

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”), Privateer Holdings, Inc. and Little Bay, Inc. (collectively “Privateer”), with DiPirro and Privateer 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. Privateer 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 Privateer sells, or distributes for sale in the state of California, marijuana intended for smoking, 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, the consumption and use of which allegedly results in exposures to marijuana smoke, that are sold, or distributed for sale in California by Privateer, 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), pre-rolled cigar-type cannabis products known as “blunts” or “cones” (“Product” or “Products”).

### 1.4 Notice of Violation

On or about April 20, 2017, DiPirro served Privateer, 99 High Tide Collective, 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 Privateer 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**

Privateer denies the material, factual, and legal allegations contained in the Notice and contends that all of the Products it has produced, sold, or distributed for sale in California, have been, and are, in compliance with all applicable state laws and requirements relating to medicinal use of marijuana. Nothing in this Settlement Agreement shall be construed as an admission by Privateer 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 Privateer of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Privateer. This section shall not, however, diminish or otherwise affect Privateer'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 December 5, 2017.

## **2. INJUNCTIVE RELIEF: WARNINGS**

Commencing on or before the Effective Date, Privateer shall provide clear and reasonable warnings as set forth below, for all Products sold or distributed in California. Each warning shall be prominently placed on or with the products, as described below, 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 Warning.** Between the Effective Date and August 30, 2018, Privateer shall affix a warning to the packaging, labeling, or directly on each Product sold or distributed for sale in California by Privateer as shown below, with the text in [brackets] being optional at the discretion of Privateer. The warning text shall be printed in a font, font size and ink that are easy to read and legible, and with the word “WARNING” in capital letters and bold print. Employees may not write over the text of the warning for any reason.

**WARNING: Smoking this product will expose you and those in your immediate vicinity to chemicals, including marijuana smoke, 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 August 30, 2018, for all festivals, conferences, and other public events that take place in California, at which Privateer operates a booth or other space and sells Products from such booth or other space it operates, Privateer shall post a sign with warning language as shown below. 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 a font, font size and ink that are easy to read and legible,

**WARNING: Smoking Marijuana 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 and birth defects or other reproductive**

(c) **Internet Website or Telephone Order Warnings.** Between the Effective Date and August 30, 2018, in the event Privateer ever sells Products via orders placed on a website or by telephone directly to California consumers, Privateer shall provide a warning as shown below via one of the following options: a) on the product; or b) printed on the receipt; or c) in the delivery bag on an insert that is at least three inches by five inches; or d) 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 Privateer, with the warning text printed in a font, font size and ink that are easy to read and legible.

**WARNING: Marijuana smoke contains chemicals known to the State of California to cause cancer [and birth defects or other reproductive harm].**

**OR**

**WARNING: Smoking this product will expose you [and those in your immediate vicinity] to chemicals, including marijuana smoke, 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 August 29, 2018**

For all Products that are sold or otherwise distributed in California by Privateer after August 29, 2018, Privateer shall use the warning language as set forth below and with the word “WARNING” in capital letters and bold print, 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 Privateer.



**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](http://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).** Privateer shall make a civil penalty payment of \$10,000, 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, 6761 Sebastopol Avenue, Suite 111, Sebastopol CA 95472, 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 \$7,500.00 for payment to OEHHA. Law Offices of Bush & Henry agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant’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 \$2,500.00 as payment to Michael DiPirro. Law Offices of Bush & Henry agree to forward such funds in a timely manner. Alternatively, at Defendant’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 \$41,250, 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.** Privateer 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. Privateer 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. Privateer shall pay \$41,250 for fees and costs incurred as a result of investigating, bringing this matter to Privateer's attention, and

negotiating a settlement in the public interest. Privateer 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 on or before December 12, 2017 to the address listed in Section 3.2 above.

## **5. CLAIMS COVERED AND RELEASED**

### **5.1 DiPirro’s Release of Privateer**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and Privateer 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 Privateer, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Privateer 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 Privateer 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 Privateer and Releasees from all claims whether known or unknown, suspected or unsuspected that he may have against Privateer 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 alleged or actual exposures to marijuana smoke from Products sold, or distributed for sale in California by Privateer prior to the Effective Date.

## **5.2 Privateer's Release of DiPirro**

Privateer, 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 Privateer 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 Defendant 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 Privateer Holdings, Inc., dba Marley Natural:

Margaret K. Cerrato-Blue, Esq.  
Fox Rothschild LLP



1001 Fourth Avenue, Suite 4500  
Seattle, WA 98154-1192

For DiPirro:

Bush & Henry, Attorneys at Law, PC  
6761 Sebastopol Avenue, Suite 111  
Sebastopol, CA 95472

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**

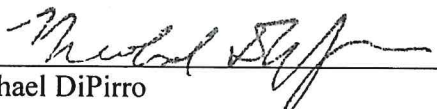
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


**AGREED TO:**

**AGREED TO:**

Date: 12/5/17

Date: December 5, 2017

By:   
Michael DiPirro

By:   
Brendan Kennedy, President  
Privateer Holdings, Inc.