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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,)
Plaintiff,)
v.)
WALMART, INC., a corporation, and DOES)
1 through 100, inclusive,)
Defendants.)

CASE NO. 19STCV46042

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Robert S. Draper
Dept.: 78
Compl. Filed: December 19, 2019

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

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

13 **1.2 Allegations**

14 **1.2.1** Plaintiff alleges that Defendant sold a certain Wallet (SKU503688)
15 supplied to Defendant by Sunsea Grocery (hereinafter the “Products¹”) in the State of California
16 causing users in California to be exposed to unsafe levels of Lead without providing “clear and
17 reasonable warnings”, in violation of Proposition 65. Lead is potentially subject to Proposition
18 65 warning requirements because it is listed by the State of California as known to cause cancer
19 and birth defects or other reproductive harm.

20 **1.2.2** On September 5, 2019, Plaintiff provided a Sixty-Day Notice of Violation
21 to Defendant and the various public enforcement agencies regarding the alleged violation of
22 Proposition 65 with respect to the Products. On December 19, 2019, Plaintiff filed the instant
23 action (“Complaint”) in the Superior Court for the County of Los Angeles, alleging violations of
24 Proposition 65. On January 3, 2020, Plaintiff provided a Supplemental Sixty-Day Notice of
25 Violation to Defendant, as well as Sunsea Grocery and the various public enforcement agencies
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28 ¹ The term “Products” as used herein only refers to the Wallets with item number SKU503688 that were supplied to
Walmart by Sunsea Grocery and no others.

1 regarding the alleged violation of Proposition 65 with respect to the Products. The September 5th
2 Notice and the January 3rd Notice shall hereinafter collectively be referred to as the “Notices”.

3 **1.3 No Admissions**

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

11 **1.4 Compromise**

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

16 **1.5 Jurisdiction And Venue**

17 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
18 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
19 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to California Code of Civil Procedure (“CCP”) § 664.6 and
21 Proposition 65.

22 **1.6 Effective Date**

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

25 **2. INJUNCTIVE RELIEF**

26 As of the Effective Date and continuing thereafter, Defendant shall no longer sell or offer
27 for sale the Products in California.

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1 **3. PAYMENTS**

2 **3.1 Civil Penalty Pursuant To Proposition 65**

3 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a
4 total civil penalty of two thousand dollars (\$2,000) to be apportioned in accordance with *Health*
5 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500) for State of California Office
6 of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500) for
7 Plaintiff.

8 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
9 made payable to “OEHHA” in the amount of \$1,500; and (2) a check or money order made
10 payable to “Law Offices of Lucas T. Novak” in the amount of \$500. Defendant shall, following
11 Defendant’s receipt of completed W-9 tax forms from Plaintiff for both Plaintiff’s counsel and
12 OEHHA, remit the payments within fifteen (15) business days of the Effective Date, to:

13 Lucas T. Novak, Esq.
14 LAW OFFICES OF LUCAS T. NOVAK
15 8335 W Sunset Blvd., Suite 217
16 Los Angeles, CA 90069

17 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

18 Defendant shall reimburse Plaintiff’s experts’ and attorney’s fees and costs incurred in
19 prosecuting the instant action, for all work performed through entry of this Consent Judgment.
20 Accordingly, Defendant shall issue a check or money order made payable to “Law Offices of
21 Lucas T. Novak” in the amount of thirteen thousand dollars (\$13,000). Defendant shall,
22 following Defendant’s receipt of a completed W-9 tax form from Plaintiff for Plaintiff’s counsel,
23 remit the payment within fifteen (15) business days of the Effective Date, to:

24 Lucas T. Novak, Esq.
25 LAW OFFICES OF LUCAS T. NOVAK
26 8335 W Sunset Blvd., Suite 217
27 Los Angeles, CA 90069

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1 **4. RELEASES**

2 **4.1 Plaintiff's Release Of Defendant**

3 Plaintiff, acting in its individual capacity and in the public interest, in consideration of the
4 promises and monetary payments contained herein, hereby releases Defendant, its parents, direct
5 and indirect subsidiaries, shareholders, affiliates (including but not limited to Walmart.com
6 USA, LLC, and Walmart Inc.), directors, franchisees, cooperative members, licensees,
7 shareholders, marketplaces, members, officers, agents, experts, employees, attorneys, successors
8 and assignees, insurers, as well as its downstream distributors, retailers, customers, and their
9 respective direct and indirect subsidiaries, affiliates and parents, directors, officers, agents,
10 employees, attorneys, and each entity to whom they directly or indirectly distribute or sell the
11 Products (collectively "Releasees"), from any alleged Proposition 65 violation claims asserted in
12 Plaintiff's Notice and/or Complaint regarding the alleged failure to warn about exposure to lead
13 from the Products sold or distributed by Defendant before and up to the Effective Date.

14 **4.2 Defendant's Release Of Plaintiff**

15 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
16 action against Plaintiff, its shareholders, directors, members, officers, employees, attorneys,
17 experts, successors and assignees for actions or statements made or undertaken in the course of
18 investigating claims referenced in the aforementioned Notice or Complaint or seeking
19 enforcement of Proposition 65 against Defendant in this matter. If any Releasee should institute
20 any such action, then Plaintiff's release of said Releasee in this Consent Judgment shall be
21 rendered void and unenforceable.

22 **4.3 Waiver Of Unknown Claims**

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

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

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

5. COURT APPROVAL

Upon execution of this Consent Judgment by the 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. NOTICE

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:	TO PLAINTIFF:
Angela Jean Levin, Esq. Troutman Pepper Three Embarcadero Center	Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217

Suite 800 San Francisco, CA 94111 Kevin Gilliland, Esq. Troutman Pepper 5 Park Plaza, Suite 1400 Irvine, CA 92614	Los Angeles, CA 90069
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9. INTEGRATION

This Consent Judgment constitutes the entire agreement between the parties with respect to the subject matter hereof and may not be amended or modified except in writing.

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.

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: 10/22/20

By: [Signature]
 Authorized Representative of APS&EE, LLC

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1 **AGREED TO:**

2 Date: October 21, 2020

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5 By: _____
6 Authorized Representative of Walmart, Inc.

7 **IT IS SO ORDERED.**

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11 Dated: _____

12 JUDGE OF THE SUPERIOR COURT
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