

08/10/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: S. Ontiveros Deputy

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7 Attorney for Plaintiff, APS&EE, LLC

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

10 APS&EE, LLC, a limited liability company,)
11)
12 Plaintiff,)
13)
14 v.)
15)
16 MICHAELS STORES, INC., a corporation,)
17 MICHAELS STORES PROCUREMENT)
18 COMPANY, INC., a corporation, and DOES 1)
19 through 100, inclusive,)
20)
21 Defendants.)
22)
23)
24)
25)
26)
27)
28)

CASE NO. 21STCV11856

~~FILED~~ **CONSENT JUDGMENT**

Judge: Hon. Malcolm Mackey

Dept.: 55

Compl. Filed: March 29, 2021

Unlimited Jurisdiction

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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”), on the one hand, and Michaels Stores, Inc. and Michaels Stores Procurement
5 Company, Inc. (collectively “Defendants”), on the other hand. Plaintiff and Defendants shall
6 hereinafter collectively be referred to as the “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 found in consumer products.

11 **1.1.3** Plaintiff alleges that Defendants are each a person in the course of doing
12 business as the term is defined in California Health & Safety Code section 25249.6 et seq.
13 (“Proposition 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendants sold Ashland ceramic cookie jars,
16 including the Ashland Cookie Jars #629504; 83659-2020-04, 1-91518-20956-3 (collectively
17 hereinafter the “Products”) in the State of California causing users in California to be exposed to
18 lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is
19 potentially subject to Proposition 65 warning requirements because it is listed by the State of
20 California as known to cause cancer and birth defects or other reproductive harm.

21 **1.2.2** On September 23, 2020, Plaintiff provided a Sixty-Day Notice of
22 Violation to Defendants and the various public enforcement agencies regarding the alleged
23 violation of Proposition 65 with respect to the Products. On March 29, 2021, Plaintiff filed the
24 instant action (“Complaint”) in the Superior Court for the County of Los Angeles, alleging
25 violations of Proposition 65.

26 **1.3 No Admissions**

27 Defendants deny all allegations in Plaintiff’s Notice and Complaint and maintain that the
28 Products have been, and are, in compliance with all laws, and that Defendants have not violated

1 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
2 Defendants but to the contrary as a compromise of claims that are expressly contested and
3 denied. However, nothing in this section shall affect the Parties' obligations, duties, and
4 responsibilities under this Consent Judgment.

5 **1.4 Compromise**

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

10 **1.5 Jurisdiction and Venue**

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

16 **1.6 Effective Date**

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

19 **2. INJUNCTIVE RELIEF AND REFORMULATION**

20 **2.1 Reformulation**

21 As of the Effective Date, Defendants shall not distribute or cause to be distributed any
22 Products to be sold in California unless (a) the Product contains no more than 1.0 microgram of
23 lead based on a wipe sample collected using NIOSH Method 9100 from the part of the Product
24 that contains the Exterior Decorations, or (b) the Product is accompanied by a clear and
25 reasonable warning as described below in Section 2.2. "Exterior Decorations" is defined as all
26 colored artwork, designs and/or markings on the exterior surface of the Products. Products that
27 comply with Section 2.1(a) shall be deemed "Reformulated Products."

28 **2.2 Clear And Reasonable Warnings**

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

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

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

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

20 **3. PAYMENTS**

21 **3.1 Civil Penalty Pursuant To Proposition 65**

22 In settlement of all claims referred to in this Consent Judgment, Defendants shall pay a
23 total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with
24 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
25 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
26 25% (\$1,000.00) for Plaintiff.

27 Defendants shall issue two (2) checks for the civil penalty: (1) a check or money order
28 made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made

1 payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Defendants shall remit
2 the 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 Defendants 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, Defendants shall issue a check or money order made payable to “Law Offices of
10 Lucas T. Novak” in the amount of thirty-two thousand dollars (\$32,000.00). Defendants 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 Defendants**

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 Defendants, its parents,
19 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
20 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 lead from the Products sold or
23 distributed by Defendants before and up to the Effective Date.

24 **4.2 Defendants’ Release of Plaintiff**

25 Defendants, by this Consent Judgment, waive all rights to institute any form of legal
26 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
27 experts, successors and assignees for actions or statements made or undertaken, whether in the
28 course of investigating claims or seeking enforcement of Proposition 65 against Defendants in

1 this matter. If any Releasee should institute any such action, then Plaintiff's release of said
2 Releasee in this Consent Judgment shall be rendered void and unenforceable.

3 **4.3 Waiver of Unknown Claims**

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

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

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

19 **5. COURT APPROVAL**

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

27 **6. SEVERABILITY**

28 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.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California.

4 **8. NOTICE**

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

<p>7 TO DEFENDANTS:</p> <p>8 William Tarantino, Esq. 9 Morrison & Foerster LLP 10 425 Market Street 11 San Francisco, CA 94105</p>	<p>TO PLAINTIFF:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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12 **9. INTEGRATION**

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

15 **10. COUNTERPARTS**

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

21 **11. AUTHORIZATION**

22 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
24 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
25 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or
26 interfere with the execution or performance of this Consent Judgment by said Party.
27
28

1 **AGREED TO:**

2 Date: 5/9/22

3 By: [Signature]
4 Authorized Representative of APS&EE, LLC

6 **AGREED TO:** *David Kilpatrick*

8 Date: May 6, 2022

9 By: David Kilpatrick, Associate General Counsel
10 Authorized Representative of Michaels Stores, Inc.

11 **AGREED TO:** *David Kilpatrick*

12 Date: May 6, 2022

14 By: David Kilpatrick, Associate General Counsel
15 Authorized Representative of Michaels Stores Procurement Company, Inc.

17 **IT IS SO ORDERED.**

18
19 Dated: 08/10/2022



[Signature]

JUDGE OF THE SUPERIOR COURT
Malcolm Mackey / Judge