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cmc

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Superior Court of California
County of Los Angeles

FEB 23 2015

Sherril R. Carter, Executive Officer/Clerk
By K. Tollack, Deputy

7 Attorney for Plaintiff, Isabel Ruggeri

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

10 ISABEL RUGGERI, an individual,

11 Plaintiff,

12 v.

13 THE MAINSTREET COLLECTION, INC., a
14 corporation, and DOES 1 through 100,
inclusive,

15 Defendants.

CASE NO. BC558105

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Teresa Sanchez-Gordon

Dept.: 74

Compl. Filed: September 19, 2014

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between Isabel
4 Ruggeri (“Plaintiff”) and The Mainstreet Collection, Inc. (“MSC”). Plaintiff and MSC shall
5 hereinafter collectively be referred to as the “Parties.”

6 Plaintiff is a citizen of the State of California with an interest in protecting the
7 environment, improving human health and the health of ecosystems, and supporting
8 environmentally sound practices, which includes promoting awareness of exposure to toxic
9 chemicals and reducing exposure to hazardous substances found in consumer products. MSC is a
10 company which caused wallets made with leather, imitation leather, and/or vinyl materials to be
11 sold in California, and is thus a person in the course of doing business as the term is defined in
12 California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that MSC manufactured, distributed, supplied, and/or sold wallets made
15 with leather, imitation leather, and/or vinyl materials, including but not limited to iPhone wallet
16 (Style # IWSP/4406; 8-47219-04406-3; 1347750) (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. Lead is potentially
19 subject to Proposition 65 warning requirements because it is listed as known to the State of
20 California to cause birth defects and reproductive harm. MSC expressly denies the allegations
21 and denies any wrongdoing.

22 On June 11, 2014, a sixty-day notice of violation (“60-Day Notice”), along with a
23 Certificate of Merit, was provided by Plaintiff pursuant to *Health and Safety Code* section
24 25249.7(d) to MSC, Tuesday Morning, Inc. and various public enforcement agencies regarding
25 the alleged violation of Proposition 65 with respect to the Lead in the Products.

26 **1.3 No Admissions**

27 MSC denies all allegations in Plaintiff’s 60-Day Notice and maintains that the Products
28 have been, and are, in compliance with all laws, and that MSC has not violated Proposition 65.

1 This Consent Judgment shall not be construed as an admission of liability by MSC or by
2 Tuesday Morning, Inc., its parent, subsidiaries, or its affiliated entities (collectively, “Tuesday
3 Morning”) but to the contrary as a compromise of claims that are expressly contested and denied.
4 However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities
5 under this Consent Judgment.

6 **1.4 Compromise**

7 The Parties enter into this Consent Judgment in order to resolve the controversy
8 described above in a manner consistent with prior Proposition 65 consent judgments on the Lead
9 in the Products that were entered on behalf of the public interest and to avoid prolonged and
10 costly litigation between them.

11 **1.5 Jurisdiction And Venue**

12 For purposes of this Consent Judgment, the Parties stipulate that the above-entitled Court
13 has jurisdiction over MSC as to the allegations of the Complaint and that venue is proper in Los
14 Angeles County.

15 **1.6 Effective Date**

16 The “Effective Date” shall be the date upon which this Consent Judgment is entered by
17 the Court.

18 **2. INJUNCTIVE RELIEF AND REFORMULATION**

19 **2.1 Reformulation Standard**

20 Except as provided in Section 2.2 below, MSC shall not manufacture, distribute, supply,
21 and/or sell for use or sale in California any of the Products that contains a material or is made of
22 a component that exceeds the following lead limits: paint or other surface coatings – 90 parts per
23 million (“ppm”); polyvinyl chloride – 200 ppm; all other materials or components other than
24 cubic zirconia, crystal, glass or rhinestones – 300 ppm.

25 **2.2 Proposition 65 Warning Obligations**

26 If the Products do not meet the Reformulation Standard described in subsection 2.1
27 above, then within 60 days after the Effective Date MSC shall not manufacture, distribute,
28 supply, and/or sell for use or sale in California any of the Products unless clear and reasonable

1 Proposition 65 warnings are provided with each unit with the following specific warning with the
2 capitalized and emboldened wording:

3 **“CALIFORNIA PROPOSITION 65 WARNING:** This product contains chemicals
4 known to the State of California to cause cancer and birth defects or other reproductive harm.”

5 Each unit shall carry said warning directly on each unit or its label or package in a
6 sufficiently conspicuous manner reasonably calculated to be seen by the ordinary consumer.

7 **3. PAYMENTS**

8 **3.1 Civil Penalty Pursuant To Proposition 65**

9 In settlement of all claims referred to in this Consent Judgment, MSC shall pay a total
10 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health*
11 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) paid to State of California
12 Office of Environmental Health Hazard Assessment, and the remaining 25% (\$1,000.00) paid to
13 Plaintiff.

14 MSC shall issue two (2) checks for the civil penalty: (1) a check or money order made
15 payable to “Law Offices of Lucas T. Novak in Trust for Office of Environmental Health Hazard
16 Assessment” in the amount of \$3,000.00; and (2) a check or money order made payable to “Law
17 Offices of Lucas T. Novak in Trust for Isabel Plaintiff” in the amount of \$1,000.00. MSC shall
18 remit the payments within five (5) business days of the Effective Date, to:

19 Lucas T. Novak, Esq.
20 LAW OFFICES OF LUCAS T. NOVAK
21 8335 W Sunset Blvd., Suite 217
22 Los Angeles, CA 90069

23 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

24 MSC shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
25 incurred in prosecuting the instant action, for all work performed through execution of this
26 agreement and entry of this Consent Judgment. Accordingly, MSC shall issue a check or money
27 order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty one thousand
28 dollars (\$21,000.00). MSC shall remit the payment within five (5) business days of the Effective
Date, to:

1 Lucas T. Novak, Esq.
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069

4 **4. RELEASES**

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

6 Plaintiff, acting in her individual capacity, her past and current agents, representatives,
7 attorneys, successors, and/or assignees, and in the public interest, in consideration of the
8 promises and monetary payments contained herein, hereby releases MSC, its parents,
9 subsidiaries, shareholders, directors, members, officers, employees, and attorneys, and its
10 downstream retailers, including but not limited to Tuesday Morning and its present and former
11 agents, attorneys, representatives, shareholders, directors, officers, and employees, and their
12 respective predecessors, successors, parents, affiliates, and subsidiaries from the claims asserted
13 in Plaintiff's 60-Day Notice dated June 11, 2014 regarding violation of Proposition 65 with
14 respect to the Products manufactured, distributed, and/or sold by MSC.

15 **4.2 MSC's Release Of Plaintiff**

16 MSC, its parents, subsidiaries, shareholders, directors, members, officers, employees, and
17 attorneys, by this Consent Judgment, waive all rights to institute any form of legal action against
18 Plaintiff, her past and current agents, representatives, attorneys, experts, successors, and/or
19 assignees, for actions or statements made or undertaken, whether in the course of investigating
20 claims or seeking enforcement of Proposition 65 against MSC in this matter.

21 **4.3 Waiver Of Unknown Claims**

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

24 "A general release does not extend to claims which the creditor does not know or
25 suspect to exist in his or her favor at the time of executing the release, which if
26 known by him or her must have materially affected his or her Consent Judgment
27 with the debtor."

28 Each of the parties waives and relinquishes any right or benefit it has or may have under

1 Section 1542 of California Civil Code or any similar provision under the statutory or non-
2 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
3 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
4 or different from, those that it believes to be true with respect to the claims released herein. The
5 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
6 effective in all respects notwithstanding the discovery of such additional or different facts.

7 **5. COURT APPROVAL**

8 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
9 Motion for Approval & Entry of Consent Judgment in the above-entitled Court. This Consent
10 Judgment is not effective until it is approved and entered by the Court and shall be null and void
11 if, for any reason, it is not approved and entered by the Court within one (1) year after its full
12 execution by all Parties. It is the intention of the Parties that the Court approve this Consent
13 Judgment, and in furtherance of obtaining such approval, the Parties and their respective counsel
14 agree to mutually employ their best efforts to support the entry of this agreement in a timely
15 manner, including cooperating on drafting and filing any papers in support of the required
16 motion for judicial approval.

17 **6. SEVERABILITY**

18 Subsequent to Court approval of this Consent Judgment, should any part or provision of
19 this Consent Judgment, for any reason, be declared by a Court to be invalid, void or
20 unenforceable, the remaining portions and provisions shall continue in full force and effect.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California.

24 **8. NOTICES**

25 All correspondence and notices required to be provided under this Consent Judgment
26 shall be in writing and delivered personally or sent by first class or certified mail addressed as
27 follows:
28

1 TO MSC:
2 Anthony J. Biller, Esq.
3 COATS AND BENNETT PLLC
4 1400 Crescent Green, Ste 300
Cary, North Carolina 27516

TO PLAINTIFF:
Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

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6 **9. INTEGRATION**

7 This Consent Judgment constitutes the entire agreement between the parties with respect
8 to the subject matter hereof and may not be amended or modified except in writing.

9 **10. COUNTERPARTS**

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

15 **11. AUTHORIZATION**

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

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1 **AGREED TO:**

2 Date:

9/24/14

3
4 By:

Josay W. Mayo

Authorized Officer of The Mainstreet Collection, Inc.

7 **AGREED TO:**

8 Date:

9
10 By:

Isabel Ruggeri

13 **IT IS SO ORDERED.**

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15 Dated:

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date:

9/24/14

By:

[Signature]
Authorized Officer of The Mainstreet Collection, Inc.

AGREED TO:

Date:

9/25/14

By:

[Signature]
Isabel Ruggeri

IT IS SO ORDERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: 9/24/14

By: [Signature]
Authorized Officer of The Mainstreet Collection, Inc.

AGREED TO:

Date: 9/25/14

By: [Signature]
Isabel Ruggeri

IT IS SO ORDERED.

Dated: 2/23/15

[Signature]
JUDGE OF THE SUPERIOR COURT
ELIZABETH R. FEFFER