

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

FILED
Superior Court of California
County of Los Angeles

07/14/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: F. Rojas Deputy

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 JO-ANN STORES, LLC, a limited liability)
17 company, and DOES 1 through 100, inclusive,)
18)
19 Defendants.)
20)
21)
22)
23)
24)
25)
26)
27)
28)

CASE NO. 21STCV40645

~~PROPOSED~~ **CONSENT JUDGMENT**

Judge: Hon. Randolph M. Hammock

Dept.: 49

Compl. Filed: November 4, 2021

Unlimited Jurisdiction

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

Electronically Received 05/26/2022 10:59 AM

1 **1. RECITALS**

2 **1.1 The Parties**

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

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold the “Rich Crock Black” upholstery
15 vinyl fabric #4-00131-332108 (hereinafter, the “Products”) in the State of California causing
16 users in California to be exposed to hazardous levels of Di (2-ethylhexyl) Phthalate (“DEHP”)
17 without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP is a
18 chemical known to the state to cause cancer and reproductive toxicity and therefore is subject to
19 Proposition 65 warning requirements.

20 **1.2.2** On August 24, 2021, Plaintiff sent a Sixty-Day Notice of Violation (the
21 “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
22 violation of Proposition 65 with respect to the Products. On November 4, 2021, Plaintiff, acting
23 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the
24 County of Los Angeles, alleging violations of Proposition 65. On May 9, 2022, Plaintiff sent a
25 Supplemental 60-Day Notice (“Supplemental Notice”) to Defendant, as well as Richloom
26 Fabrics Corp., Richloom Fabrics Group, Inc., and the various public enforcement agencies
27 regarding the alleged violation of Proposition 65 with respect to the Products. The Notice and
28 Supplemental Notice shall hereinafter be referred to as the “Notices”.

1 **1.3 No Admissions**

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

8 **1.4 Compromise**

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

13 **1.5 Jurisdiction and Venue**

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

19 **1.6 Effective Date**

20 The “Effective Date” shall be the date this Consent Judgment is approved and entered by
21 the Court.

22 **2. INJUNCTIVE RELIEF**

23 **2.1 Reformulation Standard**

24 By October 1, 2022 or the Effective Date, whichever is later, Defendant shall not
25 distribute for sale in California, sell or offer for sale the Products in California unless (a) the
26 Product contains no more than 1,000 parts per million (0.1%) of DEHP (“Reformulated
27 Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable
28 warning as described below in Section 2.2.

1 **2.2 Clear And Reasonable Warnings**

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

5
6 **WARNING:** This product can expose you to Di (2-ethylhexyl) Phthalate,
7 which is known to the State of California to cause cancer and birth
8 defects or other reproductive harm. For more information go to
9 www.P65Warnings.ca.gov.

10 If Defendant has reason to believe the Products may expose consumers to additional
11 chemicals listed under Proposition 65, then it may replace “Di (2-ethylhexyl) Phthalate, which
12 is” with “chemicals, including Di (2-ethylhexyl) Phthalate, which are” in the warning statement.
13 The warning shall be accompanied by a symbol consisting of a black exclamation point in a
14 yellow equilateral triangle with a bold black outline. Where the label for the product is not
15 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
16 be placed to the left of the text of the warning, in a size no smaller than the height of the word
17 “WARNING”.

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

26 **3. PAYMENTS**

27 **3.1 Civil Penalty Pursuant To Proposition 65**

28 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with

1 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of
2 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
3 25% (\$1,000.00) for Plaintiff.

4 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
5 made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made
6 payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Defendant shall remit
7 the payments within five (5) business days of the Effective Date, to:

8 Lucas T. Novak, Esq.
9 LAW OFFICES OF LUCAS T. NOVAK
10 8335 W Sunset Blvd., Suite 217
11 Los Angeles, CA 90069

12 Upon receipt of the above civil penalty checks, Law Offices of Lucas T. Novak shall
13 forward the payments to OEHHA and Plaintiff.

14 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

15 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
16 incurred in prosecuting the instant action for all work performed through execution and approval
17 of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made
18 payable to “Law Offices of Lucas T. Novak” in the amount of twenty-three thousand five
19 hundred dollars (\$23,500.00). Defendant shall remit the payment within five (5) business days of
20 the Effective Date, to:

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

25 **4. RELEASES**

26 **4.1 Plaintiff’s Release Of Defendant**

27 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
28 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
assignees, as well as its downstream distributors, retailers, and franchisees, and its upstream

1 supplier, Richloom Fabrics Group, Inc., as well as Richloom Fabrics Corp. (collectively
2 “Released Parties”), from any alleged Proposition 65 violation claims asserted in Plaintiff’s
3 Notices or Complaint regarding failure to warn about exposure to DEHP from the Products sold
4 by Defendant before and up to the Effective Date.

5 **4.2 Defendant’s Release Of Plaintiff**

6 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
7 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
8 experts, successors and assignees for actions or statements made or undertaken, whether in the
9 course of investigating claims or seeking enforcement of Proposition 65 against Defendant in
10 this matter. If any Released Party should institute any such action, then Plaintiff’s release of said
11 Released Party in this Consent Judgment shall be rendered void and unenforceable.

12 **4.3 Waiver Of Unknown Claims**

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

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
18 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
19 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
20 DEBTOR OR RELEASED PARTY.

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

28 **5. COURT APPROVAL**

Upon execution of this Consent Judgment by all 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. NOTICES

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: Brian M. Ledger, Esq. Gordon Rees Scully Mansukhani, LLP 101 W Broadway, Suite 2000 San Diego, CA 92101	TO PLAINTIFF: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
---	---

9. 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.

///

///

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: 5/24/22

10 By: [Signature]

11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: May 23, 2022

15 By: [Signature]

16 Authorized Representative of Jo-Ann Stores, LLC

17
18 **IT IS SO ORDERED.**

19 Dated: 07/14/2022



20 [Signature]
21 JUDGE OF THE SUPERIOR COURT
22 Randolph M. Hammock / Judge
23
24
25
26
27
28