

Electronically Received 08/05/2021 03:56 PM

1 Lucas Novak (SBN 257484)
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069
5 Telephone: (323) 337-9015
6 Email: lucas.nvk@gmail.com

7 Attorney for Plaintiff, APS&EE, LLC

FILED
Superior Court of California
County of Los Angeles

SEP 21 2021

Sherri R. Carter, Executive Officer/Clerk
By M. Alaniz, Deputy
M. Alaniz

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 JO-ANN STORES, LLC, a limited liability)
14 company, and DOES 1 through 100, inclusive,)
15 Defendants.)
16)

CASE NO. 21STCV17928

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Michael L. Stern
Dept.: 62
Compl. Filed: May 13, 2021

Unlimited Jurisdiction

17 ///
18 ///
19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///

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” or “APS&EE”) and Jo-Ann Stores, LLC (“Defendant” or “Jo-Ann”), with Plaintiff
5 and Defendant each referred to individually as a “Party” and collectively 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 Defendant is a company 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 Jo-Ann sold the 15oz coffee mug, 1709-6421, 9-
15 332663-036111, described as black with different colored beans decoration (hereinafter the
16 “Products”) in the State of California causing users in California to be exposed to unsafe levels
17 of Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead
18 is potentially subject to Proposition 65 warning requirements because it is listed by the State of
19 California as known to cause cancer and birth defects or other reproductive harm.

20 **1.2.2** On March 1, 2021, Plaintiff provided a Sixty-Day Notice of Violation (the
21 “Notice”), along with a Certificate of Merit, to Jo-Ann and the various public enforcement
22 agencies regarding the alleged violation of Proposition 65 with respect to the Products. On May
23 13, 2021, Plaintiff, acting in the public interest, filed the instant action (the “Complaint”) in the
24 Superior Court for the County of Los Angeles, alleging violations of Proposition 65.
25

26 **1.3 No Admissions**

27 Jo-Ann denies all allegations in Plaintiff’s Notice and Complaint and maintains that the
28 Products have been, and are, in compliance with all laws, and that Jo-Ann has not violated
Proposition 65. This Consent Judgment shall not be construed as an admission of liability by Jo-

1 Ann but to the contrary as a compromise of claims that are expressly contested and denied.
2 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities
3 under this Consent Judgment.

4 **1.4 Compromise**

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

9 **1.5 Jurisdiction and Venue**

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

15 **1.6 Effective Date**

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

18 **2. INJUNCTIVE RELIEF AND REFORMULATION**

19 **2.1 Reformulation**

20 As of sixty (60) days of the Effective Date, Jo-Ann shall not sell or cause to have the
21 Products sold in California unless (a) the Product contains no more than 1.0 microgram of lead
22 per 100 square centimeter area (1.0 µg/100 cm²) based on a wipe sample collected using NIOSH
23 Method 9100 from the part of the Product that contains the Exterior Decorations, or (b) the
24 Product is accompanied by a clear and reasonable warning as described below in Section 2.2.
25 "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior
26 surface of the Products.

27 **2.2 Clear And Reasonable Warnings**

28 **2.2.1** When a warning is required for Products pursuant to Section 2.1, such

1 Products shall be accompanied by a clear and reasonable warning. Jo-Ann shall provide a
2 warning substantially similar to either the following long-form or short-form warning:

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

7 **WARNING:** Cancer and Reproductive Harm-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 The Products shall carry said warning directly on each unit, label, labeling, package, shelf
14 tag or sign 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 purchase. However, if
16 Jo-Ann opts to use the short-form warning, such warning shall be provided on each Product or its
17 label or package. A Product that is sold by Jo-Ann on the internet to persons located in California
18 shall also provide the warning message by a clearly marked hyperlink on the product display
19 page, or otherwise prominently displayed to the purchaser before the purchaser completes his or
20 her purchase of the Product.

21 **2.2.2** Jo-Ann shall be deemed to be in compliance with the warning requirements
22 of this Consent Judgment by adhering either to Sections 2.1 and 2.2.1 above or to the warning
23 provisions in any regulations adopted by the California Office of Environmental Health Hazard
24 Assessment (“OEHHA”) after the Effective Date that pertain to the Products.

25 **2.3 Sell-Through For Existing Inventory**

26 The warning and reformulation requirements of this Section 2 shall not apply to Products
27 that Jo-Ann places into the stream of commerce within sixty (60) days of the Effective Date,
28 including but not limited to Products in distribution centers, in inventory, or at retail locations.

1 Any such products placed into the stream of commerce within sixty (60) days of the Effective
2 Date shall be subject to the releases provided in Section 4.1.

3 **3. PAYMENTS**

4 **3.1 Civil Penalty Pursuant To Proposition 65**

5 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
6 total civil penalty of two thousand dollars (\$2,000) to be apportioned in accordance with *Health*
7 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500) for OEHHA, and the
8 remaining 25% (\$500) for Plaintiff.

9 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
10 made payable to "OEHHA" in the amount of \$1,500; and (2) a check or money order made
11 payable to "Law Offices of Lucas T. Novak" in the amount of \$500. Defendant shall remit the
12 payments within ten (10) business days of the Effective Date, to:

13
14 Lucas T. Novak, Esq.
15 LAW OFFICES OF LUCAS T. NOVAK
16 8335 W Sunset Blvd., Suite 217
17 Los Angeles, CA 90069

18 **3.2 Reimbursement Of Plaintiff's Fees And Costs**

19 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
20 incurred in prosecuting the instant action, for all work performed through execution and approval
21 of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made
22 payable to "Law Offices of Lucas T. Novak" in the amount of seventeen thousand dollars
23 (\$17,000). Defendant shall remit the payment within ten (10) business days of the Effective
24 Date, to:

25
26 Lucas T. Novak, Esq.
27 LAW OFFICES OF LUCAS T. NOVAK
28 8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

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,
5 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
6 assignees, including its downstream distributors, wholesalers, vendors, licensors, licensees,
7 retailers, franchisees, customers, owners, purchasers and users (collectively the "Releasees"),
8 from any and all alleged Proposition 65 violation claims asserted in Plaintiff's Notice or
9 Complaint regarding failure to warn about exposure to Lead from the Products that Defendant
10 has sold, caused to be sold, and/or offered for sale in California before and up to sixty (60) days
11 following the Effective Date. Compliance with the terms of this Consent Judgment constitutes
12 compliance with Proposition 65 with regard to the Products.

13 **4.2 Defendant's Release Of Plaintiff**

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

20 **4.3 Waiver Of Unknown Claims**

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

23
24
25
26
27
28
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.

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

8 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

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

23 **8. NOTICE**

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

09/28/2021

1 TO DEFENDANT:

2 Lauren Hopkins, Esq.
3 Beveridge & Diamond
4 456 Montgomery Street, Suite 1800
5 San Francisco, CA 94104

TO PLAINTIFF:

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

6 **9. COUNTERPARTS**

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

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

09/22/2011

1 **10. 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: 8/4/21

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

12
13 **AGREED TO:**

14 Date: August 4, 2021

15 By: [Signature]
16 Robert D. Icsman, Assistant General Counsel
17 Authorized Representative of Jo-Ann Stores, LLC

18
19 **IT IS SO ORDERED.**

20 Dated: September 21, 2021

21 [Signature]
22 JUDGE OF THE SUPERIOR COURT
23 **MICHAEL L. STERN**

24
25
26
27
28