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Attorneys for Plaintiff
Michael DiPirro

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,

Plaintiff,

v.

EVERGREEN ENTERPRISES OF VIRGINIA,
LLC; and DOES 1-150,
Defendants.

Case No. 24 CV 093285

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff,
4 Michael DiPirro (“DiPirro”), and Evergreen Enterprises of Virginia, LLC (“Defendant”).

5 DiPirro and Defendant are individually referred to as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

8 DiPirro is an individual residing in California who seeks to promote awareness of exposures
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
10 contained in consumer products.

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 DiPirro alleges that Defendant manufactures or sells, PVC Bottle Openers
17 in the State of California, which exposes consumers to Diethylhexyl phthalate (“DEHP”), a toxic
18 chemical, without first providing the clear and reasonable exposure warnings required by Proposition
19 65. DEHP was listed pursuant to Proposition 65 as a chemical that is known to the State of
20 California to cause cancer on January 1, 1988, and has been subject to the warning requirements
21 since January 1, 1989.

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are PVC Bottle Openers
24 that are sold, or distributed for sale in California by Defendant, including, but not limited to the
25 Cheesehead PVC Bottle Opener (the “Products”).

26 **1.6 Notices of Violation**

27 On or about May 28, 2024, DiPirro served Defendant and certain requisite public enforcement
28 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of

1 DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its customers and
2 consumers in California that the Products expose users to DEHP. To the best of the Parties’
3 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth
4 in the Notice.

5 **1.7 Complaint**

6 On or about September 25, 2024, DiPirro filed the instant action against Defendant for the
7 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

8 **1.8 No Admission**

9 Defendant denies the material, factual, and legal allegations contained in the Notices and
10 contends that it sells Products to California residents in accordance with applicable state laws and
11 requirements. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
12 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
13 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
14 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.
15 This section shall not, however, diminish or otherwise affect Defendant’s obligations,
16 responsibilities, and duties under this Consent Judgment.

17 **1.9 Consent to Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Alameda
20 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
21 Judgment.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date of entry
24 of this Consent Judgment by this Court.

25 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

26 **2.1** Within thirty days of the Effective Date (a.k.a. the “Warning Date”), as to all Products
27 that contain DEHP (the “Listed Chemical”) and are directly sold by and shipped to a California
28 address for sale by Defendant (as opposed to any third party) thereafter, Defendant shall provide a 2

1 clear and reasonable warning on the label of each Product as set forth below in Section 2.3. In the
2 event that the Products are distributed to third party retailers and are manufactured with DEHP,
3 Defendant shall inform such retailers of the warning requirements as specified in this Consent
4 Judgment for any sales of the product to California consumers and provide them with warning
5 stickers if necessary. Each warning shall be prominently placed with such conspicuousness as
6 compared with other words, statements, designs, or devices as to render it likely to be read and
7 understood by an ordinary individual under customary conditions before purchase or use. Each
8 warning shall be provided in a manner such that the consumer or user understands to which specific
9 Product the warning applies, so as to minimize the risk of consumer confusion. Defendant's
10 compliance with the warning requirements set forth in Sections 2.1 through 2.3 or the warning
11 requirements of Proposition 65 and related regulations, as may be amended from time to time, shall
12 be deemed compliance with this Consent Judgment. Defendant acknowledges that the OEHHA
13 amended Title 27, California Code of Regulations section 25603, effective as of January 1, 2025, to
14 provide three years for businesses to transition to new short-form language content. Defendant
15 further acknowledges that compliance with the new short-form language as prescribed by section
16 25603(b) is required by January 1, 2028 for all products manufactured after that time. However, if
17 any changes are made to the warning which deviate from the requirements of this Consent Judgment
18 or Proposition 65 and its related regulations, as may be amended from time to time, such changes
19 must be agreed to by Michael DiPirro through his counsel in writing.

20 **2.2 Internet Warnings.** In addition to the warning specified in Section 2.1 above, for all
21 Products that Defendant offers for sale directly to consumers in California via the internet on or after
22 the Warning Date, Defendant shall provide a warning for such Products by including the warning set
23 forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a
24 Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same web
25 page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during
26 the checkout process. The internet warning described above can also be delivered through a
27 hyperlink using the word "[California Prop 65] WARNING" (language in brackets optional).

28 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light

background, in a font that is easy to read and legible, but in no case less than a size 6 font. Defendant shall use the warning language as set forth below in 2.3(a) or 2.3(b) for Products containing DEHP or the warning language as set forth below in 2.3(c) or 2.3(d) for Products containing DINP, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product's packaging).

a. Full Warning.



WARNING: This product can expose you to chemicals including Diethylhexyl phthalate (DEHP), which 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.

b. Short-Form Warning.

 **WARNING: Cancer and Reproductive Harm.¹**

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

3. PENALTIES & PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Defendant shall make a civil penalty payment of \$4,000 as a component of this settlement. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office

¹ In the event that Defendant continues to distribute the Products on or after January 1, 2028, Defendant agrees to comply with 27 C.C.R. § 25603 on and after that date, and will utilize the following Short-Form Warning:

a. Short-Form Warning.

 **WARNING: Risk of cancer and reproductive harm from exposure to Diethylhexyl phthalate (DEHP). See www.P65Warnings.ca.gov.**

1 of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
2 remitted to DiPirro.

3 **4. REIMBURSEMENT OF FEES AND COSTS**

4 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. The Defendant then
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
8 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
9 DiPirro and his counsel under general contract principles and the private attorney general doctrine
10 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
11 execution of this agreement. The Defendant shall pay a total of \$61,000 for fees and costs incurred
12 as a result of investigating, working with toxicology experts, bringing this matter to the Defendant’s
13 attention, document preparation, and negotiating a settlement in the public interest.

14 **5. PAYMENT AND FORM 1099**

15 **5.1 Payment.** The complete settlement payment in the amount of \$65,000 shall be delivered
16 within five business days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law
17 (via wire transfer, or ACH payment; number provided upon request) or by physical check to the
18 office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and
19 for the latter option shall be in the form of a check made payable to: “Jeremy Fietz, Attorney at Law”.
20 For any payment that is returned for any reason, including insufficient funds, a payment must be
21 made by CTM in form of a cashier’s check within three (3) calendar days of notification of
22 insufficient funds, plus a 10% service fee paid to DiPirro’s attorneys. Any payment that is not
23 actually received by the due date will also be subject to a 10% late fee.

24 **5.2 Issuance of 1099 Form.** The Defendant shall provide DiPirro’s counsel, Jeremy
25 Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be
26 made on the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds paid to an
27 attorney”). The Defendant acknowledges that 1099 shall NOT be issued under form 1099 NEC. A
28 W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully

1 executed by the Parties to this agreement.

2 **6. CLAIMS COVERED AND RELEASED**

3 **6.1 DiPirro's Public Release of Proposition 65 Claims**

4 DiPirro, acting on his own behalf and in the public interest, releases Defendant, any persons
5 or entities identified on any of the Notices as an alleged violator, retailer, manufacturer, or
6 distributor (collectively, "Noticed Parties"), and each of the respective officers, directors,
7 shareholders, employees, attorneys, representatives, shareholders, subsidiaries, affiliates, parents,
8 divisions, successors, assigns, insurers, dealers, distributors, retailers, and customers of Defendant
9 (collectively, "Affiliates"), and any other person or entity to whom Defendant directly or indirectly
10 distributes or sells the Products collectively with Defendant, and Affiliates, (the "Releasees"), from
11 all claims for or based upon violations of Proposition 65 up through the Effective Date based on
12 exposures to any Listed Chemical from the use of any Products (as set forth in the Notices and the
13 Complaint) to the extent the Product was (i) manufactured; and (ii) sold or distributed by Plaintiff
14 before the Effective Date. Compliance with the terms of this Consent Judgment constitutes
15 compliance with Proposition 65 with respect to exposures to Listed Chemical from the use of the
16 Products sold by Defendant after the Effective Date, as set forth in the Notices.

17 **6.2 DiPirro's Individual Release of Claims**

18 In further consideration of the promises and agreements herein contained, DiPirro, *not* in his
19 representative capacity, but on behalf of himself and his past and current agents, representatives,
20 attorneys, successors, and assigns, hereby waives all rights to institute or participate in, directly or
21 indirectly, any form of legal action, and releases any and all actions, causes of action, obligations,
22 costs, expenses, fees, attorneys' fees, fines, penalties, damages, losses, claims, suits, liabilities, and
23 demands that he has or may have against Defendant and/or any other Releasee, of any nature,
24 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
25 actual exposures to any Listed Chemicals from the use of any of the Products sold or distributed for
26 sale in the State of California before the Warning Date.

27 DiPirro, in his individual capacity and not in his representative capacity, waives and
28 relinquishes all rights and benefits of California Civil Code section 1542 with respect to any and

1 claims relating to the Products and/or the Notices, and does so understanding and acknowledging the
2 significance and consequence of specifically waiving section 1542. California Civil Code § 1542
3 states as follows:

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

10 Thus, notwithstanding the provisions of section 1542, DiPirro expressly acknowledges this
11 Consent Judgment is intended to include in its effect, without limitation, all claims relating to the
12 Products and/or the Notices that DiPirro does not know or suspect to exist in his favor at the time of
13 signing this Consent Judgment, and that this Consent Judgment contemplates the extinguishment of
14 any such claims.

15 **6.3 Defendant's Release of DiPirro**

16 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
17 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
18 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
19 (or those that could have been taken or made) by DiPirro and his attorneys and other
20 representatives, whether in the course of investigating claims, otherwise seeking to enforce
21 Proposition 65 against it in this matter, or with respect to the Products.

22 **7. COURT APPROVAL**

23 9.1 DiPirro agrees to comply with the requirements set forth in California Health & Safety
24 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Defendant
25 agrees it shall support approval of such Motion.

26 9.2 This Consent Judgment shall not be effective until it is approved and entered by the Court
27 and shall be null and void if, for any reason, it is not approved by the Court within one year after it
28 has been fully executed by all parties. In such case, the Parties agree to meet and confer on how to
proceed.

9.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate

1 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.

2 **8. SEVERABILITY**

3 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
4 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
5 adversely affected.

6 **9. GOVERNING LAW**

7 The terms of this Consent Judgment shall be governed by the laws of the State of California
8 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
9 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
10 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
11 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.
12 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
13 comply with any pertinent state or federal toxics control laws.

14 **10. NOTICES**

15 Unless specified herein, all correspondence and notices required to be provided pursuant to
16 this Consent Judgment shall be both by email and in writing and sent by: (i) personal delivery; (ii)
17 first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier
18 on any party by the other party at the following addresses:

19
20 For Evergreen Enterprises of Virginia, LLC::

21 Jeffrey M. Goldman
22 troutman pepper
23 350 S. Grand Avenue, Suite 3400
24 Los Angeles, CA 90071

25 For Plaintiff DiPirro:

26 Jeremy Fietz, Attorney-at-Law
27 4241 Montgomery Drive, #123
28 Santa Rosa CA 95405

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

1 **11. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment contains the entire and only agreement between the Parties and any
3 and all prior negotiations and understandings related hereto shall be deemed to have been merged
4 within it. There are no representations or terms of agreement made by any Party with respect to the
5 subject matter hereof or the other Party except for those contained in this Consent Judgment. This
6 Consent Judgment may be executed in counterparts, and by facsimile or portable document format
7 (PDF) signature, each of which shall be deemed an original, and all of which, when taken together,
8 shall constitute one and the same document.

9 **12. POST EXECUTION ACTIVITIES**

10 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
11 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
12 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
13 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
14 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
15 judicial approval of the settlement in a timely manner.

16 **13. MODIFICATION**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
18 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
19 application of any Party and the entry of a modified consent judgment by the Court. Notwithstanding
20 the foregoing, if DiPirro, the Attorney General, or any public enforcer represented by Jeremy Fietz or
21 Law Office of David Bush agree to terms in a judicially entered consent judgment with any
22 manufacturer of products (as defined by California Health and Safety Code section 109900) that
23 is/are substantially similar to the Products which permits a higher level of DEHP without requiring an
24 exposure warning, the Parties agree that Defendant shall have the right to move for modification of
25 this Consent Judgment. DiPirro agrees not to oppose any such motion.
26
27
28

1 **14. RETENTION OF JURISDICTION**

2 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this
3 Consent Judgment under Code of Civil Procedure § 664.6.

4 DiPirro shall have the exclusive right to enforce the provisions of this Consent Judgment.
5 DiPirro represents and warrants neither he nor his agents or attorneys have assigned or otherwise
6 transferred, or attempted to assign, or transfer, any claim or claims against Defendant. DiPirro
7 further warrants that neither he nor his agents or attorneys are aware of any other potential private
8 enforcer or attorney who intends to bring litigation based on the 60-Day Notice.

9 **15. AUTHORIZATION**

10 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
11 Parties and have read, understood and agree to all of the terms and conditions of this Consent
12 Judgment.


13
14 AGREED TO:

AGREED TO:

15 Date: April 25, 2025

16 Date: May 2, 2025

17
18 By:  _____
19 MICHAEL DIPIRRO

By:  _____
20 Evergreen Enterprises of Virginia, LLC
21 Print Name: Christopher R. Wornom
22 Title: CFO

23 **SO ORDERED, ADJUDGED, AND DECREED:**

24 **DATED:**

25
26 **ALAMEDA COUNTY SUPERIOR COURT**