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Michael DiPirro

ENDORSED
FILED
ALAMEDA COUNTY

JUN 14 2018

Exec. Off./Clerk

By

R. S. Abuee

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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14 MICHAEL DIPIRRO,
15 Plaintiff,
16 v.

17 DIVINE WELLNESS CENTER; and DOES 1-
18 150,
19 Defendants.

Case No. RG17886474

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~~PROPOSED~~ JUDGMENT PURSUANT TO
TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: June 1, 2018
Time: 10:00 am
Dept. 6
Judge: Hon. Don C. Clay

Reservation No. R-1950616

1 Plaintiff, Michael DiPirro, and Defendant DIVINE WELLNESS CENTER, having
2 agreed through their respective counsel that judgment be entered pursuant to the terms of
3 their settlement agreement in the form of a Consent Judgment, and following this Court's
4 issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

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

10
11 **IT IS SO ORDERED.**

12
13
14 Dated: JUN 14 2018

C. Don Clay

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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Case No. RG17886474

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Michael DiPirro (“DiPirro”),
4 and DIVINE WELLNESS CENTER; (“Defendant” or “DWC”), with DiPirro and Defendant
5 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Defendant 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 Defendant sells, or distributes for sale in the state of California, marijuana
16 intended for smoking and paraphernalia for smoking medical marijuana, the consumption and use of
17 which results in the generation of marijuana smoke, without first providing the clear and reasonable
18 exposure warning required by Proposition 65. Marijuana smoke is listed pursuant to Proposition 65
19 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 cannabis or marijuana intended for
22 smoking and paraphernalia for smoking marijuana, the consumption and use of which allegedly
23 results in exposures to marijuana smoke, that are sold, or distributed for sale in California by
24 Defendant, including, but not limited to, unprocessed marijuana intended to be heated until
25 combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants
26 such as kief), and paraphernalia for smoking marijuana, including, but not limited to, water bongs,
27 smoking pipes, rolling papers, blunts and vaporizers that do not have digital heat control/cannot be
28 definitively set at a temperature below combustion point (“Products”).

1 **1.6 Notice of Violation**

2 On or about April 5, 2017, DiPirro served Defendant and certain requisite public enforcement
3 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
4 DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its customers and
5 consumers in California that the Products expose users to marijuana smoke. To the best of the
6 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations
7 set forth in the Notice.

8 **1.7 Complaint**

9 On or about December 19, 2017, DiPirro filed the instant action against Defendant for the
10 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

11 **1.8 No Admission**

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

21 **1.9 Consent to Jurisdiction**

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

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean March 1, 2018.
28

1 **2. INJUNCTIVE RELIEF: WARNINGS**

2 **2.1 Proposition 65 Warnings**

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

11 (a) **Entry Door Warnings.** On or adjacent to all entry doors of all California locations of
12 Defendant's store-front dispensaries, into any room in which a customer can purchase any Product
13 from Defendant, and in the Lobby/waiting area, **if applicable**, Defendant shall post a sign bearing the
14 warning shown below in Section 2.1(d). The warning sign shall be at least 8 1/2 inches by 11 inches,
15 and posted at a height that will make it conspicuous and easy to read for the average person. The text
16 of the warning shall be printed in black ink, in a font that is easy to read and legible, but in no case
17 less than a size 36 font.
18

19 (b) **Internet Website or Telephone Order Warnings.** For all Products that are
20 purchased via orders placed on a website or by telephone, to be delivered directly to Defendant's
21 members or other customers in California by Defendant or any of its affiliated or contracted
22 companies, the website from which the order is placed shall either, at Defendant's option: a) provide
23 a warning as shown below on the receipt; b) include in the delivery bag a warning as shown below,
24 on an insert that is at least three inches by five inches; OR c) provide a warning as shown below, on
25 the webpage/receipt displayed to a purchaser during the checkout process (if purchased via a
26 website). The warning shall be provided as shown below in Section 2.1(d), with the warning text
27 printed in black ink, in a font that is easy to read and legible, in a font size of at least 12 (or, in the
28

1 case of a website-based warning, in a font size that is no smaller than the font size of the text in the
2 product description), and set off from all other text.

3 (c) **Warning Sign at Festivals/Conferences.** For all festivals, conferences, and other
4 public events that take place in California, in which either Defendant operates a booth or other space
5 from which it sells any of the Products, Defendant shall post a sign with warning language as shown
6 below in Section 2.1(d). The warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a
7 height and location that will make it conspicuous and easy to read for the average person. The text of
8 the warning shall be printed in black ink, in a font that is easy to read and legible, but in no case less
9 than a size 36 font.

11 (d) **Proposition 65 Warning Text**

12 For all warnings provided by Defendant pursuant to this Agreement, Defendant shall use the
13 warning language as set forth below, which shall include a symbol consisting of a black exclamation
14 point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be
15 black on white if the color yellow is otherwise not used on the Product's packaging), with the text in
16 [brackets] being optional at the discretion of Defendant.



WARNING: Use of this [cannabis] product will expose you [and those in your immediate vicinity] to chemicals including marijuana smoke, which are known to the State of California to cause cancer. [Do not consume products that produce marijuana smoke near pregnant women, children or pets.] For more information go to www.P65Warnings.ca.gov.

23 **3. MONETARY PAYMENTS**

24 **3.1 Civil Penalty.** Defendant shall pay a civil penalty in the amount of \$2,000.00 within
25 two (2) business days of Court approval of this Consent Judgment. The penalty payment will be
26 allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1)
27 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
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1 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro. The penalty
2 payment shall be delivered to the address listed in Section 3.3 below.

3 **3.3 Payments Held in Trust.** Payments shall be delivered to the offices of Bush &
4 Henry, Attorneys at Law, PC, 6761 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472, within
5 two (2) business days of Court approval of this Consent Judgment, and shall be in the form of three
6 checks for the following amounts made payable to:

- 7 (a) “Bush & Henry, Attorneys at Law” in the amount of \$1,500.00 for payment
8 to OEHHA. Bush & Henry agree to forward such funds to OEHHA in a
9 timely manner. Alternatively, at Defendant’s option, it can choose to deliver
10 to the offices of Bush & Henry a certified or cashier’s check made payable to
11 “Office of Environmental Health Hazard Assessment.”
- 12 (b) “Bush & Henry, Attorneys at Law” in the amount of \$500.00 as payment to
13 Michael DiPirro. Bush & Henry agree to forward such funds in a timely
14 manner. Alternatively, at Defendant’s option, it can choose to deliver to the
15 offices of Bush & Henry a certified or cashier’s check made payable to
16 “Michael DiPirro.”
- 17 (c) “Bush & Henry, Attorneys at Law, PC” in the amount of \$18,000 as payment
18 for attorneys’ fees and costs pursuant to Section 4 below.

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

21 Any payment that is not actually received by the due date will also be subject to a 10% fee.

22 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro’s counsel with a separate
23 1099 form for each of its payments under this Agreement as follows:

- 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
28 Parties for his portion of the civil penalties paid; and

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

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

4 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. Defendant then
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
8 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
9 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
10 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
11 mutual execution of this agreement. Defendant shall pay \$18,000 for fees and costs incurred as a
12 result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in
13 the public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall
14 make the check payable to "Bush & Henry, Attorneys at Law, PC" and shall deliver payment within
15 three (3) business days of Court approval of this Consent Judgment to the address listed in Section
16 3.3 above.

17 **5. CLAIMS COVERED AND RELEASED**

18 **5.1 DiPirro's Public Release of Proposition 65 Claims**

19 DiPirro, acting on his own behalf and in the public interest, releases Defendant, its officers,
20 directors, attorneys, representatives, shareholders, subsidiaries, affiliates, divisions and retailers,
21 from all claims for violations of Proposition 65 up through the Effective Date based on exposures to
22 marijuana smoke from the use of the Products, as set forth in the Notice and the Complaint.
23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
24 with respect to exposures to marijuana smoke from the use of the Products sold by Defendant after
25 the Effective Date, as set forth in the Notice.

26 **5.2 DiPirro's Individual Release of Claims**

27 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
28 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all

1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
3 suspected or unsuspected, arising out of alleged or actual exposures to marijuana smoke from the use
4 of the Products sold or distributed for sale by Defendant in the State of California before the Effective
5 Date.

6 **5.3 Defendant's Release of DiPirro**

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

13 **6. COURT APPROVAL**

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

17 **7. SEVERABILITY**

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

21 **8. GOVERNING LAW**

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

27 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
28 comply with any pertinent state or federal toxics control laws.

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 Defendant DWC:

7 William F. Salle, Esq.
8 Law Offices of William F. Salle
9 700 North Brand Blvd., Suite 900
 Glendale, CA 91203

10 For DiPirro:

11 Bush & Henry, Attorneys at Law, PC
12 6761 Sebastopol Avenue, Suite 111
 Sebastopol, CA 95472

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

15 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

19 **11. POST EXECUTION ACTIVITIES**

20 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
21 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
22 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
23 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
24 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
25 judicial approval of the settlement in a timely manner.

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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

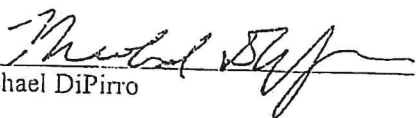
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

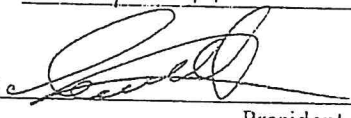
AGREED TO:

AGREED TO:

Date: 3-30-18

Date: 3/28/18

By: 
Michael DiPirro

By: , President
DIVINE WELLNESS CENTER