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FILED
Superior Court of California
County of Los Angeles
06/28/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: C. Wilson 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) DD'S DISCOUNTS, INC., a corporation,)
16) ROSS STORES, INC., a corporation, and)
17) DOES 1 through 100, inclusive,)
18)
19) Defendants.)
20)
21)
22)
23)
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CASE NO. 21STCV40655

~~PROPOSED~~ CONSENT JUDGMENT

Judge: Hon. Barbara M. Scheper
Dept.: 30
Compl. Filed: November 4, 2021

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and
4 between Plaintiff APS&EE, LLC (“Plaintiff”) and Defendant X-S Merchandise, Inc.
5 (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as the
6 “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 Defendant is a person in the course of doing business
12 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
13 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendant sold the Hand Transplanter #6-82824-
16 70227-0 (hereinafter, the “Product(s)”) in the State of California causing users in California to be
17 exposed to hazardous levels of Di (2-ethylhexyl) Phthalate (“DEHP”) and Di-n-Butyl Phthalate
18 (“DBP,” and collectively with DEHP, the “Listed Chemicals”), without providing “clear and
19 reasonable warnings,” in violation of Proposition 65. DEHP is a chemical known to the state to
20 cause cancer and reproductive toxicity, and DBP is known to cause birth defects and other
21 reproductive harm, and therefore each chemical is subject to Proposition 65 warning
22 requirements.

23 **1.2.2** On August 24, 2021, Plaintiff sent a Sixty-Day Notice of Violation (the
24 “Notice”) to DD’s Discounts, Inc., Ross Stores, Inc., and the various public enforcement
25 agencies regarding the alleged violation of Proposition 65 with respect to the Products. On
26 November 4, 2021, Plaintiff, acting in the public interest, filed the instant action (the
27 “Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of
28 Proposition 65. On January 12, 2022, Ross Stores, Inc. filed an Answer to Plaintiff’s Complaint,

1 and Plaintiff dismissed DD’s Discounts, Inc. without prejudice. On February 7, 2022, Plaintiff
2 sent a Supplemental Sixty-Day Notice of Violation (the “Supplemental Notice”) to Defendant, as
3 well as DD’s Discounts, Inc., Ross Stores, Inc., and the various public enforcement agencies
4 regarding the alleged violation of Proposition 65 with respect to the Products. On April 13, 2022,
5 Plaintiff filed a Doe Amendment, substituting Defendant for Doe 1.

6 **1.3 No Admissions**

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

13 **1.4 Compromise**

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

18 **1.5 Jurisdiction and Venue**

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

24 **1.6 Effective Date**

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

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Reformulation Standard**

3 After the Effective Date, Defendant shall not distribute for sale in California, sell, or offer
4 for sale the Products in California unless (a) the Product contains no more than 1,000 parts per
5 million (0.1%) of DEHP or DBP (“Reformulated Product(s)”), or (b) the Product is distributed,
6 sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

7 **2.2 Clear And Reasonable Warnings**

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

11 **WARNING:** This product can expose you chemicals, including Di (2-
12 ethylhexyl) Phthalate, which are known to the State of California
13 to cause cancer and birth defects or other reproductive harm. For
more information go to <http://www.P65Warnings.ca.gov>.

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

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

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1 **2.3 Compliance with Warning Regulations**

2 Defendant shall be deemed to be in compliance with this Consent Judgment by either
3 adhering to Section 2.2 of this Consent Judgment or by complying with warning requirements
4 adopted by the State of California’s Office of Environmental Health Hazard Assessment
5 (“OEHHA”) after the Effective Date.

6 **3. PAYMENTS**

7 **3.1 Civil Penalty Pursuant To Proposition 65**

8 In settlement of all claims referred to in this Consent Judgment, pursuant to California
9 *Health & Safety Code* section 25249.7, Defendant shall pay a total civil penalty of two thousand
10 dollars and zero cents (\$2,000.00) to be apportioned in accordance with *Health & Safety Code*
11 section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of
12 Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for
13 Plaintiff.

14 Defendant shall send two (2) checks for the civil penalty: (1) a check or money order
15 made payable to “OEHHA” in the amount of one thousand five hundred dollars and zero cents
16 (\$1,500.00); and (2) a check or money order made payable to “Law Offices of Lucas T. Novak”
17 in the amount of five hundred dollars and zero cents (\$500.00). Defendant shall remit these two
18 payments within five (5) business days of the Effective Date, to:

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

23 Upon receipt of the above two civil penalty checks, Law Offices of Lucas T. Novak shall
24 forward these payments to OEHHA and Plaintiff, respectively.

25 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

26 In order to reimburse Plaintiff’s reasonable experts’ and attorneys’ fees and costs
27 incurred in prosecuting the instant action for all work performed through execution and approval
28 of this Consent Judgment, pursuant to *Code of Civil Procedure* section 1021.5, Defendant shall
send a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount

1 of twenty thousand five hundred dollars and zero cents (\$20,500.00). Defendant shall send this
2 payment 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 **4. RELEASES**

7 **4.1 Plaintiff's Release Of Defendant**

8 Plaintiff, acting in its individual capacity and in the public interest and on behalf of itself
9 and its past and current members, managers, agents, representatives, attorneys, successors and/or
10 assignees, in consideration of the promises and monetary payments contained herein, hereby
11 releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers,
12 employees, attorneys, successors and assignees, as well as its upstream and downstream
13 manufacturers, distributors, wholesalers, customers, retailers, and franchisees, including, but not
14 limited to, Ross Stores, Inc., its parents, subsidiaries, and affiliates (including, but not limited to,
15 dd's DISCOUNTS), (collectively "Released Parties") from any alleged Proposition 65 violation
16 claims asserted in Plaintiff's Notice, Supplemental Notice, or Complaint regarding the alleged
17 failure to warn about exposure to the Listed Chemicals from the Products distributed and/or sold
18 by Defendant before and up to the Effective Date. Within ten (10) business days after receipt of
19 payment from Defendant as described in Section 3 above, Plaintiff shall file a request for
20 dismissal with prejudice of Ross Stores, Inc. and Does 1 through 100.

21 **4.2 Defendant's Release Of Plaintiff**

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

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1 **4.3 Waiver Of Unknown Claims**

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

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

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

17 **5. COURT APPROVAL**

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

25 **6. SEVERABILITY**

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

7. GOVERNING LAW

 The terms of this Consent Judgment shall be governed by the laws of the State of

1 California.

2 **8. NOTICES**

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

<p>6 TO DEFENDANT:</p> <p>7 Stephen Squillario, Esq. 8 Haight Brown & Bonesteel LLP 9 505 Sansome Street 10 Suite 1701 11 San Francisco, CA 94111</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. COUNTERPARTS**

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

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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.

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8 **AGREED TO:**

9 Date: 4/29/22
10 By: [Signature]
11 Authorized Representative of APS&EE, LLC

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13
14 **AGREED TO:**

15 Date: 4-29-22
16 By: [Signature]
17 Authorized Representative of X-S Merchandise, Inc.

18
19 **IT IS SO ORDERED.**

20 Dated: 06/28/2022



21 [Signature]
22 JUDGE OF THE SUPERIOR COURT
23 Barbara M. Scheper / Judge
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