

1 David R. Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
2 Bush & Henry, Attorneys at Law, PC
3270 Mendocino Ave. #2E
3 Santa Rosa, CA 95403
Telephone: (707) 541-6255
4 Facsimile: (707) 676-4301

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 AVERY DENNISON CORPORATION; *et al.*,

16 Defendants.

17 MICHAEL DIPIRRO,

18 Plaintiff,

19 v.

20 CCL INDUSTRIES, INC.; and DOES 1-150,
inclusive,

21 Defendants.
22

Case No. RG14749183

(Consolidated with Case No. RG15787334 for
purposes of entry of this Consent Judgment)

[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 AVERY DENNISON CORPORATION (“Avery”) and CCL INDUSTRIES INC. (“CCL”)
5 (collectively, “Defendants”), with Plaintiff DiPirro and each Defendant individually referred to as a
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 Each Defendant employs ten or more persons and is a person in the course of doing business
13 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
14 Safety Code section 25249.6 *et seq.* (“Proposition 65”). On or about January 29, 2013, Defendant
15 Avery sold a division of its company to Defendant CCL.

16 **1.4 General Allegations**

17 DiPirro alleges that Defendants manufacture, import, sell, or distribute for sale in the state of
18 California, media holders and vinyl/PVC office storage and filing products containing phthalates
19 known as DEHP and/or DINP without first providing the requisite Proposition 65 health hazard
20 warnings. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of
21 California to cause cancer, birth defects and/or other reproductive harm. DINP is listed pursuant to
22 Proposition 65 as a chemical that is known to the State of California to cause cancer.

23 **1.5 Product Description**

24 The products that are covered by this Consent Judgment are defined as media holders and
25 vinyl/PVC office storage and filing products containing DEHP and/or DINP that are manufactured,
26 sold, or distributed for sale in California by Avery Dennison Corporation or Avery Products
27 Corporation, including, but not limited to, *Avery Self-Adhesive CS/DVD/Zip Pockets, Pack of 10*
28 ~~(#73721)~~ (#0 77711 73721 1), *Avery Sliding Bar Clear Report Covers (#47314)*, *Avery Durable View*

1 *Protect & Store Binder with 1" Slant Rings, White (#23000), and Avery Hanging File Folder Tabs,*
2 *1/5 Cut, Clear (#06727)* ("Covered Products").

3 **1.6 Notices of Violation**

4 On September 30, 2013, DiPirro served Avery and various public enforcement agencies with
5 a document entitled "60-Day Notice of Violation" that provided the recipients with notice of alleged
6 violations of Proposition 65 for failing to warn consumers that the Covered Products exposed users in
7 California to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
8 diligently prosecuting the allegations set forth in the Notice.

9 On or about April 21, 2015, DiPirro served Defendants and certain requisite public
10 enforcement agencies with a "Supplemental 60-Day Notice of Violation", a document that informed
11 the recipients of DiPirro's allegation that Defendant violated Proposition 65 by failing to warn its
12 customers and consumers in California that the Covered Products expose users to DEHP and/or
13 DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
14 prosecuting the allegations set forth in the Notice. The two Notices of Violation are collectively
15 referred to herein as "Notices."

16 **1.7 Complaints**

17 On or about November 21, 2014, DiPirro, who was and is acting in the interest of the general
18 public in California, filed the action titled *DiPirro v. Avery Dennison Corporation, et al.*, Case No.
19 RG14749183, in the Superior Court in and for the County of Alameda against Avery and Does 1
20 through 150, alleging, inter alia, for violations of Proposition 65 based on the alleged exposures to
21 DEHP contained in the Covered Products.

22 On or about August 28, 2015, DiPirro filed the action titled *DiPirro v. CCL Industries, Inc., et*
23 *al.*, Case No. RG15787334, in the Superior Court in and for the County of Alameda against CCL and
24 Does 1 through 150, alleging, inter alia, for violations of Proposition 65 based on the alleged
25 exposures to DEHP and DINP contained in the Covered Products.

26 Collectively, the *DiPirro v. Avery Dennison Corporation* and the *DiPirro v. CCL Industries,*
27 *Inc.* actions are referred to herein as the "Actions." To facilitate the administration of justice, upon
28 approval and entry of this Consent Judgment by the Court, Case Numbers RG14749183 and

1 RG15787334 shall be deemed to have been consolidated by the Court, *nunc pro tunc*, so that
2 Judgment pursuant to the terms of this Consent Judgment shall apply to the allegations and operative
3 pleadings in both Actions.

4 **1.8 No Admission**

5 Defendants deny the material, factual, and legal allegations contained in DiPirro's Notices
6 and complaints in the Actions ("Complaints"), and maintain that all Covered Products they have
7 manufactured, sold, or distributed for sale in California, have been, and are, in compliance with all
8 laws. Nothing in this Consent Judgment shall be construed as an admission by Defendants of any
9 fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
10 Consent Judgment constitute or be construed as an admission by Defendants of any fact, finding,
11 conclusion of law, issue of law, or violation of law, the same being specifically denied by
12 Defendants. This section shall not diminish or otherwise affect Defendants' obligations,
13 responsibilities, and duties under this Consent Judgment.

14 **1.9 Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over Defendants as to the allegations contained in the Complaints, that venue is proper in
17 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this
18 Consent Judgment.

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term "Effective Date" shall mean September 1,
21 2016.

22 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

23 **2.1 Reformulation Commitment Option**

24 In order to waive the second civil penalty under Section 3.2, Defendants shall only
25 manufacture for sale or distribute for sale in California, Covered Products that are reformulated
26 ("Reformulated Products"). For purposes of this Consent Judgment, Reformulated Products are
27 Covered Products that meet the Reformulation Standards of Section 2.2 below.

28 **2.2 Reformulation Standard**

1 For purposes of this Consent Judgment, “Reformulated Products” are defined as Covered
2 Products containing no more than 1,000 parts per million (0.1%) DEHP and no more than 1,000
3 parts per million (0.1%) DINP when analyzed pursuant to EPA testing methodologies 3580A and
4 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of
5 determining DEHP or DINP content in a solid substance, including CPSC-CH-C1001-09.3.

6 **2.3 Warning**

7 Commencing on the Effective Date, Defendants shall not sell to California consumers
8 Covered Products which are not Reformulated Products, unless clear and reasonable warnings in the
9 form set forth below shall appear on such Covered Products. Each warning shall be prominently
10 placed with such conspicuousness as compared with other words, statements, designs, or devices as
11 to render it likely to be read and understood by an ordinary individual under customary conditions
12 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
13 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
14 confusion. If a warning is provided pursuant to this Section, the text shall be as follows, at
15 Defendants’ option,

16
17 **WARNING: This product contains DEHP and/or DINP,
18 phthalate chemicals known to the State of
19 California to cause cancer and birth defects or
20 other reproductive harm.**

21 -OR-

22
23 **WARNING: This product contains chemicals known to the
24 State of California to cause cancer and birth
25 defects or other reproductive harm, including
26 phthalate chemicals**

27 **3. MONETARY PAYMENTS**

28 **3.1 Initial Civil Penalty.** Defendants shall each pay an initial civil penalty in the amount
of \$6,250.00 within two (2) business days of Court approval of this Consent Judgment. 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

1 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.
2 The initial penalty payment shall be delivered to the address listed in Section 3.3 below.

3 **3.2 Final Civil Penalty.** Each Defendant shall pay a final civil penalty of \$14,000.00 on
4 or before October 1, 2016. For each Defendant, the final civil penalty shall be waived in its entirety
5 as to that Defendant, however, if, no later than October 1, 2016, an officer of that Defendant provides
6 DiPirro with written certification that, as of the date of such certification and continuing into the
7 future, that Defendant has met the reformulation standard specified in Section 2 above, such that at
8 least fifty percent (50%) of all Covered Products manufactured for sale in California by that
9 Defendant are Reformulated Products. The certification in lieu of a final civil penalty payment
10 provided by this Section is a material term, and time is of the essence. The penalty payment will be
11 allocated by DiPirro’s counsel in accordance with California Health & Safety Code § 25249.12(c)(1)
12 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
13 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro. The penalty
14 payment or certification shall be delivered to the address listed in Section 3.3 below.

15 **3.3 Payments Held in Trust.** Payments shall be delivered to the offices of Bush &
16 Henry, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403, within two (2) business days of
17 Court approval of this Consent Judgment. Avery and CCL shall each deliver payment in the form of
18 three checks as set forth below:

19 **Payments Made By Avery:**

- 20 (a) “Law Office of David R. Bush” in the amount of \$4,687.50 for payment to
21 OEHHA. Law Office of David R. Bush agrees to forward such funds to
22 OEHHA in a timely manner.
- 23 (b) “Law Office of David R. Bush” in the amount of \$1,562.50 as payment to
24 Michael DiPirro. David R. Bush agrees to forward such funds in a timely
25 manner; and
- 26 (c) “Bush & Henry, Attorneys at Law” in the amount of \$64,750.00, as payment
27 for attorneys’ fees and costs pursuant to Section 4 below.

28 **Payments Made By CCL:**

1 (d) "Law Office of David R. Bush" in the amount of \$4,687.50 for payment to
2 OEHHA. Law Office of David R. Bush agrees to forward such funds to
3 OEHHA in a timely manner.

4 (e) "Law Office of David R. Bush" in the amount of \$1,562.50 as payment to
5 Michael DiPirro. David R. Bush agrees to forward such funds in a timely
6 manner; and

7 (f) "Bush & Henry, Attorneys at Law" in the amount of \$34,750.00 as payment
8 for attorneys' fees and costs pursuant to Section 4 below.

9 **3.3 Issuance of 1099 Forms.** After the Consent Judgment has been approved,
10 Defendants shall provide DiPirro's counsel with a separate 1099 forms for each of its payments
11 under this Agreement as follows:

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

14 (b) "Michael DiPirro," whose address and tax identification number shall be
15 furnished upon request after this Consent Judgment has been fully executed
16 by the Parties for his portion of the civil penalties paid; and

17 (c) "Law Offices of David R. Bush," for fees and costs reimbursed pursuant to
18 Section 4.

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

20 The Parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
22 issue to be resolved after the material terms of the agreement had been settled. The parties then
23 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
24 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
25 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
26 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
27 mutual execution of this agreement. Avery shall pay \$64,750.00 and CCL shall pay \$34,750.00 for
28 fees and costs incurred as a result of investigating, bringing this matter to Defendants' attention, and

1 negotiating a settlement in the public interest. Defendants shall issue a separate 1099 for fees and
2 costs (EIN: 81-1257634), shall make the check payable to “Bush & Henry, Attorneys at Law” and
3 shall deliver payment within two (2) business days of Court approval of this Consent Judgment to the
4 address listed in Section 3.3 above.

5 **5. CLAIMS COVERED AND RELEASED**

6 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

7 DiPirro, acting on his own behalf and in the public interest, also releases each Defendant,
8 their officers, directors, attorneys, representatives, shareholders, subsidiaries, parent companies,
9 agents, employees, distributors, dealers, customers, purchasers, suppliers, affiliates, divisions and
10 retailers from all claims for violations of Proposition 65 up through the Effective Date based on
11 exposures to DEHP and/or DINP from the Covered Products, as set forth in the Notices and the
12 Complaints. Compliance with the terms of this Consent Judgment constitutes compliance with
13 Proposition 65 with respect to exposures to DEHP and/or DINP from the Covered Products sold by
14 Defendants after the Effective Date.

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 DEHP and/or DINP in the
21 Covered Products imported, manufactured, sold or distributed for sale by Defendants before the
22 Effective Date.

23 **5.3 Defendants’ Release of DiPirro**

24 Defendants, on their own behalf and on behalf of their past and current agents,
25 representatives, attorneys, successors, and assignees, hereby waives any and all claims that they
26 may have against DiPirro and his attorneys and other representatives, for any and all actions taken
27 or statements made (or those that could have been taken or made) by DiPirro and his attorneys and
28 other representatives in the course of investigating claims, otherwise seeking to enforce Proposition
8473542591

1 65 against it in this matter, or with respect to the Covered Products.

2 **5.4 Releases Between Avery and CCL**

3 Avery hereby relieves, releases and forever discharges CCL and all of its predecessors,
4 successors, assigns, employees, former employees, officers, directors, parents, subsidiaries, affiliates,
5 shareholders, members, partners, representatives, insurers, and attorneys, and each of them, (“CCL
6 Releasees”) from any and all claims, complaints, rights, debts, liabilities, liens, losses, demands,
7 obligations, damages whether general, special, punitive, exemplary, contractual or extra contractual,
8 costs, expenses (including, but not limited to, attorneys’ fees), suits, charges, actions and causes of
9 action, of whatever kind or nature whether legal, equitable, or administrative, whether now known or
10 unknown, suspected or unsuspected, contingent or fixed that Avery had, now has, or may have
11 against CCL or the CCL Releasees, with respect to, based on, or arising out of (i) the Notices, (ii) the
12 Actions (iii) the Complaints or (iv) any alleged violations of Proposition 65 alleged in the Notices,
13 Actions or Complaints.

14 CCL hereby relieves, releases and forever discharges Avery and all of its predecessors,
15 successors, assigns, employees, former employees, officers, directors, parents, subsidiaries, affiliates,
16 shareholders, members, partners, representatives, insurers, and attorneys, and each of them, (“Avery
17 Releasees”) from any and all claims, complaints, rights, debts, liabilities, liens, losses, demands,
18 obligations, damages whether general, special, punitive, exemplary, contractual or extra contractual,
19 costs, expenses (including, but not limited to, attorneys’ fees), suits, charges, actions and causes of
20 action, of whatever kind or nature whether legal, equitable, or administrative, whether now known or
21 unknown, suspected or unsuspected, contingent or fixed that CCL had, now has, or may have against
22 Avery or the Avery Releasees, with respect to, based on, or arising out of (i) the Notices, (ii) the
23 Actions (iii) the Complaints or (iv) any alleged violations of Proposition 65 alleged in the Notices,
24 Actions or Complaints.

25 It is understood by Avery and CCL that there is a risk that either of them may incur or suffer
26 loss, damage or injuries which are in some way caused by or related to the subject matter of the
27 releases contained in paragraph 5.4 of this Consent Judgment, but which are unknown or
28 unanticipated at the time of the execution of this Consent Judgment. Further, there is a risk that loss

1 or damage presently known may be or become greater than either party now expects or anticipates.
2 Avery and CCL each assumes such risks that the releases contained herein shall apply to all unknown
3 and/or unanticipated results arising from or relating to the subject matter of the releases contained in
4 paragraph 5.4, and, Avery and CCL each WAIVES AGAINST THE OTHER ALL RIGHTS UNDER
5 CALIFORNIA CIVIL CODE SECTION 1542 (OR ANY APPLICABLE SIMILAR PROVISION
6 OF FEDERAL, STATE, OR FOREIGN LAW), WHICH PROVIDES AS FOLLOWS:

7 "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH, IF
10 KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS
11 OR HER SETTLEMENT WITH THE DEBTOR."

12 **6. COURT APPROVAL**

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

16 **7. SEVERABILITY**

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

20 **8. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise
23 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendants may
24 provide written notice to DiPirro of any asserted change in the law, and have no further obligations
25 pursuant to this Consent Judgment, with respect to, and to the extent that, the Covered Products are
26 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendants from any
27 obligation to comply with any pertinent state or federal toxics control laws. This Consent Judgment
28 shall be interpreted in accordance with the fair meaning of the terms herein, without regard to which
Party may have drafted any specific provision.

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 AVERY DENNISON CORPORATION:

7 William F. Tarantino, Esq.
8 Morrison & Foerster LLP
9 425 Market Street, Suite 3300
 San Francisco, CA 94105

10 *with a copy to*
11 Bijal Shah, Esq.
12 Avery Dennison Corporation
13 207 Goode Avenue
 Glendale, CA 91203

14 For Defendant CCL INDUSTRIES, INC.:

15 Ryan S. Fife, Esq.
16 Drinker Biddle & Reath LLP
17 1800 Century Park East, Ste. 1500
 Los Angeles, CA 90067

18 *with a copy to*
19 Mark A. McClendon
20 CCL Industries Inc.
 17700 Foltz Parkway
 Strongsville, OH 44149

21 For DiPirro:

22 Bush & Henry, Attorneys at Law, PC
23 3270 Mendocino Avenue, Suite 2E
24 Santa Rosa, CA 95403

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

27 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

28 This Consent Judgment may be executed in counterparts, and by facsimile or portable

1 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
2 taken together, shall constitute one and the same document.

3 **11. POST EXECUTION ACTIVITIES**

4 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
5 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
6 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
7 of obtaining such approval, DiPirro and Defendants agree to mutually employ their best efforts, and
8 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
9 judicial approval of the settlement in a timely manner.

10 **12. MODIFICATION**

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

14 **13. ENTIRE AGREEMENT**

15 This Consent Judgment contains the sole and entire agreement and understanding of the
16 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
17 negotiations, commitments, and understandings related hereto. No representations, oral or
18 otherwise, express or implied, other than those contained herein have been made by any party
19 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
20 to exist or to bind any of the Parties.

21 **14. AUTHORIZATION**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Date: _____

By: _____
Michael DiPirro

AGREED TO:

Date: 3/7/16

By: 
Bijal Shah, Vice President
AVERY DENNISON CORPORATION

AGREED TO:

Date: _____

By: _____
Mark McClendon, General Counsel
CCL INDUSTRIES INC.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

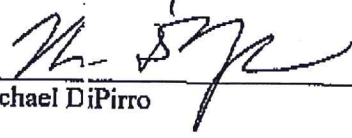
AGREED TO:

Date:

3/15/16

By:

Michael DiPirro



AGREED TO:

Date:

By:

Bijal Shah, Vice President
AVERY DENNISON CORPORATION

AGREED TO:

Date:

March 8, 2016

By:

Mark McClendon, General Counsel
CCL INDUSTRIES INC

