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ALAMEDA COUNTY

DEC 19 2017

CLERK OF THE SUPERIOR COURT
By: BRICA BAKER, Deputy

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

MICHAEL DIPIRRO,
Plaintiff,
v.
DIVINE WELLNESS CENTER; and DOES 1-
150,
Defendants.

Case No. CG17886474

**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 warn California citizens about the risk of exposure to marijuana smoke from the use of
8 marijuana intended for smoking, and paraphernalia for smoking marijuana, manufactured,
9 distributed, and offered for sale or use to consumers throughout the state of California.

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

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

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

24 6. Defendants manufacture or otherwise process for sale, distribute, and sell
25 marijuana intended for smoking, and paraphernalia for smoking marijuana, including, but not
26 limited to, unprocessed marijuana intended to be heated until combustion, then inhaled
27 (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and
28

1 paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes,
2 rolling papers, and blunts, the consumption and use of which result in marijuana smoke in levels
3 that require a warning under Proposition 65. All such marijuana intended for smoking and
4 paraphernalia for smoking marijuana, the consumption and use of which results in marijuana
5 smoke, are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

17 **PARTIES**

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

22 11. Defendant DIVINE WELLNESS CENTER (“DWC”) is a person in the course of
23 doing business within the meaning of Health and Safety Code section 25249.11.

24 12. DWC manufactures (or otherwise processes for sale), distributes, and/or offers the
25 PRODUCTS for sale or use in the state of California, or implies by its conduct that it
26 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
2 County, because DEFENDANTS market or otherwise offer to sell the PRODUCTS to
3 California business and leisure travelers or other consumers all over the state, including to
4 residents of Alameda County, and/or because DEFENDANTS conducted, and continue to
5 conduct, business in this county with respect to the PRODUCTS.

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

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

16 **FIRST CAUSE OF ACTION**

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

18 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
19 Paragraphs 1 through 23, inclusive.

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

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

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1 27. On April 5, 2017, plaintiff’s sixty-day notice of violation, together with the
2 requisite certificate of merit, was provided to DWC and certain public enforcement agencies
3 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
4 CHEMICAL, purchasers and users in the state of California were being exposed to the LISTED
5 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a “clear and reasonable
7 warning” regarding such toxic exposures, as required by Proposition 65.

8 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
9 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
10 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day
11 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,
12 and will continue to occur in the future.

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

16 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
17 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
18 allowable state limits, such that they require a “clear and reasonable warning” under Proposition
19 65.

20 31. DEFENDANTS knew or should have known that the PRODUCTS they
21 manufacture, distribute, and offer for sale or use in California contain the LISTED
22 CHEMICAL.

23 32. The LISTED CHEMICAL results from the use and consumption of the
24 PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion
25 during reasonably foreseeable use.

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

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

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

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

10 Dated: December 19, 2017

Respectfully Submitted,
BUSH & HENRY

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13 By: _____

Jennifer Henry
Attorneys for Plaintiff
MICHAEL DIPIRRO