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ALAMEDA COUNTY

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION

12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 SHOWGROW; AHPS PRESENTS  
16 SHOWGROW LA; ABSOLUTE HERBAL  
17 PAIN SOLUTIONS dba AHPS; DAVID  
18 BARAKETT dba SHOWGROW; and DOES 1-  
19 150,

20 Defendants.

Case No.

**RG19003395**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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 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.  
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1           13. Defendant AHPS PRESENTS SHOWGROW LA (“AHPS/SHOWGROW”) is a  
2 person in the course of doing business within the meaning of Health and Safety Code section  
3 25249.11.

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

8           15. Defendant ABSOLUTE HERBAL PAIN SOLUTIONS dba AHPS (“AHPS”) is a  
9 person in the course of doing business within the meaning of Health and Safety Code section  
10 25249.11.

11           16. AHPS manufactures (or otherwise processes for sale), distributes, and/or offers the  
12 PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
13 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

14           17. Defendant DAVID BARAKETT dba SHOWGROW (“BARAKETT”) is a person  
15 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

16           18. BARAKETT manufactures (or otherwise processes for sale), distributes, and/or  
17 offers the PRODUCTS for sale or use in the state of California, or implies by its conduct that it  
18 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the state of California.

19           19. In an attempt to avoid its Proposition 65 violations, SHOWGROW AND/OR  
20 AHPS have renamed themselves and/or done business as AHPS PRESENTS SHOWGROW  
21 LA. SHOWGROW, AHPS/SHOWGROW, AHPS, and BARAKETT have commonality in  
22 ownership; all are owned, co-owned, directed, and/or managed by BARAKETT. There is such  
23 unity of interest and ownership between SHOWGROW, AHPS/SHOWGROW, AHPS, and  
24 BARAKETT that any purported separate personalities of these businesses no longer exist. If  
25 DEFENDANTS’ Proposition 65 violations are treated as belonging only to one of the  
26 defendants, an inequitable result will follow.



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 29. 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 30. 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 31. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
19 Paragraphs 1 through 30, inclusive.

20 32. 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 33. 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.

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

9           35. On April 24, 2018 plaintiff's supplemental sixty-day notice of violation, together  
10 with the requisite certificate of merit, was provided to SHOWGROW, AHPS PRESENTS,  
11 AHPS, BARAKETT, and certain public enforcement agencies stating that, as a result of  
12 DEFENDANTS' sales of the PRODUCTS containing the LISTED CHEMICAL, purchasers  
13 and users in the state of California were being exposed to the LISTED CHEMICAL resulting  
14 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and  
15 users first having been provided with a "clear and reasonable warning" regarding such toxic  
16 exposures, as required by Proposition 65.

17           36. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of  
18 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
19 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day  
20 notices of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,  
21 and will continue to occur in the future.

22           37. After receiving the claims asserted in the sixty-day notices of violation, the  
23 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
24 cause of action against DEFENDANTS under Proposition 65.

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

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

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

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

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

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

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

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