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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 )  
12 Plaintiff, )  
13 v. )  
14 JO-ANN STORES, LLC, a limited liability )  
15 company, and DOES 1 through 100, inclusive, )  
16 Defendants. )

CASE NO. 21STCV17928

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Michael L. Stern  
Dept.: 62  
Compl. Filed: May 13, 2021

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” or “APS&EE”) and Jo-Ann Stores, LLC (“Defendant” or “Jo-Ann”), with Plaintiff  
5 and Defendant each referred to individually as a “Party” and collectively 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 company 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 Jo-Ann sold the 15oz coffee mug, 1709-6421, 9-  
15 332663-036111, described as black with different colored beans decoration (hereinafter the  
16 “Products”) in the State of California causing users in California to be exposed to unsafe levels  
17 of Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead  
18 is potentially subject to Proposition 65 warning requirements because it is listed by the State of  
19 California as known to cause cancer and birth defects or other reproductive harm.

20 **1.2.2** On March 1, 2021, Plaintiff provided a Sixty-Day Notice of Violation (the  
21 “Notice”), along with a Certificate of Merit, to Jo-Ann and the various public enforcement  
22 agencies regarding the alleged violation of Proposition 65 with respect to the Products. On May  
23 13, 2021, Plaintiff, acting in the public interest, filed the instant action (the “Complaint”) in the  
24 Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

25 **1.3 No Admissions**

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

1 Ann 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 AND REFORMULATION**

19 **2.1 Reformulation**

20 As of sixty (60) days of the Effective Date, Jo-Ann shall not sell or cause to have the  
21 Products sold in California unless (a) the Product contains no more than 1.0 microgram of lead  
22 per 100 square centimeter area (1.0 µg/100 cm<sup>2</sup>) based on a wipe sample collected using NIOSH  
23 Method 9100 from the part of the Product that contains the Exterior Decorations, or (b) the  
24 Product is accompanied by a clear and reasonable warning as described below in Section 2.2.  
25 "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior  
26 surface of the Products.

27 **2.2 Clear And Reasonable Warnings**

28 **2.2.1** When a warning is required for Products pursuant to Section 2.1, such



1 Any such products placed into the stream of commerce within sixty (60) days of the Effective  
2 Date shall be subject to the releases provided in Section 4.1.

3 **3. PAYMENTS**

4 **3.1 Civil Penalty Pursuant To Proposition 65**

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

9 Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order  
10 made payable to “OEHHA” in the amount of \$1,500; and (2) a check or money order made  
11 payable to “Law Offices of Lucas T. Novak” in the amount of \$500. Defendant shall remit the  
12 payments within ten (10) business days of the Effective Date, to:

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

18 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

19 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs  
20 incurred in prosecuting the instant action, for all work performed through execution and approval  
21 of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made  
22 payable to “Law Offices of Lucas T. Novak” in the amount of seventeen thousand dollars  
23 (\$17,000). Defendant shall remit the payment within ten (10) business days of the Effective  
24 Date, to:

25  
26 Lucas T. Novak, Esq.  
27 LAW OFFICES OF LUCAS T. NOVAK  
28 8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

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,  
5 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and  
6 assignees, including its downstream distributors, wholesalers, vendors, licensors, licensees,  
7 retailers, franchisees, customers, owners, purchasers and users (collectively the "Releasees"),  
8 from any and all alleged Proposition 65 violation claims asserted in Plaintiff's Notice or  
9 Complaint regarding failure to warn about exposure to Lead from the Products that Defendant  
10 has sold, caused to be sold, and/or offered for sale in California before and up to sixty (60) days  
11 following the Effective Date. Compliance with the terms of this Consent Judgment constitutes  
12 compliance with Proposition 65 with regard to the Products.

13 **4.2 Defendant's Release Of Plaintiff**

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

20 **4.3 Waiver Of Unknown Claims**

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

23  
24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
25 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
26 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
27 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
28 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
DEBTOR OR RELEASED PARTY.

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

8 **5. COURT APPROVAL**

9 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
10 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
11 Judgment is not effective until it is approved and entered by the Court. It is the intention of the  
12 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such  
13 approval, the Parties and their respective counsel agree to mutually employ their best efforts to  
14 support the entry of this agreement in a timely manner, including cooperating on drafting and  
15 filing any papers in support of the required motion for judicial approval.

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of  
22 California.

23 **8. NOTICE**

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

2 Lauren Hopkins, Esq.  
3 Beveridge & Diamond  
4 456 Montgomery Street, Suite 1800  
5 San Francisco, CA 94104

TO PLAINTIFF:

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

6 **9. COUNTERPARTS**

7 This Consent Judgment may be executed in counterparts, each of which shall be deemed  
8 an original, and all of which, when taken together, shall constitute the same document. Execution  
9 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
10 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
11 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: 8/4/21

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

12  
13 **AGREED TO:**

14 Date: August 4, 2021

15 By: [Signature]  
16 Robert D. Icsman, Assistant General Counsel  
17 Authorized Representative of Jo-Ann Stores, LLC

18  
19 **IT IS SO ORDERED.**

20 Dated: \_\_\_\_\_

21 JUDGE OF THE SUPERIOR COURT  
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