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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 JMLE, LLC, a limited liability company,)
14 ROSS STORES, INC., a corporation, and)
15 DOES 1 through 100, inclusive,)
16 Defendants.)

CASE NO. 24STCV00027

[PROPOSED] CONSENT JUDGMENT

Judge: Hon. Stephen P. Pfahler

Dept.: 68

Compl. Filed: January 2, 2024

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 APS&EE, LLC (“Plaintiff”) and Ross Stores, Inc. (“Defendant”). Plaintiff and
5 Defendant shall 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 “PerfectCuisine” brand of nonstick
15 fry pans Style EZ06D002CHAR, 8” 2.5MM HMRD FRY CHAR (hereinafter, the “Products”),
16 in the State of California causing users in California to be exposed to hazardous levels of
17 Perfluorooctanoic Acid (“PFOA”) without providing “clear and reasonable warnings”, in
18 violation of Proposition 65. PFOA is potentially subject to Proposition 65 warning requirements
19 because it is listed as known to cause cancer and reproductive harm.

20 **1.2.2** On October 19, 2023, Plaintiff sent a Sixty-Day Notice of Violation (the
21 “Notice”) to Defendant, JMLE, LLC, and the various public enforcement agencies regarding the
22 alleged violation of Proposition 65 with respect to the Products. On January 2, 2024, Plaintiff,
23 acting in the public interest, filed the instant action (the “Complaint”) in the Superior Court for
24 the County of Los Angeles, alleging violations of Proposition 65.

25 **1.3 No Admissions**

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

1 Defendant 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**

19 **2.1 Reformulation Standard**

20 As of 120 days after Effective Date, Defendant shall not sell Products in California,
21 unless (a) the Products contain no intentionally-added PFOA and no more than 100 parts per
22 million total organic fluorine ("Reformulated Product"), or (b) the Products are distributed, sold,
23 or offered for sale with a clear and reasonable warning as described below in Section 2.2. This
24 reformulation requirement shall not apply to Products that Defendant has in distribution centers
25 or in inventory in California retail stores prior to 120 days after the Effective Date. Such
26 Products are subject to the release in Section 4 of this Consent Judgment.

27 **2.2 Clear And Reasonable Warnings**

28 For any Products that are not Reformulated Products, such Products shall be

1 accompanied by a clear and reasonable warning. Defendant shall provide a warning statement
2 substantially similar to the following:

3 **WARNING:** This product can expose you to Perfluorooctanoic Acid
4 ("PFOA") which is known to the State of California to cause
5 cancer and birth defects or other reproductive harm. For more
6 information go to www.P65Warnings.ca.gov.

7 The warning shall be accompanied by a symbol consisting of a black exclamation point
8 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not
9 printed using the color yellow, the symbol may be printed in black and white. The symbol shall
10 be placed to the left of the text of the warning, in a size no smaller than the height of the word
11 "WARNING". Additionally, if the Product contains consumer information in a foreign language,
12 the warning must be provided in the foreign language.

13 The Products shall carry said warning directly on each unit, label, or package, with such
14 conspicuousness as compared with other words, statements or designs as to render it likely to be
15 read and understood by an ordinary consumer prior to sale. A Product that is sold by Defendant
16 on the internet to persons located in California shall also provide the warning message by a
17 clearly marked hyperlink on the product display page, or otherwise prominently displayed to the
18 purchaser before the purchaser completes his or her purchase of the Product. For Products that
19 Defendant provides for a downstream entity to sell on the internet, Defendant shall comply with
20 27 CCR section 25600.2(b) and include an instruction that the entity comply with the warning
21 requirements of this section.

21 **3. PAYMENTS**

22 **3.1 Civil Penalty Pursuant To Proposition 65**

23 In settlement of all claims referred to in this Consent Judgment, Defendant shall
24 collectively pay a total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in
25 accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00)
26 for State of California Office of Environmental Health Hazard Assessment ("OEHHA"), and the
27 remaining 25% (\$1,000.00) for Plaintiff.

28 Defendant shall issue these payments collectively as part of the total payment described

1 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the
2 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective
3 payments to OEHHA and APS&EE.

4 **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 and approval
7 of this Consent Judgment, in the amount of twenty-eight thousand dollars (\$28,000.00).
8 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.
9 Novak in the amount of thirty-two thousand dollars (\$32,000.00), which includes the civil
10 penalty described in Section 3.1, within ten (10) business days of the Effective Date. Wire
11 instructions have been exchanged between the Parties' counsel.

12 **4. RELEASES**

13 **4.1 Plaintiff's Release Of Defendant**

14 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of
15 the promises and monetary payments contained herein, hereby releases Defendant, it parents,
16 subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and
17 assignees, including, but not limited to JMLE, LLC, and its downstream distributors, retailers,
18 and franchisees (all of the foregoing, collectively "Released Parties"), from any alleged
19 Proposition 65 violation claims asserted or that could have been asserted in Plaintiff's Notice or
20 Complaint regarding failure to warn about PFOA exposure from the Products sold by Defendant
21 before and up to 120 days after Effective Date and any Products Defendant has in its distribution
22 centers or in inventory in California retail stores prior to 120 days the Effective Date, even if sold
23 by Defendant after 120 days after Effective Date (collectively "Released Products").

24 Plaintiff, for itself and its agents, successors, and assigns, releases, waives, and forever
25 discharges any and all claims against Defendant and Released Parties arising from any violation
26 of Proposition 65 or any other statutory or common law claims that have been or could have
27 been asserted by Plaintiff regarding the failure to warn about exposure to PFOA arising in
28 connection with the Released Products.

1 Compliance with the terms of this Consent Judgment by Defendant shall constitute
2 compliance with Proposition 65 by Defendant and any Released Parties with respect to any
3 alleged failure to warn about PFOA in Products sold or offered for sale by Defendant after 120
4 days after the Effective Date. However, Released Parties that do not comply with the warning
5 requirements of Section 2.2 after being instructed to do so are not released from future liability
6 with respect to the failure to warn about exposure to PFOA from the Products.

7 **4.2 Defendant's Release Of Plaintiff**

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

14 **4.3 Waiver Of Unknown Claims**

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

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

21 Each of the Parties waives and relinquishes any right or benefit it has or may have under
22 Section 1542 of California Civil Code or any similar provision under the statutory or non-
23 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
24 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
25 or different from, those that it believes to be true with respect to the claims released herein. The
26 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
27 effective in all respects notwithstanding the discovery of such additional or different facts.
28

1 **5. COURT APPROVAL**

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

9 **6. GOVERNING LAW**

10 The terms of this Consent Judgment shall be governed by the laws of the State of
11 California, exclusive of its conflict of law rules. This Consent Judgment is entered into in the
12 State of California and may only be enforced in the State of California.

13 **7. NOTICES**

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

17 TO DEFENDANT: 18 General Counsel 19 Ross Stores, Inc. 20 5130 Hacienda Drive 21 Dublin, CA 94568 22 WITH COPY TO: 23 Lauren Shoor, Esq. 24 Norton Rose Fulbright US LLP 25 555 South Flower Street, Forty-First 26 Floor 27 Los Angeles, California 90071	17 TO PLAINTIFF: 18 Lucas T. Novak, Esq. 19 Law Offices of Lucas T. Novak 20 8335 W Sunset Blvd., Suite 217 21 Los Angeles, CA 90069
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26 **8. COUNTERPARTS**

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

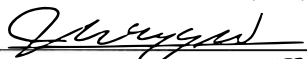
1 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall
2 constitute legal and binding execution and delivery. Any photocopy of the executed Consent
3 Judgment shall have the same force and effect as the originals.

4 **9. AUTHORIZATION**

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

10
11 **AGREED TO:**

12 Date: 8/19/24

13 By: 

14 Authorized Representative of APS&EE, LLC

15
16 **AGREED TO:**

17 Date: August 19, 2024

18 By: 

19 Authorized Representative of Ross Stores, Inc.

20
21 **IT IS SO ORDERED.**

22 Dated: _____

23 JUDGE OF THE SUPERIOR COURT