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COURT CLERK
ALAMEDA COUNTY

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

12 MICHAEL DIPIRRO,
13 Plaintiff,
14 v.

15 NATURAL REMEDIES CAREGIVERS; MR.
16 NICE GUY; and DOES 1-150,
17 Defendants.

Case No. RG17806053

**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
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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 NATURAL REMEDIES CAREGIVERS (“NATURAL REMEDIES”)
23 is a person in the course of doing business within the meaning of Health and Safety Code section
24 25249.11.

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

3 13. Defendant MR. NICE GUY (“NICE GUY”) is a person in the course of doing
4 business within the meaning of Health and Safety Code section 25249.11.

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

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

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

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

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

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

22 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
23 state of California.

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

3 22. NATURAL REMEDIES, NICE GUY, MANUFACTURER DEFENDANTS,
4 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
5 collectively be referred to as “DEFENDANTS.”

6 **VENUE AND JURISDICTION**

7 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
8 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
9 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
10 County, because DEFENDANTS market or otherwise offer to sell the PRODUCTS to
11 California business and leisure travelers or other consumers all over the state, including to
12 residents of Alameda County, and/or because DEFENDANTS conducted, and continue to
13 conduct, business in this county with respect to the PRODUCTS.

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

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

24 **FIRST CAUSE OF ACTION**

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

26 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
27 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 20, 2017, plaintiff’s sixty-day notice of violation, together with the
10 requisite certificate of merit, was provided to Defendant NATURAL REMEDIES and certain
11 public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the
12 PRODUCTS containing the LISTED CHEMICAL, purchasers and users in the state of
13 California were being exposed to the LISTED CHEMICAL resulting from the reasonably
14 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
15 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
16 required by Proposition 65.

17 30. On April 20, 2017, plaintiff’s sixty-day notice of violation, together with the
18 requisite certificate of merit, was provided to Defendant NICE GUY and certain public
19 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
20 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
21 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
22 PRODUCTS, without the individual purchasers and users first having been provided with a
23 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

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

3 40. 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 41. 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 42. 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;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: December 20, 2017

Respectfully Submitted,
BUSH & HENRY

By: 

Jennifer Henry
Attorneys for Plaintiff
MICHAEL DIPIRRO