

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

Alameda Superior Court / RCD

<p>Michael DiPirro Plaintiff/Petitioner(s) VS. Aviation Supplies &amp; Academics, Inc. Defendant/Respondent(s)</p>	<p>No. 22CV018423 Date: 07/10/2023 Time: 3:00 PM Dept: 19 Judge: Stephen Kaus  ORDER re: Hearing on Motion to Confirm Settlement filed by Michael DiPirro (Plaintiff)</p>
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Matter was not contested and the tentative is affirmed.

The Motion to Confirm Settlement filed by Michael DiPirro on 05/26/2023 is Granted.

Plaintiff Michael DiPirro’s (“Plaintiff”) Unopposed Motion for Approval of Proposition 65 Settlement and Consent Judgment (“SCJ”) is GRANTED. (Code Civ. Proc., § 664.6.) The injunctive relief complies with Proposition 65, the Civil Penalty Amount is appropriate and properly allocated, and the attorney fees are reasonable. (Health & Saf. Code, § 25249.7.)

**BACKGROUND**

This is a Proposition 65 case brought by Plaintiff on behalf of the Citizens of the state of California to enforce the public interest and right to be informed of health hazards caused by Diisononyl phthalate (“DINP”), a toxic chemical found in binders which include the 7-Ring Approach Plate Binder, Item ASA-AP-BD-7RNG (“Subject Product”), which is a product that is manufactured, distributed, and offered for sale by Defendant Aviation Supplies & Academics, Inc. (“Defendant”) to consumers in California.

(Complaint ¶¶ 1-3.)

On June 17, 2022, Plaintiff issued a 60-Day Notice of Violation together with a certificate of merit to Defendant along with certain public enforcement agencies indicating that as a result of Defendant’s sales of the Subject Product, containing DINP, consumers in California were being exposed to DINP resulting from reasonably foreseeable uses of the Subject Product, and without a “clear and reasonable” warning regarding such toxic exposures as required by Proposition 65. (Complaint ¶ 27.)

None of the notified enforcement agencies took action after receiving the Notice. (Complaint ¶ 29.) Plaintiff filed this action on September 26, 2022, more than 60 days after service of the Notice of Violation. (Complaint p. 1; Register of Actions (“ROA”).)

On May 24, 2023, the parties finalized and mutually executed this Consent Judgment, which is a

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settlement resolving Plaintiff's claims against Defendant as alleged in the Notice of violation and which provides for a properly tailored release. (Bush Decl. ¶¶ 6-7.)

## DISCUSSION

California Health and Safety Code section 25249.7 (f) provides in relevant part:

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

- (A) The warning that is required by the settlement complies with this chapter.
- (B) The award of attorney's fees is reasonable under California law.
- (C) The penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in a proceeding without intervening in the case.

(Health & Saf. Code, § 25249.7, subd. (f)(4)-(5).)

## SUBSTANTIVE PROVISIONS OF STIPULATED CONSENT JUDGMENT ("SCJ")

### Injunctive Relief/Mandated Actions

The proposed settlement and consent judgment requires Defendant to include the following warning on the Subject Product within thirty days upon determining that any of the subject products contains more than 0.1 percent (1,000 part per million) of DINP, to be determined by Defendant using its own independent testing laboratory accredited by the state of California, a federal agency, or a nationally recognized accrediting organization. (SCJ § 2.1.) Testing samples shall be prepared and extracted using Consumer Product Safety Commission ("CPSC") methodology CPSC-CHC1001-09.3 or CPSC-CHC1001-09.4 and analyzed using Environmental Protection Agency ("EPA") methodology 8270D, or other methodologies used by federal or state government agencies to determine phthalate content in a solid substance. (Ibid.)

The required text of the warning shall be printed in black ink on a light background, in no less than 6-point font and including a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. (SCJ §2.3.)

The text of the warning shall consist of the following statement:

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! WARNING: This product can expose you to chemicals including DINP which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

SCJ § 2.3.)

In addition, all of the Subject Products sold directly to consumers in California over the internet shall provide the same warning on one or more of the following:

- a) The same web page on which the Subject Product is displayed
- b) The same web page as the order form for the Subject Product
- c) The same web page as the price for the Subject Product, or on
- d) One or more web pages displayed to a purchaser during the checkout process.

The internet warning can also be delivered by way of a hyperlink using the words: “[California Prop 65] WARNING”, with language in the brackets to be optional.

(SCJ § 2.2.)

## Civil Penalties

Under the Stipulated Consent Judgment, Defendant is required to pay a civil penalty in the amount of \$2,000.00 (Bush Decl. ¶ 9; SCJ § 3.1.) 75% of this amount (\$1,500) shall be paid directly to OEHHA and 25% (\$500) shall be paid to Plaintiff. (Ibid.)

## Attorney Fees & Costs

Plaintiff and his attorneys have agreed to perform all work and cover all costs in connection with this litigation as part of their pro bono service to Plaintiff and the people of the State of California.

## Release

The scope of the Release is limited to Defendant, Plaintiff and their representatives in connection with the content of DINP in the Subject Product. It is therefore narrowly tailored to release only the issues litigated in this action.

## Approval of Proposed Settlement and Consent Judgment

The parties’ proposed Proposition 65 Settlement and Consent Judgment satisfies all statutory requirements. (Health & Saf. Code, § 25249.7.)

Therefore, Plaintiff’s Unopposed Motion for Approval of Proposition 65 Settlement and Consent Judgment is granted. (Code Civ. Proc., § 664.6; Health & Saf. Code, § 25249.7.)

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The Court will sign the proposed order and Consent Judgment provided by Plaintiff.

Dated: 07/10/2023

A handwritten signature in black ink, appearing to read "S. Kaus".

**Stephen Kaus / Judge**