

ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 08 2015

CLERK OF THE SUPERIOR COURT  
By Xian-Xi Bowie

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6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA  
9 UNLIMITED CIVIL JURISDICTION  
10

11  
12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 GO GREEN BEAR, dba 420 KUSH N WAX  
16 CONNECTION; GO GREEN BEAR, dba 420  
17 KUSH N WAX CONNECTION, dba GREEN  
18 FIELD COLLECTIVE GROUP; and DOES 1-  
150,

19 Defendants.

Case No. RG15797857

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELIEF**

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

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27 **BY FAX**  
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1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiff  
3 MICHAEL DIPIRRO in the public interest of the citizens of the State of California to enforce  
4 the People’s right to be informed of the presence of marijuana smoke, a toxic chemical created  
5 by the use of marijuana intended for smoking and paraphernalia for smoking marijuana sold in  
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
8 warn California citizens about the risk of exposure to marijuana smoke from the use of  
9 marijuana intended for smoking, and paraphernalia for smoking marijuana, manufactured,  
10 distributed, and offered for sale or use to consumers throughout the state of California.

11 3. High levels of marijuana smoke are commonly produced and consumed through  
12 the use of marijuana intended for smoking, and paraphernalia for smoking marijuana, that  
13 defendants manufacture, distribute, and offer for sale to consumers throughout the state of  
14 California.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
16 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of  
17 doing business shall knowingly and intentionally expose any individual to a chemical known to  
18 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
19 warning to such individual . . . .” Health & Safety Code § 25249.6.

20 5. Pursuant to Proposition 65, on June 19, 2009, California identified and listed  
21 marijuana smoke as a chemical known to cause cancer. Marijuana smoke became subject to the  
22 “clear and reasonable warning” requirements of the act one year later on June 19, 2010. Cal.  
23 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). Marijuana  
24 smoke is referred to hereinafter as the “LISTED CHEMICAL.”

25 6. Defendants manufacture or otherwise process for sale, distribute, and sell  
26 marijuana intended for smoking, and paraphernalia for smoking marijuana, including, but not  
27 limited to, unprocessed marijuana intended to be heated until combustion, then inhaled  
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1 (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and  
2 paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes,  
3 rolling papers, and blunts, the consumption and use of which result in marijuana smoke in levels  
4 that require a warning under Proposition 65. All such marijuana intended for smoking and  
5 paraphernalia for smoking marijuana, the consumption and use of which results in marijuana  
6 smoke, are referred to collectively hereinafter as “PRODUCTS.”

7 7. Defendants’ failure to warn consumers and other individuals in the state of  
8 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
9 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
10 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
11 & (b)(1).

12 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and  
13 permanent injunctive relief to compel defendants to provide purchasers or users of the  
14 PRODUCTS with the required warning regarding the health hazards of the LISTED  
15 CHEMICAL. Health & Safety Code § 25249.7(a).

16 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
17 penalties against defendants for their violations of Proposition 65.

18 **PARTIES**

19 10. Plaintiff MICHAEL DIPIRRO is a citizen of the state of California who is  
20 dedicated to protecting the health of California citizens through the elimination or reduction of  
21 toxic exposures from consumer products; and he brings this action in the public interest  
22 pursuant to Health and Safety Code section 25249.7(d).

23 11. Defendant GO GREEN BEAR, dba 420 KUSH N WAX CONNECTION  
24 (“KUSH”) is a person in the course of doing business within the meaning of Health and Safety  
25 Code section 25249.11.

1           12. KUSH manufactures (or otherwise processes for sale), distributes, and/or offers the  
2 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
3 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

4           13. Defendant GO GREEN BEAR, dba 420 KUSH N WAX CONNECTION, dba  
5 GREEN FIELD COLLECTIVE GROUP (“GREEN FIELD”) is a person in the course of doing  
6 business within the meaning of Health and Safety Code section 25249.11. On or about March  
7 20, 2016, KUSH started doing business as GREEN FIELD COLLECTIVE GROUP. GO  
8 GREEN BEAR, 420 KUSH N WAX CONNECTION, and GREEN FIELD COLLECTIVE  
9 GROUP share a commonality of owners, location, assets, employees and/or management.

10           14. GREEN FIELD manufactures (or otherwise processes for sale), distributes, and/or  
11 offers the PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
12 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

13           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a  
14 person in the course of doing business within the meaning of Health and Safety Code section  
15 25249.11.

16           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
17 cultivate, harvest and/or manufacture, or imply by their conduct that they research, test, design,  
18 assemble, fabricate, cultivate, harvest and/or manufacture one or more of the PRODUCTS  
19 offered for sale or use in the state of California.

20           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person  
21 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

22           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
23 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
24 in the state of California.

25           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in  
26 the course of doing business within the meaning of Health and Safety Code section 25249.11.



1 **(Violation of Proposition 65 - Against All Defendants)**

2 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
3 Paragraphs 1 through 25, inclusive.

4 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
5 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be  
6 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
7 harm.”

8 28. Proposition 65 states, “[n]o person in the course of doing business shall  
9 knowingly and intentionally expose any individual to a chemical known to the state to cause  
10 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
11 individual . . . .” Health & Safety Code § 25249.6.

12 29. On December 26, 2014 plaintiff’s sixty-day notice of violation, together with the  
13 requisite certificate of merit, was provided to KUSH and certain public enforcement agencies  
14 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED  
15 CHEMICAL, purchasers and users in the state of California were being exposed to the LISTED  
16 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
17 individual purchasers and users first having been provided with a “clear and reasonable  
18 warning” regarding such toxic exposures, as required by Proposition 65.

19 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
20 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
21 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day  
22 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,  
23 and will continue to occur in the future.

24 31. After receiving the claims asserted in the sixty-day notice of violation, the  
25 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
26 cause of action against DEFENDANTS under Proposition 65.

27 32. After receiving the claims asserted in the sixty-day notice of violation and this  
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1 Complaint, Defendant KUSH changed its name to GREEN FIELD COLLECTIVE GROUP, in  
2 an attempt to avoid liability for the violations asserted in this Complaint.

3 33. The PRODUCTS manufactured, distributed, and offered for sale or use in  
4 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
5 allowable state limits, such that they require a “clear and reasonable” warning under Proposition  
6 65.

7 34. DEFENDANTS knew or should have known that the PRODUCTS they  
8 manufacture, distribute, and offer for sale or use in California contain the LISTED  
9 CHEMICAL.

10 35. The LISTED CHEMICAL results from the use and consumption of the  
11 PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion  
12 during reasonably foreseeable use.

13 36. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
14 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are  
15 defined by California Code of Regulations title 27, section 25602(b).

16 37. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
17 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
18 and/or ingestion.

19 38. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
20 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
21 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for  
22 sale or use to individuals in the state of California.

23 39. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
24 consumers and other individuals in the state of California who were or who would become  
25 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
26 reasonably foreseeable uses of the PRODUCTS.

27 40. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
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1 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal  
2 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold  
3 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to  
4 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

5 41. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
6 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
7 for each violation.

8 42. As a consequence of the above-described acts, Health and Safety Code  
9 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
10 DEFENDANTS.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

13 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
14 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

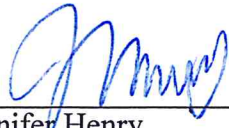
15 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
17 offering the PRODUCTS for sale or use in California without first providing a “clear and  
18 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*  
19 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

20 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

21 4. That the Court grant such other and further relief as may be just and proper.

22 Dated: May 6, 2016

23 Respectfully Submitted,  
24 BUSH & HENRY

25 By:   
26 Jennifer Henry  
27 Attorneys for Plaintiff  
28 MICHAEL DIPIRRO