21 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
22 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
23 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
24 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
25 Proposition 65.

26 **1.6 Effective Date**

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

1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

3 After the Effective Date, Defendant shall not distribute for sale in California, sell, offer
4 for sale, or cause to have the Products sold in California unless (a) the Products produce a test
5 result no higher than 1.0 microgram of lead based on a wipe sample collected using NIOSH
6 Method 9100 or equivalent (“Reformulated Product”), or (b) the Products are distributed, sold, or
7 offered for sale with a clear and reasonable warning as described below in Section 2.2.

8 **2.2 Clear And Reasonable Warnings**

9 **2.2.1** For any Products that are not Reformulated Products, such Products shall
10 be accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
11 substantially similar to the following:

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

15 The warning shall be accompanied by a symbol consisting of a black exclamation point
16 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
17 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
18 be placed to the left of the text of the warning, in a size no smaller than the height of the word
19 “WARNING”. Additionally, if the Product contains consumer information in a foreign
20 language, the warning must be provided in the foreign language. Alternatively, the warning may
21 be a short-form warning that complies with Title 27, California Code of Regulations § 25603(b)
22 and (c). To the extent the warning statement used is clear and reasonable in accordance with
23 Title 27, California Code of Regulations § 25600 *et seq.* (and as those regulations may hereafter
24 be amended), it will be deemed substantially similar to the warning statement provided above.

25 **2.2.2** The Products shall carry said warning directly on each unit, label, shelf
26 tag, or package, with such conspicuousness as compared with other words, statements or designs
27 as to render it likely to be read and understood by an ordinary consumer prior to sale. If the
28 warning is provided on a shelf tag, it shall follow the appropriate methods and content for shelf
tags as described in 27 CCR section 25600, *et seq.* A Product that is sold by Defendant on the

1 internet to persons located in California shall also provide the warning message by a clearly
2 marked hyperlink on the product display page, or otherwise prominently displayed to the
3 purchaser before the purchaser completes his or her purchase of the Product, including an option
4 for the warning to be provided via pop-up once a California zip code is included in the location
5 for intended shipment destination. For Products that Defendant provides for a downstream entity
6 to sell on the internet, Defendant shall include an instruction that the entity comply with the
7 warning requirements of this section.

8 **2.2.3 Compliance with Warning Regulations.**

9 In addition to the warning requirements set forth in Section 2.2 above, Defendant may
10 comply with this Consent Judgment by using any other warning and transmission method(s) set
11 forth in 27 Cal. Code Regs. §§ 25601, 25602, 25603, et seq., and amended subsequently
12 thereafter that are applicable to consumer product exposures.

13 **3. PAYMENTS**

14 **3.1 Civil Penalty Pursuant To Proposition 65**

15 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
16 total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
17 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
18 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
19 25% (\$1,000.00) for Plaintiff.

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

24 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

25 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
26 incurred in prosecuting the instant action for all work performed through execution and approval
27 of this Consent Judgment, in the amount of thirty-five thousand dollars (\$35,000.00).

28 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.

1 Novak in the amount of thirty-nine thousand dollars (\$39,000.00), which includes the civil
2 penalty described in Section 3.1, within fourteen (14) days of the Effective Date. Wire
3 instructions have been exchanged between the Parties' counsel.

4 **4. RELEASES**

5 **4.1 Plaintiff's Release Of Defendant**

6 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
7 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
8 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
9 assignees, partners, sister companies, predecessors, licensees and assigns and Defendant's
10 downstream distributors and retailers, including but not limited to Home Depot U.S.A., Inc. d/b/a
11 Contractors' Warehouse (all of the foregoing, collectively "Released Parties"), from any alleged
12 Proposition 65 violation claims asserted in Plaintiff's Notices or Complaint regarding failure to
13 warn about possible Lead exposure from the Products sold by Defendant before and up to the
14 Effective Date. Within five (5) business days after receipt of full payment from Defendant as
15 described in Section 3 above, Plaintiff shall file a request for dismissal with prejudice of Home
16 Depot U.S.A., Inc. d/b/a Contractors' Warehouse. In addition to the foregoing, Plaintiff, on
17 behalf of itself, successors and assignees, and not in the public interest, hereby waives all rights
18 to institute or participate in, directly or indirectly, any form of legal action and releases Released
19 Parties from any and all manner of actions, causes of action, claims, demands, rights, suits,
20 obligations, debts, contracts, agreements, promises, liabilities, damages, fines, penalties, claims,
21 charges, losses, costs, expenses, and attorneys' fees, with respect to any alleged violations of
22 Proposition 65 related to any chemicals listed under Proposition 65 in the Products distributed by
23 Defendant before and up to the Effective Date.

24 Compliance with the terms of this Consent Judgment constitutes compliance with
25 Proposition 65 with regard to the Products.

26 **4.2 Defendant's Release Of Plaintiff**

27 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
28 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,

1 experts, successors and assignees for actions or statements made or undertaken, whether in the
2 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
3 this matter. If any Released Party should institute any such action, then Plaintiff's release of said
4 Released Party in this Consent Judgment shall be rendered void and unenforceable.

5 **4.3 Waiver Of Unknown Claims**

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

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

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

21 **5. COURT APPROVAL**

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

6. SEVERABILITY

Should any part or provision of this Consent Judgment for any reason be declared by a

1 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
2 in full force and effect.

3 **7. GOVERNING LAW**

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

6 **8. NOTICES**

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

<p>10 TO DEFENDANT:</p> <p>11 Ryan S. Landis, Esq. 12 Gordon Rees Scully Mansukhani 13 5 Park Plaza, Suite 1100 Irvine, CA 92614</p>	<p>10 TO PLAINTIFF:</p> <p>11 Lucas T. Novak, Esq. 12 Law Offices of Lucas T. Novak 13 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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15 **9. COUNTERPARTS**

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

21 **10. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
24 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
25 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or
26 interfere with the execution or performance of this Consent Judgment by said Party.

27 **11. PUBLIC BENEFIT**

28 It is the Parties' understanding that the commitments Defendant has agreed to herein,

1 and actions to be taken by Defendant under this Consent Judgment, would confer a significant
2 benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin.
3 Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private
4 party initiates an action alleging a violation of Proposition 65 with respect to Defendant's and/or
5 Released Parties' failure to provide a warning concerning exposure to lead prior to use of the
6 Products they have manufactured, distributed, sold, or offered for sale in California, such private
7 party action would not confer a significant benefit on the general public as to those Products
8 addressed in this Consent Judgment, provided that Defendant and/or Released Parties are in
9 material compliance with this Consent Judgment.


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11 **AGREED TO:**

12 Date: 6/3/2024

13 By: 
14 Authorized Representative of APS&EE, LLC

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16 **AGREED TO:**

17 Date: 5/31/2024

18 By: 
19 Authorized Representative of Southwire Company, LLC

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21 **IT IS SO ORDERED.**

22 Dated: _____

23 JUDGE OF THE SUPERIOR COURT
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