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Plaintiff, Michael DiPirro, and Defendant, BLOOM ROOM, 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, 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.

IT IS SO ORDERED.

Dated: August 10, 2016



JUDGE OF THE SUPERIOR COURT
Victoria S. Kolakowski

EXHIBIT 1

David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
Bush & Henry, Attorneys at Law, PC
3270 Mendocino Ave. #2E
Santa Rosa, CA 95403
Telephone: (707) 541-6255
Facsimile: (707) 676-4301

Attorneys for Plaintiff
Michael DiPirro

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,
Plaintiff,

v.

BLOOM ROOM; et al.,

Defendants.

Case No. R 615 797 802

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq.)

CONSENT JUDGMENT

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1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Michael DiPirro ("DiPirro") and Bloom Room ("Bloom Room"), with DiPirro and Bloom Room individually referred to as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

Bloom Room employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.4 General Allegations

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

1.5 Product Description

The products covered by this Consent Judgment are cannabis or marijuana intended for smoking and paraphernalia for smoking marijuana, the consumption and use of which allegedly results in exposures to marijuana smoke, that are sold, or distributed for sale in California by Bloom Room, including, but not limited to, unprocessed marijuana intended to be heated until combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes, rolling papers, blunts and vaporizers that do not have digital heat control/cannot be definitively set at

1 a temperature below combustion point (“Products”).

2 **1.6 Notice of Violation**

3 On or about April 21, 2015, DiPirro served Bloom Room and certain requisite public
4 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
5 recipients of DiPirro’s allegation that Bloom Room violated Proposition 65 by failing to warn its
6 customers and consumers in California that the Products expose users to marijuana smoke. To the
7 best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
8 allegations set forth in the Notice.

9 **1.7 Complaint**

10 On or about December 23, 2015, DiPirro filed the instant action against Defendant
11 (“Complaint”) for the alleged violations of Health & Safety Code § 25249.6 that are the subject of
12 the Notice.

13 **1.8 No Admission**

14 Bloom Room denies the material, factual, and legal allegations contained in the Notice and
15 contends that it provides medical marijuana to California residents in accordance with applicable
16 state laws and requirements relating to medicinal use of marijuana. Nothing in this Consent
17 Judgment shall be construed as an admission by Bloom Room of any fact, finding, conclusion of
18 law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or
19 be construed as an admission by Bloom Room of any fact, finding, conclusion of law, issue of law,
20 or violation of law, the same being specifically denied by Bloom Room. This section shall not,
21 however, diminish or otherwise affect Bloom Room’s obligations, responsibilities, and duties under
22 this Consent 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.

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1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean May 31, 2016.

2. INJUNCTIVE RELIEF: WARNINGS

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

(a) **Entry Door Warnings.** On or adjacent to the entry doors of Bloom Room's dispensary, Bloom Room shall post a sign bearing one of the specified warnings shown below, with the text in [brackets] being optional at the discretion of Bloom Room. The warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a height that will make it conspicuous and easy to read for the average person. The text of the warning shall be printed in black ink, in a font that is easy to read and legible, but in no case less than a size 36 font.

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

OR

WARNING: Use of products sold here can expose you [and those in your immediate vicinity] to marijuana smoke, a chemical known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Do not consume products that produce marijuana smoke near pregnant women, children or pets.]

(b) **Internet Website Warning.** For all Products that are purchased via orders placed on a website, to be delivered directly to Bloom Room members, the website from which the order is placed shall either, at Bloom Room's option: a) provide a warning as shown below on the receipt; b)

1 include in the delivery bag a warning as shown below, on an insert that is at least three inches by
2 five inches; OR c) provide a warning as shown below, on the webpage/receipt displayed to a
3 purchaser during the checkout process. Bloom Room shall not accept orders over the telephone
4 unless a warning is provided in compliance with this section. In either case, the warning shall be
5 provided as shown below, with the text in [brackets] being optional at the discretion of Bloom
6 Room, with the warning text printed in black ink, in a font that is easy to read and legible, in a font
7 size of at least 12 (or, in the case of a website-based warning, in a font size that is no smaller than the
8 font size of the text in the product description), and set off from all other text.

9
10 **WARNING: Marijuana smoke contains chemicals known**
11 **to the State of California to cause cancer [and**
12 **birth defects or other reproductive harm].**

13 **OR**

14 **WARNING: Use of this product can expose you [and those**
15 **in your immediate vicinity] to marijuana**
16 **smoke, a chemical known to the State of**
17 **California to cause cancer [and birth defects**
18 **or other reproductive harm]. [Do not**
19 **consume products that produce marijuana**
20 **smoke near pregnant women, children or**
21 **pets.]**

22 (c) **Warning Sign at Festivals/Conferences.** For all festivals, conferences, and other
23 public events that take place in California, in which either Defendant operates a booth or other space
24 from which it sells any of the Products, Bloom Room shall post a sign with warning language as
25 shown below, with the text in [brackets] being optional at the discretion of Bloom Room. The
26 warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a height and location that will
27 make it conspicuous and easy to read for the average person. The text of the warning shall be
28 printed in black ink, in a font that is easy to read and legible, but in no case less than a size 36 font.

29 **WARNING: Marijuana smoke contains chemicals known**
30 **to the State of California to cause cancer [and**
31 **birth defects or other reproductive harm].**

32 (d) **Additional Warnings.** In order to waive the second civil penalty under Section 3.2,

1 Bloom Room shall provide a warning in its Membership Agreement as described in Section 2(d)(i)
2 below, **and** either the additional warnings described in Section (ii) below, or the additional warnings
3 described in Section (iii) below, as follows:

4 (i) **Membership Agreement.** Bloom Room shall provide a warning in its
5 Membership Agreement, as shown below, with the text in [brackets] being optional at the discretion
6 of Bloom Room. The warnings provided shall be printed in black ink, in a font that is easy to read
7 and legible, in at least a size 12 font, and separated from its surrounding text. The warning shall be
8 provided on either the first or last page of the Membership Agreement; OR if the warning is on a
9 page other than the first or last page, then Bloom Room shall request each member to initial the text
10 of the warning to show he or she read and understood the warning. If Bloom Room accepts
11 Membership Agreements through a website, then each website-registered member must separately
12 “click-through” to review and approve the warning transmitted in or with the Membership
13 Agreement.

14
15 **WARNING: Marijuana smoke contains chemicals known to the**
16 **State of California to cause cancer [and birth defects or other**
reproductive harm]. [Do not use near pregnant women, children or
pets.]

17 (ii) **Product Labeling.** Bloom Room shall affix a warning to the packaging,
18 labeling, or directly on each Product sold in retail outlets in California by Bloom Room the Products
19 as shown below, with the text in [brackets] being optional at the discretion of Bloom Room. The
20 warning text shall be printed in black ink, in a font that is easy to read and legible, in the same type
21 size or larger than the Product’s description text. Employees may not write over the text of the
22 warning for any reason.

23
24 **WARNING: Use of this product can expose you [and those**
25 **in your immediate vicinity] to marijuana**
26 **smoke, a chemical known to the State of**
California to cause cancer. [Do not consume
products that produce marijuana smoke near
pregnant women, children or pets.]

27 (iii) **Point-of-Sale Warnings.** In order that customers will view the warning
28

1 before making the decision to purchase the Products at the Dispensary, Bloom Room shall post a
2 warning sign, in the form below, using one of the following point-of-sale warning options: a) at or
3 near each cash register in the store; or b) at or near each display case in the store; or c) on a
4 stanchion (crowd control post) message sign located at the front of the cash register entry line; or d)
5 on all receipts. The warning text shall be in the same type size or larger than the Product's
6 description text.

7
8 **WARNING: Marijuana smoke is a chemical known to the
State of California to cause cancer.**

9 **OR:**

10 **WARNING: Use of products sold here can expose you [and
11 those in your immediate vicinity] to marijuana
12 smoke, a chemical known to the State of
13 California to cause cancer. [Do not consume
products that produce marijuana smoke near
pregnant women, children or pets.]**

14 **3. MONETARY PAYMENTS**

15 **3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).**

16 Bloom Room shall make an initial civil penalty payment of \$4,000, in accordance with this section,
17 within two (2) business days of the Court's approval of this Consent Judgment. The penalty
18 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
19 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
20 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro in accordance
21 with Section 3.3 below. The penalty payment shall be delivered to the address listed in Section 3.3
22 below.

23 **3.2 Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** On
24 or before September 1, 2016, Bloom Room shall pay a second civil penalty of \$10,000. As an
25 incentive to significantly reduce the use of plastic in its dispensary location(s), however, the second
26 civil penalty shall be waived in its entirety if an officer of Bloom Room certifies in writing that as of
27 August 1, 2016, Bloom Room will, for all of its Products sold and offered for sale in all of its
28 California dispensary locations either:

1 Option 1) use only glass, cardboard or paper packaging (including, but not limited to, regular
2 or reusable glass containers for dried marijuana bud, paper bags for each total purchase, cardboard
3 packaging for pre-filled cartridges and/or straw coverings for pre-rolled cigarettes and pre-filled
4 cartridges); -or-

5 Option 2) provide one or both of the Additional Warnings as set forth in Section 2(e) above.

6 Such certification, along with photographs showing proof of compliance with the Option
7 chosen, must be received by Bush & Henry on or before August 1, 2016. The second civil penalty
8 payment shall be apportioned in accordance with California Health & Safety Code § 25249.12(c) &
9 (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to
10 DiPirro in accordance with Section 3.3.

11 **3.3 Payments Held in Trust.** Payments shall be delivered Bush & Henry, Attorneys at
12 Law, PC, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, Ca 95403, and shall be in the form of
13 three checks for the following amounts made payable to:

14 (a) "Law Office of David R. Bush" in the amount of \$3,000 for payment to
15 OEHHA. Law Office of David R. Bush agrees to forward such funds to
16 OEHHA in a timely manner.

17 (b) "Law Office of David R. Bush" in the amount of \$1,000 as payment to
18 Michael DiPirro. David R. Bush agrees to forward such funds in a timely
19 manner; and

20 (c) "Bush & Henry" in the amount of \$28,000 as payment for attorneys' fees and
21 costs pursuant to Section 4 below.

22 **3.4 Issuance of 1099 Forms.** Bloom Room shall provide DiPirro's counsel with a
23 separate 1099 forms for each of its payments under this Agreement to:

24 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
25 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;

26 (b) "Michael DiPirro," whose address and tax identification number shall be
27 furnished upon request after this Agreement has been fully executed by the
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Parties for his portion of the civil penalties paid; and
(c) "Bush & Henry, Attorneys at Law, PC," for fees and costs reimbursed pursuant to Section 4.

For any payment that is returned for insufficient funds, payment must be made by a cashier's check within ten (10) calendar days of notification of insufficient funds, plus a 10% service fee

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Bloom Room then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Bloom Room shall pay \$28,000 for fees and costs incurred as a result of investigating, bringing this matter to Bloom Room's attention, and negotiating a settlement in the public interest. Bloom Room shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the check payable to "Bush & Henry, Attorneys at Law" and shall deliver payment within two (2) business days of the Court's approval of this Consent Judgment to the address listed in Section 3.3 above.

5. CLAIMS COVERED AND RELEASED

5.1 Plaintiff's Public Binding Release of Proposition 65 Claims

This Consent Judgment is a full, final, and binding resolution between DiPirro acting on behalf of himself and in the public interest, and Bloom Room, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Bloom Room directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees") of any violation of Proposition 65 that was or could have been

1 asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives,
2 attorneys, successors, and assignees, against Releasees for unwarned exposures to marijuana smoke
3 from the Products sold or distributed for sale in California by Bloom Room prior to the Effective
4 Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
5 65 with respect to exposures to marijuana smoke from the Products sold by or through Bloom Room
6 after the Effective Date.

7 **5.2 DiPirro's Individual Release of Claims**

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

15 **5.3 Defendant's Release of DiPirro**

16 Bloom Room, on its own behalf and on behalf of its past and current agents,
17 representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may
18 have against DiPirro and his attorneys and other representatives, for any and all actions taken or
19 statements made (or those that could have been taken or made) by DiPirro and his attorneys and
20 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
21 Proposition 65 against it in this matter.

22 **5.4 California Civil Code Section 1542**

23 It is possible that other claims not known to the Parties arising out of the facts alleged in the
24 Notice and relating to the Products will develop or be discovered. DiPirro on behalf of himself only,
25 on one hand, and Bloom Room, on the other hand, acknowledge that this Agreement is expressly
26 intended to cover and include all such claims up through the Effective Date, including all rights of
27 action therefor. DiPirro and Bloom Room acknowledge that the claims released in Sections 5.1 and
28

1 5.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542
2 as to any such unknown claims. California Civil Code section 1542 reads as follows:

3 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
4 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR**
5 **HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH**
6 **IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED**
7 **HIS OR HER SETTLEMENT WITH THE DEBTOR.**

8 DiPirro and Bloom Room each acknowledge and understand the significance
9 and consequences of this specific waiver of California Civil Code section 1542.

10 **6. COURT APPROVAL**

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

14 **7. SEVERABILITY**

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

18 **8. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California
20 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise
21 rendered inapplicable by reason of law generally, or as to the Products, then Bloom Room may
22 provide written notice to DiPirro of any asserted change in the law, and have no further obligations
23 pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so
24 affected. Nothing in this Consent Judgment shall be interpreted to relieve Bloom Room from any
25 obligation to comply with any pertinent state or federal toxics control laws.

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

6 **9. NOTICES**

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

11 For Bloom Room:

12 Bloom Room
13 471 Jessie Street
14 San Francisco CA 94103

15 With a copy to:

16 Ann G. Grimaldi, Esq.
17 Grimaldi Law Offices
18 50 California Street, Suite 1500
19 San Francisco, CA 94111

20 For DiPirro:

21 Bush & Henry, Attorneys at Law, PC
22 3270 Mendocino Avenue, Suite 2E
23 Santa Rosa, CA 95403

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

11. POST EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety

1 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
2 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
3 furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their best
4 efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and
5 to obtain judicial approval of the settlement in a timely manner.

6 **12. MODIFICATION**

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

10 **13. AUTHORIZATION**

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

14 **AGREED TO:**

AGREED TO:

15
16 Date: 5/18/16

Date: 5-16-2016

17
18 By: 
19 MICHAEL DIPIRRO

By: 
20 DIMITRY SITKOLNIKOV, President
21 BLOOM ROOM

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