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**ENDORSED
FILED
ALAMEDA COUNTY**

JUL 03 2018

CLERK OF THE SUPERIOR COURT
By CURTIAH GANTER
Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

UNION COLLECTIVE; MR. NICE GUY dba
DTLA COLLECTIVE; and DOES 1-150,

Defendants.

Case No. RG17886910

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

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

BY FAX

1 **NATURE OF THE ACTION**

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

25 12. UNION manufactures (or otherwise processes for sale), distributes, and/or offers
26 the 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 MR. NICE GUY dba DTLA COLLECTIVE (“NICE”) is a person in
2 the course of doing business within the meaning of Health and Safety Code section 25249.11.

3 14. NICE manufactures (or otherwise processes for sale), distributes, and/or offers the
4 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 On information and belief, UNION and NICE and their dbas have commonality of ownership.

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

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

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

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

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

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

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 22. UNION, NICE, MANUFACTURER DEFENDANTS, DISTRIBUTOR
2 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
3 referred to as “DEFENDANTS.”

4 **VENUE AND JURISDICTION**

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 **PRAYER FOR RELIEF**

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

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


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

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

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

18 Dated: July 3, 2018

19 Respectfully Submitted,
20 BUSH & HENRY

21 By: 
22 Jennifer Henry
23 Attorneys for Plaintiff
24 MICHAEL DIPIRRO
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