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FILED
Superior Court of California
County of Los Angeles

MAR 05 2020

Sherril R. Carter, Executive Officer/Clerk
By Manisa Ventura Deputy
Manisa Ventura

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 USA MINISO DEPOT, INC., a corporation,)
14 and DOES 1 through 100, inclusive,)
15 Defendants.)

CASE NO. 19STCV39831

~~[PROPOSED]~~ CONSENT JUDGMENT

Judge: Hon. Terry Green

Dept.: 14

Compl. Filed: November 5, 2019

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment is entered into by and between APS&EE, LLC
4 (“Plaintiff”) and USA Miniso Depot, Inc. (“Defendant”). Plaintiff and Defendant shall
5 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 each Defendant is a person in the course of doing
11 business as the term is defined in California *Health & Safety Code* section 25249.6 et seq.
12 (“Proposition 65”).

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold Miniso Pliers, including Miniso Dual-
15 use Screwdriver and Pliers Kit #4-504671-290013 (hereinafter collectively the “Products”) in the
16 State of California causing users in California to be exposed to unsafe levels of Di (2-ethylhexyl)
17 Phthalate (“DEHP”) and Lead without providing “clear and reasonable warnings”, in violation of
18 Proposition 65. DEHP and Lead are potentially subject to Proposition 65 warning requirements
19 because DEHP is listed by the State of California as known to cause cancer and reproductive
20 toxicity, and Lead is listed as known to cause cancer and birth defects or other reproductive
21 harm.

22 **1.2.2** On August 20, 2019, Plaintiff provided a Sixty-Day Notice of Violation
23 (the “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
24 violation of Proposition 65 with respect to the Products. On November 5, 2019, Plaintiff filed the
25 instant action (“Complaint”) in the Superior Court for the County of Los Angeles, alleging
26 violations of Proposition 65.

27 **1.3 No Admissions**

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

7 **1.4 Compromise**

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

12 **1.5 Jurisdiction And Venue**

13 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
14 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
15 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
16 this Consent Judgment pursuant to California Code of Civil Procedure ("CCP") § 664.6 and
17 Proposition 65.

18 **1.6 Effective Date**

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

21 **2. INJUNCTIVE RELIEF AND REFORMULATION**

22 **2.1 Reformulation**

23 As of the Effective Date, Defendant shall not distribute, sell or offer for sale the Products
24 in California unless (a) the Products contain no more than 1,000 parts per million (0.1%) of
25 DEHP, and no more than 100 parts per million (0.01%) of Lead ("Reformulated Product"), or (b)
26 the Product is distributed, sold, or offered for sale with a clear and reasonable warning as
27 described below in Section 2.2.

28 **2.2 Clear And Reasonable Warnings**

1 **2.2.1** For any Products that are not Reformulated Products, such Products shall
2 be accompanied by a clear and reasonable warning. Defendant shall use a warning with the
3 capitalized and emboldened wording substantially similar to the following:

4 **WARNING:** This product can expose you to chemicals including Lead [and/or
5 DEHP] which are known to the State of California to cause cancer
6 and birth defects or other reproductive harm. For more information
7 go to www.P65Warnings.ca.gov.

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

13 **2.2.2** Each unit shall carry said warning directly on each unit or its label or
14 package, with such conspicuousness as compared with other words, statements or designs as to
15 render it likely to be read and understood by an ordinary consumer prior to sale. A Product that is
16 sold by Defendant on the internet shall also provide the warning message by a clearly marked
17 hyperlink on the product display page, or otherwise prominently displayed to the purchaser
18 before the purchaser completes his or her purchase of the Product. For Products that a Defendant
19 provides for another entity to sell on the internet, Defendant shall include an instruction that the
20 retailer comply with the warning requirements of this section.

21 **3. PAYMENTS**

22 **3.1 Civil Penalty Pursuant To Proposition 65**

23 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
24 total civil penalty of three thousand dollars (\$3,000.00) to be apportioned in accordance with
25 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for State of
26 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
27 25% (\$750.00) for Plaintiff.

28 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made

1 payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Defendant shall remit the
2 payments within five (5) business days of the Effective Date, to:

3 Lucas T. Novak, Esq.
4 LAW OFFICES OF LUCAS T. NOVAK
5 8335 W Sunset Blvd., Suite 217
6 Los Angeles, CA 90069

6 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

7 Defendant shall reimburse Plaintiff’s experts’ and attorney’s fees and costs incurred in
8 prosecuting the instant action, for all work performed through entry of this Consent Judgment.
9 Accordingly, Defendant shall issue a check or money order made payable to “Law Offices of
10 Lucas T. Novak” in the amount of twenty-six thousand dollars (\$26,000.00). Defendant shall
11 remit the payment within five (5) business days of the Effective Date, to:

12 Lucas T. Novak, Esq.
13 LAW OFFICES OF LUCAS T. NOVAK
14 8335 W Sunset Blvd., Suite 217
15 Los Angeles, CA 90069

15 **4. RELEASES**

16 **4.1 Plaintiff’s Release Of Defendant**

17 Plaintiff, acting in its individual capacity and in the public interest, in consideration of the
18 promises and monetary payments contained herein, hereby releases Defendant, its parents,
19 subsidiaries, shareholders, directors, members, officers, employees, agents, attorneys, successors
20 and assignees, as well as its downstream distributors, retailers, and customers (collectively
21 “Releasees”), from any alleged Proposition 65 violation claims asserted in Plaintiff’s Notice
22 and/or Complaint regarding failure to warn about exposure to DEHP and/or Lead from the
23 Products sold or distributed by Defendant before and up to the Effective Date.

24 **4.2 Defendant’s Release Of Plaintiff**

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

1 65 against Defendant in this matter. If any Releasee should institute any such action, then
2 Plaintiff's release of said Releasee in this Consent Judgment shall be rendered void and
3 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 the 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. NOTICE**

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 Pyng Soon, Esq. 10 Law Offices Of Pyng Soon Inc. 11 17870 Castleton St, Ste 215 12 City of Industry, CA 91748-6765	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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13 **9. INTEGRATION**

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

16 **10. COUNTERPARTS**

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

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1 **11. 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: 12/31/19

10 By: [Signature]
11 Authorized Representative of APS&EE, LLC
12

13 **AGREED TO:**

14 Date: 12/30/19

15 By: [Signature]
16 Authorized Representative of USA Miniso Depot, Inc.
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18 **IT IS SO ORDERED.**

19 Dated: 3/5/20

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21 [Signature]
22 JUDGE OF THE SUPERIOR COURT
23 Judge Terry A. Green
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