

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”) and Downtown Patient Group dba DTPG (“DTPG”), with DiPirro and DTPG individually referred to as a “Party” and collectively as the “Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. DTPG employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

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

1.3 Product Description

The products covered by this Settlement Agreement are cannabis or marijuana intended for smoking and paraphernalia for smoking marijuana, the consumption and use of which allegedly results in exposures to marijuana smoke, that are sold, or distributed for sale in California by DTPG, including, but not limited to, unprocessed marijuana intended to be heated until combustion, then inhaled (specifically, flowers, leaves, and other organic parts of marijuana plants such as kief), and paraphernalia for smoking marijuana, including, but not limited to, water bongs, smoking pipes, rolling papers, blunts and vaporizers that do not have digital heat control/cannot be definitively set at a temperature below combustion point (“Products”).

1.4 Notice of Violation

On or about December 9, 2016, DiPirro served DTPG and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that DTPG violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to marijuana smoke. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

DTPG denies the material, factual, and legal allegations contained in the Notice and contends that it provides medical marijuana to California residents in accordance with applicable state laws and requirements relating to medicinal use of marijuana. Nothing in this Settlement Agreement shall be construed as an admission by DTPG of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by DTPG of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by DTPG. This section shall not, however, diminish or otherwise affect DTPG’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall be March 1, 2017.

2. INJUNCTIVE RELIEF: WARNINGS

Commencing on or before the Effective Date, DTPG shall provide clear and reasonable warnings as set forth below, for all Products sold in California. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner

such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

(a) **Product Labeling or Entry Door Warnings.** Between the Effective Date and July 31, 2018, DTPG shall comply with Product Labeling or Entry Door Warnings, at its option:

OPTION 1: Product Labeling Between the Effective Date and July 31, 2018, DTPG shall affix a warning to the packaging, labeling, or directly on each Product sold in California by DTPG as shown below, with the text in [brackets] being optional at the discretion of DTPG. The warning text shall be printed in black ink, in a font that is easy to read and legible, in the same type size or larger than the Product's description text. Employees may not write over the text of the warning for any reason.

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. [Do not consume products that produce marijuana smoke near pregnant women, children or pets.]

OPTION 2: Entry Door Warnings. Between the Effective Date and July 31, 2018, on or adjacent to all entry doors of all California locations of DTPG's store-front dispensaries, into any room in which a customer can purchase any Product from DTPG, and in the Lobby/waiting area, DTPG shall post a sign bearing one of the specified warnings shown below, with the text in [brackets] being optional at the discretion of DTPG. The warning sign shall be at least 8 1/2 inches by 11 inches, and posted at a height 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: Smoke from cannabis contains chemicals known to the State of California to cause cancer [and birth defects or other

reproductive harm]. [Do not use near pregnant women, children or pets.]

OR

WARNING: Use of products sold here 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.]

(b) **Warning Sign at Festivals/Conferences.** Between the Effective Date and July 31, 2018, for all festivals, conferences, and other public events that take place in California, in which either DTPG operates a booth or other space from which it sells any of the Products, DTPG shall post a sign with warning language as shown below, with the text in [brackets] being optional at the discretion of DTPG. 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].

(c) **Internet Website or Telephone Order Warnings.** Between the Effective Date and July 31, 2018, for all Products that are purchased via orders placed on a website or by telephone, to be delivered directly to DTPG's members by DTPG or any of its affiliated or contracted companies, the website from which the order is placed shall either, at DTPG's option: a) provide a warning as shown below on the receipt; b) include in the delivery bag a warning as shown below, on an insert that is at least three inches by five inches; OR c) provide a warning as shown below, on the webpage/receipt displayed to a purchaser during the checkout process (if

purchased via a website). The warning shall be provided as shown below, with the text in [brackets] being optional at the discretion of DTPG, 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].

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.]

(d) Warnings After July 31, 2018

For all Products that are sold or otherwise distributed in California by DTPG after July 31, 2018, DTPG 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 DTPG.



WARNING: Use of this [cannabis] product will expose you [and those in your immediate vicinity] to chemicals including marijuana smoke, which are known to the State of California to cause cancer. [Do not consume products that produce marijuana smoke near pregnant women, children or pets.] For more information go to www.P65Warnings.ca.gov.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). DTPG shall make a civil penalty payment of \$2,000, in accordance with this section, on or before the Effective Date. The penalty payment will be allocated 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 in accordance with Section 3.2 below. The penalty payment shall be delivered to the address listed in Section 3.2 below.

3.2 Payments Held in Trust. Payments shall be delivered to the Law Offices of Bush & Henry, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403, and shall be in the form of three checks for the following amounts made payable to:

- (a) “Bush & Henry, Attorneys at Law” in the amount of \$1,500.00 for payment to OEHHA. Law Offices of Bush & Henry agree to forward such funds to OEHHA in a timely manner. Alternatively, at DTPG’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) “Bush & Henry, Attorneys at Law” in the amount of \$500.00 as payment to Michael DiPirro. Law Offices of Bush & Henry agree to forward such funds in a timely manner. Alternatively, at DTPG’s option, it can choose to deliver to the offices of Bush & Henry a certified or cashier’s check made payable to “Michael DiPirro.”
- (c) “Bush & Henry, Attorneys at Law” in the amount of \$15,000, as payment for attorneys’ fees and costs pursuant to Section 4 below.

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

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

3.3 Issuance of 1099 Forms. DTPG shall provide DiPirro's counsel with a separate 1099 forms for each of its payments under this Agreement to:

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

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. DTPG then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. DTPG shall pay \$15,000 for fees and costs incurred as a result of investigating, bringing this matter to DTPG's attention, and negotiating a settlement in the public interest. DTPG shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the check payable to "Bush & Henry, Attorneys at Law" and shall deliver payment to the address listed in Section 3.2 above, as follows: \$7,500 due on or before the Effective Date; and a second payment of \$7,500 due on or before April 1, 2017.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Release of DTPG

This Settlement Agreement is a full, final, and binding resolution between DiPirro and DTPG of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against DTPG, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom DTPG directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), for unwarned exposures to marijuana smoke from the Products sold or distributed for sale in California by DTPG prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against DTPG and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to marijuana smoke from Products sold, or distributed for sale in California by DTPG prior to the Effective Date.

5.2 DTPG's Release of DiPirro

DTPG, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

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

8. NOTICES

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

For Downtown Patient Group dba DTPG:

Arthur D. Hodge, Esq.
Attorney At Law
701 Palomar Airport Road, Suite 300
Carlsbad, CA 92011

For DiPirro:

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

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

9. **COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. **POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. **AUTHORIZATION**

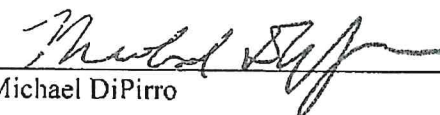
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

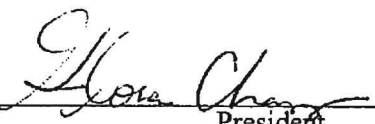
AGREED TO:

AGREED TO:

Date: 3-1-17

Date: 2/28/17

By: 
Michael DiPirro

By: 
Gloria Chang, President
Downtown Patient Group dba DTPG