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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 Plaintiff,)
12 v.)
13 COASTLINE IMPORTS, INC., a corporation,)
14 and DOES 1 through 100, inclusive,)
15 Defendants.)

CASE NO. 19STCV13113

**[PROPOSED] CONSENT JUDGMENT
AS TO VALUE SOURCE, INC., DBA
COASTLINE IMPORTS**

Judge: Hon. Michael P. Linfield
Dept.: 34
Compl. Filed: April 15, 2019

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” or “APS&EE”) and Defendant Value Source, Inc.,
5 dba Coastline Imports (“Defendant” or “Coastline”), with Plaintiff and Defendant each referred
6 to individually as a “Party” and collectively 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** Defendant is a corporation and a person in the course of doing business as
12 the term is defined in California Health & Safety Code Section 25249.6 *et seq.* (“Proposition
13 65”).

14 **1.2 Allegations**

15 APS&EE alleges that Coastline manufactured, distributed, supplied, sold and/or offered
16 to sell mugs with exterior decorations including, but not limited to, the *Stechcol Impressions*
17 *Mug #2040, 3040, 1118, 2051072* (hereinafter the “Products”) in the State of California, causing
18 users in California to be exposed to lead, without providing a “clear and reasonable warning”
19 required by Proposition 65. Lead is listed by the State of California as known to cause cancer
20 and birth defects or other reproductive harm.

21 On January 3, 2019, APS&EE issued a Sixty-Day Notice of Violation (the “Notice”),
22 along with a Certificate of Merit, to Coastline, Tuesday Morning, Inc., and various public
23 enforcement agencies regarding the alleged violation of Proposition 65 with respect to the
24 Products. On April 15, 2019, Plaintiff, acting in the public interest, filed the instant action in the
25 Superior Court for the County of Los Angeles, alleging violations of Proposition 65, and on
26 April 16, 2019, Plaintiff filed a First Amended Complaint clarifying the alleged violations of
27 Proposition 65 (the “Complaint”).
28

1 **1.3 No Admissions**

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

9 **1.4 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 **1.5 Effective Date**

16 The “Effective Date” shall be five (5) business days after Plaintiff’s counsel provides
17 written notice to Defendant or its counsel that the Motion to Approve this Consent Judgment is
18 approved and entered by the Court.

19 **2. INJUNCTIVE RELIEF AND REFORMULATION**


20 **2.1 Reformulation Standard**

21 As of sixty (60) calendar days after the Effective Date, and continuing thereafter,
22 Defendant shall not manufacture, distribute, supply, sell or offer for sale in California Products
23 that contain more than 1.0 microgram of lead per 100 square centimeter area (1.0 µg/100 cm²)
24 based on a wipe sample collected using NIOSH Method 9100 from the part of the Product that
25 contains the Exterior Decorations, unless the Product is accompanied by a clear and reasonable
26 warning as described below in Section 2.2. “Exterior Decorations” is defined as all colored
27 artwork, designs and/or markings on the exterior surface of the Products.
28


1 **2.2 Proposition 65 Warnings**

2 **2.2.1** When a warning is required for Products under Section 2.1, Defendant
3 shall provide a warning substantially similar to either the following long-form or short-form
4 warning.

5 Long-Form Warning:

6  **WARNING:** This product can expose you to [*chemicals including*] lead,
7 which is[*are*] known to the State of California to cause cancer and birth defects or
8 other reproductive harm. For more information go to www.P65Warnings.ca.gov.

9 Short-Form Warning:

10  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

11 Defendant may use “chemicals including lead” in place of “lead” in the long-form warning. The
12 warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow
13 equilateral triangle with a black outline. Where the label, labeling, package, shelf tag or sign for
14 the Products is not printed using the color yellow, the symbol may be printed in black and white.
15 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the
16 height of the word “**WARNING.**” The warning shall be provided directly on each Product or its
17 label, labeling, package, shelf tag or sign with such conspicuousness as compared with other
18 words, statements or designs as to render it likely to be seen, read and understood by an ordinary
19 individual under customary conditions of purchase. However, if Defendant opts to use the Short-
20 Form Warning, said warning must be provided on each Product or its label or package; providing
21 it solely on the labeling, shelf tag or sign is insufficient.

22 **2.2.2 Compliance with Warning Regulations.** Defendant shall be deemed to
23 be in compliance with the warning requirements of this Consent Judgment by either adhering to
24 Sections 2.1 and 2.2 of this Consent Judgment or by complying with Proposition 65 warning
25

1 requirements adopted by the California Office of Environmental Health Hazard Assessment
2 (“OEHHA”) after the Effective Date that pertain to such Products.¹

3 **2.3 Sell-through For Existing Inventory**

4 The injunctive requirements of Section 2 shall not apply to Products that Defendant
5 manufactured, distributed, supplied, sold and/or offered to sell prior to sixty (60) calendar days
6 after the Effective Date, which Products are subject to the releases provided in Section 4.1.

7 **3. PAYMENTS**

8 **3.1 Civil Penalty Pursuant To Proposition 65**

9 In settlement of all the claims referred to in the Notice, the Complaint and this Consent
10 Judgment, Defendant shall pay a total civil penalty of three thousand dollars (\$3,000.00), to be
11 apportioned in accordance with Health and Safety Code Section 25249.12(c)(1) and (d), with
12 75% (\$2,250.00) for OEHHA, and the remaining 25% (\$750.00) for Plaintiff.

13 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
14 made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made
15 payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Defendant shall remit
16 the civil penalty payments within ten (10) business days of the Effective Date, to:

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

21 Upon receipt, Plaintiff’s counsel will forward delivery of Defendant’s civil penalty payment to
22 OEHHA.

23 **3.2 Reimbursement of Plaintiff’s Fees and Costs**

24 Defendant shall issue a check or money order made payable to “Law Offices of Lucas T.
25 Novak” in the amount of twenty-two thousand dollars (\$22,000.00) as full reimbursement of
26 Plaintiff’s reasonable attorney’s fees and costs incurred in prosecuting the instant action.

27 _____
28 ¹ As of the date of execution of this Consent Judgment, the warning requirements are located at 27 Cal. Code Regs.
§ 25601, et seq.

1 Defendant shall remit the reimbursement payment within ten (10) business days of the Effective
2 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

7 Other than the payment required hereunder, each Party is to bear its own attorneys' fees and
8 costs.

9 **4. RELEASES**

10 **4.1 Plaintiff's Release of Proposition 65 Claims**

11 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
12 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
13 subsidiaries, affiliates, divisions, shareholders, directors, members, officers, employees,
14 representatives, agents, attorneys, and their predecessors, successors and assignees, franchisees,
15 cooperative members and licensees ("Defendant Releasees"), as well as each entity to whom
16 Defendant Releasees directly or indirectly distribute or sell the Products, including but not
17 limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
18 franchisees, cooperative members, and retailers, including without limitation Tuesday Morning,
19 Inc., and their respective parents, affiliates and subsidiaries, shareholders, directors, officers,
20 agents, employees, attorneys, successors and assignees, franchisees, cooperative members and
21 licensees (all collectively, including Defendant Releasees, "Released Parties"), from any claims
22 or allegations of violation arising under Proposition 65 pertaining to the failure to warn about
23 exposures to lead from the Products that Defendant has distributed, supplied, and/or sold prior to
24 sixty (60) calendar days after the Effective Date. Compliance with the terms of this Consent
25 Judgment constitutes compliance with Proposition 65 with regard to the Products.

26 **4.2 Defendant's Release of Plaintiff**

27 Defendant, on its own behalf, by this Consent Judgment waives all rights to institute any
28 form of legal action against Plaintiff, its shareholders, directors, members, officers, employees,
attorneys, experts, successors and assignees for reasonable actions or statements made or

1 undertaken in the course of investigating claims or seeking enforcement of Proposition 65
2 against Defendant in this matter. If any Released Party should institute any such action, then
3 APS&EE's release of said Released Party in this Agreement shall be rendered null and void.

4 **4.3 Waiver of Unknown Claims**

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

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

12 Each of the Parties waives and relinquishes any right or benefit it has or may have under
13 California Civil Code Section 1542 or any similar provision under the statutory or non-statutory
14 law of any other jurisdiction to the full extent that it may lawfully waive all such rights and
15 benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or
16 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 all 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. Plaintiff and Defendant
23 agree to support the entry of this agreement as a judgment, and to obtain the Court's approval of
24 their settlement in a timely manner. The Parties acknowledge that, pursuant to California Health
25 and Safety Code Section 25249.7(f), a noticed motion is required for judicial approval of this
26 Consent Judgment, which motion and supporting papers Plaintiff shall timely draft and file. If
27 any third-party objection to the motion is filed, the Parties agree to work together to file a reply.
28

1 **6. SEVERABILITY**

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by
8 reason of law generally or as to the Products, then Defendant shall have no further obligations
9 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
10 affected.

11 **8. NOTICES**

12 All correspondence and notices required to be provided under this Consent Judgment
13 shall be in writing and delivered personally, sent by valid email, or sent by first class or certified
14 mail, addressed as follows:

15
16 TO DEFENDANT:

17
18 Malcolm C. Weiss
19 Hunton Andrews Kurth, LLP
20 550 S. Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@HuntonAK.com

TO PLAINTIFF:

Lucas T. Novak
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069
lucas.nvk@gmail.com

21
22 **9. INTEGRATION**

23 This Consent Judgment constitutes the entire agreement between the Parties with respect
24 to the subject matter hereof and may not be amended or modified except in writing signed by
25 each of the Parties and approved by the Court.

26 **10. COUNTERPARTS**

27 This Consent Judgment may be executed in counterparts, each of which shall be deemed
28 an original, and all of which, when taken together, shall constitute the same document.

1 Execution and delivery of this Consent Judgment by email, facsimile, or other electronic means
2 shall constitute legal and binding execution and delivery. Any photocopy of the executed
3 Consent Judgment shall have the same force and effect as the originals.

4 **11. AUTHORIZATION**

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

10
11 **AGREED TO:**

12 Date:

5/10/2019

13
14 By:



15 Authorized Officer of Value Source, Inc., dba Coastline Imports

16
17 **AGREED TO:**

18 Date:

5/11/19

19
20 By:



21 Authorized Officer of APS&EE, LLC

22
23 **IT IS SO ORDERED.**

24
25 Dated: _____

26 _____
27 JUDGE OF THE SUPERIOR COURT
28

[PROPOSED] CONSENT JUDGMENT AS TO
VALUE SOURCE, INC., DBA COASTLINE IMPORTS