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Attorney for Plaintiff, APS&EE, LLC

**FILED**  
Superior Court of California  
County of Los Angeles

**JAN 21 2021**

Sherri R. Carter, Executive Officer/Clerk  
By Patricia Salcido, Deputy  
Patricia Salcido

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

APS&EE, LLC, a limited liability company, )

Plaintiff, )

v. )

WALMART, INC., a corporation, and DOES )  
1 through 100, inclusive, )

Defendants. )

CASE NO. 19STCV46042

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Robert S. Draper

Dept.: 78

Compl. Filed: December 19, 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 Walmart Inc. (“Defendant”). Plaintiff and Defendant shall hereinafter  
5 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 a certain Wallet (SKU503688)  
15 supplied to Defendant by Sunsea Grocery (hereinafter the “Products<sup>1</sup>”) in the State of California  
16 causing users in California to be exposed to unsafe levels of Lead without providing “clear and  
17 reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition  
18 65 warning requirements because it is listed by the State of California as known to cause cancer  
19 and birth defects or other reproductive harm.

20 **1.2.2** On September 5, 2019, Plaintiff provided a Sixty-Day Notice of Violation  
21 to Defendant and the various public enforcement agencies regarding the alleged violation of  
22 Proposition 65 with respect to the Products. On December 19, 2019, Plaintiff filed the instant  
23 action (“Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of  
24 Proposition 65. On January 3, 2020, Plaintiff provided a Supplemental Sixty-Day Notice of  
25 Violation to Defendant, as well as Sunsea Grocery and the various public enforcement agencies  
26  
27

28 <sup>1</sup> The term “Products” as used herein only refers to the Wallets with item number SKU503688 that were supplied to Walmart by Sunsea Grocery and no others.

1 regarding the alleged violation of Proposition 65 with respect to the Products. The September 5th  
2 Notice and the January 3rd Notice shall hereinafter collectively be referred to as the "Notices".

3 **1.3 No Admissions**

4 Defendant denies all allegations in Plaintiff's Notices and Complaint and maintains that  
5 the Products have been, and are, in compliance with all laws, that Defendant was not legally  
6 responsible for labeling the Products, and that Defendant has not violated Proposition 65. This  
7 Consent Judgment shall not be construed as an admission of liability by Defendant but to the  
8 contrary as a compromise of claims that are expressly contested and denied. However, nothing in  
9 this section shall affect the Parties' obligations, duties, and responsibilities under this Consent  
10 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 ("CCP") § 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 As of the Effective Date and continuing thereafter, Defendant shall no longer sell or offer  
27 for sale the Products in California.

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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 two thousand dollars (\$2,000) to be apportioned in accordance with *Health*  
5     *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500) for State of California Office  
6     of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500) for  
7     Plaintiff.

8             Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order  
9     made payable to “OEHHA” in the amount of \$1,500; and (2) a check or money order made  
10    payable to “Law Offices of Lucas T. Novak” in the amount of \$500. Defendant shall, following  
11    Defendant’s receipt of completed W-9 tax forms from Plaintiff for both Plaintiff’s counsel and  
12    OEHHA, remit the payments within fifteen (15) business days of the Effective Date, to:

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

16            **3.2     Reimbursement Of Plaintiff’s Fees And Costs**

17            Defendant shall reimburse Plaintiff’s experts’ and attorney’s fees and costs incurred in  
18    prosecuting the instant action, for all work performed through entry of this Consent Judgment.  
19    Accordingly, Defendant shall issue a check or money order made payable to “Law Offices of  
20    Lucas T. Novak” in the amount of thirteen thousand dollars (\$13,000). Defendant shall,  
21    following Defendant’s receipt of a completed W-9 tax form from Plaintiff for Plaintiff’s counsel,  
22    remit the payment within fifteen (15) business days of the Effective Date, to:

23            Lucas T. Novak, Esq.  
24            LAW OFFICES OF LUCAS T. NOVAK  
25            8335 W Sunset Blvd., Suite 217  
              Los Angeles, CA 90069

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1     **4. RELEASES**

2             **4.1 Plaintiff's Release Of Defendant**

3             Plaintiff, acting in its individual capacity and in the public interest, in consideration of the  
4 promises and monetary payments contained herein, hereby releases Defendant, its parents, direct  
5 and indirect subsidiaries, shareholders, affiliates (including but not limited to Walmart.com  
6 USA, LLC, and Walmart Inc.), directors, franchisees, cooperative members, licensees,  
7 shareholders, marketplaces, members, officers, agents, experts, employees, attorneys, successors  
8 and assignees, insurers, as well as its downstream distributors, retailers, customers, and their  
9 respective direct and indirect subsidiaries, affiliates and parents, directors, officers, agents,  
10 employees, attorneys, and each entity to whom they directly or indirectly distribute or sell the  
11 Products (collectively "Releasees"), from any alleged Proposition 65 violation claims asserted in  
12 Plaintiff's Notice and/or Complaint regarding the alleged failure to warn about exposure to lead  
13 from the Products sold or distributed by Defendant before and up to the Effective Date.

14             **4.2 Defendant's Release Of Plaintiff**

15             Defendant, by this Consent Judgment, waives all rights to institute any form of legal  
16 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,  
17 experts, successors and assignees for actions or statements made or undertaken in the course of  
18 investigating claims referenced in the aforementioned Notice or Complaint or seeking  
19 enforcement of Proposition 65 against Defendant in this matter. If any Releasee should institute  
20 any such action, then Plaintiff's release of said Releasee in this Consent Judgment shall be  
21 rendered void and unenforceable.

22             **4.3 Waiver Of Unknown Claims**

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

25             "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
26 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
27 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
28 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 the 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.

**8. NOTICE**

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:                                                          | TO PLAINTIFF:                                                                           |
|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| Angela Jean Levin, Esq.<br>Troutman Pepper<br>Three Embarcadero Center | Lucas T. Novak, Esq.<br>Law Offices of Lucas T. Novak<br>8335 W Sunset Blvd., Suite 217 |



Suite 800  
San Francisco, CA 94111

Los Angeles, CA 90069

Kevin Gilliland, Esq.  
Troutman Pepper  
5 Park Plaza, Suite 1400  
Irvine, CA 92614

**9. INTEGRATION**

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

**10. 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.

**11. AUTHORIZATION**

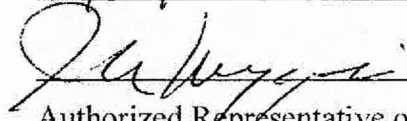
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Consent Judgment. Each Party warrants to the other that it is free to enter into this Consent Judgment and is not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

**AGREED TO:**

Date:

10/22/20

By:



Authorized Representative of APS&EE, LLC

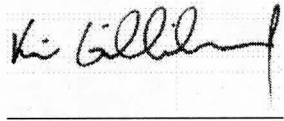
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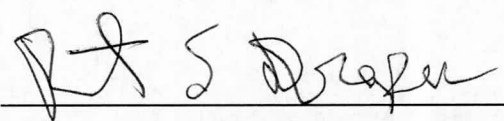
1 **AGREED TO:**

2 Date: October 21, 2020

3  
4   
5 By: \_\_\_\_\_  
6 Authorized Representative of Walmart, Inc.

7 **IT IS SO ORDERED.**

8  
9  
10  
11 Dated: 1/21/21

12   
13 JUDGE OF THE SUPERIOR COURT  
14 **ROBERT S. DRAPER**