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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 07 2015

CLERK OF THE SUPERIOR COURT  
By R. De Jesus, Deputy

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

MICHAEL DIPIRRO,  
Plaintiff,

v.

BAY PACIFIC NETWORKS, INC., dba  
SPARC; EAZE SOLUTIONS, INC., dba  
"EAZE"; and DOES 1-150,  
Defendants.

Case No. **RG 15781156**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

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

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to  
7 properly warn California citizens pursuant to Proposition 65 about the risk of exposure to  
8 marijuana smoke from the use of marijuana intended for smoking and paraphernalia for  
9 smoking marijuana manufactured, distributed, and offered for sale or use to consumers  
10 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 distribute or otherwise offer for sale to consumers that are members of its  
14 dispensaries throughout the state of 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 medical  
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 properly warn consumers and other individuals in the state  
8 of 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 BAY PACIFIC NETWORKS, INC., dba SPARC (“SPARC”) is a  
24 person in the course of doing business within the meaning of Health and Safety Code section  
25 25249.11.

1           12.    SPARC manufactures (or otherwise processes for sale), distributes, and/or offers  
2 the 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 EAZE SOLUTIONS, INC., dba “EAZE” (“EAZE”) is a person in the  
5 course of doing business within the meaning of Health and Safety Code section 25249.11.

6           14.    EAZE distributes, and/or offers the PRODUCTS for sale or use in the state of  
7 California, or implies by its conduct that it distributes, and/or offers the PRODUCTS for sale or  
8 use in the state of California, and/or operates a website that enables SPARC’s members to submit  
9 orders for delivery by SPARC of PRODUCTS for sale or use in the state of California.

10          15.    Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each  
11 persons in the course of doing business within the meaning of Health and Safety Code section  
12 25249.11.

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

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

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

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

24          20.    RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals  
25 approved by California law to purchase medical marijuana the state of California.

26          21.    At this time, the true names of defendants DOES 1 through 150, inclusive, are  
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
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1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 22. SPARC, EAZE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
5 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
6 referred to as “DEFENDANTS.”

### 7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
9 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
10 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
11 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
12 county with respect to the PRODUCTS.

13 24. The California Superior Court has jurisdiction over this action pursuant to  
14 California Constitution Article VI, section 10, which grants the Superior Court “original  
15 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
16 which this action is brought does not specify any other basis of subject matter jurisdiction.

17 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
18 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
19 association that is a citizen of the state of California, has sufficient minimum contacts in the  
20 state of California, and/or otherwise purposefully avails itself of the California market.  
21 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
22 California courts consistent with traditional notions of fair play and substantial justice.

### 23 **FIRST CAUSE OF ACTION**

#### 24 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

9           29. On April 21, 2015, plaintiff’s sixty-day notice of violation, together with the  
10 requisite certificate of merit, was provided to SPARC, EAZE and certain public enforcement  
11 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
12 LISTED CHEMICAL, purchasers and users in the state of California were being exposed to the  
13 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,  
14 without the individual purchasers and users first having been provided with a “clear and  
15 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

25           32. The PRODUCTS manufactured, distributed, and offered for sale or use in  
26 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
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1 allowable state limits, such that they require a “clear and reasonable” warning under Proposition  
2 65.

3 33. DEFENDANTS knew or should have known that the PRODUCTS they  
4 manufacture, distribute, and offer for sale or use in California contain the LISTED  
5 CHEMICAL.

6 34. The LISTED CHEMICAL results from the use and consumption of the  
7 PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion  
8 during reasonably foreseeable use.

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

12 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
13 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
14 and/or ingestion.

15 37. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
16 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-  
17 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for  
18 sale or use to individuals who are collective members in the state of California.

19 38. DEFENDANTS failed to provide a “clear and reasonable warning” pursuant to  
20 Proposition 65 to those consumers and other individuals in the state of California who were or  
21 who would become exposed to the LISTED CHEMICAL through dermal contact and/or  
22 ingestion during the reasonably foreseeable uses of the PRODUCTS.

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