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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.)
)
DAISO CALIFORNIA, LLC, a limited)
liability company, DAISO HOLDING USA,)
INC., a corporation, and DOES 1 through 100,)
inclusive,)
)
Defendants.)

CASE NO. 20STCV12345

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Terry Green
Dept.: 14
Compl. Filed: March 27, 2020

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, Daiso California LLC
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** Defendant is a person in the course of doing business as the term is
12 defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

13 **1.2 Allegations**

14 Plaintiff alleges that Defendant manufactured, distributed, sold, and/or offered to sell in
15 California the Daiso Brass Padlocks, D11, 4-549131-273465 (hereinafter “Padlocks”); and (2)
16 Cup & Saucer Sets, dots&lattice 4-549131-554762 FN-18-(30 and dots&stripes FN-19-P30
17 (hereinafter “Cup & Saucer Sets”, and collectively with Padlocks, the “Covered Product(s)”).
18 Plaintiff alleges that the Covered Products cause users to be exposed to unsafe levels of Lead,
19 without providing a clear and reasonable warning required by Proposition 65. Lead is listed by
20 the State of California as known to cause cancer and birth defects or other reproductive harm,
21 and therefore subject to Proposition 65 warning requirements.

22 On January 20, 2020, Plaintiff provided a Sixty-Day Notice of Violation (the “Notice”) to
23 Daiso California LLC, Daiso Holding USA, Inc. and the various public enforcement agencies
24 with respect to the Proposition 65 violations from the Covered Products. On March 27, 2020,
25 Plaintiff, acting in the public interest, filed a Complaint in the Superior Court for the County of
26 Los Angeles, alleging violations of Proposition 65 from the Covered Products (the “Complaint”).

27 **1.3 No Admissions**

28 Defendant denies all allegations in Plaintiff’s Notice and Complaint and maintains that

the Covered Products have been, and are, in compliance with all laws, and that Defendant has not violated Proposition 65. This Consent Judgment shall not be construed as an admission of liability by Defendant but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Consent Judgment.

1.4 Jurisdiction And Venue

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

1.5 Effective Date

The "Effective Date" shall be the date this Consent Judgment is approved and entered by the Court.

2. INJUNCTIVE RELIEF AND REFORMULATION

2.1 Reformulation

Defendant shall not distribute, sell or offer for sale a Covered Product in California unless (a) the Padlocks contain a total content of no more than 100 parts per million (0.01%) of Lead, and the Cup & Saucer Sets contain no more than 1.0 microgram of lead per 100 square centimeter area (1.0 µg/100 cm²) based on a wipe sample collected using NIOSH Method 9100 or equivalent, from the part of the product that contains the Exterior Decorations ("Reformulated Product"), or (b) the Covered Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2. "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Cup & Saucer Sets.

2.2 Clear And Reasonable Warnings

2.2.1 For any Covered Product that is not a Reformulated Product, such Covered Product shall be accompanied by a clear and reasonable warning. Defendant shall use a warning with the capitalized and emboldened wording substantially similar to the following:

1 **WARNING:** This product can expose you to chemicals including lead, which is
2 known to the State of California to cause cancer and birth defects
3 or other reproductive harm. For more information go to
4 www.P65Warnings.ca.gov.

5 The warning shall be accompanied by a symbol consisting of a black exclamation point
6 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
7 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
8 be placed to the left of the text of the warning, in a size no smaller than the height of the word
9 “WARNING”. In lieu of the preceding warning content and methods set forth above, Defendant
10 may use any warning content and method that complies with Title 27, California Code of
11 Regulations, section 25600 et seq., as amended August 30, 2016 and subsequently thereafter.

12 **2.2.2** Each unit shall carry said warning directly on each unit or its label or
13 package, with such conspicuousness as compared with other words, statements or designs as to
14 render it likely to be read and understood by an ordinary consumer prior to sale.

15 **2.2.3** A Covered Product that is sold by Defendant on the internet shall also
16 provide the warning message by a clearly marked hyperlink on the product display page, or
17 otherwise prominently displayed to the purchaser before the purchaser completes his or her
18 purchase of the Covered Product.

19 **3. PAYMENTS**

20 **3.1 Civil Penalty Pursuant To Proposition 65**

21 In settlement of all causes of action in Plaintiff’s Complaint, Defendant shall pay a total
22 civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with *Health*
23 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of California
24 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
25 (\$1,000.00) for Plaintiff.

26 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order
27 made payable to “OEHHA” in the amount of \$3,000.00; and (2) a check or money order made
28 payable to “Law Offices of Lucas T. Novak” in the amount of \$1,000.00. Defendant shall remit
 the payments within five (5) business days of the Effective Date, to:

1 Lucas T. Novak, Esq.
2 LAW OFFICES OF LUCAS T. NOVAK
3 8335 W Sunset Blvd., Suite 217
4 Los Angeles, CA 90069

3.2 Reimbursement Of Plaintiff's Fees And Costs

5 Defendant shall reimburse Plaintiff's reasonable experts' and attorney's fees and costs
6 incurred in prosecuting the instant action, for all work performed through execution of this
7 agreement and entry of this Consent Judgment. Accordingly, Defendant shall issue a check or
8 money order made payable to "Law Offices of Lucas T. Novak" in the amount of twenty-six
9 thousand dollars (\$26,000.00). Defendant shall remit the payments within five (5) business days
10 of the Effective Date, to:

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

4. RELEASES

4.1 Plaintiff's Release Of Proposition 65 Claims Against Defendant

16 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
17 the promises and monetary payments contained herein, hereby releases Defendant, its parents,
18 subsidiaries, shareholders, directors, members, officers, employees, affiliated entities under
19 common ownership, attorneys, successors and assignees (including Daiso Holding USA Inc.), as
20 well as each entity to whom Defendant directly or indirectly distributes or sells the Covered
21 Products, including but not limited to Defendant's distributors, retailers, wholesalers, vendors,
22 customers, marketplace hosts, and the successors and assigns of any of them (collectively
23 "Released Parties"), from any violation arising under Proposition 65 pertaining to the failure to
24 warn about exposures to Lead from the Covered Products sold or distributed for sale in
25 California by Defendant prior to the Effective Date, as alleged or otherwise asserted in the
26 Notice or Plaintiff's Complaint. Upon receipt of all payments described in Section 3 above,
27 Plaintiff shall file a Request For Dismissal of Daiso Holding USA, Inc. and Does 1 through 100.

4.2 Defendant's Release Of Plaintiff

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

7 **4.3 Waiver Of Unknown Claims**

8 Each of the Parties acknowledges that it is familiar with California Civil Code § 1542
9 which provides:

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

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

22 **5. COURT APPROVAL**

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

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.

8 **8. NOTICES**

9 All correspondence and notices required to be provided under this Consent Judgment
10 shall be in writing and delivered personally or sent by first class or certified mail addressed as
11 follows:

12 **TO DEFENDANT:**

13 Liz Shoemaker, Esq.
14 Teraoka & Partners LLP
15 One Embarcadero Center, Suite 1020
San Francisco, CA 94111

TO PLAINTIFF:

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

16 **9. INTEGRATION**

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

19 **10. COUNTERPARTS**

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

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

25 **11. AUTHORIZATION**

26 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions
28 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this

1 Consent Judgment and not subject to any conflicting obligation that will or might prevent or
2 interfere with the execution or performance of this Consent Judgment by said party.

3
4 **AGREED TO:**

5 Date:

9/10/2020

6
7 By:

Tamara Ta Kao

8 Authorized Representative of Daiso California LLC

9
10 **AGREED TO:**

11 Date:

9/10/2020

12
13 By:

Julie Lee

14 Authorized Representative of APS&EE, LLC

15
16 **IT IS SO ORDERED.**

17 Dated: _____

JUDGE OF THE SUPERIOR COURT