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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.
MUTUAL INDUSTRIES NORTH, INC. a
corporation, and DOES 1 through 100,
inclusive,
Defendants.

CASE NO. 24STCV26110

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Kerry Bensinger
Dept.: 31
Compl. Filed: October 8, 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, Mutual Industries North, Inc.
5 (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the
6 “Parties.”

7 **1.1.2** Plaintiff alleges it 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 Defendant’s brand of anchor bolts,
16 including but not limited to 1/2in. x 8in. (hereinafter, the “Products”), in the State of California
17 causing users in California to be exposed to hazardous levels of Lead (“Listed Chemical”)
18 without providing “clear and reasonable warnings”, in violation of Proposition 65. Plaintiff
19 alleges the Listed Chemical is potentially subject to Proposition 65 warning requirements
20 because it is listed as known to cause cancer and birth defects or other reproductive harm.

21 **1.2.2** On March 12, 2024, APS&EE provided a Sixty-Day Notice of Violation
22 (the "Notice"), along with a Certificate of Merit, to Mutual Industries and the various public
23 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
24 Products. On May 20, 2024, APS&EE provided an Amended Sixty-Day Notice of Violation (the
25 "Amended Notice"), along with a Certificate of Merit, to Mutual Industries and the various
26 public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
27 Products. The Notice and Amended Notice shall hereinafter collectively be referred to as the
28 "Notices".

1 **1.2.3** On October 8, 2024, Plaintiff, allegedly acting in the public interest, filed
2 the instant action (the “Complaint”) in the Superior Court for the County of Los Angeles,
3 alleging violations of Proposition 65. The Court entered default against Defendant on December
4 9, 2024, in part due to service and other issues alleged by Defendant.

5 **1.3 No Admissions**

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

12 **1.4 Compromise**

13 The Parties enter into this Consent Judgment in order to resolve the controversy
14 described above in a manner consistent with prior Proposition 65 settlements and consent
15 judgments that were entered in the public interest and to avoid prolonged and costly litigation
16 between them. By executing this Consent Judgment, the Parties intend in part and will jointly
17 request that the Court vacate the default entered against Defendant in order to enter this Consent
18 Judgment.

19 **1.5 Jurisdiction and Venue**

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

25 **1.6 Effective Date**

26 The “Effective Date” shall be the date that Plaintiff provides notice to Defendant that this
27 Consent Judgment has been approved and entered by the Court.


28 **2. INJUNCTIVE RELIEF**

2.1 Reformulation Standard

After the Effective Date, Defendant shall not distribute for sale in California, sell or offer for sale the Products in California unless (a) the galvanizing solution in which the Products are submerged contains no more than 100 parts per million (0.01%) of the Listed Chemical, and the finished Products produce a test result no higher than 1.0 microgram of the Listed Chemical based on a wipe sample collected using NIOSH Method 9100 or equivalent (“Reformulated Product”), or (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

2.2 Clear And Reasonable Warnings

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

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

If Defendant has reason to believe the Products expose consumers to additional chemicals listed under Proposition 65, then Defendant may alternatively identify such chemicals provided that a chemical for each endpoint (cancer and birth defects/reproductive harm) is identified. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”. Alternatively, the warning may be a short-form warning that complies with Title 27, California Code of Regulations § 25603(b) and (c) pertaining to lead which is known as both a carcinogen and a reproductive toxicant. Additionally, if the Product contains consumer information in a foreign language, the warning must be provided in the foreign language.

¹ “CA WARNING” and “CALIFORNIA WARNING” may also be used.

1 The Products shall carry said warning directly on each unit, label, or package, with such
2 conspicuousness as compared with other words, statements or designs as to render it likely to be
3 read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant
4 on the internet to persons with a California shipping address shall also provide the warning
5 message by a clearly marked hyperlink on the product display page, or otherwise prominently
6 displayed to the purchaser before the purchaser completes his or her purchase of the Product. For
7 Products that Defendant provides for a downstream entity to sell on the internet, Defendant shall
8 comply with 27 CCR section 25600.2(b) and include an instruction that the entity comply with
9 the warning requirements of this section. However, Defendant shall not be responsible for
10 monitoring any third-party websites for compliance.

11 **3. PAYMENTS**

12 **3.1 Civil Penalty Pursuant To Proposition 65**

13 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
14 total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with
15 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of
16 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
17 25% (\$250.00) for Plaintiff.

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

22 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

23 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
24 incurred in prosecuting the instant action for all work performed through execution and approval
25 of this Consent Judgment, in the amount of twelve thousand five hundred dollars (\$12,500.00).
26 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.
27 Novak in the amount of thirteen thousand five hundred dollars (\$13,500.00), which includes the
28 civil penalty described in Section 3.1, sent within five (5) business days of the Effective Date.

Wire instructions will be exchanged between the Parties' counsel.

4. RELEASES

4.1 Plaintiff's Release Of Defendant

Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and their downstream distributors, retailers, online marketplaces, and franchisees (all of the foregoing, collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's Notices or Complaint regarding failure to warn about exposure to the Listed Chemical from the Products sold by Defendant before and up to the Effective Date.

4.2 Defendant's Release Of Plaintiff

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

4.3 Waiver Of Unknown Claims

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

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

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,

or different from, those that it believes to be true with respect to the claims released herein. The Parties agree that this Consent Judgment and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. COURT APPROVAL

Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed 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 approval, the Parties and their respective counsel agree to mutually employ their best efforts to 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. 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:

Sherry E. Jackman, Esq.
Sedina L. Banks, Esq.
Greenberg Glusker LLP
2049 Century Park East, Ste 2600
Los Angeles, CA 90067

TO PLAINTIFF:

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

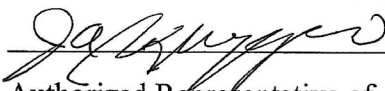
1 **9. COUNTERPARTS**

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

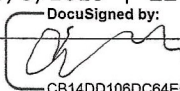
7 **10. AUTHORIZATION**

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

13
14 **AGREED TO:**

15 Date: 3.5.2025
16 By: 
17 Authorized Representative of APS&EE, LLC

18
19 **AGREED TO:**

20 Date: 3/5/2025 | 11:42 AM PST
21 By: 
22 Authorized Representative of Mutual Industries North, Inc.

23
24 **IT IS SO ORDERED.**

25 Dated: _____
26 JUDGE OF THE SUPERIOR COURT
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