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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,) CASE NO. 19ST CV20131
11)
12 Plaintiff,) **[PROPOSED] CONSENT JUDGMENT**
13 v.)
14 MSRF, INC., a corporation, and DOES 1) Judge: Hon. Patricia D. Nieto
15 through 100, inclusive,) Dept.: 24
16 Defendants.) Compl. Filed: June 10, 2019
17) 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 (“APS&EE”) and MSRF, Inc. (“MSRF”). APS&EE and MSRF shall hereinafter collectively be
5 referred to as the “Parties.”

6 **1.1.2** APS&EE 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** APS&EE alleges that MSRF is a person in the course of doing business as
11 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** APS&EE alleges that MSRF sold ceramic mugs with exterior decorations,
15 such as the “Dog Mom” Mug 7-02014-21047-4, (hereinafter the “Products”) in the State of
16 California causing users in California to be exposed to hazardous levels of lead from the
17 Products’ exterior decorations without providing “clear and reasonable warnings”, in violation of
18 Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is
19 listed by the State of California as known to cause cancer and birth defects or other reproductive
20 harm.

21 **1.2.2** On January 22, 2019, APS&EE sent a Sixty-Day Notice of Violation (the
22 “Notice”), along with a Certificate of Merit, to MSRF and the various public enforcement
23 agencies regarding the alleged violation of Proposition 65 with respect to the Products. On June
24 10, 2019, acting in the public interest, Plaintiff filed the instant action (the “Complaint”) in the
25 Superior Court for the County of Los Angeles, alleging violations of Proposition 65.

26 **1.3 No Admissions**

27 MSRF denies all allegations in APS&EE’s Notice and Complaint and maintains that the
28 Products have been, and are, in compliance with all laws, and that MSRF has not violated

1 Proposition 65. This Consent Judgment shall not be construed as an admission of liability by
2 MSRF but to the contrary as a compromise of claims that are expressly contested and denied.
3 However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities
4 under this Consent Judgment.

5 **1.4 Compromise**

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

10 **1.5 Effective Date**

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

13 **2. INJUNCTIVE RELIEF**

14 **2.1 Reformulation Standard**

15 **2.1.1** As of the Effective Date, MSRF shall not distribute, supply, sell or offer
16 for sale the Products in California if they contain more than 1.0 microgram of lead based on a
17 wipe sample collected and tested using NIOSH Method 9100 as applied to the area of Product
18 that contains the majority of the Exterior Decorations, unless clear and reasonable Proposition 65
19 warnings accompany each unit, as described below in Section 2.2. ("Exterior Decorations" is
20 defined as all colored artwork, designs and/or markings on the exterior surface of the Products.)

21 **2.1.2** Compliance with this Reformulation Standard can be proven if (a) a
22 Certified Laboratory performed or performs lead testing pursuant to NIOSH Method 9100 on at
23 least six (6) randomly selected units of each Production Unit, and all results do not exceed the
24 lead levels described in Section 2.1.1 ("Production Unit" means, for each unique Exterior
25 Decoration on a mug, Products with a common Exterior Decoration that are produced, on behalf
26 of MSRF, at the same manufacturing facility in a single lot; "Certified Laboratory" means the
27 laboratory meets the requirements of 27 CCR Section 25900(a)(3): a laboratory certified by the
28 State of California or accredited by the State of California, a federal agency, the National

1 Environmental Laboratory Accreditation Program or similar nationally recognized accrediting
2 organization to perform the particular method of detection and analysis in question.); and (b)
3 certification from the manufacturer that its manufacturing process for a particular Exterior
4 Decoration did not change during the manufacture of a Production Unit. A manufacturing
5 process change will be deemed to have occurred if there is a material change in: the glaze, print,
6 decorating materials (or in the supplier of those materials), type of fuel used to fire the kiln,
7 manufacturing site, firing temperatures, cycles, settings and procedures.

8 **2.1.3** If the Products do not meet this Reformulation Standard, then clear and
9 reasonable Proposition 65 warnings must accompany each unit, as described below in Section
10 2.2.

11 **2.2 Proposition 65 Warnings**

12 **2.2.1** Whenever a clear and reasonable warning is required under Section 2.1,
13 MSRF shall comply with 27 Cal. Code Regs. § 25601, et seq. (operative Aug. 30, 2018) and use
14 a warning with the capitalized and emboldened wording substantially similar to the following:

15 **WARNING:** This product can expose you to lead, which is known to the State
16 of California to cause cancer and birth defects or other
17 reproductive harm. For more information go to
18 www.P65Warnings.ca.gov.

19 Or, if the warning is placed directly on the product or its immediate packaging:

20 **WARNING:** Cancer and Reproductive Harm-www.P65Warnings.ca.gov.

21 If it has reason to believe the Products contain additional chemicals listed under
22 Proposition 65, then MSRF may use “chemicals including lead” in place of “lead”. The warning
23 shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral
24 triangle with a bold black outline. Where the label for the product is not printed using the color
25 yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of
26 the text of the warning, in a size no smaller than the height of the word “WARNING”.

27 **2.2.2** Each unit shall carry said warning directly on each unit or its label or
28 package, with such conspicuousness as compared with other words, statements or designs as to

1 render it likely to be read and understood by an ordinary consumer prior to sale.

2 **3. PAYMENTS**

3 **3.1 Civil Penalty Pursuant To Proposition 65**

4 In settlement of all claims referred to in this Consent Judgment, MSRF shall pay a total
5 civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health*
6 *and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California
7 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25%
8 (\$500.00) for APS&EE.

9 MSRF shall issue two (2) checks for the civil penalty: (1) a check or money order made
10 payable to “OEHHA” in the amount of \$1,500.00; and (2) a check or money order made payable
11 to “Law Offices of Lucas T. Novak” in the amount of \$500.00. MSRF shall remit the payments
12 within ten (10) business days of the Effective Date and after receipt of relevant tax payer
13 information, to:

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 APS&EE’s Fees And Costs**

19 MSRF shall reimburse APS&EE’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, MSRF shall issue a check or money order made payable
22 to “Law Offices of Lucas T. Novak” in the amount of twenty thousand five hundred dollars
23 (\$20,500.00). MSRF shall remit the payment within ten (10) business days of the Effective Date,
24 to:

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

1 **4. RELEASES**

2 **4.1 APS&EE's Release Of MSRF**

3 APS&EE, acting in its individual capacity, and in the public interest, in consideration of
4 the promises and monetary payments contained herein, hereby releases MSRF, its parents,
5 subsidiaries, affiliated companies under common ownership or control, shareholders, directors,
6 members, officers, employees, attorneys, successors and assignees, as well as its downstream
7 distributors, customers and retailers (including Big Lots Stores, Inc.) and all other entities to
8 which MSRF directly or indirectly distributes or sells Products, including but not limited to
9 wholesalers, customers, franchisees, licensors, and licensees (collectively, "Released Parties"),
10 from any alleged Proposition 65 violation claims asserted in APS&EE's Notice regarding
11 exposure to lead from the Products distributed, sold or supplied by MSRF in California before
12 and up to the Effective Date. Compliance with the terms of this Consent Judgment shall
13 constitute compliance with Proposition 65 by MSRF and Released Parties with respect to alleged
14 failure to warn about lead in Products manufactured, distributed, sold, or supplied by MSRF after
15 the Effective Date.

16
17 In further consideration of the promises and agreements herein contained, APS&EE, for
18 itself, its past and current representatives, agents, successors, and assigns, releases, waives, and
19 forever discharges any and all claims and waives all rights to institute any form of legal action
20 against MSRF and Released Parties arising from any violation of Proposition 65 that has been or
21 could have been asserted by APS&EE regarding exposure to lead from the Products distributed,
22 sold or supplied by MSRF prior to the Effective Date.

23 **4.2 MSRF's Release Of APS&EE**

24 MSRF, its parents, subsidiaries, shareholders, directors, members, officers, employees,
25 attorneys, successors and assignees, by this Consent Judgment, waives all rights to institute any
26 form of legal action against APS&EE, its shareholders, directors, members, officers, employees,
27 attorneys, experts, successors and assignees for actions or statements made or undertaken in
28 relation to any alleged violation of Proposition 65 regarding a failure to warn about exposure to

1 lead from the Products distributed, sold or supplied by MSRF prior to the Effective Date ,
2 whether in the course of investigating claims or seeking enforcement of Proposition 65 against
3 MSRF in relation to the claims in this matter. If any Released Party should institute any such
4 action, then APS&EE's release of said Released Party in this Agreement shall be rendered void
5 and unenforceable.

6 **4.3 Waiver Of Unknown Claims**

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

9
10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
11 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
12 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
13 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
14 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
15 DEBTOR OR RELEASED PARTY.

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

24 **5. COURT APPROVAL**

25 Upon execution of this Consent Judgment by all Parties, APS&EE shall file a noticed
26 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
27 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
28 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

1 filing any papers in support of the required motion for judicial approval.

2 If this Consent Judgment is not entered by the Court, it shall be of no force or effect and
3 shall not be introduced into evidence or otherwise used in any proceeding for any purpose other
4 than to allow the Court to determine if there is a material breach of this Section 5.

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, overnight or certified mail addressed
15 as follows:

<p>18 TO MSRF:</p> <p>19 David Reich 20 MSRF, Inc. 21 3319 N. Elston Ave. 22 Chicago, IL 60618</p> <p>23 With a copy to: 24 Lauren Michals, Esq. 25 Nixon Peabody LLP 26 One Embarcadero Ctr 27 32nd Floor 28 San Francisco, CA 94111</p>	<p>TO APS&EE:</p> <p>Lucas Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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1 **9. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the subject matter hereof, and any and all prior discussions, negotiations,
4 commitments, or understandings related hereto, if any, are hereby merged herein. There are no
5 warranties, representations, or other agreements between the Parties except as expressly set forth
6 herein. No representations, oral or otherwise, express or implied, other than those expressly
7 referred to in the Consent Judgment have been made by any Party hereto. No other agreements
8 not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to
9 bind any Party hereto. No supplementation, modification, waiver, or termination of this Consent
10 Judgment shall be binding unless in executed in writing by the Party to be bound hereby. No
11 waiver of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of
12 any other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
13 waiver.

14 **10. RETENTION OF JURISDICTION**

15 This court shall retain jurisdiction of this matter to enforce and/or modify the Consent
16 Judgment pursuant to California Code of Civil Procedure Section 664.6 and Proposition 65.

17 **11 COUNTERPARTS**

18 This Consent Judgment may be executed in counterparts, each of which shall be deemed
19 an original, and all of which, when taken together, shall constitute the same document.
20 Execution and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means
21 shall constitute legal and binding execution and delivery. Any photocopy of the executed
22 Consent Judgment shall have the same force and effect as the originals.

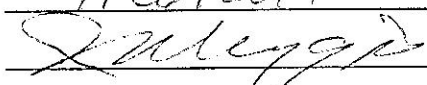
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1 **12. AUTHORIZATION**

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:**

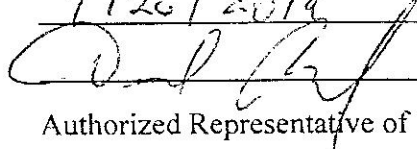
9 Date: 7/26/2019

10 By: 

11 Authorized Representative of APS&EE, LLC

12
13 **AGREED TO:**

14 Date: 7/26/2019

15 By: 

16 Authorized Representative of MSRF, INC.

17
18
19 **IT IS SO ORDERED.**

20 Dated: _____

JUDGE OF THE SUPERIOR COURT