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17 Attorneys for Plaintiff
18 Environmental Health Advocates, Inc.

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **IN AND FOR THE COUNTY OF ALAMEDA**

21 ENVIRONMENTAL HEALTH
22 ADVOCATES, INC., a California organization,

23 Plaintiff,

24 v.

25 HISI GLASS, a California corporation,
26 VITRICO CORPORATION, a California
27 corporation, and DOES 1 through 100,
28 inclusive,

Defendants.

Case No. HG20083207

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA”) and Vitrico Corporation, dba HiSi Glass, (“Defendants” or “Vitrico”) with EHA and Vitrico
5 each individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 EHA is a corporation organized in the state of California, acting in the interest of the general
8 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health
9 by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendants**

11 Vitrico is alleged to employ ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 EHA alleges that Vitrico manufactures, imports, sells, offers for sale and/or distributes for
16 sale marijuana paraphernalia that expose consumers to marijuana smoke. EHA further alleges that
17 Vitrico does so without providing a sufficient health hazard warning as required by Proposition 65
18 and related Regulations. Pursuant to Proposition 65, marijuana smoke is listed as a chemical known
19 to cause cancer, birth defects and other reproductive harm.

20 **1.5 Notices of Violation**

21 On May 28, 2020, EHA served HiSi Glass, the California Attorney General, and all other
22 required public enforcement agencies with a 60-Day Notice of Violation of California Health and
23 Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged that HiSi had violated Proposition
24 65 by failing to sufficiently warn consumers in California of the health hazards associated with
25 exposures to marijuana smoke contained in, for example, its HiSi 50 X 5mm Tube—15 in. Beaker.

26 On September 1, 2020, EHA served HiSi Glass, Vitrico Corporation, the California Attorney
27 General, and all other required public enforcement agencies with an amended 60-Day Notice of
28 Violation of California Health and Safety Code section 25249.6 *et seq.* (“Amended Notice”) adding

1 Vitrico Corporation.

2 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
3 violations alleged in the Notice.

4 **1.6 Product Description**

5 This Consent Judgment covers products, including the “HiSi 50 X 5mm Tube—15 in.
6 Beaker,” that allegedly expose consumers to marijuana smoke and are imported, sold, offered for
7 sale, shipped, delivered or distributed for sale to consumers in California by Releasees (as defined in
8 section 4.1) (“Products”).

9 **1.7 State of the Pleadings**

10 On December 16, 2020, EHA filed a Complaint against Vitrico for the alleged violations of
11 Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

12 On February 5, 2021, EHA filed a First Amended Complaint against Vitrico. (“FAC”).

13 **1.8 No Admission**

14 Vitrico denies the material factual and legal allegations of the Notices and Complaints and
15 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in
16 California, including Products, have been, and are, in compliance with all laws. Nothing in this
17 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
18 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
19 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
20 not, however, diminish or otherwise affect Vitrico’s obligations, responsibilities, and duties under
21 this Consent Judgment.

22 **1.9 Jurisdiction**

23 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
24 Court has jurisdiction over Vitrico as to the allegations in the Complaint, that venue is proper in the
25 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
26 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

1 **1.10 Effective Date and Compliance Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
3 EHA provides Vitrico’s counsel notice that the Court grants the motion for approval of this Consent
4 Judgment, as discussed in Section 5. The Compliance Date is the date that is sixty (60) days after the
5 Effective Date.

6 **2. INJUNCTIVE RELIEF: REFORMULATION OF PRODUCTS**

7 **2.1 Warnings**

8 Except as otherwise provided herein, any Products that are manufactured by Vitrico on and
9 after the Compliance Date that Vitrico sells in California or distributes for sale in California shall
10 contain a clear and reasonable warning that complies with Proposition 65 warning regulations,
11 including Cal. Code Regs. tit. 27, § 25600 *et seq.*

12 Products may be sold in California with one of the following warning statements:

13 **Option 1:**

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

17 **Option 2:**

18 **▲ WARNING:** Cancer and Reproductive Harm –
www.P65Warnings.cs.gov

19 The warning in Option 2 may only be used if the warning appears on the product container or
20 labeling. The word “**WARNING**” shall be displayed in all capital letters and bold print. This warning
21 statement shall be prominently displayed on the Products, on the packing of the Products, or on a
22 placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as
23 compared with other words, statements, or designs as to render it likely to be read and understood by
24 an ordinary individual prior to sale. If the warning statement is displayed on the Products’ label, it
25 must be set off from other surrounding information.

26 **2.2.2** The warning requirements set forth herein are imposed pursuant to the terms of this
27 Consent Judgment and are recognized by the Parties as not being the exclusive manner of providing
28 a warning for the Covered Products. Warnings may be provided as specified in the Proposition 65

1 regulations for products in effect as of the Effective Date (Title 27, California Code of Regulations,
2 section 25601, *et seq.*) or as such regulations may be amended in the future, or pursuant to a
3 settlement agreement or consent judgment involving marijuana smoke. In addition, Vitrico may
4 follow the notification procedure set out in Title 27, California Code of Regulations, section 25600.2
5 or a similar procedure where Vitrico instructs its distributor or retailer customers to provide warnings
6 for the Covered Products consistent with Section 2.2. The same warning shall be posted on any
7 websites where the Product is sold in California.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Settlement Amount**

10 Vitrico shall pay fifty thousand dollars (\$50,000) in settlement and total satisfaction of all the
11 claims referred to in the Notices, the Complaints, and this Consent Judgment. This includes civil
12 penalties in the amount of five thousand dollars (\$5,000) pursuant to Health and Safety Code section
13 25249.7(b) and attorney's fees and costs in the amount of forty five thousand dollars (\$45,000)
14 pursuant to Code of Civil Procedure section 1021.5.

15 **3.2 Civil Penalty**

16 The portion of the settlement attributable to civil penalties shall be allocated according to
17 Health and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
18 penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and
19 the remaining twenty-five percent (25%) of the penalty paid to EHA individually.

20 All payments (\$1,250) owed to EHA shall be delivered to the following address:

21 Environmental Health Advocates
22 225 Broadway, Suite 1900
23 San Diego, CA 92101

24 All payments (\$3,750) owed to OEHHA (EIN: 68-0284486) shall be delivered directly to
25 OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

26 For United States Postal Service Delivery:

27 Mike Gyurics
28 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

1
2 For Federal Express 2-Day Delivery:

3 Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street
7 Sacramento, CA 95814

8 Vitrico agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
9 simultaneous with its penalty payments to EHA.

10 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as
11 required. Relevant information is set out below:

- 12 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 13 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);
- 14 and
- 15 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA
16 95814.

17 The above-mentioned checks will be issued within thirty (30) days of the Effective Date.

18 **3.3 Attorney's Fees and Costs**

19 Forty-five thousand dollars (\$45,000) of the settlement is attributable to attorney's fees and
20 costs. This amount shall be paid to EHA's counsel, who are entitled to attorney's fees and costs
21 incurred by it in this action, including but not limited to investigating potential violations, bringing
22 this matter to Vitrico's attention, as well as litigating and negotiating a settlement in the public
23 interest.

24 Vitrico shall provide payment to EHA's counsel as follows:

- 25 1. Within thirty (30) days after the Effective Date, one check to the Glick Law Group in the
26 amount of \$8,750.
- 27 2. Within thirty (30) days after the Effective Date, one check to Nicholas & Tomasevic, LLP
28 in the amount of \$8,750.
3. Within sixty (60) days after the Effective Date, one check to the Glick Law Group in the
amount of \$8,750.

1 4. Within sixty (60) days after the Effective Date, one check to Nicholas & Tomasevic, LLP
2 in the amount of \$8,750.

3 5. Within ninety (90) days after the Effective Date, one check to the Glick Law Group in the
4 amount of \$5,000.

5 6. Within ninety (90) days after the Effective Date, one check to Nicholas & Tomasevic, LLP
6 in the amount of \$5,000.

7 The addresses for these two entities are:

8
9 Noam Glick
10 Glick Law Group
11 225 Broadway, 19th Floor
12 San Diego, CA 92101

13 Craig Nicholas
14 Nicholas & Tomasevic, LLP
15 225 Broadway, 19th Floor
16 San Diego, CA 92101

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4. **CLAIMS COVERED AND RELEASED**

4.1 **EHA's Public Release of Proposition 65 Claims**

For any claim, alleged violation or violation arising under Proposition 65 alleging a failure to warn about exposures to marijuana smoke from Products or related products manufactured, imported, sold, offered for sale or distributed by Vitrico prior to the Compliance Date, EHA, acting for the general public, releases Vitrico of any and all liability. This includes Vitrico's owners, parents, subsidiaries, affiliated entities under common ownerships, its directors, officers, agents, employees, attorneys, and each entity to whom Vitrico directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesales, customers, retailers, franchisees, cooperative members and licensees, (collectively, the "Releasees"). Releasees include defendants, their parents, and all subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell Vitrico's Products. Compliance with the terms of this Consent Judgment constitutes compliances with Proposition 65 with respect to the alleged or actual failure to warn about exposures

1 to marijuana smoke from Products manufactured, imported, sold, or distributed by Vitrico after the
2 Effective Date. This Consent Judgment is a full, final and binding resolution of all claims that were or
3 could have been asserted against Vitrico and/or Releasees for failure to provide warnings for alleged
4 exposure to marijuana smoke from Products.

5 **4.2 EHA's Individual Release of Claims**

6 EHA, in its individual capacity, also releases Vitrico and Releasees, which release shall be a
7 full and final accord and satisfaction of, as well as a bar to, all actions, causes of action, obligations,
8 costs, expenses, attorney's fees, damages, losses, claims, liabilities, and demands of every nature,
9 character, and kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
10 actual exposures to marijuana smoke in Products manufactured, imported, sold, offered for sale or
11 distributed by Vitrico before the Compliance Date.
12

13 **4.3 Vitrico's Release of EHA**

14 Vitrico on its own behalf as well as its past and current agents, representatives, attorneys,
15 successors, and assignees, hereby waives any and all claims against EHA and its attorneys and other
16 representatives, for any and all actions taken or statements made by EHA and its attorneys and other
17 representatives, whether in the course of investigating claims, otherwise seeking to enforce
18 Proposition 65 against them, in this matter or with respect to the Products.
19

20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved by the Court and shall be null and
22 void if it is not approved by the Court within one year after it has been fully executed by the Parties,
23 or by such additional time as the Parties may agree to in writing.
24

25 **6. SEVERABILITY**

26 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is
27 held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
28 affected.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California as
3 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable for reasons, including but not limited to changes in the law, then Vitrico may
5 provide written notice to EHA of any asserted change, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected.

8 **8. NOTICE**

9 Unless otherwise specified herein, all correspondence and notice required by this Consent
10 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
11 mail, return receipt requested; (iii) by validly addressed email, or (iv) a recognized overnight courier
12 to the following addresses:

13 If to Vitrico Corporation:

14 Malcolm Weiss, Esq.
15 (mweiss@huntonak.com)
16 Jennifer MikoLevine
17 (jmikolevine@huntonak.com)
18 550 South Hope Street
19 Suite 2000
20 Los Angeles, CA 90071

If to EHA:

Noam Glick, Esq.
(noam@glicklawgroup.com)
Glick Law Group, PC
225 Broadway, 19th Floor
San Diego, CA 92101

21 Any Party may, from time to time, specify in writing to the other, a change of address to
22 which notices and other communications shall be sent.

23 **9. COUNTERPARTS; DIGITAL SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
25 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
26 same document.

27 **10. POST EXECUTION ACTIVITIES**

28 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which

1 motion EHA shall draft, serve and file. In furtherance of obtaining such approval, the Parties agree to
2 mutually employ their good faith efforts, including those of their counsel, to support the entry of this
3 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner..

4 **11. MODIFICATION**

5 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry
6 of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
7 Party, and the entry of a modified consent judgment thereon by the Court.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
10 have read, understand, and agree to all of the terms and conditions contained herein.

11 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

12 If a dispute arises with respect to either Party's compliance with the terms of this Consent
13 Judgment entered by the Court, the Parties shall meet and confer in person, or by telephone, and/or in
14 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed
15 in the absence of such a good faith attempt to resolve the dispute beforehand.

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1 **14. ENTIRE AGREEMENT**


2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
4 commitments, and understandings related hereto. No representations, oral or otherwise, express or
5 implied, other than those contained herein have been made by any Party. No other agreements, oral or
6 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

7 **AGREED TO:**

AGREED TO:

8
9 Date: March 31, 2021

Date: March 31, 2021

10
11 By: 
12 ENVIRONMENTAL HEALTH
13 ADVOCATES, INC.

By: 
VITRICO CORPORATION

14
15 **IT IS SO ORDERED.**

16
17 Date: _____

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19 _____
20 JUDGE OF THE SUPERIOR COURT