

1 Jeremy Fietz, State Bar No. 200396
LAW OFFICES OF JEREMY FIETZ
2 1510 Fourth Street
Santa Rosa, CA 95404
3 Telephone: (707) 999-9999

4 David R. Bush, State Bar No. 154511
LAW OFFICE OF DAVID R. BUSH
5 321 South Main Street #502
Sebastopol, CA 95472
6 Telephone: (707) 321-5028
drbush@drbushlaw.com

7 Attorneys for Plaintiff
8 Michael DiPirro

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION
13

14 MICHAEL DIPIRRO,

15 Plaintiff,

16 v.

17
18 AYC GROUP, LLC; and DOES 1-150,

19 Defendants.

Case No. 22CV013241

[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 AYC GROUP, LLC; (“Defendant” or “AYC”), with DiPirro and Defendant individually referred
5 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 sells, or distributes for sale in the State of California a hair
16 grooming accessory that expose users to dibutyl phthalate (DBP) without first providing the clear and
17 reasonable exposure warning required by Proposition 65. DBP was listed pursuant to Proposition 65
18 as a chemical that is known to the State of California to cause cancer on December 2, 2005, and has
19 been subject to the warning requirements since December 2, 2006.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment is Spray Head (with hose) --AYC Product
22 number 00-XIT-SPYHD-031 (“Products”).

23 **1.6 Notice of Violation**

24 On or about April 21, 2022, DiPirro served Defendant and certain requisite public
25 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
26 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
27 customers and consumers in California that the Products expose users to DBP. To the best of the
28 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations 1

1 set forth in the Notice.

2 **1.7 Complaint**

3 On or about June 23, 2022, DiPirro filed the instant action against Defendant for the alleged
4 violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

5 **1.8 No Admission**

6 Defendant denies the material, factual, and legal allegations contained in the Notice and
7 contends that it sells Products to California residents in accordance with applicable state laws and
8 requirements. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
9 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
10 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
11 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.
12 This section shall not, however, diminish or otherwise affect Defendant’s obligations,
13 responsibilities, and duties under this Consent Judgment.

14 **1.9 Consent to Jurisdiction**

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

19 **1.10 Effective Date**

20 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
21 which the Court enters an order approving this Consent Judgment.

22 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

23 **2.1 Product Warnings.** Commencing within thirty (30) days of the Effective Date for all
24 Products that contain the Listed Chemical, and are shipped to a California address for sale by the
25 Noticed Parties, or any agent, distributor, or affiliated company working on behalf of the Noticed
26 Parties, the Noticed Parties shall provide a clear and reasonable warning on each Product as set forth
27 below in Section 2.3. Each warning shall be prominently placed with such conspicuousness as
28 compared with other words, statements, designs, or devices as to render it likely to be read and

1 understood by an ordinary individual under customary conditions before purchase or use. Each
2 warning shall be provided in a manner such that the consumer or user understands to which specific
3 Product the warning applies, so as to minimize the risk of consumer confusion.

4
5 **2.2 Internet Warnings.** For all Products that the Noticed Parties offer for sale directly to
6 consumers in California via the internet, they shall provide a warning for such Products by
7 including the warning set forth below in Section 2.3 on one or more of the following: a) on the
8 product display page; b) on the product packaging box, or c) by including a warning in the shipment
9 to the California consumer.

10 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light
11 background, in a font that is easy to read and legible, but in no case less than a size 12 font. The
12 Noticed Parties shall use the warning language as set forth below, which shall include a
13 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
14 outline as shown below (the symbol may be black or white if the color yellow is otherwise not used
15 on the Product’s packaging).



18 **WARNING: This product can expose you to chemicals including DBP, which is**
19 **known to the State of California to cause cancer. For more information**
20 **go to www.P65Warnings.ca.gov.**

21 **3. MONETARY PAYMENTS**

22 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The
23 Noticed Parties shall make a civil penalty payment of \$3500, in accordance with this section, within 5
24 days of the Effective Date. The penalty payment will be allocated in accordance with California
25 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
26 Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the
27

1 penalty remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be
2 remitted in accordance with the procedure set out in Section 3.2.

3 **3.2 Payments.** All payments shall be delivered within 5 business days of the Effective Date
4 by ACH payment, Zelle, or wire transfer to the account of Jeremy Fietz (bank information given
5 upon settlement) or in the alternative to Jeremy Fietz, Attorney at Law, 1510 Fourth Street, Santa
6 Rosa CA 95404 in the form of three checks for the following amounts made payable to:

7 (a) "Jeremy Fietz, Attorney at Law" in the amount of \$2625 for payment of 75%
8 of the civil penalty to OEHHA. Counsel for DiPirro agree to forward such
9 funds to OEHHA in a timely manner. Alternatively, at Defendant's option, it
10 can choose to deliver a certified or cashier's check made payable to "Office of
11 Environmental Health Hazard Assessment."

12
13 (b) "Jeremy Fietz, Attorney at Law " in the amount of \$875), as payment of 25%
14 of the civil penalty to Michael DiPirro. Counsel for DiPirro agree to forward
15 such funds in a timely manner. Alternatively, at Defendant's option, it can
16 choose to deliver a certified or cashier's check made payable to "Michael
17 DiPirro."

18
19 (c) "Jeremy Fietz, Attorney at Law" in the amount of \$63,000) as payment for
20 attorneys' fees and costs pursuant to Section 4 below.

21 For any payment that is returned for any reason, including insufficient funds, a payment for
22 the entire amount owed must be made by AYC in form of a cashier's check within three (3) calendar
23 days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any
24 payment that is not actually received by the due date will also be subject to a 10% late fee.

25 **3.3 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro's counsel with a
26 separate 1099 form for each of its payments under this Agreement to:

27 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
28 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;

1 (b) “Michael DiPirro,” whose address and tax identification number shall be
2 furnished upon request after this Agreement has been fully executed by the
3 Parties for his portion of the civil penalties paid; and

4 (c) “Jeremy Fietz, Attorney at Law” whose address and tax identification
5 number shall be furnished upon request after this Agreement has been fully
6 executed by the Parties, for fees and costs reimbursed pursuant to Section 4.

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

8 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
10 issue to be resolved after the material terms of the agreement had been settled. Defendant then
11 expressed a desire to resolve the fee and cost issue after the other settlement terms had been finalized.
12 The parties then attempted to (and did) reach an accord on the compensation due to OEHHA, DiPirro
13 and his counsel under general contract principles and the private attorney general doctrine codified at
14 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
15 this agreement. Defendant shall pay \$63,000 for fees and costs incurred as a result of investigating,
16 bringing this matter to Defendant’s attention, and negotiating a settlement in the public interest.
17 Defendant shall deliver payments as described in Section 3, above.

18 **5. CLAIMS COVERED AND RELEASED**

19 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

20 DiPirro, acting on his own behalf and in the public interest, releases Defendant, its officers,
21 directors, attorneys, representatives, shareholders, subsidiaries, affiliates, divisions and retailers,
22 including but not limited to Emarketline, Inc., from all claims for violations of Proposition 65 up
23 through the Effective Date based on exposures to DBP from the use of the Products, as set forth in
24 the Notice and the Complaint. Compliance with the terms of this Consent Judgment constitutes
25 compliance with Proposition 65 with respect to exposures to DBP from the use of the Products sold
26 by Defendant after the Effective Date, as set forth in the Notice.
27
28

1 **5.2 DiPirro’s Individual Release of Claims**

2 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
5 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,
6 suspected or unsuspected, arising out of alleged or actual exposures to DBP from the use of the
7 Products sold or distributed for sale by Defendant in the State of California before the Effective Date.

8 **5.3 Defendant’s Release of DiPirro**

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

15 **6. COURT APPROVAL**

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

19 **7. SEVERABILITY**

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

23 **8. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the State of California
25 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
26 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
27 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
28 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.

1 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
2 comply with any pertinent state or federal toxics control laws.

3 **9. NOTICES**

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

8
9 For Defendant AYC:

10 John Epperson, Esq.
11 Buchalter
12 425 Market Street, Suite 2900
13 San Francisco, CA 94105
14 jepperson@buchalter.com

15 For Plaintiff DiPirro:

16 Jeremy Fietz, Attorney-at-Law
17 1510 Fourth Street
18 Santa Rosa CA 95404
19 Jeremy@superawesomelawyer.com

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

22 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **11. POST EXECUTION ACTIVITIES**

27 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
28 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
§ 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and

1 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
2 judicial approval of the settlement in a timely manner.

3 **12. MODIFICATION**

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

7 **13. AUTHORIZATION**

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

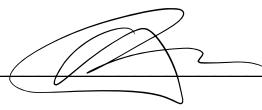
11
12 **AGREED TO:**

AGREED TO:

13 Date: 10/26/2022

13 Date: 10/27/2022

14
15
16 By:  _____
Michael DiPirro

15
16 By:  _____
Anderson Chen, Print name
Manager, Position
AYC GROUP, LLC