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 9 Michael DiPirro

FILED
 ALAMEDA COUNTY

SEP 18 2018

CLERK OF THE SUPERIOR COURT

By Pam Williams
 Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,

Plaintiff,

v.

99 HIGH TIDE COLLECTIVE; and, DOES 1-
 150,

Defendants.

Case No. RG17883040

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

Date: September 18, 2018

Time: 9:00 am

Dept. 17

Judge: Hon. Ioana Petrou

Reservation No. R-1986348

AUG 02 2018

1 Plaintiff, Michael DiPirro, and Defendant 99 HIGH TIDE COLLECTIVE, 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.

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11 **IT IS SO ORDERED.**

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14 Dated: 9/18/18

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16 JUDGE OF THE SUPERIOR COURT
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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
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Telephone: (707) 827-3311
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5 Attorneys for Plaintiff
Michael DiPirro
6

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10
11

12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 99 HIGH TIDE COLLECTIVE; and, DOES 1-
16 150,

17 Defendants.
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Case No. RG17883040

[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 99 HIGH TIDE COLLECTIVE; ("Defendant" or "99 HIGH TIDE"), 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 99 High Tide is a licensed marijuana dispensary located at 22775 Pacific Coast
12 Hwy, Malibu, CA 90265. Plaintiff asserts, and Defendant disputes, that Defendant employs ten or
13 more persons and is a person in the course of doing business for purposes of the Safe Drinking Water
14 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition
15 65"). Notwithstanding this disputed issue, in the interest of avoiding litigation and without making
16 any admissions, the Parties agree to resolve Plaintiff's claims in this settlement.

17 **1.4 General Allegations**

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

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are cannabis or marijuana intended for
25 smoking and paraphernalia for smoking marijuana, the consumption and use of which allegedly
26 results in exposures to marijuana smoke, that are sold, or distributed for sale in California by
27 Defendant, including, but not limited to, unprocessed marijuana intended to be heated until
28 combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants

1 such as kief), and paraphernalia for smoking marijuana, including, but not limited to, water bongs,
2 smoking pipes, rolling papers, blunts and vaporizers that do not have digital heat control/cannot be
3 definitively set at a temperature below combustion point ("Products").

4 **1.6 Notice of Violation**

5 On or about April 20, 2017, DiPirro served Defendant and certain requisite public
6 enforcement agencies with a "60-Day Notice of Violation" ("Notice"), a document that informed the
7 recipients of DiPirro's allegation that Defendant violated Proposition 65 by failing to warn its
8 customers and consumers in California that the Products expose users to marijuana smoke. To the
9 best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the
10 allegations set forth in the Notice.

11 **1.7 Complaint**

12 On or about November 20, 2017, DiPirro filed the instant action against Defendant for the
13 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

14 **1.8 No Admission**

15 Defendant denies all the material, factual, and legal allegations contained in the Notice and
16 Complaint, and contends that it provides medical marijuana to California residents in accordance
17 with applicable state and local laws and requirements relating to the sale and use of medicinal
18 marijuana. Defendant denies that any exposures to marijuana smoke have occurred at levels
19 requiring a Proposition 65 warning, denies that Plaintiff has standing to enforce Proposition 65,
20 denies that it is a "person in the course of doing business," and denies that it violated Proposition 65.
21 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
22 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
23 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion of
24 law, issue of law, or violation of law, the same being specifically denied by Defendant. The Parties
25 are entering into this Consent Judgment for the purpose of avoiding protracted and resource-intensive
26 litigation. Further, nothing in this Consent Judgment shall be construed as a determination that
27 Defendant has violated any local, state or federal law. This section shall not, however, diminish or
28 otherwise affect Defendant's obligations, responsibilities, and duties under this Consent Judgment. 2

1 **1.9 Consent to Jurisdiction**

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

6 **1.10 Effective Date**

7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that the
8 Court enters this Consent Judgment.

9 **2. INJUNCTIVE RELIEF: WARNINGS**

10 **2.1 Proposition 65 Warnings**

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

19 (a) **Lobby Area Warning.** Between the Effective Date and August 30, 2018, Defendant
20 shall post a sign in its lobby area in a conspicuous location in a manner designed that every customer
21 shall view it, and on at least one entry door leading into the room in which a customer can purchase
22 any Product(s) from Defendant, bearing one of the specified warnings shown below, with the text in
23 [brackets] being optional at the discretion of Defendant. The warning sign shall be at least 8 1/2
24 inches by 11 inches, and posted at a height that will make it conspicuous and easy to read for the
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1 average person. The text of the warning shall be printed in black ink, in a font that is easy to read and
2 legible, but in no case less than a size 36 font.

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

10 **OR**

11 **WARNING: Use of products sold here will expose you [and**
12 **those in your immediate vicinity] to marijuana**
13 **smoke, a chemical known to the State of**
14 **California to cause cancer [and birth defects**
15 **or other reproductive harm]. [Do not consume**
16 **products that produce marijuana smoke near**
17 **pregnant women, children or pets.] [Talk to**
18 **your healthcare provider about smoking**
19 **cannabis.]**

20 (b) **Internet Website or Telephone Order Warnings.** Between the Effective Date and
21 August 30, 2018, for all Products that are purchased via orders placed on a website or by telephone,
22 to be delivered directly to Defendant's members or other customers in California by Defendant or any
23 of its affiliated or contracted companies, the website from which the order is placed shall either, at
24 Defendant's option: a) provide a warning as shown below on the receipt; b) include in the delivery
25 bag a warning as shown below, on an insert that is at least three inches by five inches; OR c) provide
26 a warning as shown below, on the webpage/receipt displayed to a purchaser during the checkout
27 process (if purchased via a website). The warning shall be provided as shown below, with the text in
28 [brackets] being optional at the discretion of Defendant, with the warning text 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 case of a website-based
warning, in a font size that is no smaller than the font size of the text in the product description), and
set off from all other text.

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

[Talk to your healthcare provider about smoking cannabis.]

OR

WARNING: Use of this product will 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.] [Talk to your healthcare provider about smoking cannabis.]

(c) **Warning Sign at Festivals/Conferences.** Between the Effective Date and August 30, 2018, for all festivals, conferences, and other 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 below, with the text in [brackets] being optional at the discretion of Defendant. The warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a height and location 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: Marijuana smoke contains chemicals known to the State of California to cause cancer [and birth defects or other reproductive harm]. [Talk to your healthcare provider about smoking cannabis.]

(d) **Warnings After August 30, 2018**

For the warning provided by Defendant pursuant to this Agreement after August 30, 2018, Defendant shall use the warning language as set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black on white if the color yellow is otherwise not used on the Product's packaging), with the text in [brackets] being optional at the discretion of Defendant.



WARNING: Use of this [cannabis] product can expose you [and those in your immediate vicinity] to chemicals including marijuana smoke, which are 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.] [Talk to your healthcare provider about smoking cannabis.] For more information go to www.P65Warnings.ca.gov.

3. MONETARY PAYMENTS

3.1 Civil Penalty. Defendant shall pay a civil penalty in the amount of \$1,500.00 per Section 3.3. below. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro. The penalty payment shall be delivered to the address listed in Section 3.3 below.

3.3 Payments Held in Trust. Payments shall be delivered to the offices of Bush & Henry, Attorneys at Law, PC, 6761 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472 in accordance with the schedule and forms of payment set forth below.

- (a) Within five (5) business days of the Effective Date, a check made payable to "Bush & Henry, Attorneys at Law" in the amount of \$1,125.00 for payment to OEHHA. Bush & Henry agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant's option, it can choose to deliver to the offices of Bush & Henry a certified or cashier's check made payable to "Office of Environmental Health Hazard Assessment."
- (b) Within five (5) business days of the Effective Date, a check made payable to "Bush & Henry, Attorneys at Law" in the amount of \$375.00 as payment to Michael DiPirro. Bush & Henry agree to forward such funds in a timely manner. Alternatively, at Defendant's option, it can choose to deliver to the offices of Bush & Henry a certified or cashier's check made payable to "Michael DiPirro."

- 1 (c) Checks made payable to "Bush & Henry, Attorneys at Law, PC" as payment
2 for attorneys' fees and costs pursuant to Section 4 below totaling \$27,000 as
3 follows: 1) Within five (5) business days of the Effective Date, \$8,000; 2) No
4 less than 30 calendar days after the Effective Date, \$9,500; and 3) No less
5 than 60 calendar days after the Effective Date, \$9,500.

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

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

9 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro's counsel with a separate
10 1099 form for each of its payments under this Agreement as follows:

11 (a) If Defendant makes payment by check made payable to OEHHA, Defendant
12 shall provide DiPirro's counsel with a 1099 form for "Office of
13 Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento,
14 CA 95814 (EIN: 68-0284486) for civil penalties paid;

15 (b) If Defendant makes payment by check made payable to Plaintiff, Defendant
16 shall provide DiPirro's counsel with a 1099 form for "Michael DiPirro,"
17 whose address and tax identification number shall be furnished upon request
18 after this Agreement has been fully executed by the Parties for his portion of
19 the civil penalties paid; and

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

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

23 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
25 issue to be resolved after the material terms of the agreement had been settled. Defendant then
26 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
27 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
28 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general.

1 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
2 mutual execution of this agreement. Defendant shall pay \$27,000 for fees and costs incurred as a
3 result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in
4 the public interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall
5 make payments in accordance with the terms of Section 3.3.

6 **5. CLAIMS COVERED AND RELEASED**

7 **5.1 DiPirro's Public Release of Proposition 65 Claims**

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

15 **5.2 DiPirro's Individual Release of Claims**

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

23 **5.3 Defendant's Release of DiPirro**

24 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
25 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
26 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
27 (or those that could have been taken or made) by DiPirro and his attorneys and other
28 representatives, whether in the course of investigating claims, otherwise seeking to enforce

1 Proposition 65 against it in this matter with respect to the Products.

2 **6. COURT APPROVAL**

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

6 **7. SEVERABILITY**

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

10 **8. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the state of California
12 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise
13 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
14 written notice to DiPirro of any asserted change in the law, and shall have no further obligations
15 pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so
16 affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
17 obligation to comply with any pertinent state or federal toxics control laws.

18 **9. NOTICES**

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

23 For Defendant 99 HIGH TIDE:

24 Ann Grimaldi, Esq.
25 Grimaldi Law Offices
26 535 Mission Street, 14th Floor
San Francisco, CA 94105

27 For DiPirro:

28 Bush & Henry, Attorneys at Law, PC
6761 Sebastopol Avenue, Suite 111

1 Sebastopol, CA 95472

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

4 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

8 **11. POST EXECUTION ACTIVITIES**

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

15 **12. MODIFICATION**

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

1 **13. AUTHORIZATION**

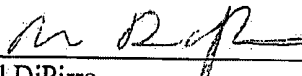
2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
3 Parties and have read, understood and agree to all of the terms and conditions of this Consent
4 Judgment.


5
6 **AGREED TO:**

6 **AGREED TO:**

7 Date: 7-27-18

7 Date: 7/20/2018

8
9 By: 
10 Michael DiPirro

9 By: 
10 Yvonne Green, President
11 99 HIGH TIDE COLLECTIVE