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ENDORSED
FILED
ALAMEDA COUNTY

MAY 25 2018

SUE PESKO

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

MICHAEL DIPIRRO,

Plaintiff,

v.

BSE; BSE, dba FIREHAUS; and DOES 1-150,

Defendants.

Case No. RG17857553

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

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

FILED

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint “Complaint” is a representative action brought by
3 plaintiff MICHAEL DIPIRRO in the public interest of the citizens of the State of California to
4 enforce the People’s right to be informed of the presence of marijuana smoke, a toxic chemical
5 created by the use of marijuana intended for smoking and paraphernalia for smoking marijuana
6 sold in 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 BSE (“BSE”) is a person in the course of doing business within the
24 meaning of Health and Safety Code section 25249.11.

25 12. BSE manufactures (or otherwise processes for sale), distributes, and/or offers the
26 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
27 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.
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1 13. Defendant BSE, dba FIREHAUS (“FIREHAUS”) is a person in the course of
2 doing business within the meaning of Health and Safety Code section 25249.11.

3 14. FIREHAUS manufactures (or otherwise processes for sale), distributes, and/or
4 offers the PRODUCTS for sale or use in the state of California, or implies by its conduct that it
5 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

6 15. On or about March 2, 2018, BSE renamed itself FIREHAUS, in part to avoid
7 liability for its Proposition 65 violations. BSE and FIREHAUS have commonality in ownership;
8 both are owned or co-owned by Zahur Lalji. There is such unity of interest and ownership
9 between BSE and FIREHAUS that the separate personalities of the two businesses no longer
10 exist. If BSE/FIREHAUS’ Proposition 65 violations are treated as belonging only to BSE, an
11 inequitable result will follow.

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

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

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

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

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

26 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
27 state of California.

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1 **FIRST CAUSE OF ACTION**

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

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

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

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

13 30. On December 9, 2016, plaintiff’s sixty-day notice of violation, together with the
14 requisite certificate of merit, was provided to BSE and certain public enforcement agencies
15 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
16 CHEMICAL, purchasers and users in the state of California were being exposed to the LISTED
17 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
18 individual purchasers and users first having been provided with a “clear and reasonable
19 warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

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

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

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

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

9 **PRAYER FOR RELIEF**

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

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

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

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

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

20 Dated: May 24, 2018

21 Respectfully Submitted,
22 BUSH & HENRY

23 By: 

24 Jennifer Henry
25 Attorneys for Plaintiff
26 MICHAEL DIPIRRO
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