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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF ALAMEDA

9 UNLIMITED CIVIL JURISDICTION

12 MICHAEL DIPIRRO,

13 Plaintiff,

14 v.

15 DELUXE CORPORATION, *et al.*,

16 Defendants.

Case No. RG16841471

[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 DELUXE CORPORATION; (“Defendant” or “Deluxe”), 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 manufactures, imports, sells, or distributes for sale in the state
16 of California, checkbook covers containing Diisononyl phthalate (“DINP”) without first providing
17 the clear and reasonable exposure warning required by Proposition 65. DINP is listed pursuant to
18 Proposition 65 as a chemical that is known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are checkbook covers and similar financial
21 products used to cover or hold personal or business checks, containing DINP that are manufactured,
22 sold, or distributed for sale in California by Defendant, including, but not limited to, *The Traveller*,
23 *Business Size Portable Checks (SKU # 59000N)* (“Products”).

24 **1.6 Notice of Violation**

25 On or about April 12, 2016, DiPirro served Defendant and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
27 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
28 customers and consumers in California that the Products expose users to DINP. To the best of the

1 Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations
2 set forth in the Notice.

3 **1.7 Complaint**

4 On or about November 28, 2016, DiPirro filed the instant action against Defendant
5 ("Complaint") for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

8 Defendant denies the material, factual, and legal allegations contained in the Notice and
9 maintains that all of the products it has manufactured, sold, or distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion of law,
12 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or
14 violation of law, the same being specifically denied by Defendant. This section shall not, however,
15 diminish or otherwise affect Defendant's obligations, responsibilities, and duties under this Consent
16 Judgment.

17 **1.9 Consent to Jurisdiction**

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

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean June 1, 2017.

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

25 **2.1 Reformulation Commitment**

26 In order to waive the second civil penalty under Section 3.2 below, Defendant shall only
27 manufacture for sale or distribute for sale in California, Products that are reformulated
28

1 (“Reformulated Products”). For purposes of this Consent Judgment, Reformulated Products are
2 Products that meet the Reformulation Standards of Section 2.2 below.

3 **2.2 Reformulation Standard**

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

8 **2.3 Product Warnings**

9 Commencing on the Effective Date, for all Products that contain DINP, and are
10 manufactured and shipped for sale in California by Defendant, Defendant shall provide a clear and
11 reasonable warning as set forth below. Each warning shall be prominently placed with such
12 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
13 to be read and understood by an ordinary individual under customary conditions before purchase or
14 use. Each warning shall be provided in a manner such that the consumer or user understands to
15 which specific Product the warning applies, so as to minimize the risk of consumer confusion. The
16 text of the warning shall be printed in black ink on a light background, in a font that is easy to read
17 and legible, but in no case less than in 10 point font.

18 For Products that are not Reformulated Products, and are manufactured and shipped for sale
19 in California by Defendant prior to August 1, 2018, Defendant may use one of the following
20 warnings, at Defendant’s option. For Products that are not Reformulated Products, that are
21 manufactured and shipped for sale in California by Defendant after July 31, 2018, Defendant shall
22 use the warning language under “Option 2” below, which shall include a symbol consisting of a black
23 exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the
24 symbol may be black on white if the color yellow is otherwise not used on the Product’s packaging).

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1 **OPTION 1:**

2 **WARNING: This product contains DINP, a phthalate chemical**
3 **known to the State of California to cause cancer.**

4 **OPTION 2:**



6 **WARNING: This product can expose you to chemicals including**
7 **DINP, which are known to the State of California to**
8 **cause cancer. For more information go to**
9 **www.P65Warnings.ca.gov.**

10 **3. MONETARY PAYMENTS**

11 **3.1 Initial Civil Penalty.** Defendant shall pay an initial civil penalty in the amount of
12 \$5,000.00 within two (2) business days of Court approval of this Consent Judgment. The penalty
13 payment will be allocated by DiPirro’s counsel in accordance with California Health & Safety Code §
14 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
15 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.
16 The initial penalty payment shall be delivered to the address listed in Section 3.3 below.

17 **3.2 Final Civil Penalty.** Defendant shall pay a final civil penalty of \$15,000.00 on or
18 before December 1, 2017. The final civil penalty shall be waived in its entirety, however, if, no later
19 than December 1, 2017, an officer of Defendant provides DiPirro with written certification that, as of
20 the date of such certification and continuing into the future, Defendant has met the reformulation
21 standard specified in Section 2 above, such that all Products manufactured for sale in California by
22 Defendant are Reformulated Products. The certification in lieu of a final civil penalty payment
23 provided by this Section is a material term, and time is of the essence. The penalty payment will be
24 allocated by DiPirro’s counsel in accordance with California Health & Safety Code § 25249.12(c)(1)
25 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
26 Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro. The penalty
27 payment or certification shall be delivered to the address listed in Section 3.3 below.

28 **3.3 Payments Held in Trust.** Payments shall be delivered to the offices of Bush &
Henry, Attorneys at Law, PC, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403, within
three (3) business days of Court approval of this Consent Judgment, and shall be in the form of three
checks for the following amounts made payable to:

- 1 (a) "Bush & Henry, Attorneys at Law" in the amount of \$3,750.00 for payment to
2 OEHHA. Bush & Henry agree to forward such funds to OEHHA in a timely
3 manner. Alternatively, at Defendant's option, it can choose to deliver to the
4 offices of Bush & Henry a certified or cashier's check made payable to
5 "Office of Environmental Health Hazard Assessment."
- 6 (b) "Bush & Henry, Attorneys at Law" in the amount of \$1,250.00 as payment to
7 Michael DiPirro. Bush & Henry agree to forward such funds in a timely
8 manner. Alternatively, at Defendant's option, it can choose to deliver to the
9 offices of Bush & Henry a certified or cashier's check made payable to
10 "Michael DiPirro."
- 11 (c) "Bush & Henry, Attorneys at Law, PC" in the amount of \$50,000, as payment
12 for attorneys' fees and costs pursuant to Section 4 below.

13 For any payment that is returned for insufficient funds, payment must be made by a cashier's
14 check within ten (10) calendar days of notification of insufficient funds, plus a 10% service fee.
15 Any payment that is not actually received by the due date will also be subject to a 10% fee.

16 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro's counsel with a separate
17 1099 form for each of its payments under this Agreement as follows:

- 18 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
19 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- 20 (b) "Michael DiPirro," whose address and tax identification number shall be
21 furnished upon request after this Agreement has been fully executed by the
22 Parties for his portion of the civil penalties paid; and
- 23 (c) "Bush & Henry, Attorneys at Law, PC," for fees and costs reimbursed
24 pursuant to Section 4.

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

26 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
28 issue to be resolved after the material terms of the agreement had been settled. The parties then

1 attempted to (and did) reach an accord on the compensation due to OEHHA, DiPirro and his counsel
2 under general contract principles and the private attorney general doctrine codified at California Code
3 of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement.
4 Defendant shall pay \$50,000 for fees and costs incurred as a result of investigating, bringing this
5 matter to Defendant’s attention, and negotiating a settlement in the public interest. Defendant shall
6 issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the check payable to “Bush &
7 Henry, Attorneys at Law, PC” and shall deliver payment within three (3) business days of Court
8 approval of this Consent Judgment to the address listed in Section 3.3 above.

9 **5. CLAIMS COVERED AND RELEASED**

10 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

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

17 **5.2 DiPirro’s Individual Release of Claims**

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

25 **5.3 Defendant’s Release of DiPirro**

26 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
28 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made,

1 (or those that could have been taken or made) by DiPirro and his attorneys and other
2 representatives, whether in the course of investigating claims, otherwise seeking to enforce
3 Proposition 65 against it in this matter, or with respect to the Products.

4 **6. COURT APPROVAL**

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

8 **7. SEVERABILITY**

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

12 **8. GOVERNING LAW**

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

22 **9. NOTICES**

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

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1 For Defendant DELUXE CORPORATION:

2 Garth N. Ward, Esq.
3 Lewis Brisbois Bisgaard & Smith LLP
4 701 B Street, Suite 1900
5 San Diego, CA 92101

6 For DiPirro:

7 Bush & Henry, Attorneys at Law, PC
8 3270 Mendocino Avenue, Suite 2E
9 Santa Rosa, CA 95403

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

12 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

16 **11. POST EXECUTION ACTIVITIES**

17 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
18 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
19 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
20 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
21 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
22 judicial approval of the settlement in a timely manner.

23 **12. MODIFICATION**

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

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13. AUTHORIZATION

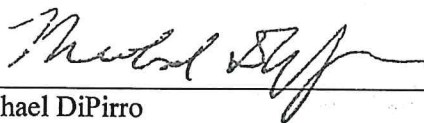
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: 5-25-17

Date: 5/21/17

By: 
Michael DiPirro

By: 
S. Michael Schroeder Sr., President
DELUXE CORPORATION