



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

David R. Bush, State Bar No. 154511  
Jennifer Henry, State Bar No. 208221  
Bush & Henry, Attorneys at Law, PC  
6761 Sebastopol Avenue, Suite 111  
Sebastopol, CA 95472  
Telephone: (707) 827-3311  
Facsimile: (707) 676-4301

Attorneys for Plaintiff  
Michael DiPirro

**FILED**  
**ALAMEDA COUNTY**

NOV 21 2017

CLERK OF THE SUPERIOR COURT  
By *D. Oliver*  
D. OLIVER, Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

SHOWGROW; AHPS PRESENTS  
SHOWGROW LA; AHPS; and DOES 1-150,

Defendants.

Case No. 17883260

**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 SHOWGROW ("SHOWGROW") is a person in the course of doing  
23 business within the meaning of Health and Safety Code section 25249.11.

24 12. SHOWGROW manufactures (or otherwise processes for sale), distributes, and/or  
25 offers the 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.

1 SHOWGROW owns and/or operates one or more storefront dispensaries in California and/or  
2 delivers its PRODUCTS to consumers in California.

3 13. Defendant AHPS Presents SHOWGROW LA ("AHPS PRESENTS") is a person  
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 14. AHPS PRESENTS manufactures (or otherwise processes for sale), distributes,  
6 and/or offers the PRODUCTS for sale or use in the state of California, or implies by its conduct  
7 that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of  
8 California. AHPS PRESENTS owns and/or operates one or more storefront dispensaries in  
9 California and/or delivers its PRODUCTS to consumers in California.

10 15. Defendant Absolute Herbal Pain Solutions dba AHPS ("AHPS") is a person in the  
11 course of doing business within the meaning of Health and Safety Code section 25249.11.

12 16. AHPS manufactures (or otherwise processes for sale), distributes, and/or offers the  
13 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
14 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.  
15 AHPS owns and/or operates one or more storefront dispensaries in California and/or delivers its  
16 PRODUCTS to consumers in California.

17 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
18 person in the course of doing business within the meaning of Health and Safety Code section  
19 25249.11.

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

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

26 20. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or  
27 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
28

1 in the state of California.

2 21. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in  
3 the course of doing business within the meaning of Health and Safety Code section 25249.11.

4 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
5 state of California.

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

11 24. SHOWGROW, AHPS PRESENTS, AHPS, MANUFACTURER  
12 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,  
13 where appropriate, collectively be referred to as "DEFENDANTS."

14 **VENUE AND JURISDICTION**

15 25. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil  
16 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
17 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
18 County, because DEFENDANTS market or otherwise offer to sell the PRODUCTS to California  
19 business and leisure travelers or other consumers all over the state, including to residents of  
20 Alameda County, and/or because DEFENDANTS conducted, and continue to conduct, business in  
21 this county with respect to the PRODUCTS.

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

26 27. The California Superior Court has jurisdiction over DEFENDANTS based on  
27 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or  
28

1 association that is a citizen of the state of California, has sufficient minimum contacts in the  
2 state of California, and/or otherwise purposefully avails itself of the California market.  
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by  
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

7 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
8 Paragraphs 1 through 27, inclusive.

9 29. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
10 Enforcement Act of 1986, the People of California expressly declare their right "[t]o be  
11 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
12 harm."

13 30. Proposition 65 states, "[n]o person in the course of doing business shall  
14 knowingly and intentionally expose any individual to a chemical known to the state to cause  
15 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
16 individual . . . ." Health & Safety Code § 25249.6.

17 31. On April 5, 2017 and/or June 6, 2017, plaintiff's sixty-day notice of violation,  
18 together with the requisite certificate of merit, was provided to SHOWGROW, AHPS  
19 PRESENTS, AHPS and certain public enforcement agencies stating that, as a result of  
20 DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers  
21 and users in the state of California were being exposed to the LISTED CHEMICAL resulting  
22 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
23 users first having been provided with a "clear and reasonable warning" regarding such toxic  
24 exposures, as required by Proposition 65.

25 32. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
26 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
27 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
28

1 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
2 and will continue to occur in the future.

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

6 34. The PRODUCTS manufactured, distributed, and offered for sale or use in  
7 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
8 allowable state limits, such that they require a "clear and reasonable warning" under Proposition  
9 65.

10 35. DEFENDANTS knew or should have known that the PRODUCTS they  
11 manufacture, distribute, and offer for sale or use in California contain the LISTED  
12 CHEMICAL.

13 36. The LISTED CHEMICAL results from the use and consumption of the  
14 PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion  
15 during reasonably foreseeable use.

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

19 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses  
20 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact  
21 and/or ingestion.

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

26 40. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
27 consumers and other individuals in the state of California who were or who would become  
28

1 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the  
2 reasonably foreseeable uses of the PRODUCTS.

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

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

11 43. As a consequence of the above-described acts, Health and Safety Code  
12 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
13 DEFENDANTS.

14 **PRAYER FOR RELIEF**

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28




1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Dated: November 20, 2017

Respectfully Submitted,  
BUSH & HENRY

By:   
Jennifer Henry  
Attorneys for Plaintiff  
MICHAEL DIPIRRO