

~~[Proposed]~~ Consent Judgment

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 Lenox Corporation (“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 Lenox brand of Butterfly Meadow
15 spoon rests, SKU#890146 (hereinafter, the “Products”), in the State of California causing users
16 in California to be exposed to hazardous levels of Lead without providing “clear and reasonable
17 warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning
18 requirements because it is listed as known to cause cancer and birth defects or other reproductive
19 harm.

20 **1.2.2** On September 26, 2023, Plaintiff sent a Sixty-Day Notice of Violation
21 (the “Notice”) to Defendant and the various public enforcement agencies regarding the alleged
22 violation of Proposition 65 with respect to the Products. On January 16, 2024, Plaintiff, acting in
23 the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County
24 of Los Angeles, alleging violations of Proposition 65.

25 **1.3 No Admissions**

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

1 Defendant 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**

19 **2.1 Reformulation Standard**

20 After the Effective Date, Defendant shall not distribute for sale in California, sell or offer
21 for sale the Products in California unless (a) the Products produce a test result no higher than 1.0
22 microgram of lead based on a wipe sample collected using NIOSH Method 9100 or equivalent
23 from the part of the Product that contains Exterior Decorations ("Reformulated Product"), or (b)
24 the Products are distributed, sold, or offered for sale with a clear and reasonable warning as
25 described below in Section 2.2. "Exterior Decorations" is defined as all colored artwork, designs
26 and/or markings on the exterior surface of the Products.

27 **2.2 Clear And Reasonable Warnings**

28 For any Products that are not Reformulated Products, such Products shall be

1 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
2 substantially similar to the following:

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 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”. Additionally, if the Product contains consumer information in a foreign language,
12 the warning must be provided in the foreign language.

13 The Products shall carry said warning directly on each unit, label, or package, with such
14 conspicuousness as compared with other words, statements or designs as to render it likely to be
15 read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant
16 on the internet to persons located in California shall also provide the warning message by a
17 clearly marked hyperlink on the product display page, or otherwise prominently displayed to the
18 purchaser before the purchaser completes his or her purchase of the Product. For Products that
19 Defendant provides for a downstream entity to sell on the internet, Defendant shall comply with
20 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning
21 requirements of this section.

22 3. PAYMENTS

23 3.1 Civil Penalty Pursuant To Proposition 65

24 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
25 total civil penalty of one thousand dollars (\$1,000.00) to be apportioned in accordance with
26 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$750.00) for State of
27 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
28 25% (\$250.00) for Plaintiff.

Defendant shall issue these payments collectively as part of the total payment described

below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective payments to OEHHA and APS&EE.

3.2 Reimbursement Of Plaintiff's Fees And Costs

Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action for all work performed through execution and approval of this Consent Judgment, in the amount of thirteen thousand dollars (\$13,000.00). Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T. Novak in the amount of fourteen thousand dollars (\$14,000.00), which includes the civil penalty described in Section 3.1, within fifteen (15) business days of the Effective Date. Wire instructions have been exchanged between the Parties' counsel.

4. RELEASES

4.1 Plaintiff's Release Of Defendant

Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the promises and monetary payments contained herein, hereby releases Defendant, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, and Defendant's downstream distributors, retailers, and franchisees (all of the foregoing, collectively "Released Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's Notice or Complaint regarding failure to warn about Lead exposure from the Products sold by Defendant before and up to the Effective Date.

4.2 Defendant's Release Of Plaintiff

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

California. This Consent Judgment is entered into in the State of California and may only be enforced in 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:

William F. Tarantino, Esq.
Morrison Foerster
425 Market Street
San Francisco, CA 94105-2482

TO PLAINTIFF:

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

9. NO EFFECT ON OTHER AGREEMENTS

Nothing in this Agreement shall be construed to affect any of the rights or obligations of either Party as set forth in any other agreement in which either Party is a signatory.

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.

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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: 12/13/24

By: [Signature]

Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 12/12/24

By: [Signature]

David Rhoads CFO

Authorized Representative of Lenox Corporation

IT IS SO ORDERED.

Dated: 02/27/2025



[Signature]

Lynne M. Hobbs / Judge

JUDGE OF THE SUPERIOR COURT