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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. 25STCV22241
11)	
11	Plaintiff,)	[PROPOSED] CONSENT JUDGMENT
12)	
12	v.)	Judge: Hon. Gary D. Roberts
13	NEW ENGLAND GREENS, LLC, a limited)	Dept.: 73
14	liability company, and DOES 1 through 100,)	Compl. Filed: July 29, 2025
14	inclusive,)	
15)	Unlimited Jurisdiction
15	Defendants.)	
16)	
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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”) and NEW ENGLAND GREENS, LLC d/b/a VIBRANT
5 HEALTH (“Defendant”). Plaintiff and Defendant shall hereinafter collectively be referred to as
6 the “Parties”.

7 **1.1.2** APS&EE is an organization based in California with an interest in
8 protecting the environment, improving human health and the health of ecosystems, and supporting
9 environmentally sound practices, which includes promoting awareness of exposure to toxic
10 chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** Plaintiff alleges that Defendant is a person in the course of doing business
12 as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition
13 65”).

14 **1.2 Allegations**

15 **1.2.1** Plaintiff alleges that Defendant manufactured, distributed, sold, or offered
16 for sale Vibrant Health Green Vibrance supplement, including but not limited to 0-74306-80001-
17 5, and Vibrant Health Maximum Vibrance supplement, including but not limited to 0-74306-
18 80128-9 (hereafter collectively, the “Products”), in the State of California causing California
19 consumers to be exposed to levels of Lead without providing “clear and reasonable warnings”, in
20 violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements
21 because it is listed as known to cause cancer and birth defects or other reproductive harm.

22 **1.2.2** On January 27, 2025, Plaintiff served a Sixty-Day Notice of Violation with
23 a Certificate of Merit (the “Notice”), to Defendant, as well as Vitamin Shoppe Industries LLC, and
24 the various public enforcement agencies with respect to the Proposition 65 violations related to
25 Lead in the Vibrant Health Green Vibrance supplement. Furthermore, on May 1, 2025, Plaintiff
26 served a Supplemental Sixty-Day Notice of Violation with a Certificate of Merit (the
27 “Supplemental Notice”, and collectively with the Notice, the “Notices”), to Defendant, as well as
28 Vitamin Shoppe Industries LLC, and the various public enforcement agencies with respect to the

1 Proposition 65 violations related to Lead in the Products, including the Vibrant Health Green
2 Vibrance and Vibrant Health Maximum Vibrance supplements. On July 29, 2025, Plaintiff, acting
3 in the public interest, filed the instant action (the “Complaint”) in the Superior Court for the County
4 of Los Angeles, alleging violations of Proposition 65. The Court entered default against Defendant
5 on September 9, 2025.

6 **1.3 No Admissions**

7 Defendant denies all allegations in Plaintiff’s Notices and Complaint and maintains that
8 the Products have been, and are, in compliance with all laws, and that Defendant has not violated
9 Proposition 65. Nothing in this Consent Judgment nor compliance with this Consent Judgment
10 shall be construed as an admission of liability by Defendant or by any of Defendant’s respective
11 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
12 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue
13 of law, or violation of law. To the contrary, this Consent Judgment and compliance with this
14 Consent Judgment are a compromise of claims that Defendant expressly denies. However, nothing
15 in this section shall affect the Parties’ obligations, duties, and responsibilities under this Consent
16 Judgment.

17 **1.4 Compromise**

18 The Parties enter into this Consent Judgment in order to resolve the controversy described
19 above in a manner consistent with prior Proposition 65 settlements and consent judgments that
20 were entered in the public interest and to avoid prolonged and costly litigation between them. By
21 executing this Consent Judgment, the Parties intend in part, and hereby jointly request, that the
22 Court vacate the default entered against Defendant in order to enter this Consent Judgment.

23 **1.5 Jurisdiction and Venue**

24 For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled
25 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper
26 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of
27 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and
28 Proposition 65.

1 **1.6 Effective Date**

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

4 **2. INJUNCTIVE RELIEF**

5 **2.1 Reformulation Standard**

6 As of the Effective Date, Defendant shall not sell, distribute, or cause the Products to be
7 offered for sale in California unless: (a) the Products expose a person to less than 0.5 micrograms
8 of lead per day based on the recommended Daily Serving as calculated below in Section 2.2, or
9 (b) the Products are distributed, sold, or offered for sale with a clear and reasonable warning as
10 described below in Section 2.3. As used in this Consent Judgment, “distributing into California”
11 shall mean to directly ship Products into California for sale in California or to sell Products to a
12 distributor that Defendant knows or has reason to know will sell the Products in California.

13 **2.2 Exposure Calculation**

14 **2.2.1** A “Daily Serving” (for purposes of this Consent Judgment) shall be defined
15 by the serving size set forth on the label of the Products under "Nutrition Facts", "Supplement
16 Facts", or equivalent. If the label, package, or product display page on the internet¹ do not
17 recommend a number of daily servings, then the number of daily servings shall be one.

18 **2.2.2** The daily exposure shall be calculated by using the following formula:
19 micrograms of lead per gram, multiplied by grams of the product per serving, multiplied by
20 servings of the product per day.

21 **2.3 Proposition 65 Warnings**

22 Whenever a warning is required under Section 2.1, Defendant shall use one of the
23 following options:

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27 _____

28 ¹ The “Product display page on the internet” applies to Products purchased online, not to Products
purchased elsewhere, such as a brick-and-mortar retail store.

1 Option 1

2 **WARNING** [*or CA WARNING or CALIFORNIA WARNING*]:

3 Consuming this product can expose you to Lead, which is known to the
4 State of California to cause [cancer and] birth defects or other reproductive harm.
5 For more information go to www.P65Warnings.ca.gov/food.

6 Option 2

7 **WARNING** [*or CA WARNING or CALIFORNIA WARNING*]: Risk of
8 [cancer and] reproductive harm from exposure to lead. See
9 www.P65Warnings.ca.gov/food.

10 *or*

11 **WARNING** [*or CA WARNING or CALIFORNIA WARNING*]: Can expose
12 you to lead, a [carcinogen and] reproductive toxicant. See
13 www.P65Warnings.ca.gov/food.

14 Option 3 (for Products manufactured and labeled before January 1, 2028)

15 **WARNING:** [Cancer and] Reproductive Harm -www.P65Warnings.ca.gov/food.

16 If daily exposure for the Products exceeds 15 micrograms of lead, where daily exposure is
17 determined under Section 2.2, Defendant shall include the phrase “cancer and” or “carcinogen
18 and” in the warning.

19 Nothing in this Agreement prevents Defendant from modifying any warning contained in
20 Option 1 or 2 to disclose the presence of additional chemicals if Defendant determines that such
21 disclosure is appropriate or required.

22 Under Option 3, the warning shall be accompanied by a symbol consisting of a black
23 exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for
24 the product is not printed using the color yellow, the symbol may be printed in black and white.
25 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height
26 of the word “WARNING”.

27 Each warning provided on the Product label shall be set off from other surrounding
28 information, enclosed in a box. Additionally, if the Product contains consumer information in a

1 foreign language, the warning must be provided in the foreign language. The Products shall carry
2 said warning with such conspicuousness as compared with other words, statements or designs as
3 to render it likely to be read and understood by an ordinary consumer prior to sale. A Product
4 sold by Defendant on the internet to persons located in California shall also provide the warning
5 using one or more of the following methods: (1) a warning on the product display page; (2) a
6 clearly marked hyperlink with the words “WARNING”, “CA WARNING”, or “CALIFORNIA
7 WARNING” on the product display page that links to the warning, or (3) by otherwise
8 prominently displaying the warning to the purchaser prior to completing the purchase. For
9 Products that Defendant provides for a downstream entity to sell on the internet to persons
10 located in California, Defendant shall comply with 27 CCR section 25600.2(b) and (c) and
11 include an instruction that the entity comply with the warning requirements of this section.

12 The Parties agree that Defendant may comply with this Consent Judgment by adhering to this
13 section or by complying with warning regulations adopted by the State of California’s Office of
14 Environmental Health Hazard Assessment (“OEHHA”) or requirements applicable to the Products
15 pursuant to entry of a Modified Consent Judgment in accordance with Section 6.

16 If regulations or legislation are enacted providing that Proposition 65 warnings are no longer
17 required with respect to lead in the Products, or should safe harbor warning exposure thresholds be
18 promulgated, such that the lack of a warning will not thereafter breach this Consent Judgment, then
19 Defendant may move for modification of the Consent Judgment pursuant to Section 6 below.

20 **3. PAYMENTS**

21 **3.1 Civil Penalty Pursuant To Proposition 65**

22 In settlement of all claims referred to in this Consent Judgment, Defendant shall pay a total
23 civil penalty of eighteen thousand dollars (\$18,000.00) to be apportioned in accordance with
24 *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$13,500.00) for OEHHA, and
25 the remaining 25% (\$4,500.00) for Plaintiff.

26 Defendant shall issue these payments collectively as part of the total payment described
27 below in Section 3.2 via wire transfer to Law Offices of Lucas T. Novak. After receipt of the final
28 wire transfer installment, Law Offices of Lucas T. Novak shall be responsible for forwarding the

1 respective payments to OEHHA and APS&EE.

2 **3.2 Reimbursement Of Plaintiff’s Fees And Costs**

3 Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs
4 incurred in prosecuting the instant action for all work performed through execution and approval
5 of this Consent Judgment, in the amount of forty-two thousand dollars (\$42,000.00). Accordingly,
6 Defendant shall remit total payment via wire transfers to Law Offices of Lucas T. Novak in the
7 amount of sixty thousand dollars (\$60,000.00), which includes the civil penalty described in
8 Section 3.1 and reimbursement described in this Section 3.2 (the “Settlement Payment”).
9 Defendant shall remit the Settlement Payment in three wire transfer installments as follows:

- 10 First installment of \$20,000.00 paid within five (5) business days of the Effective Date;
- 11 Second installment of \$20,000.00 paid within thirty-five (35) calendar days of the Effective
12 Date; and
- 13 Third installment of \$20,000.00 paid within sixty-five (65) calendar days of the Effective
14 Date.

15 Wire instructions have been exchanged between the Parties.

16 **4. RELEASES**

17 **4.1 Public And Private Release of Proposition 65 Claims**

18 Plaintiff, acting in its individual capacity, and in the public interest, in consideration of the
19 promises and monetary payments contained herein, hereby releases Defendant, its parents,
20 subsidiaries, shareholders, directors, members, officers, employees, representatives, attorneys,
21 agents, divisions, affiliates, and the predecessors, successors and assignees of any of them
22 (collectively, the “Defendant Releases”), and all other upstream and downstream entities in the
23 Products’ distribution chain, including but not limited to manufacturers, distributors, retailers,
24 suppliers, wholesalers, customers, licensees, licensors, and franchisees, including but not limited
25 to Vitamin Shoppe Industries LLC (all of the foregoing, collectively “Released Parties”), from any
26 alleged Proposition 65 violation claims, actions, causes of action, suits, demands, liabilities,
27 damages, civil penalties, obligations, debts, losses, fees, costs and expenses asserted in or related
28

1 to Plaintiff's Notices or Complaint regarding failure to warn about Lead exposure from the
2 Products sold by Defendant before and up to the Effective Date.

3 **4.2 Defendant's Release Of Plaintiff**

4 Defendant, by this Consent Judgment, waives all rights to institute any form of legal action
5 against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts,
6 successors and assignees for actions or statements made or undertaken, whether in the course of
7 investigating claims or seeking enforcement of Proposition 65 against Defendant in this matter. If
8 any released party should institute any such action, then APS&EE's release of said released party
9 in this Consent Judgment shall be rendered void and unenforceable.

10 **4.3 Waiver Of Unknown Claims**

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

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

19 Each of the Parties waives and relinquishes any right or benefit it has or may have under
20 Section 1542 of California Civil Code or any similar provision under the statutory or non-
21 statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights
22 and benefits. The Parties acknowledge that each may subsequently discover facts in addition to,
23 or different from, those that it believes to be true with respect to the claims released herein. The
24 Parties agree that this Consent Judgment and the releases contained herein shall be and remain
25 effective in all respects notwithstanding the discovery of such additional or different facts.
26 Compliance with the terms of this Consent Judgment shall be deemed to constitute compliance
27 with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the
28 Products, as set forth in the Notices and Complaint. However, Released Parties that do not
comply with the warning requirements of Section 2.3 after being instructed to do so are not
released from future liability with respect to the failure to warn about exposure to Lead from the

1 Products.

2 **5. COURT APPROVAL**

3 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed
4 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent
5 Judgment is not effective until it is approved and entered by the Court. It is the intention of the
6 Parties that the Court approve this Consent Judgment, and in furtherance of obtaining such
7 approval, the Parties and their respective counsel agree to mutually employ their best efforts to
8 support the entry of this agreement in a timely manner, including cooperating on drafting and
9 filing any papers in support of the required motion for judicial approval. If this Consent
10 Judgment is not approved by the Court, it shall be void and have no force or effect.

11 **6. MODIFICATION**

12 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
13 and on entry of a modified consent judgment by the Court thereon; or (ii) on a successful motion
14 or application of any Party and the entry of a modified consent judgment by the Court.

15 **7. APPLICATION OF CONSENT JUDGMENT**

16 This Consent Judgment shall have no application to any Product that is distributed or
17 sold exclusively outside the State of California.

18 **8. SEVERABILITY**

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

22 **9. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the State of
24 California. This Consent Judgment is entered into in the State of California and may only be
25 enforced in the State of California.

26 **10. NOTICES**

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

<p>TO DEFENDANT:</p> <p>Sean Newland, Esq. Greenberg Traurig, LLP 2375 E. Camelback Rd. Suite 800 Phoenix, AZ 85016</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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11. COUNTERPARTS

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

12. AUTHORIZATION

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

13. ENFORCEMENT

The Parties may attempt to enforce the Consent Judgment’s terms and conditions by motion. Before bringing a motion, the moving Party shall provide the other Party with written notice of the issue and meet and confer about the basis for the anticipated motion for at least 30 days in an attempt to resolve it informally. No enforcement motion shall be filed during the 30-day meet-and-confer period. If such attempts at informal resolution fail, the moving Party may file its enforcement motion.

14. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment contains the entire and only agreement between the Parties and all prior negotiations and understandings related hereto shall be deemed to have been merged


1 within it. There are no representations or terms of agreement made by any Party with respect to
2 the subject matter hereof or the other Party except for those contained in this Consent Judgment.
3 This Consent Judgment may be executed in counterparts, and by facsimile or portable document
4 format (PDF) signature, each of which shall be deemed an original, and all of which, when taken
5 together, shall constitute one and the same document.

6 **15. POST EXECUTION ACTIVITIES**

7 Plaintiff agrees to comply with the reporting form requirements in Health & Safety Code
8 § 25249.7(f).

9
10 **AGREED TO:**

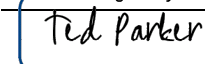
11 Date: 6/29/26

12 By: 

13 Authorized Representative of APS&EE, LLC

14
15 **AGREED TO:**

16 Date: DocuSigned by: 06/26/2026

17 By: 

18 Ted Parker
Authorized Representative of NEW ENGLAND GREENS, LLC

19
20 **IT IS SO ORDERED.**

21 Dated: _____

JUDGE OF THE SUPERIOR COURT