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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 CAROUSEL CHECKS INC.; and DOES 1-  
16 150, inclusive,

17 Defendants.

Case No. RG16824660

**[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 CAROUSEL CHECKS INC.; (“Defendant”), with DiPirro and Defendant individually referred to  
5 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 DiPirro alleges that Defendant is a person in the course of doing business for purposes of the  
12 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et*  
13 *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, *Sage Green*  
23 *Vinyl Checkbook Cover (SKU # CVP-GRN06)* (“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 December 7, 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 this Consent Judgment as a full and final  
21 resolution of all claims up through and including the Effective Date which were or could have been  
22 asserted in this action based on the facts alleged in the Notice and Complaint.

23 **1.10 Effective Date**

24 The Effective Date of this Consent Judgment is the date on which DiPirro serves notice on  
25 Defendant that it has been entered as a Judgment by this Court.  
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1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Reformulation Commitment**

3 In order to waive the second civil penalty under Section 3.2 below, Defendant shall only  
4 manufacture for sale or distribute for sale in California, Products that are reformulated  
5 (“Reformulated Products”). For purposes of this Consent Judgment, Reformulated Products are  
6 Products that meet the Reformulation Standards of Section 2.2 below.

7 **2.2 Reformulation Standard**

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

12 **2.3 Product Warnings**

13 Commencing on the Effective Date, for all Products that contain DINP, and are  
14 manufactured and shipped for sale in California by Defendant, Defendant shall provide a clear and  
15 reasonable warning as set forth below, on each Product or in each Product’s packing slip or receipt.  
16 Each warning shall be prominently placed with such conspicuousness as compared with other  
17 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
18 individual under customary conditions before purchase or use. Each warning shall be provided in a  
19 manner such that the consumer or user understands to which specific Product the warning applies,  
20 so as to minimize the risk of consumer confusion. The text of the warning shall be printed in black  
21 ink on a light background, in a font that is easy to read and legible, but in no case less than in 6  
22 point font.

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

3  
4 **OPTION 1:**

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

7 **OPTION 2:**



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

13 **3. MONETARY PAYMENTS**

14 In full satisfaction of all potential civil penalties, payment in lieu of civil penalties, attorney's  
15 fees and costs, Defendant shall make a total payment of \$17,000.00, as set forth below.

16 **3.1 Initial Civil Penalty.** Defendant shall pay an initial civil penalty in the amount of  
17 \$750.00 within three (3) business days of Court approval of this Consent Judgment. The penalty  
18 payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code §  
19 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
20 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro.  
21 The initial penalty payment shall be delivered to the address listed in Section 3.3 below.

22 **3.2 Final Civil Penalty.** Defendant shall pay a final civil penalty of \$1,500.00 on or  
23 before December 1, 2017. The final civil penalty shall be waived in its entirety, however, if, no later  
24 than December 1, 2017, an officer of Defendant provides DiPirro with written certification that, as of  
25 the date of such certification and continuing into the future, Defendant has met the reformulation  
26 standard specified in Section 2 above, such that all Products manufactured for sale in California by  
27 Defendant are Reformulated Products. The certification in lieu of a final civil penalty payment  
28 provided by this Section is a material term, and time is of the essence. 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

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

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

- 7 (a) “Bush & Henry, Attorneys at Law” in the amount of \$562.50 for payment to  
8 OEHHA. Bush & Henry agree to forward such funds to OEHHA in a timely  
9 manner. Alternatively, at Defendant’s option, it can choose to deliver to the  
10 offices of Bush & Henry a certified or cashier’s check made payable to  
11 “Office of Environmental Health Hazard Assessment.”
- 12 (b) “Bush & Henry, Attorneys at Law” in the amount of \$187.50 as payment to  
13 Michael DiPirro. Bush & Henry agree to forward such funds in a timely  
14 manner. Alternatively, at Defendant’s option, it can choose to deliver to the  
15 offices of Bush & Henry a certified or cashier’s check made payable to  
16 “Michael DiPirro.”
- 17 (c) “Bush & Henry, Attorneys at Law, PC” in the amount of \$14,750, as payment  
18 for attorneys’ fees and costs pursuant to Section 4 below.

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

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

22 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro’s counsel with a separate  
23 1099 form for each of its payments under this Agreement as follows:

- 24 (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,  
25 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- 26 (b) “Michael DiPirro,” whose address and tax identification number shall be  
27 furnished upon request after this Agreement has been fully executed by the  
28 Parties for his portion of the civil penalties paid; and

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

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

4 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without  
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
6 issue to be resolved after the material terms of the agreement had been settled. The parties then  
7 attempted to (and did) reach an accord on the compensation due to OEHHA, DiPirro and his counsel  
8 under general contract principles and the private attorney general doctrine codified at California Code  
9 of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement.  
10 Defendant shall pay \$14,750 for fees and costs incurred as a result of investigating, bringing this  
11 matter to Defendant's attention, and negotiating a settlement in the public interest. Defendant shall  
12 issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the check payable to "Bush &  
13 Henry, Attorneys at Law, PC" and shall deliver payment within three (3) business days of Court  
14 approval of this Consent Judgment to the address listed in Section 3.3 above.

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1 DiPirro's Public Release of Proposition 65 Claims** DiPirro, acting on his own  
17 behalf and in the public interest, releases Defendant, its officers, directors, attorneys,  
18 representatives, shareholders, subsidiaries, affiliates, divisions customers, distributors, and retailers,  
19 and all other downstream entities, as well as Defendant's Professional Service Organization,  
20 Insperty PEO Services, L.P., from all claims for violations of Proposition 65 up through the  
21 Effective Date based on exposures to DINP from the Products, as set forth in the Notice and the  
22 Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with  
23 Proposition 65 with respect to exposures to DINP from the Products sold by Defendant after the  
24 Effective Date, as set forth in the Notice.

25 **5.2 DiPirro's Individual Release of Claims**

26 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a  
27 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
28 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,

1 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,  
2 suspected or unsuspected, arising out of alleged or actual exposures to DINP in the Products  
3 imported, manufactured, sold or distributed for sale by Defendant in the State of California before the  
4 Effective Date.

5 This Consent Judgment is a full, final, and binding resolution between DiPirro on behalf of  
6 himself, and Defendant and its respective officers, directors, shareholders, employees, agents, parent  
7 companies, subsidiaries, divisions, franchisees, licensees, customers, distributors, wholesalers,  
8 retailers, and all other downstream entities in the distribution chain of any Covered Product,  
9 including Defendant's Professional Service Organization, Insperty PEO Services, L.P., and the  
10 predecessors, successors, and assigns of any of them (collectively, "'Released Parties'"). DiPirro  
11 hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of  
12 action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could  
13 have been asserted from the handling, use, or consumption of the Covered Product, as to any alleged  
14 violation of Proposition 65 or its implementing regulations arising from the failure to provide  
15 Proposition 65 warnings on the Covered Product regarding DINP up to and including 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  
22 representatives, whether in the course of investigating claims, otherwise seeking to enforce  
23 Proposition 65 against it in this matter, or with respect to the Products.

### 24 **5.4 Civil Code Section 1542 Release**

25 It is possible that other claims not known to the Parties, arising out of the facts alleged in  
26 the Notice or the Complaint and relating to the Covered Product, will develop or be discovered.

27 DiPirro on behalf of itself only, and Defendant on behalf of itself only, acknowledge that this  
28 Consent Judgment is expressly intended to cover and include all such claims up through and 7



1 including the Effective Date, including all rights of action therefore. DiPirro and Defendant  
2 acknowledge that the claims released above may include unknown claims, and nevertheless  
3 waive California Civil Code Section 1542 as to any such unknown claims. California Civil  
4 Code Section 1542 reads as follows:

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

10 DiPirro on behalf of itself only, and Defendant on behalf of itself only, acknowledge and understand  
11 the significance and consequences of this specific waiver of California Civil Code Section 1542.

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 provision of this Consent  
18 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be  
19 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 Products, then Defendant may provide  
24 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant  
25 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.  
26 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to  
27 comply with any pertinent state or federal toxics control laws. This Consent Judgment shall be  
28 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 CAROUSEL CHECKS INC.:

7 Melissa A. Jones, Esq.  
8 Stoel Rives LLP  
9 500 Capitol Mall, Suite 1600  
Sacramento, CA 95814

10 For DiPirro:

11 Bush & Henry, Attorneys at Law, PC  
12 3270 Mendocino Avenue, Suite 2E  
Santa Rosa, CA 95403

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.

**13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

If a dispute arises with respect to either Party's compliance with the terms of this Consent Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be filed in the absence of such a good faith attempt to resolve the dispute beforehand.

**14. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter herein, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party. No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

**15. AUTHORIZATION**

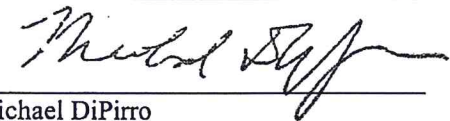
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

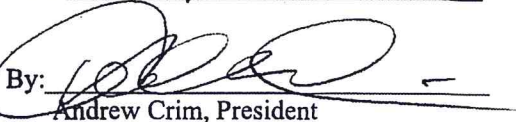
**AGREED TO:**

**AGREED TO:**

Date: 2-15-17

Date: 2/14/17

By:   
Michael DiPirro

By:   
Andrew Crim, President  
CAROUSEL CHECKS INC.