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Bush & Henry, Attorneys at Law, PC
6761 Sebastopol Avenue, Suite 111
Sebastopol, CA 95472
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Facsimile: (707) 676-4301

Attorneys for Plaintiff
Michael DiPirro

FILED
ALAMEDA COUNTY
JAN 17 2019
CLERK OF THE SUPERIOR COURT
By *Rola Clarke*
Deputy

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

MICHAEL DIPIRRO,

Plaintiff,

v.

BSE; et al.

Defendants.

Case No. RG17857553
**[PROPOSED] JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: January 17, 2019
Time: 3:00 pm
Dept. 517
Judge: Hon. Stephen Pulido

Reservation No. R-2000934

BY FAX


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Plaintiff, Michael DiPirro, and Defendant BSE, 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: 1-17-2019



JUDGE OF THE SUPERIOR COURT

1 David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
2 Bush & Henry, Attorneys at Law, PC
6761 Sebastopol Avenue, Suite 111
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Telephone: (707) 827-3311
4 Facsimile: (707) 676-4301

5 Attorneys for Plaintiff
Michael DiPirro

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

12 MICHAEL DIPIRRO,
13 Plaintiff,
14 v.
15 BSE; et al.
16 Defendants.

Case No. RG17857553
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.*)

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1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Michael DiPirro (“DiPirro”)
4 on the one hand, and Triple M Management, LLC (“Triple M”) incorrectly named as Triple M
5 Management, LLC, dba BSE, dba Firehaus, Zahur Lalji (“Lalji”) incorrectly named as Zahur Lalji,
6 dba BSE, dba Firehaus, and Greenleaf Caregivers Cooperative , Inc., dba Firehaus (“Firehaus”)
7 incorrectly named as Greenleaf Caregivers Cooperative , Inc., dba BSE, dba Firehaus (collectively
8 “Defendants”) on the other hand, with DiPirro and any of Defendants individually referred to as a
9 “Party” and collectively as the “Parties.”

10 **1.2 Plaintiff**

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

14 **1.3 Defendants**

15 Defendant Triple M contends it is an entity which managed, but did not own, a commercial
16 cannabis business doing business as BSE which operated in strict compliance with the requirements
17 of the Los Angeles Municipal Code at 2000 Cotner Avenue, Los Angeles, California on December 9,
18 2016. Defendant Firehaus later began operating an independent commercial cannabis business at
19 2000 Cotner Avenue Los Angeles, California. Defendants are persons in the course of doing
20 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and
21 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

22 **1.4 General Allegations**

23 DiPirro alleges that Defendants sell, or distributes for sale in the state of California, cannabis
24 and cannabis products intended for smoking and paraphernalia for smoking medical marijuana, the
25 consumption and use of which results in the generation of marijuana smoke, without first providing
26 the clear and reasonable exposure warning required by Proposition 65. Marijuana smoke is listed
27 pursuant to Proposition 65 as a chemical that is known to the state of California to cause cancer.
28 Defendants deny Plaintiff’s allegations.

1 **1.5 Product Description**

2 The products covered by this Consent Judgment are cannabis or marijuana and cannabis
3 products intended for smoking and paraphernalia for smoking marijuana, the consumption and use of
4 which allegedly results in exposures to marijuana smoke, that are sold, or distributed for sale in
5 California by Defendants, including, but not limited to, processed and unprocessed marijuana
6 intended to be heated until combustion, then inhaled (specifically, flowers, leaves, and other organic
7 parts of marijuana plants such as kief), and paraphernalia for smoking marijuana, including, but not
8 limited to, water bong, smoking pipes, rolling papers, blunts and vaporizers that do not have digital
9 heat control/cannot be definitively set at a temperature below combustion point (“Products”).

10 **1.6 Notice of Violation**

11 On or about December 9, 2016, DiPirro served BSE and certain requisite public enforcement
12 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
13 DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its customers and
14 consumers in California that the Products expose users to marijuana smoke. To the best of the
15 Parties’ knowledge, no public enforcement has commenced and is diligently prosecuting the
16 allegations set forth in the Notice.

17 **1.7 Complaint**

18 On or about April 21, 2017, DiPirro filed the instant action against BSE for the alleged
19 violations of Health & Safety Code § 25249.6 that are the subject of the Notice. The Complaint was
20 subsequently amended to name Defendants.

21 **1.8 No Admission**

22 Defendants deny the material, factual, and legal allegations contained in the Notice and
23 contend that they provide cannabis and cannabis products to California residents in accordance with
24 applicable state laws and requirements relating to medicinal and adult-use of marijuana and in
25 accordance with Health and Safety Code § 25249.6. Nothing in this Consent Judgment shall be
26 construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or
27 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an
28 admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law, the

1 same being specifically denied by Defendants. This section shall not, however, diminish or otherwise
2 affect Defendants' obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Consent to Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Defendants as to the allegations in the Complaint, that venue is proper in Alameda
6 County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
7 Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 1,
10 2018.

11 **2. INJUNCTIVE RELIEF: WARNINGS**

12 **2.1 Proposition 65 Warnings**

13 Commencing on or before the Effective Date, Defendant shall provide clear and reasonable
14 warnings as set forth below, for all Products sold or otherwise distributed in California. Each
15 warning shall be prominently placed with such conspicuousness as compared with other words,
16 statements, designs, or devices as to render it likely to be read and understood by an ordinary
17 individual under customary conditions before purchase or use. Each warning shall be provided in a
18 manner such that the consumer or user understands to which specific Product the warning applies, so
19 as to minimize the risk of consumer confusion.
20

21 (a) **Entry Door Warnings.** Beginning on or before the Effective Date, on or adjacent to
22 all entry doors of all California locations of any Defendant's store-front dispensaries, into any room
23 in which a customer can purchase any Product from Defendant, and in the Lobby/waiting area, if
24 **applicable**, Defendant shall post a sign bearing the specified warning shown below in Section (e),
25 with the text in [brackets] being optional at the discretion of Defendant. The warning sign shall be at
26 least 8 1/2 inches by 11 inches, and posted at a height that will make it conspicuous and easy to read
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1 for the average person. The text of the warning shall be printed in black ink, in a font that is easy to
2 read and legible, but in no case less than a size 36 font.

3 (b) **Internet Website Warnings.** Beginning on or before the Effective Date, for all
4 Products that are purchased via orders placed on a website, to be delivered directly to Defendant's
5 members or other customers in California by Defendant or any of its affiliated or contracted
6 companies, the website from which the order is placed shall either, at Defendant's option: a) provide
7 a warning as shown below on the receipt; b) include in the delivery bag a warning as shown below,
8 on an insert that is at least three inches by five inches; OR c) provide a warning as shown below, on
9 the webpage/receipt displayed to a purchaser during the checkout process (if purchased via a
10 website). The warning shall be provided as shown below in Section (e), with the text in [brackets]
11 being optional at the discretion of Defendant, with the warning text printed in black ink, in a font that
12 is easy to read and legible, in a font size of at least 12 (or, in the case of a website-based warning, in a
13 font size that is no smaller than the font size of the text in the product description), and set off from
14 all other text.
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16
17 (c) **Warning Sign at Festivals/Conferences.** Beginning on or before the Effective Date,
18 for all festivals, conferences, and other public events that take place in California, in which either
19 Defendant operates a booth or other space from which it sells any of the Products, Defendant shall
20 post a sign with warning language as shown below in Section (e), with the text in [brackets] being
21 optional at the discretion of Defendant. The warning sign shall be at least 8 1/2 inches by 11 inches,
22 and posted at a height and location that will make it conspicuous and easy to read for the average
23 person. The text of the warning shall be printed in black ink, in a font that is easy to read and legible,
24 but in no case less than a size 36 font.

25 (e) **Text of Warning**

26 For all warnings provided by Defendants, Defendants shall use the warning language as set
27 forth below, which shall include a symbol consisting of a black exclamation point in a yellow
28 equilateral triangle with a bold black outline as shown below (the symbol may be black on white if the

1 color yellow is otherwise not used on the Product's packaging), with the text in [brackets] being
2 optional at the discretion of Defendant.



WARNING: Use of this [cannabis] product will expose you to chemicals including marijuana smoke, which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

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6 **3. MONETARY PAYMENTS**

7 **3.1 Initial Civil Penalty.** Defendant Firehaus shall pay a civil penalty in the amount of
8 \$1,250.00 per Section 3.3 below. The penalty payment will be allocated by DiPirro's counsel in
9 accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds
10 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the
11 remaining 25% of the penalty remitted to DiPirro. The penalty payment shall be delivered to the
12 address listed in Section 3.3 below.

13 **3.3 Payments Held in Trust.** Payments shall be delivered to the offices of Bush &
14 Henry, Attorneys at Law, PC, 6761 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472, as
15 follows, and shall be in the form of three checks for the following amounts made payable to:

- 16 (a) "Bush & Henry, Attorneys at Law" in the amount of \$937.50 for payment to
17 OEHHA due on or before October 20, 2018. Bush & Henry agree to forward
18 such funds to OEHHA in a timely manner. Alternatively, at Defendant's
19 option, it can choose to deliver to the offices of Bush & Henry a certified or
20 cashier's check made payable to "Office of Environmental Health Hazard
21 Assessment."
22 (b) "Bush & Henry, Attorneys at Law" in the amount of \$312.50 as payment to
23 Michael DiPirro, due on or before October 20, 2018. Bush & Henry agree to
24 forward such funds in a timely manner. Alternatively, at Defendant's option,
25 it can choose to deliver to the offices of Bush & Henry a certified or cashier's
26 check made payable to "Michael DiPirro."
27 (c) "Bush & Henry, Attorneys at Law, PC" in the amount of \$19,250 as payment
28 for attorneys' fees and costs pursuant to Section 4 below, due as follows: 5

1 \$9,000 due on or before October 20, 2018; \$5,125 due on or before
2 November 20, 2018; and \$5,125 by December 20, 2018.

3 For any payment that is returned for insufficient funds, payment must be made by a cashier's
4 check within ten (10) calendar days of notification of insufficient funds, plus a 10% service fee.
5 Any payment that is not actually received by the due date will also be subject to a 10% fee.

6 **3.4 Issuance of 1099 Forms.** Defendant Firehaus shall provide DiPirro's counsel with a
7 separate 1099 form for each of its payments under this Agreement as follows:

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

10 (b) "Michael DiPirro," whose address and tax identification number shall be
11 furnished upon request after this Agreement has been fully executed by the
12 Parties for his portion of the civil penalties paid; and

13 (c) "Bush & Henry, Attorneys at Law, PC," for fees and costs reimbursed
14 pursuant to Section 4.

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

16 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
18 issue to be resolved after the material terms of the agreement had been settled. Defendant then
19 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
20 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
21 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
22 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
23 mutual execution of this agreement. Defendant shall pay \$19,250 for fees and costs incurred as a
24 result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in
25 the public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall
26 make the check payable to "Bush & Henry, Attorneys at Law, PC" and shall deliver payment
27 pursuant to Section 3.3 above.
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1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1 DiPirro's Public Release of Proposition 65 Claims**

3 DiPirro, acting on his own behalf and in the public interest, releases each of the named
4 Defendants and each of its officers, directors, attorneys, representatives, shareholders, subsidiaries,
5 affiliates, divisions and retailers, from all claims for violations of Proposition 65 up through the
6 Effective Date based on exposures to marijuana smoke from the use of the Products, as set forth in
7 the Notice and the Complaint. Compliance with the terms of this Consent Judgment constitutes
8 compliance with Proposition 65 with respect to exposures to marijuana smoke from the use of the
9 Products sold by Defendant after the Effective Date, as set forth in the Notice.

10 **5.2 DiPirro's Individual Release of Claims**

11 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
12 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
13 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
14 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
15 suspected or unsuspected, arising out of alleged or actual exposures to marijuana smoke from the use
16 of the Products sold or distributed for sale by any of the Defendants, its predecessors, successors,
17 assigns, principals, agents, employees, and/or owners, in the State of California before the Effective
18 Date.

19 **5.3 Defendant's Release of DiPirro**

20 Each Defendant, on its own behalf and on behalf of its past and current agents,
21 representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may
22 have against DiPirro and his attorneys and other representatives, for any and all actions taken or
23 statements made (or those that could have been taken or made) by DiPirro and his attorneys and
24 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
25 Proposition 65 against it in this matter, or with respect to the Products.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and shall
28 be null and void if, for any reason, it is not approved and entered by the Court within one year after it

1 has been fully executed by all Parties.

2 **7. SEVERABILITY**

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

6 **8. GOVERNING LAW**

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

12 Nothing in this Consent Judgment shall be interpreted to relieve Defendants from any obligation to
13 comply with any pertinent state or federal toxics control laws. This Consent Judgment shall be
14 interpreted in accordance with the fair meaning of the terms herein, without regard to which Party
15 may have drafted any specific provision.

16 **9. NOTICES**

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

21 For Defendant Firehaus:

22 GianDominic Vitiello, Esq.
23 Katchko, Vitiello & Karikomi, PC
24 11500 W. Olympic Boulevard, Suite 512
Los Angeles, CA 90064

25 For DiPirro:

26 Bush & Henry, Attorneys at Law, PC
27 6761 Sebastopol Avenue, Suite 111
Sebastopol, CA 95472

28 Any party may, from time to time, specify in writing to the other party a change of address to which

1 all notices and other communications shall be sent.

2 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

6 **11. POST EXECUTION ACTIVITIES**

7 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
8 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
9 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
10 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
11 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
12 judicial approval of the settlement in a timely manner.

13 **12. MODIFICATION**

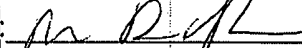
14 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
15 upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or
16 application of any Party and the entry of a modified consent judgment by the Court.

17 **13. AUTHORIZATION**

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

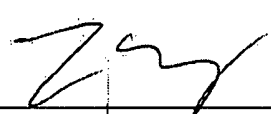
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22 **AGREED TO:**

23 Date: 10/6/18

24
25 By: 
26 Michael DiPirro

AGREED TO:

23 Date: 9/15/18

24
25 By: 
26 Zahur Lalji, President
27 Greenleaf Caregivers Cooperative, Inc., dba
28 Firehaus