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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 )  
12 Plaintiff, )  
13 v. )  
14 EVERGREEN ENTERPRISES, INC., a )  
15 corporation, GREEN THUMB )  
16 INTERNATIONAL, INC., a corporation, and )  
17 DOES 1 through 100, inclusive, )  
18 Defendants. )

CASE NO. 23STCV19947

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. William F. Fahey  
Dept.: 69  
Compl. Filed: August 21, 2023

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”), on the one hand, and Evergreen Enterprises Of Virginia,  
5 LLC, erroneously named as Evergreen Enterprises, Inc. (“Defendant”), and Green Thumb  
6 International, Inc. (“Green Thumb”), on the other hand. Plaintiff, Defendant, and Green Thumb  
7 shall hereinafter collectively be referred to as the “Parties.”

8 **1.1.2** Plaintiff contends that it is an organization based in California with an  
9 interest in protecting the environment, improving human health and the health of ecosystems,  
10 and supporting environmentally sound practices, which includes promoting awareness of  
11 exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer  
12 products.

13 **1.1.3** Plaintiff alleges that Defendant and Green Thumb are each a person in the  
14 course of doing business as the term is defined in California *Health & Safety Code* section  
15 25249.6 et seq. (“Proposition 65”).

16 **1.2 Allegations**

17 **1.2.1** Plaintiff alleges that Defendant and Green Thumb sold “Evergreen” travel  
18 mugs, including but not limited to Hummingbird Trio #EGA0H6 (hereinafter, the “Products”), in  
19 the State of California causing users in California to be exposed to hazardous levels of Lead  
20 without providing “clear and reasonable warnings”, in violation of Proposition 65. Lead is  
21 potentially subject to Proposition 65 warning requirements because it is listed as known to cause  
22 cancer and birth defects or other reproductive harm.

23 **1.2.2** On June 1, 2023, Plaintiff sent a Sixty-Day Notice of Violation (the  
24 “Notice”) to Defendant and Green Thumb and the various public enforcement agencies regarding  
25 the alleged violation of Proposition 65 with respect to the Products. On August 21, 2023,  
26 Plaintiff, acting in the public interest, filed the instant action (the “Complaint”) in the Superior  
27 Court for the County of Los Angeles, alleging violations of Proposition 65.

1           **1.3     No Admissions**

2           Defendant and Green Thumb deny all allegations in Plaintiff’s Notice and Complaint and  
3 maintain that the Products have been, and are, in compliance with all laws, and that Defendant  
4 and Green Thumb have not violated Proposition 65. This Consent Judgment shall not be  
5 construed as an admission of liability by Defendant or Green Thumb but to the contrary as a  
6 compromise of claims that are expressly contested and denied. However, nothing in this section  
7 shall affect the Parties’ obligations, duties, and responsibilities 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 and Green Thumb as to the allegations in the Complaint,  
16 that venue is proper in Los Angeles County, and that this Court has jurisdiction to enter and  
17 enforce the provisions of this Consent Judgment pursuant to California Code of Civil Procedure  
18 Section 664.6 and Proposition 65.

19           **1.6     Notice and Cure**

20           If Plaintiff determines at a future date that a violation of this Consent Judgment has  
21 occurred, Plaintiff shall provide notice to Defendant (and to the extent the violation involves a  
22 Product sold by Green Thumb, to Green Thumb) (collectively, the “Alleged Violator”). Prior to  
23 bringing any action to enforce any requirement of this Consent Judgment, Plaintiff shall provide  
24 the Alleged Violator with written notice of the grounds for such allegation together with all  
25 supporting information as well as a complete demand for the relief sought. The Parties shall then  
26 meet and confer regarding the basis for the allegation to resolve the matter informally, including  
27 providing the Alleged Violator with a reasonable opportunity of at least thirty (30) days to cure  
28 any alleged violation. Nothing herein shall prevent Plaintiff from seeking additional civil

1 penalties and attorney’s fees and/or costs for the Alleged Violator violation of this Consent  
2 Judgment.

3 **1.7 Effective Date**

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

6 **2. INJUNCTIVE RELIEF**

7 **2.1 Reformulation Standard**

8 After the Effective Date, Defendant shall not distribute for sale in California or sell or  
9 offer for sale in California Products imported after the Effective Date unless (a) the Product  
10 contains no more than 1.0 microgram of lead based on a wipe sample collected using NIOSH  
11 Method 9100 from the part of the Product that constitutes the Exterior Decorations  
12 (“Reformulated Product”), or (b) the Products are distributed, sold, or offered for sale with a  
13 clear and reasonable warning as described below in Section 2.2. “Exterior Decorations” is  
14 defined as all colored artwork, designs and/or markings on the exterior surface of the Products,  
15 including the handle.

16 **2.2 Clear And Reasonable Warnings**

17 For any Products that are not Reformulated Products, the following provisions of this  
18 Section 2.2 shall apply.

19 Such Products shall be accompanied by a clear and reasonable warning. Defendant shall  
20 provide a warning statement substantially similar to the following:

21 **WARNING:** This product can expose you to Lead which is known to the State  
22 of California to cause cancer and birth defects or other  
23 reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24 The warning shall be accompanied by a symbol consisting of a black exclamation point  
25 in a yellow equilateral triangle with a bold black outline. Where the label for the product is not  
26 printed using the color yellow, the symbol may be printed in black and white. The symbol shall  
27 be placed to the left of the text of the warning, in a size no smaller than the height of the word  
28

1 “WARNING”. Additionally, if the Product contains consumer information in a foreign language,  
2 the warning must be provided in the foreign language.

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

11 **3. PAYMENTS**

12 **3.1 Civil Penalty Pursuant To Proposition 65**

13 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a  
14 total civil penalty of four thousand dollars (\$4,000.00) to be apportioned in accordance with  
15 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$3,000.00) for State of  
16 California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining  
17 25% (\$1,000.00) for Plaintiff.

18 Defendant shall issue these payments collectively as part of the total payment described  
19 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the  
20 wire transfer, Law Offices of Lucas T. Novak shall be responsible for forwarding the respective  
21 payments to OEHHA and APS&EE.

22 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

23 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs  
24 incurred in prosecuting the instant action for all work performed through execution and approval  
25 of this Consent Judgment, in the amount of twenty-six thousand dollars (\$26,000.00).  
26 Accordingly, Defendant shall remit total payment via wire transfer to Law Offices of Lucas T.  
27 Novak in the amount of thirty thousand dollars (\$30,000.00), which includes the civil penalty  
28 described in Section 3.1, within five (5) business days of the Effective Date. Wire instructions

1 have been exchanged between the Parties' counsel.

2 **4. RELEASES**

3 **4.1 Plaintiff's Release Of Defendants**

4 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of  
5 the promises and monetary payments contained herein, hereby releases Defendant, its parents,  
6 subsidiaries, shareholders, directors, members, owners of membership interests (including but  
7 not limited to Evergreen Enterprises, Inc.), officers, employees, contractors, website designers,  
8 website administrators, website owners, manufacturers<sup>1</sup>, attorneys, successors and assignees, and  
9 Defendant's downstream distributors and retailers, including but not limited to Green Thumb (as  
10 well as its parents, subsidiaries, shareholders, directors, members, officers, employees,  
11 contractors, website designers, website administrators, website owners, manufacturers of the  
12 Products, attorneys, successors and assignees) (all of the foregoing, collectively "Released  
13 Parties"), from any alleged Proposition 65 violation claims asserted in Plaintiff's Notice or  
14 Complaint for failure to warn about Lead exposure from the Products sold or distributed by  
15 Defendant with respect to any Products imported before and up to the Effective Date, and (i)  
16 distributed, or sold by Defendant before and up to the Effective Date or (ii) distributed or sold by  
17 Defendant after the Effective date as to Products imported before and up to the Effective Date.  
18 Compliance with this Consent Judgment shall constitute compliance with Proposition 65 by  
19 Defendant with respect to the presence of Lead in the Exterior Decorations of the Products. For  
20 the sake of clarity, it is the Parties' intention that this Consent Judgment shall have preclusive  
21 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its  
22 interests or the public interest shall be permitted to pursue and/or take any action with respect to  
23 any violation of Proposition 65 that was alleged in the Notice or Complaint or that could have  
24 been brought pursuant to the Notice or Complaint against Released Parties regarding exposure to  
25 lead from the Exterior Decorations of any Products sold or distributed by Defendant or any other  
26 Released Parties, including Green Thumb, prior to the Effective Date.

27 \_\_\_\_\_  
28 <sup>1</sup> For the sake of clarity, such release of manufacturers is limited to the Products they provided to Defendant.

1 In addition to the foregoing, Plaintiff, on behalf of itself, and *not* in its representative  
2 capacity in the public interest, in consideration of the promises and monetary payments  
3 contained herein, hereby waives all rights to institute or participate in, directly or indirectly, any  
4 form of legal action and discharges and releases the Released Parties from any and all claims  
5 arising under Proposition 65 relating to the Products imported, distributed or sold by any  
6 Released Party prior to the Effective Date. It is possible that other claims not known to the  
7 Parties arising out of the facts contained in the Notice, or alleged in the Complaint, relating to the  
8 Products, will hereafter be discovered, or developed. Plaintiff, on behalf of itself only,  
9 acknowledges that this Consent Judgment is expressly intended to cover and include all such  
10 claims prior to the Effective Date, including all rights of action therefor.

11 **4.2 Defendant’s and Green Thumb International, Inc.’s Release Of Plaintiff**

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

18 **4.3 Waiver Of Unknown Claims**

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

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

25 Each of the Parties waives and relinquishes any right or benefit it has or may have under  
26 Section 1542 of California Civil Code or any similar provision under the statutory or non-  
27 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights  
28

1 and benefits related to this Proposition 65 action. The Parties acknowledge that each may  
2 subsequently discover facts in addition to, or different from, those that it believes to be true with  
3 respect to the claims released herein. The Parties agree that this Consent Judgment and the  
4 releases contained herein shall be and remain effective in all respects notwithstanding the  
5 discovery of such additional or different facts.

6 **5. COURT APPROVAL**

7 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
8 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. It is the  
9 intention of the Parties that the Court approve this Consent Judgment, and in furtherance of  
10 obtaining such approval, the Parties and their respective counsel agree to mutually employ their  
11 best efforts to support the entry of this agreement in a timely manner, including cooperating on  
12 drafting and filing any papers in support of the required motion for judicial approval. This  
13 Consent Judgment shall not be effective until it is approved and entered by the Court and shall be  
14 null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to  
15 meet and confer on how to proceed and if such agreement is not reached within 30 days, the case  
16 shall proceed on its normal course. If the Court approves this Consent Judgment and is reversed  
17 or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the  
18 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,  
19 the case shall proceed on its normal course on the trial court's calendar.

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California, exclusive of its conflict of law rules. If Proposition 65 is repealed, preempted or is  
27 otherwise rendered inapplicable by reason of law generally, or as to Products, then Defendant  
28 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the



1 extent that, Products are so affected.

2 **8. NOTICES**

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

<p>5</p> <p>6 TO DEFENDANT AND GREEN THUMB:</p> <p>7</p> <p>8 Jeffrey Goldman, Esq. Troutman Pepper Hamilton Sanders LLP 350 South Grand Avenue, Ste. 3400 Los Angeles, CA 90071</p> <p>9</p> <p>10</p> <p>11</p> <p>12 With a copy to:</p> <p>13 Coburn Beck, Esq. Troutman Pepper Hamilton Sanders LLP 1001 Haxall Point 15<sup>th</sup> Floor Richmond, VA 23219</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p>	<p>TO PLAINTIFF:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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19 **9. INTEGRATION**

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

24 **10. COUNTERPARTS**

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

3 **11. MODIFICATION**

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

6 **12. AUTHORIZATION**

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

12  
13 **AGREED TO:**

14 Date: \_\_\_\_\_

15 By: \_\_\_\_\_

16 Authorized Representative of APS&EE, LLC

17  
18 **AGREED TO:**

19 Date: March 28, 2024  \_\_\_\_\_

20 By: Christopher R. Wornom

21 Authorized Representative of Evergreen Enterprises Of Virginia, LLC

22  
23 **AGREED TO:**

24 Date: \_\_\_\_\_

25 By: \_\_\_\_\_

26 Authorized Representative of Green Thumb International, Inc.

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11 interfere with the execution or performance of this Consent Judgment by said Party.

12  
13 **AGREED TO:**

14 Date: \_\_\_\_\_

15 By: \_\_\_\_\_

16 Authorized Representative of APS&EE, LLC

17  
18 **AGREED TO:**

19 Date: \_\_\_\_\_

20 By: \_\_\_\_\_

21 Authorized Representative of Evergreen Enterprises Of Virginia, LLC

22  
23 **AGREED TO:**

24 Date: 4/1/2024 \_\_\_\_\_

25 By: La Tiere Galvan \_\_\_\_\_

26 Authorized Representative of Green Thumb International, Inc.

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9 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
10 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
11 interfere with the execution or performance of this Consent Judgment by said Party.

12  
13 **AGREED TO:**

14 Date: 4/2/2024

15 By: [Signature]

16 Authorized Representative of APS&EE, LLC

17  
18 **AGREED TO:**

19 Date: \_\_\_\_\_

20 By: \_\_\_\_\_

21 Authorized Representative of Evergreen Enterprises Of Virginia, LLC

22  
23 **AGREED TO:**

24 Date: \_\_\_\_\_

25 By: \_\_\_\_\_

26 Authorized Representative of Green Thumb International, Inc.

1 **IT IS SO ORDERED.**

2 Dated: \_\_\_\_\_

\_\_\_\_\_  
3 JUDGE OF THE SUPERIOR COURT

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