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 Michael DiPirro

FILED
 ALAMEDA COUNTY

OCT 05 2015

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION

14 MICHAEL DIPIRRO,
 15 Plaintiff,
 16 v.
 17 BAY AREA GREEN CROSS DISPENSARY,
 18 INC. dba THE GREEN CROSS; and DOES 1-
 19 150,
 20 Defendants.

Case No. RG15778923

**[PROPOSED] JUDGMENT PURSUANT TO
 TERMS OF PROPOSITION 65
 SETTLEMENT AND CONSENT
 JUDGMENT**

BS

Date: September 18, 2015
 Time: 9 a.m.
 Dept. 18
 Judge: Hon. Kimberly Colwell

Reservation No. 1652215

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Plaintiff, Michael DiPirro, and defendant, Bay Area Green Cross Dispensary, Inc. dba The Green Cross, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and ~~Code of Civil Procedure section 664.6,~~ BS judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. ~~By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure section 664.6~~ BS

IT IS SO ORDERED.

Dated: 10/5/15



JUDGE OF THE SUPERIOR COURT BS

EXHIBIT 1

David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
Bush & Henry
3270 Mendocino Ave. #2E
Santa Rosa, CA 95403
Telephone: (707) 541-6255
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Attorneys for Plaintiff
Michael DiPirro

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

MICHAEL DIPIRRO,
Plaintiff,

v.

BAY AREA GREEN CROSS DISPENSARY,
INC. dba THE GREEN CROSS; et al.,

Defendants.

Case No.

~~[PROPOSED]~~ CONSENT
JUDGMENT

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

BS

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Michael DiPirro (“DiPirro”) and Bay
4 Area Green Cross Dispensary, Inc. dba The Green Cross (“The Green Cross”), with DiPirro and The
5 Green Cross individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 DiPirro is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 The Green Cross employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 DiPirro alleges that The Green Cross sells, or distributes for sale in the state of California,
16 marijuana intended for smoking and paraphernalia for smoking medical marijuana, the consumption
17 and use of which results in the generation of marijuana smoke, without first providing the clear and
18 reasonable exposure warning required by Proposition 65. Marijuana smoke is listed pursuant to
19 Proposition 65 as a chemical that is known to the state of California to cause cancer.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are marijuana intended for smoking and
22 paraphernalia for smoking marijuana, the consumption and use of which allegedly results in
23 exposures to marijuana smoke, that are sold, or distributed for sale in California by The Green Cross,
24 including, but not limited to, unprocessed marijuana intended to be heated until combustion, then
25 inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and
26 paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes,
27 rolling papers, and blunts (“Products”).

1 **1.6 Notice of Violation**

2 On or about December 26, 2014, DiPirro served The Green Cross and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
4 recipients of DiPirro’s allegation that The Green Cross violated Proposition 65 by failing to warn its
5 customers and consumers in California that the Products expose users to marijuana smoke. To the
6 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
7 allegations set forth in the Notice.

8 **1.7 Complaint**

9 On or about July 20, 2015, DiPirro filed the instant action against Defendant (“Complaint”)
10 for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

11 **1.8 No Admission**

12 The Green Cross denies the material, factual, and legal allegations contained in the Notice
13 and maintains that all of the products it has sold, or distributed for sale in California, including the
14 Products, have been, and are, in compliance with all laws applicable to medical marijuana in
15 California, including, but not limited to, Proposition 215, the Medical Marijuana Program Act and its
16 amendments, local laws and Proposition 65. Nothing in this Consent Judgment shall be construed as
17 an admission by The Green Cross of any fact, finding, conclusion of law, issue of law, or violation
18 of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
19 by The Green Cross of any fact, finding, conclusion of law, issue of law, or violation of law, the
20 same being specifically denied by The Green Cross. This section shall not, however, diminish or
21 otherwise affect The Green Cross’s obligations, responsibilities, and duties under this Consent
22 Judgment.

23 **1.9 Consent to Jurisdiction**

24 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Alameda
26 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
27 Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean August 15,
3 2015.

4 **2. INJUNCTIVE RELIEF: WARNINGS**

5 Commencing on or before the Effective Date, The Green Cross shall provide clear and
6 reasonable warnings as set forth below, for all Products sold in California. Each warning shall be
7 prominently placed with such conspicuousness as compared with other words, statements, designs,
8 or devices as to render it likely to be read and understood by an ordinary individual under customary
9 conditions before purchase or use. Each warning shall be provided in a manner such that the
10 consumer or user understands to which specific Product the warning applies, so as to minimize the
11 risk of consumer confusion.

12 (a) **Signs.** The Green Cross shall post one or more signs at its California dispensary
13 location(s) with one of the alternative warning texts as shown below, with the text in [brackets]
14 being optional at the discretion of The Green Cross. The warnings provided shall be prominently
15 displayed with such conspicuousness, as compared with other words, statements, designs, or devices
16 in the display as to render it likely to be read and understood by an ordinary individual under
17 customary conditions of purchase or use.

18 **WARNING: Smoke from cannabis contains chemicals**
19 **known to the State of California to cause**
20 **cancer [and birth defects or other**
 reproductive harm]. [Do not use near
 pregnant women, children or pets.]

21 **OR**

22 **WARNING: Products sold here contain chemicals,**
23 **including marijuana smoke, known to the**
 State of California to cause cancer [and birth
 defects or other reproductive harm].

24 (b) **Membership Agreement.** The Green Cross shall provide a warning in its
25 Membership Agreement, which shall be on the first page, as shown below, with the text in
26 [brackets] being optional at the discretion of The Green Cross. The warnings provided shall be in at
27 least a size 12 font, separated from its surrounding text, and prominently placed with such
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1 conspicuousness, as compared with other words, statements, designs, or devices in the brochure as
2 to render it likely to be read and understood by an ordinary individual under customary conditions
3 of purchase or use.

4 **WARNING: Smoke from cannabis contains chemicals**
5 **known to the State of California to cause**
6 **cancer [and birth defects or other**
7 **reproductive harm]. [Do not use near**
8 **pregnant women, children or pets.]**

9 (c) **Internet Website Warning.** In order that customers will view the warning before
10 making the decision to purchase the Products online, The Green Cross shall provide a warning for
11 such Products on its own website. The warning may be given either: (a) on the same web page on
12 which a Product is displayed; (b) on the same web page as the order form for a Product (if
13 applicable); (c) on the same page as the price for any Product; or (d) on one or more web pages
14 displayed to a purchaser during the checkout process (if applicable). One of the following warning
15 statements, with the text in [brackets] being optional at the discretion of The Green Cross, shall be
16 used and shall appear in any of the above instances adjacent to or immediately following the display,
17 description, or price of the Product for which it is given, in the font size no smaller than other health-
18 related information or other description provided for the Product:

19 **WARNING: Smoke from cannabis contains chemicals**
20 **known to the State of California to cause**
21 **cancer [and birth defects or other**
22 **reproductive harm].**

23 **OR**

24 **WARNING: Products sold here contain chemicals,**
25 **including marijuana smoke, known to the**
26 **State of California to cause cancer [and birth**
27 **defects or other reproductive harm].**

28 (d) **Additional Warnings.** If The Green Cross chooses to implement the option under
Section 3.2 in order to waive the second civil penalty, it shall provide additional product labeling
warnings as follows: The Green Cross shall affix a warning, using one of the alternative warnings
set forth below, to the packaging, labeling, or directly on each Product sold in its California

1 dispensary location(s) with the text in [brackets] being optional at the discretion of The Green Cross.
2 The warnings shall be in at least a size 12 font (except where the label is 2 inches by 2 inches or
3 smaller, in which case the warning shall be in at least a size 8 font), separated from its surrounding
4 text, and prominently placed upon the Product, its label or labeling with such conspicuousness, as
5 compared with other words, statements, designs, or devices on the Product, label or labeling as to
6 render it likely to be read and understood by an ordinary individual under customary conditions of
7 purchase or use. Employees will be instructed not to write over the text of the warning.

8
9 **WARNING: Smoke from cannabis contains chemicals**
10 **known to the State of California to cause**
11 **cancer [and birth defects or other**
12 **reproductive harm]. [Do not use near**
13 **pregnant women, children or pets.]**

14 **OR:**

15 **WARNING: This product contains chemicals known to the**
16 **State of California to cause cancer [and birth**
17 **defects or other reproductive harm].**

18 **3. MONETARY PAYMENTS**

19 **3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The
20 Green Cross shall make an initial civil penalty payment of \$1,500, in accordance with this section,
21 on or before July 24, 2015. The penalty payment will be allocated in accordance with California
22 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
23 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
24 penalty remitted to DiPirro in accordance with Section 3.3 below. The penalty payment shall be
25 delivered to the address listed in Section 3.3 below.

26 **3.2 Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** On
27 or before September 30, 2015, The Green Cross shall pay a second civil penalty of \$3,000. As an
28 incentive to significantly reduce the use of plastic in its dispensary location(s), however, the second
civil penalty shall be waived in its entirety if an officer of The Green Cross certifies in writing that
as of September 30, 2015, The Green Cross will, for all of its Products sold and offered for sale in all
of its California dispensary locations provide the Additional Warnings as set forth in Section 2(d)

1 above.

2 Such certification, along with date-stamped photographs showing proof of compliance with
3 the Option chosen, must be received by the Law Offices of David R. Bush on or before September
4 30, 2015. The second civil penalty payment shall be apportioned in accordance with California
5 Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the
6 remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3.

7 **3.3 Payments Held in Trust.** Payments shall be delivered to the Law Offices of David
8 R. Bush, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, Ca 95403, and shall be in the form of
9 three checks for the following amounts made payable to:

- 10 (a) "Law Office of David R. Bush" in the amount of \$1,125 for payment to
11 OEHHA. Law Office of David R. Bush agrees to forward such funds to
12 OEHHA in a timely manner.
- 13 (b) "Law Office of David R. Bush" in the amount of \$375 as payment to
14 Michael DiPirro. David R. Bush agrees to forward such funds in a timely
15 manner; and
- 16 (c) "Law Offices of David R. Bush" in the amount of \$29,500, as payment for
17 attorneys' fees and costs pursuant to Section 4 below.

18 **3.4 Issuance of 1099 Forms.** The Green Cross shall provide DiPirro's counsel with a
19 separate 1099 forms for each of its payments under this Agreement to:

- 20 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
21 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- 22 (b) "Michael DiPirro," whose address and tax identification number shall be
23 furnished upon request after this Agreement has been fully executed by the
24 Parties for his portion of the civil penalties paid; and
- 25 (c) "Law Offices of David R. Bush," for fees and costs reimbursed pursuant to
26 Section 4.

27 **4. REIMBURSEMENT OF FEES AND COSTS**

1 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
2 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
3 issue to be resolved after the material terms of the agreement had been settled. The Green Cross
4 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
5 been finalized. The parties then attempted to (and did) reach an accord on the compensation due to
6 DiPirro and his counsel under general contract principles and the private attorney general doctrine
7 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
8 execution of this agreement. The Green Cross shall pay \$29,500 for fees and costs incurred as a
9 result of investigating, bringing this matter to The Green Cross’s attention, and negotiating a
10 settlement in the public interest. The Green Cross shall issue a separate 1099 for fees and costs
11 (EIN: 94-3171522), shall make the check payable to “David R. Bush, Attorney at Law” and shall
12 deliver payment on or before July 24, 2015 to the address listed in Section 3.3 above.

13 **5. CLAIMS COVERED AND RELEASED**

14 **5.1 Plaintiff’s Public Binding Release of Proposition 65 Claims**

15 This Consent Judgment is a full, final, and binding resolution between DiPirro acting on
16 behalf of himself and in the public interest, and The Green Cross of any violation of Proposition 65
17 that was or could have been asserted by DiPirro, on behalf of himself and in the public interest, or on
18 behalf of his past and current agents, representatives, attorneys, successors, and assignees, against
19 The Green Cross, its parents, subsidiaries, affiliated entities under common ownership, directors,
20 officers, employees, attorneys, and each entity to whom The Green Cross directly or indirectly
21 distributes or sells the Products, including, without limitation, its downstream distributors,
22 wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), for
23 unwarned exposures to marijuana smoke from the Products sold or distributed for sale in California
24 by The Green Cross prior to the Effective Date. DiPirro, on behalf of himself and his past and
25 current agents, representatives, attorneys, successors, and assignees, and in the public interest,
26 hereby releases The Green Cross and the Releasees, from any and all claims for alleged violations of
27 Proposition 65 up through the Effective Date arising from exposure to marijuana smoke from the
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1 Products as set forth in the Notice of Violation.

2 **5.2 DiPirro's Individual Release of Claims**

3 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
4 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
5 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
6 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
7 suspected or unsuspected, arising out of alleged or actual exposures to marijuana smoke in the
8 Products imported, manufactured, sold or distributed for sale by Defendant before the Effective
9 Date.

10 **5.3 Defendant's Release of DiPirro**

11 The Green Cross, on its own behalf and on behalf of its past and current agents,
12 representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may
13 have against DiPirro and his attorneys and other representatives, for any and all actions taken or
14 statements made (or those that could have been taken or made) by DiPirro and his attorneys and
15 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
16 Proposition 65 against it in this matter, or with respect to the Products.

17 **5.4 California Civil Code Section 1542**

18 It is possible that other claims not known to the Parties arising out of the facts alleged in the
19 Notice and relating to the Products will develop or be discovered. DiPirro on behalf of himself only,
20 on one hand, and The Green Cross, on the other hand, acknowledge that this Agreement is expressly
21 intended to cover and include all such claims up through the Effective Date, including all rights of
22 action therefor. DiPirro and The Green Cross acknowledge that the claims released in Sections 5.1
23 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code section
24 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

25 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
26 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
27 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**

1 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
2 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

3 DiPirro and The Green Cross each acknowledge and understand the
4 significance and consequences of this specific waiver of California Civil Code section 1542.

5 **6. COURT APPROVAL**

6 This Consent Judgment is not effective until it is approved and entered by the Court and shall
7 be null and void if, for any reason, it is not approved and entered by the Court within one year after
8 it has been fully executed by all Parties.

9 **7. SEVERABILITY**

10 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
11 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
12 adversely affected.

13 **8. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the state of California
15 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise
16 rendered inapplicable by reason of law generally, or as to the Products, then The Green Cross may
17 provide written notice to DiPirro of any asserted change in the law, and have no further obligations
18 pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so
19 affected.

20 If the California Office of Environmental Health Hazard Assessment or other governmental
21 body with authority promulgates regulations setting forth warning text and/or methods of
22 transmission required or permitted to be used under Proposition 65 for exposures to marijuana
23 smoke in the Products as defined herein, then at its sole discretion The Green Cross may use such
24 other warning text and/or method of transmission without being deemed in breach of this
25 Agreement, provided that it sends written notice of this decision to DiPirro within 30 days of
26 implementing any such changes.

1 **9. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered
4 or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the
5 other party at the following addresses:

6 For Bay Area Green Cross Dispensary, Inc. dba The Green Cross:

7
8 Bay Area Green Cross Dispensary, Inc. dba The Green Cross
9 4218 Mission St.
10 San Francisco, CA 94112

11 With a copy to:

12 Ann G. Grimaldi, Esq.
13 Grimaldi Law Offices
14 50 California Street, Suite 1500
15 San Francisco, CA 94111

16 For DiPirro:

17 Bush & Henry
18 3270 Mendocino Avenue, Suite 2E
19 Santa Rosa, CA 95403

20 Any party may, from time to time, specify in writing to the other party a change of address to
21 which all notices and other communications shall be sent.

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment may be executed in counterparts, and by facsimile or portable
24 document format (PDF) signature, each of which shall be deemed an original, and all of which,
25 when taken together, shall constitute one and the same document.

26 **11. POST EXECUTION ACTIVITIES**

27 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
28 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
§ 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their best

1 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and
2 to obtain judicial approval of the settlement in a timely manner.

3 **12. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon
5 entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
6 application of any Party and the entry of a modified consent judgment by the Court.

7 **13. AUTHORIZATION**


8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Parties and have read, understood and agree to all of the terms and conditions of this
10 Consent Judgment.

11 **AGREED TO:**

AGREED TO:

12
13 Date: 7/22/15

Date: _____

14
15 By: 

By: _____

16 MICHAEL DIPIRRO

_____, President
BAY AREA GREEN CROSS
DISPENSARY, INC. dba THE GREEN
CROSS

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12. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

13. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: _____

Date: 07/17/15

By: _____
MICHAEL DIPIRRO

By: [Signature]
_____, President
BAY AREA GREEN CROSS
DISPENSARY, INC. dba THE GREEN
CROSS