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Attorney for Plaintiff, APS&EE, LLC

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

APS&EE, LLC, a limited liability company, )  
Plaintiff, )  
v. )  
ALCOBRA METALS, INC., a corporation, )  
and DOES 1 through 100, inclusive, )  
Defendants. )

CASE NO. 24STCV19136

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Rupert A. Byrdsong  
Dept.: 28  
Compl. Filed: July 31, 2024

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 Plaintiff, APS&EE, LLC (“Plaintiff”) and Defendant, Alcobra Metals, Inc.  
5 “Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the  
6 “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.

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 Brass Bars, including but not limited  
16 to flat bars, round bars, hex, and square bars (hereinafter, the “Products”), in the State of  
17 California causing users in California to be exposed to hazardous levels of Lead without  
18 providing “clear and reasonable warnings”, in violation of Proposition 65. Products containing  
19 lead are potentially subject to Proposition 65 warning requirements because it is listed by the  
20 State of California as known to cause cancer and birth defects or other reproductive harm.

21 **1.2.2** On March 12, 2024, Plaintiff sent a Sixty-Day Notice of Violation (the  
22 “March 12th Notice”) to Defendant and the various public enforcement agencies regarding the  
23 alleged violation of Proposition 65 with respect to the Products. On May 20, 2024, Plaintiff sent  
24 an Amended Sixty-Day Notice of Violation (the “May 20th Notice”) to Defendant and the  
25 various public enforcement agencies regarding the alleged violation of Proposition 65 with  
26 respect to the Products. The March 12th Notice and May 20th Notice shall hereinafter  
27 collectively be referred to as the “Notices”. On July 31, 2024, Plaintiff, acting in the public  
28

1 interest, filed the instant action (the “Complaint”) in the Superior Court for the County of Los  
2 Angeles, alleging violations of Proposition 65.

### 3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that  
5 there was only one sale of Products in California that potentially violated Proposition 65.  
6 Plaintiff disputes this allegation. Defendant further maintains that it no longer distributes,  
7 markets or sells its Products in California as a result of the Complaint. This Consent Judgment  
8 shall not be construed as an admission of liability by Defendant but, to the contrary, as a  
9 compromise of claims that are expressly contested and denied. However, nothing in this section  
10 shall affect the Parties’ obligations, duties, and responsibilities 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.

### 16 **1.5 Jurisdiction and Venue**

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

### 22 **1.6 Effective Date**

23 The “Effective Date” shall be the date this Consent Judgment is approved and entered by  
24 the Court.

## 25 **2. INJUNCTIVE RELIEF**

### 26 **2.1 Reformulation Standard**

27 After the Effective Date, Defendant shall not distribute for sale in California, sell or offer  
28 for sale the Products in California unless (a) the Products contain no more than 100 parts per

1 million (0.01%) of Lead, and the Products produce a test result no higher than 1.0 microgram of  
2 lead based on a wipe sample collected using NIOSH Method 9100 or equivalent (“Reformulated  
3 Product”), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable  
4 warning as described below in Section 2.2.

## 5 **2.2 Clear And Reasonable Warnings**

6 For any Products marketed, distributed or sold in California that are not Reformulated  
7 Products, such Products shall be accompanied by a clear and reasonable warning. Defendant  
8 shall provide a warning statement as follows:

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

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

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 comply with  
25 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning  
26 requirements of this section.

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1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a  
4 total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with  
5 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of  
6 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
7 25% (\$250.00) for Plaintiff.

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

12 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

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

20 **4. RELEASES**

21 **4.1 Plaintiff’s Release Of Defendant**

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

1           **4.2     Defendant’s Release Of Plaintiff**

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

8           **4.3     Waiver Of Unknown Claims**

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

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

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

22           **5.     COURT APPROVAL**

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

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

**7. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California, exclusive of its conflict of law rules. This Consent Judgment is entered into in the State of California and may only be enforced in the State of California.

**8. NOTICES**

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

**TO DEFENDANT:**

Rudy Perrino  
Kutak Rock LLP  
777 S. Flower Street, Suite  
4550  
Los Angeles, CA 90017

**TO PLAINTIFF:**

Lucas T. Novak, Esq.  
Law Offices of Lucas T. Novak  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

**9. COUNTERPARTS**

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

3.17.2025

10 By:

[Signature]

11 Authorized Representative of APS&EE, LLC

12  
13 **AGREED TO:**

14 Date:

3-14-25

15 By:

[Signature]

16 Authorized Representative of Alcobra Metals, Inc.

17  
18 **IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT