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FILED
Superior Court of California
County of Alameda

08/07/2023

Clad File, Executive Officer / Clerk of the Court

By:  Deputy

B. Mercado

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 HARVEST GREEN INC.,

15 Defendant.

Case No.: 23CV031505

CONSENT JUDGMENT

Judge: Jeffrey Brand

Dept.: 22

Hearing Date: August 3, 2023

Hearing Time: 2:00 PM

Reservation #: 170102531444

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and Harvest Green Inc. (“HGI” or
4 “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of them
5 as a “Party.” Balabbo is an individual residing in California that seeks to promote awareness of
6 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
7 substances contained in consumer products. HGI is alleged to be a person in the course of doing
8 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to lead from its sales of (a) Spoon Rests and (b) Mugs without providing a clear and
11 reasonable exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition 65
12 as a chemical known to the State of California to cause cancer and reproductive toxicity.

13 1.3 **Notice of Violation/Action.** On or about February 6, 2023, Balabbo served HGI
14 and various public enforcement agencies with documents entitled “60-Day Notice of Violation”
15 pursuant to Health & Safety Code §25249.7(d) (the “Notices”), alleging that Defendant violated
16 Proposition 65 for failing to warn consumers and customers that use of (a) Spoon Rests and (b)
17 Mugs exposes users in California to lead. No public enforcer has brought and is diligently
18 prosecuting the claims alleged in the Notices. On April 18, 2023, Balabbo filed a complaint (the
19 “Complaint”).

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Action filed in this matter, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
23 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
24 claims which were or could have been raised in the Action based on the facts alleged therein and
25 in the Notices.

26 1.5 Defendant denies the material allegations contained in Balabbo’s Notices and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
28

1 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
2 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
5 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1 Covered Products.** The term “Covered Products” means (a) Spoon Rests and (b)
8 Mugs that are manufactured, distributed, shipped into California and offered for sale in California
9 by HGI.

10 **2.2 Effective Date.** The term “Effective Date” means the date this Consent Judgment is
11 entered as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

13 **3.1 Reformulation of Products.** As of the Effective Date, and continuing thereafter,
14 Products that HGI directly manufactures, imports, distributes, sells, or offers for sale in California
15 shall either be: (a) Reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and
16 reasonable exposure warning pursuant to §§ 3.3 - 3.4, below. For purposes of this Settlement
17 Agreement, a “Reformulated Product” is a product that is in compliance with the standard set forth
18 in § 3.2, below. The warning requirement set forth in §§ 3.3 - 3.4 shall not apply to any
19 Reformulated Product.

20 **3.2 Reformulation Standard.** “Reformulated Products” shall mean Products that
21 produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
22 NIOSH method no. 9100.

23 **3.3 Clear and Reasonable Warning.** As of the Effective Date, and continuing
24 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
25 provided for all Covered Products that HGI manufactures, imports, distributes, sells, or offers for
26 sale in California that is not a Reformulated Product. There shall be no obligation for HGI to
27 provide an exposure warning for Products that entered the stream of commerce prior to the Effective
28

1 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
2 3.3(a) or (b), respectively:

3 (a) **Warning.** The “Warning” shall consist of the statement:

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

6 (b) **Alternative Warning:** HGI may, but is not required to, use the alternative
7 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

9 **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the word
10 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
11 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
12 triangle with a black outline, except that if the sign or label for the Products does not use the color
13 yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the
14 height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or
15 printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device
16 or automatic process, provided that the **Warning** or **Alternative Warning** is displayed with such
17 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
18 read and understood by an ordinary individual under customary conditions of purchase or use. The
19 **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling,
20 or instruction booklet that states other safety warnings, if any, concerning the use of the Product
21 and shall be at least the same size as those other safety warnings.

22 In addition to affixing the **Warning** or **Alternative Warning** to the Product’s packaging or
23 labeling, the **Warning** or **Alternative Warning** shall be posted on websites where HGI offers
24 Products for sale to consumers in California. The requirements of this Section shall be satisfied if
25 the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
26 “**WARNING,**” appears on the product display page, or by otherwise prominently displaying the
27 warning to the purchaser prior to completing the purchase. To comply with this Section, HGI shall
28 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,

1 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
2 **Warning or Alternative Warning** on the websites of its third-party internet sellers, provide such
3 sellers with written notice in accordance with Title 27, California Code of Regulations, Section
4 25600.2. Third-party internet sellers of the Product that have been provided with written notice in
5 accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in
6 Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

7 **3.5 Compliance with Warning Regulations.** The Parties agree that HGI shall be
8 deemed to be in compliance with this Settlement Agreement by either adhering to § 3 of this
9 Settlement Agreement or by complying with warning requirements adopted by the State of
10 California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the
11 Product and the exposure at issue after the Effective Date.

12 **4. MONETARY TERMS**

13 **4.1 Civil Penalty.** HGI shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
14 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
15 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
16 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

17 **4.1.1** Within fifteen (15) business days of the Effective Date, or upon receipt of
18 relevant W-9 forms from the appropriate payees, whichever is later, HGI shall issue two separate
19 checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and to (b)
20 "Brodsky Smith In Trust For Precila Balabbo" in the amount of \$500.00. Payment owed to
21 Balabbo pursuant to this Section shall be delivered to the following payment address:

22 Evan J. Smith, Esquire
23 Brodsky Smith
24 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

25 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
26 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

27 For United States Postal Service Delivery:

28 Mike Gyurics

1 Fiscal Operations Branch Chief
2 Office of Environmental Health Hazard Assessment
3 P.O. Box 4010
4 Sacramento, CA 95812-4010

5 For Non-United States Postal Service Delivery:

6 Mike Gyurics
7 Fiscal Operations Branch Chief
8 Office of Environmental Health Hazard Assessment
9 1001 I Street
10 Sacramento, CA 95814

11 A copy of the check payable to OEHHHA shall be mailed to Brodsky Smith at the address set forth
12 above as proof of payment to OEHHHA.

13 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, or upon
14 receipt of relevant W-9 forms from the appropriate payees, whichever is later, HGI shall pay
15 \$23,000.00 to Brodsky Smith ("Brodsky Smith") as complete reimbursement for Balabbo's
16 attorneys' fees and costs incurred as a result of investigating, bringing this matter to the attention
17 of HGI, litigating and negotiating and obtaining judicial approval of a settlement in the public
18 interest, pursuant to Code of Civil Procedure § 1021.5.

19 4.3 **Option to Wire Monetary Payments.** HGI may also choose to wire all payments
20 (Civil Penalty and Attorneys' Fees) within fifteen (15) business days of the Effective Date, or upon
21 receipt of relevant W-9 Forms from the appropriate payees, whichever is later. If requested, counsel
22 for Balabbo will provide HGI with wire information and distribute the Civil Penalty and Attorneys'
23 Fees as appropriate.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
26 acting on her own behalf, and on behalf of the public interest, and HGI, and its parents,
27 shareholders, members, directors, officers, managers, employees, representatives, agents,
28 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees

1 retailers, including but not limited to, The TJX Companies, and its parents, subsidiaries, and
2 affiliates, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
3 violations of Proposition 65 based on exposure to lead from use of the Covered Products
4 manufactured, distributed, or sold by HGI prior to the Effective Date as set forth in the Notices. It
5 is the Parties' intention that this Consent Judgment shall have preclusive effect such that no other
6 actions by private enforcers, whether purporting to act in his, her, or its interests or the public
7 interest shall be permitted to pursue and take any action with respect to any violation of Proposition
8 65 based on exposure to lead from use of the Covered Products that was alleged in the Complaint,
9 or that could have been brought pursuant to the Notices against HGI and the Downstream Releasees
10 ("Proposition 65 Claims").

11 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
12 agents, representatives, attorneys, and successors and assignees, and not in her representative
13 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases HGI, Defendant Releasees, and Downstream Releasees from any and all
15 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
16 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
17 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
18 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
19 Products manufactured, distributed, or sold by HGI, Defendant Releasees or Downstream
20 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
21 specifically waives any and all rights and benefits which she now has, or in the future may have,
22 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
23 follows:

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 5.3 HGI waives any and all claims against Balabbo, her attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in connection
5 with the Notices and Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 Jeffrey Margulies
24 Norton Rose Fulbright US LLP
25 555 South Flower Street, 41st Floor
26 Los Angeles, CA 90071

27 And

28 For Balabbo:

 Evan Smith

1 Brodsky Smith
2 9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212

4 Any party, from time to time, may specify in writing to the other party a change of address to
5 which all notices and other communications shall be sent.

6 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

7 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
8 which shall be deemed an original, and all of which, when taken together, shall constitute one and
9 the same document.

10 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
11 **APPROVAL**

12 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
13 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
14 Defendant agrees it shall support approval of such Motion.

15 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
16 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
17 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
18 days, the case shall proceed on its normal course.

19 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
20 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
21 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
22 its normal course on the trial court's calendar.

23 **11. MODIFICATION**

24 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
25 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

26 **12. ATTORNEY'S FEES**

27 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
28 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood, and agree to all of the terms and conditions of this
9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

AGREED TO:

13
14 Date: 6/14/2023

Date: _____

15 By: 

16 By: _____

17 **PRECILA BALABBO**

HARVEST GREEN INC.

18
19 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

20 Dated: 08/06/2023

21 
22 Judge of Superior Court

Jeffrey Brand / Judge

1 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **13. RETENTION OF JURISDICTION**

4 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
5 Consent Judgment.

6 **14. AUTHORIZATION**

7 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
8 respective Parties and have read, understood, and agree to all of the terms and conditions of this
9 document and certify that he or she is fully authorized by the Party he or she represents to execute
10 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
11 explicitly provided herein each Party is to bear its own fees and costs.

12 **AGREED TO:**

AGREED TO:

13
14 Date: _____

For and on behalf of
Date: HARVEST GREEN INC (HONG KONG) LIMITED
07 Jun 2023

15 By: _____

By: J. J. [Signature]

16 **PRECILA BALABBO**

HARVEST GREEN INC. Authorized Signature(s)

17
18 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

19
20 Dated: _____

Judge of Superior Court