

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 The Parties**

This Settlement Agreement is entered into by and between Donny Macias (“Macias”) and Pot Spot Collective (“PSC”). Together, Macias and PSC are collectively referred to as the “Parties.” Macias is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

PSC is considered a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. (“Proposition 65”).

#### **1.2 General Allegations**

Macias alleges that PSC 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 PSC, 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 May 30, 2017, Macias served PSC and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided PSC and such others, including public enforcers, with notice that alleged that PSC was in violation of California Health & Safety Code § 25249.5, for failing to warn consumers and customers in California that the Products expose users to marijuana smoke. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

PSC 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 PSC of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by PSC of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by PSC. This section shall not, however, diminish or otherwise affect PSC's obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Agreement is last executed by the Parties.

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

Commencing on or before the Effective Date, PSC 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 confusions.

(a) **Entry Door and Lobby Warning.** On or adjacent to all entry doors into any room in which a customer can purchase any Product from PSC, and in the Lobby/waiting area, PSC shall post a sign bearing one of the specified warnings shown below, with the text in [brackets] being optional at the discretion of PSC. 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) **Membership Agreement.** PSC shall provide a warning in its Membership Agreement, as shown below, with the text in [brackets] being optional at the discretion of PSC. The warnings provided shall be printed in black ink, in a font that is easy to read and legible, in at least a size 12 font, and separated from its surrounding text. The warning shall be provided on either the first or last page of the Membership Agreement; OR if the warning is on a page other than the first or last page, then each member shall initial the text of the warning to show he or she read and understood the warning. If PSC accepts Membership Agreements through a website, then each website-registered member must separately “click-through” to review and approve the warning transmitted in or with the Membership Agreement.

**WARNING:** Marijuana smoke 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.]

(c) **Internet Website Warning.** For all Products that are purchased via orders placed on a website, to be delivered directly to PSC members, the website from which the order is placed

shall either, at their 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. PSC shall not accept orders over the telephone unless a warning is provided in compliance with this section. In either case, the warning shall be provided as shown below, with the text in [brackets] being optional at the discretion of PSC, 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, 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) **Product Labeling.** PSC shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by PSC or any person selling the Products as shown below, with the text in [brackets] being optional at the discretion of PSC. 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 [and birth defects or other reproductive harm]. [Do not consume products that produce marijuana smoke near pregnant women, children or pets.]

(e) **Point-of-Sale Warnings.** In order that customers will view the warning before making the decision to purchase the Products at the dispensary, PSC shall post a warning sign, in the form below, using one of the following point-of-sale warning options: a) at each cash register in the store; b) at each display case in the store and on all receipts; OR c) on a stanchion (crowd control post) message sign located at the front of the cash register entry line and on all receipts. The website warning provided pursuant to § 2 (c), above, also shall be the point of sale warning provided to members who

purchase the Products via a website for subsequent delivery. The warning text shall be in the same type size or larger than the Product's description text.

**WARNING:** Marijuana smoke is a chemical known to the State of California to cause cancer.

**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.]

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

In settlement of all the claims referred to in this Settlement Agreement, PSC shall pay a total of \$500.00 as a Civil Penalty in accordance with this §. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (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 Macias. Each penalty payment shall be delivered to the addresses listed in § 3.2, below.

**3.1 Civil Penalty**

Within ten (10) business days of the Effective Date, PSC shall issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Macias" in the amount of \$250.00. The Civil Penalty payments shall be delivered to the addresses listed in § 3.2, below.

**3.2 Payment Procedures**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Macias, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**(b) Copy of Payments to OEHHA.** PSC agrees to provide Macias's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Macias, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

**(C) Tax Documentation.** PSC agrees to provide a completed IRS 1099 for its payments to, and Brodsky & Smith, on behalf of Macias, agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement:

(i) "Donny Macias" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;

(ii) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in § 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

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

The Parties acknowledge that Macias and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Macias and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, PSC shall reimburse Macias's counsel for fees and costs incurred as a result of investigating and bringing this matter to PSC's attention, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, PSC shall issue a check payable to "Brotsky & Smith, LLC" in the amount of \$10,500.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

##### **5.1 Macias' Release of Proposition 65**

This Settlement Agreement is a full, final and binding resolution between Macias, acting on his own behalf, and PSC of any violation of Proposition 65 that was or could have been asserted by Macias, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against PSC, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom PSC 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 PSC prior to the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to marijuana smoke from the Products sold by or through PSC after the Effective Date.

Macias, in his individual capacity, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Macias of any nature,

character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to marijuana smoke in the Products grown, cultivated, processed or sold or distributed for sale by PSC before the Effective Date.

## **5.2 PSC's Release of Macias**

PSC, 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 Macias 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 Macias 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.

## **5.3 California Civil Code § 1542**

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Macias on behalf of himself only, on one hand, and PSC, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2 above may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

Macias and PSC each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.



#### **5.4 Deemed Compliance with Proposition 65**

Compliance by PSC with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to marijuana smoke in the Products grown, cultivated, processed or sold or distributed for sale by Defendant before the Effective Date.

#### **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

#### **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California.

#### **8. NOTICES**

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

For PSC:

Brad Lee, A Professional Law Corporation  
3600 Wilshire Boulevard, Suite 2210  
Los Angeles, California 90010

For Macias:

Evan J. Smith  
Brodsky & Smith, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

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

9. **COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .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. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Macias agrees to comply with the reporting requirements referenced in Health & Safety Code § 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 and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement. These are all the terms of the agreement and there are no other terms.

**AGREED TO:**

**AGREED TO:**

Date:

8/21/18

Date:

By:

Donny Macias

Donny Macias

By:

Pot Spot Collective

9. COUNTERPARTS: SIGNATURES

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

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AGREED TO:

AGREED TO:

Date: \_\_\_\_\_ Date: 09/22/2018

By: \_\_\_\_\_ By: [Signature]  
Donny Macias Pot Spot Collective