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ALAMEDA COUNTY

OCT 30 2018

CLERK OF THE SUPERIOR COURT

By Deputy

1 David R. Bush, State Bar No. 154511
2 Jennifer Henry, State Bar No. 208221
3 Bush & Henry, Attorneys at Law, PC
4 6761 Sebastopol Avenue, Suite 111
5 Sebastopol, CA 95472
6 Telephone: (707) 827-3311
7 Facsimile: (707) 676-4301

8 Attorneys for Plaintiff
9 Michael DiPirro

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13
14 MICHAEL DIPIRRO,
15 Plaintiff,
16 v.

17 NATURAL REMEDIES CAREGIVERS; and
18 DOES 1-150,
19 Defendants.
20

Case No. RG17886858

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

Date: October 30, 2018
Time: 3:45 pm
Dept. 24
Judge: Hon. Frank Roesch

Reservation No. R-2000715

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Plaintiff, Michael DiPirro, and Defendant NATURAL REMEDIES CAREGIVERS, 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: 10/30/2018


JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

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
3 Sebastopol, CA 95472
Telephone: (707) 827-3311
4 Facsimile: (707) 676-4301

5 Attorneys for Plaintiff
Michael DiPirro
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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12 MICHAEL DIPIRRO,

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15 NATURAL REMEDIES CAREGIVERS; and,
16 DOES 1-150,

17 Defendants.
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Case No. RG17886858

[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 NATURAL REMEDIES CAREGIVERS (“Defendant” or “Natural Remedies”), with DiPirro
5 and Defendant 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 For purposes of this Consent Judgment, Defendant does not dispute that it employs ten or
12 more persons and is a person in the course of doing business for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition
14 65”).

15 **1.4 General Allegations**

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

21 **1.5 Product Description**

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

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

2 **1.6 Notice of Violation**

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

9 **1.7 Complaint**

10 On or about December 21, 2017, DiPirro filed the instant action against Defendant for the
11 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

12 **1.8 No Admission**

13 Defendant denies the material, factual, and legal allegations contained in the Notice and
14 contends that it provides marijuana to California residents in accordance with applicable state laws
15 and requirements. Defendant denies that any alleged exposures to marijuana smoke occurred at
16 levels requiring a Proposition 65 warnings, denies that Plaintiff has standing to enforce Proposition
17 65, denies that it is a “person in the course of doing business,” and denies that it violated Proposition
18 65. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
19 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
20 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion of
21 law, issue of law, or violation of law, the same being specifically denied by Defendant. This section
22 shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties
23 under this Consent Judgment.

24 **1.9 Consent to Jurisdiction**

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

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1.10 Effective Date


For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that the Court enters this Consent Judgment.

2. INJUNCTIVE RELIEF: WARNINGS


2.1 Proposition 65 Warnings

Commencing on or before the Effective Date, Defendant shall provide clear and reasonable warnings as set forth below, for all Products sold or otherwise distributed 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) **Lobby Area Warning.** Defendant shall post a sign in its lobby area in a conspicuous location in a manner designed that every customer can view it, and on at least one entry door leading into the room in which a customer can purchase any Product(s) from Defendant, bearing one of the specified warnings below, with the text in [brackets] being optional at the discretion of Defendant (except for the requirement to identify a Proposition 65 reproductive toxicant in the alternative warning below). 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.

1
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3  **WARNING:** Use of this [cannabis] product can expose you [and those in
4 your immediate vicinity] to chemicals including marijuana smoke, which are known to
5 the State of California to cause cancer. [Do not consume products that produce
6 marijuana smoke near pregnant women, children or pets.] [Talk with your healthcare
7 provider about smoking cannabis.] For more information go to
8 www.P65Warnings.ca.gov.

9 OR

10  **WARNING:** Use of this [cannabis] product can expose you [and those in
11 your immediate vicinity] to chemicals including marijuana smoke, which are known to
12 the State of California to cause cancer, and [name of chemical(s)], which are known to
13 the State of California to cause birth defects or other reproductive harm. [Do not
14 consume products that produce marijuana smoke near pregnant women, children or
15 pets.] [Talk with your healthcare provider about smoking cannabis.] For more
16 information go to www.P65Warnings.ca.gov.

17 (b) **Internet Website or Telephone Order Warnings.** For all Products that are
18 purchased via orders placed on a website or by telephone, to be delivered directly to Defendant's
19 members or other customers in California by Defendant or any of its affiliated or contracted
20 companies, Defendant shall either, at Defendant's option, provide a warning as shown in Section
21 2.1(a): a) on the receipt; b) in the delivery bag, on an insert that is at least three inches by five inches;
22 OR c) on the webpage/receipt displayed to a purchaser during the checkout process (if purchased via
23 a website). The warning shall be provided with the warning text printed in black ink, in a font that is
24 easy to read and legible, in a font size of at least 12 (or, in the case of a website-based warning, in a
25 font size that is no smaller than the font size of the text in the product description), and set off from
26 all other text.

27 (c) **Warning Sign at Festivals/Conferences.** For all festivals, conferences, and other
28 public events that take place in California, in which either Defendant operates a booth or other space
from which it sells any of the Products, Defendant shall post a sign with warning language as shown

1 in Section 2.1(a) The warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a height
2 and location that will make it conspicuous and easy to read for the average person. The text of the
3 warning shall be printed in black ink, in a font that is easy to read and legible, but in no case less than
4 a size 36 font.
5
6

7 **3. MONETARY PAYMENTS**

8 **3.1 Civil Penalty.** Defendant shall pay a civil penalty in the amount of \$3,000.00 within
9 two (2) business days of Court approval of this Consent Judgment. The penalty payment will be
10 allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1)
11 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
12 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro. The penalty
13 payment shall be delivered to the address listed in Section 3.3 below.

14 **3.3 Payments Held in Trust.** Payments shall be delivered to the offices of Bush &
15 Henry, Attorneys at Law, PC, 6761 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472, within
16 two (2) business days of Court approval of this Consent Judgment, and shall be in the form of three
17 checks for the following amounts made payable to:

- 18 (a) "Bush & Henry, Attorneys at Law" in the amount of \$2,250.00 for payment
19 to OEHHA. Bush & Henry agree to forward such funds to OEHHA in a
20 timely manner. Alternatively, at Defendant's option, it can choose to deliver
21 to the offices of Bush & Henry a certified or cashier's check made payable to
22 "Office of Environmental Health Hazard Assessment."
23 (b) "Bush & Henry, Attorneys at Law" in the amount of \$750.00 as payment to
24 Michael DiPirro. Bush & Henry agree to forward such funds in a timely
25 manner. Alternatively, at Defendant's option, it can choose to deliver to the
26 offices of Bush & Henry a certified or cashier's check made payable to
27 "Michael DiPirro."
28 (c) "Bush & Henry, Attorneys at Law, PC" in the amount of \$28,500 as payment

1 for attorneys' fees and costs pursuant to Section 4 below.

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

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

5 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro's counsel with a separate
6 1099 form for each of its payments under this Agreement as follows:

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

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

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

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

15 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
17 issue to be resolved after the material terms of the agreement had been settled. Defendant then
18 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
19 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
20 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
21 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
22 mutual execution of this agreement. Defendant shall pay \$28,500 for fees and costs incurred as a
23 result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in
24 the public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall
25 make the check payable to "Bush & Henry, Attorneys at Law, PC" and shall deliver payment within
26 three (3) business days of Court approval of this Consent Judgment to the address listed in Section
27 3.3 above.

28 **5. CLAIMS COVERED AND RELEASED**

1 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

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

9 **5.2 DiPirro’s Individual Release of Claims**

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

17 **5.3 Defendant’s Release of DiPirro**

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

24 **5.4 Section 1542 Waiver**

25 Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil
26 Code which provides as follows:

27 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
28 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

1 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
2 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

3 Each of the Parties waives and relinquishes any right or benefit it has or may have under
4 Section 1542 of California Civil Code or any similar provision under the statutory or non statutory
5 law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits,
6 arising out of the facts alleged in the Notice or the Complaint and relating to the Products. The Parties
7 acknowledge that each may subsequently discover facts in addition to, or different from, those that it
8 believes to be true with respect to the claims released herein. The Parties agree that this Consent
9 Judgment and the releases contained herein shall be and remain effective in all respects
10 notwithstanding the discovery of such additional or different facts.

11 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

7 Ann G. Grimaldi, Esq.
8 Grimaldi Law Offices
9 535 Mission Street, 14th Floor
 San Francisco, CA 94105

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.

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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: 9/10/18

Date: _____

By: Michael DiPirro

By: _____, President

NATURAL REMEDIES CAREGIVERS

1 **12. MODIFICATION**

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

5 ///

6 ///

7 **13. AUTHORIZATION**

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

11 **AGREED TO:**

12 Date: _____

13 By: _____
14 Michael DiPirro

11 **AGREED TO:**

12 Date: 9/10/2018

13 By: 
14 Kristine G., President
15 NATURAL REMEDIES CAREGIVERS