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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 UP GLOBAL SOURCING UK LTD., a)
14 limited liability company, and DOES 1)
15 through 100, inclusive,)
16 Defendants.)

CASE NO. 23STCV03751

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Barbara M. Scheper
Dept.: 30
Compl. Filed: February 21, 2023

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 UP Global Sourcing UK Ltd. (“Defendant”). Plaintiff and Defendant shall
5 hereinafter 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 Defendant 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** Plaintiff alleges that Defendant sold Portobello By Design mugs with
15 exterior decorations, including but not limited to Buddha “Peace” mug, Style 624748 (hereinafter
16 the “Products”) in the State of California causing users in California to be exposed to unsafe
17 levels of Lead without providing “clear and reasonable warnings”, in violation of Proposition 65.
18 Lead is potentially subject to Proposition 65 warning requirements because it is listed by the
19 State of California as known to cause cancer and birth defects or other reproductive harm.

20 **1.2.2** On August 30, 2022, Plaintiff provided a Sixty-Day Notice of Violation
21 (the “Notice”) to The TJX Companies, Inc. and the various public enforcement agencies
22 regarding the alleged violation of Proposition 65 with respect to the Products. On November 30,
23 2022, Plaintiff provided a Supplemental Sixty-Day Notice of Violation (the “Supplemental
24 Notice”) to Defendant as well as The TJX Companies, Inc. and the various public enforcement
25 agencies regarding the alleged violation of Proposition 65 with respect to the Products. The
26 Notice and Supplemental Notice shall hereinafter collectively be referred to as the “Notices.” On
27 February 21, 2023, Plaintiff filed the instant action (“Complaint”) in the Superior Court for the
28 County of Los Angeles, alleging violations of Proposition 65.

1 **1.3 No Admissions**

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

8 **1.4 Compromise**

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

13 **1.5 Jurisdiction And Venue**

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

19 **1.6 Effective Date**

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

22 **2. INJUNCTIVE RELIEF**

23 **2.1 Reformulation Standard**

24 As of the Effective Date, Defendant shall not manufacture, distribute, sell, offer for sale,
25 or cause to have the Products sold in California unless (a) the Product contains no more than 1.0
26 microgram of lead based on a wipe sample collected using NIOSH Method 9100 from the part of
27 the Product that contains the Exterior Decorations, or (b) the Product is accompanied by a clear
28

1 and reasonable warning as described below in Section 2.2. “Exterior Decorations” is defined as
2 all colored artwork, designs and/or markings on the exterior surface of the Products.

3 **2.2 Proposition 65 Warnings**

4 For any Products that are not Reformulated Products, such Products shall be
5 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
6 substantially similar to the following:

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

10 If Defendant has reason to believe the Products may expose consumers to additional
11 chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals,
12 including Lead, which are” in the warning statement. The warning shall be accompanied by a
13 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
14 outline. Where the label for the product is not printed using the color yellow, the symbol may be
15 printed in black and white. The symbol shall be placed to the left of the text of the warning, in a
16 size no smaller than the height of the word “WARNING.”

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

25 **2.3 Sell-Through for Existing Inventory**

26 The Reformulation and/or Warning Requirements of Sections 2.1 and 2.2 shall not apply
27 to Products that Defendant has sold or distributed prior to the Effective Date, which Products are
28 subject to the releases provided in Section 4.1.

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 (\$2,000.00) to be apportioned in accordance with
5 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of
6 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining
7 25% (\$500.00) for Plaintiff.

8 Defendant shall issue these payments collectively as part of the total payment described
9 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the
10 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
11 payments to OEHHA and Plaintiff.

12 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

13 Defendant shall reimburse Plaintiff’s experts’ and attorney’s fees and costs incurred in
14 prosecuting the instant action, for all work performed through entry of this Consent Judgment, in
15 the amount of eighteen thousand dollars (\$18,000.00). Accordingly, Defendant shall remit total
16 payment via wire transfer to Law Offices of Lucas T. Novak in the amount of twenty thousand
17 dollars (\$20,000.00), which includes the civil penalty described in Section 3.1, within five (5)
18 business days of the Effective Date. Wire instructions have been exchanged between the Parties’
19 counsel.

20 **4. RELEASES**

21 **4.1 Plaintiff’s Release Of Defendant**

22 Plaintiff, acting in its individual capacity and in the public interest, in consideration of the
23 promises and monetary payments contained herein, hereby releases Defendant, its parents,
24 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
25 assignees, as well as its downstream distributors, retailers, and customers, including but not
26 limited to The TJX Companies, Inc. (collectively “Releasees”), from any alleged Proposition 65
27 violation claims asserted in Plaintiff’s Notices and/or Complaint regarding failure to warn about
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1 exposure to lead from the Exterior Decorations of the Products sold or distributed by Defendant
2 before and up to the Effective Date.

3 **4.2 Defendant’s Release Of Plaintiff**

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

10 **4.3 Waiver Of Unknown Claims**

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

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

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

26 **5. COURT APPROVAL**

27 Upon execution of this Consent Judgment by the Parties, Plaintiff shall file a noticed
28 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

1 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
2 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
3 support the entry of this agreement in a timely manner, including cooperating on drafting and
4 filing any papers in support of the required motion for judicial approval.

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California.

12 **8. NOTICE**

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

15 **TO DEFENDANT:**

16 Vanessa Adriance, Esq.
17 DLA Piper LLP
18 550 S Hope St, Ste 2400
19 Los Angeles, CA 90071

TO PLAINTIFF:

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

20 **9. INTEGRATION**

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

23 **10. COUNTERPARTS**

24 This Consent Judgment may be executed in counterparts, each of which shall be deemed
25 an original, and all of which, when taken together, shall constitute the same document. Execution
26 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
27 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
28

1 Judgment shall have the same force and effect as the originals.

2 **11. AUTHORIZATION**

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

8
9 **AGREED TO:**

10 Date:

3/3/23

11
12 By:



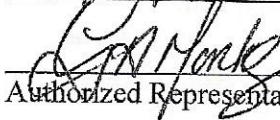
13 Authorized Representative of APS&EE, LLC

14
15 **AGREED TO:**

16 Date:

02/03/2023

17
18 By:

 (GAVINOR A. MONKS)

Authorized Representative of UP Global Sourcing UK Ltd.

19
20 **IT IS SO ORDERED.**

21
22 Dated: _____

23 _____
24 JUDGE OF THE SUPERIOR COURT