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Attorney for Plaintiff, APS&EE, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

APS&EE, LLC, a limited liability company,)	CASE NO. 20STCV00618
)	
Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
)	
v.)	Judge: Hon. Richard E. Rico
)	Dept.: 17
SWINSTAR, INC., a limited liability)	Compl. Filed: January 7, 2020
company, and DOES 1 through 100, inclusive,)	
)	
Defendants.)	Unlimited Jurisdiction
)	
)	

[illegible]

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 (“APS&EE”) and Swinstar, Inc. (“Swinstar”). APS&EE and Swinstar
5 shall hereinafter collectively be referred to as the “Parties.”

6 **1.1.2** APS&EE 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** APS&EE alleges that Swinstar 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** APS&EE alleges that Swinstar sold Trans World Duffel Bags, including
15 Style 5119 (hereinafter collectively the “Products”) in the State of California causing users in
16 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 October 22, 2019, APS&EE sent a Sixty-Day Notice of Violation (the
21 “Notice”) to Swinstar and the various public enforcement agencies regarding the alleged
22 violation of Proposition 65 with respect to the Products. On January 7, 2020, 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 Swinstar denies all allegations in APS&EE’s Notice and Complaint and maintains that
27 the Products have been, and are, in compliance with all laws, and that Swinstar has not violated
28 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by

1 Swinstar 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 Swinstar 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 ("CCP") § 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, Swinstar shall not distribute for sale in California, sell or offer
21 for sale the Products in California unless (a) the Product contains no more than 100 parts per
22 million (0.01%) of Lead ("Reformulated Product"), or (b) the Product is distributed, sold, or
23 offered for sale with a clear and reasonable warning as described below in Section 2.2.

24 **2.2 Proposition 65 Warnings**

25 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
26 Swinstar shall use a warning with the capitalized and emboldened wording substantially similar
27 to the following:
28

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

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

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

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Consent Judgment, Swinstar shall pay a total civil penalty of one thousand five hundred dollars (\$1,500.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,125.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$375.00) for APS&EE.

Swinstar shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,125.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$375.00. Swinstar shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.
LAW OFFICES OF LUCAS T. NOVAK

8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069

3.2 Reimbursement Of APS&EE's Fees And Costs

Swinstar shall reimburse APS&EE's reasonable experts' and attorney's fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Consent Judgment. Accordingly, Swinstar shall issue total payment to "Law Offices of Lucas T. Novak" in the amount of twelve thousand dollars (\$12,000.00). Swinstar shall remit the payment in three (3) installments as follows: (1) a check or money order in the amount of \$5,000.00 within five (5) business days of the Effective Date, (2) a second check or money order in the amount of \$3,500.00 within thirty (30) calendar days of the Effective Date, and (3) a third check or money order in the amount of \$3,500.00 within sixty (60) calendar days of the Effective Date, to:

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

4. RELEASES

4.1 APS&EE's Release Of Swinstar

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

4.2 Swinstar's Release Of APS&EE

Swinstar, and on behalf of the Released Parties, by this Consent Judgment, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made

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

5 **4.3 Waiver Of Unknown Claims**

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

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

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

21 **5. COURT APPROVAL**

22 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
23 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
24 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
25 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
26 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
27 support the entry of this agreement in a timely manner, including cooperating on drafting and
28 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

1 Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue
2 in full force and effect.

3 **7. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California.

6 **8. NOTICES**

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

9 TO SWINSTAR:

10 Swinstar, Inc.
11 Attn: Lin Chin Tarng
12 2433 E 8th St.
Los Angeles, CA 90021

TO APS&EE:

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

14 **9. COUNTERPARTS**

15 This Consent Judgment may be executed in counterparts, each of which shall be deemed
16 an original, and all of which, when taken together, shall constitute the same document. Execution
17 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
18 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
19 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.

7
8 **AGREED TO:**

9 Date: _____

10 By: _____

11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 2-13-2020

15 By: 

16 Authorized Representative of Swinstar, Inc.

17
18 **IT IS SO ORDERED.**

19 Dated: _____

20 JUDGE OF THE SUPERIOR COURT

1 **10. AUTHORIZATION**

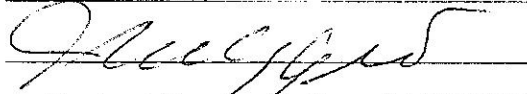
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3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this
5 Consent Judgment and is not subject to any conflicting 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:

2/13/20

10 By:


Authorized Representative of APS&EE, LLC

11
12
13 **AGREED TO:**

14 Date:

15 By:

Authorized Representative of Swinstar, Inc.

16
17
18 **IT IS SO ORDERED.**

19 Dated: _____

JUDGE OF THE SUPERIOR COURT