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8 Attorneys for Plaintiff
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 AVIATION SUPPLIES & ACADEMICS,
INC.; and DOES 1-150,
19 Defendants.

Case No. 22-CV-018423

[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 AVIATION SUPPLIES & ACADEMICS, INC. (“Defendant” or “ASA”), with DiPirro and
5 Defendant individually referred 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 binders
16 that expose users to Diisononyl Phthalate (“DINP”) without first providing the clear and reasonable
17 exposure warning required by Proposition 65. DINP was listed pursuant to Proposition 65 as a
18 chemical that is known to the State of California to cause cancer on December 20, 2013, and has been
19 subject to the warning requirements since December 20, 2014.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are binders that are sold, or distributed for
22 sale in California by Defendant, including, but not limited to the *7 Ring Approach Plate Binder, Item*
23 *# ASA-AP-BD-7RNG*. (“Products”).

24 **1.6 Notice of Violation**

25 On or about June 17, 2022, DiPirro served Defendant and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of
27 DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its customers and
28 consumers in California that the Products expose users to DINP. To the best of the Parties’

1 knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth
2 in the Notice.

3 **1.7 Complaint**

4 On or about September 26, 2022, DiPirro filed the instant action against Defendant for the
5 alleged violations of Health & Safety Code § 25249.6 that are the subject of the Notice. The pending
6 action is *Michael DiPirro v. Aviation Supplies & Academics, Inc.*, Alameda Superior Court case
7 number 22CV018423.

8 **1.8 No Admission**

9 Defendant denies the material, factual, and legal allegations contained in the Notice and
10 contends that (a) it no longer offers the Products for sale, and (b) at all times, it sold Products to
11 California residents in accordance with applicable state laws and requirements. Nothing in this
12 Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion
13 of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute
14 or be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or
15 violation of law, the same being specifically denied by Defendant. This section shall not, however,
16 diminish or otherwise affect Defendant's obligations, responsibilities, and duties under this Consent
17 Judgment.

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
25 document is fully executed by all parties.

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

27 **2.1 Product Warnings.** Commencing within thirty (30) days of the Effective Date for any of
28 Defendant's Products that contain the Listed Chemical (which Defendant will determine through its

1 own, independent testing), and are shipped to a California address for sale by Defendant, or any
2 agent, distributor, or affiliated company working on behalf of Defendant, Defendant shall provide a
3 clear and reasonable warning on the label of each Product as set forth below in Section 2.3. Each
4 warning shall be prominently placed with such conspicuousness as compared with other words,
5 statements, designs, or devices as to render it likely to be read and understood by an ordinary
6 individual under customary conditions before purchase or use. Each warning shall be provided in a
7 manner such that the consumer or user understands to which specific Product the warning applies, so
8 as to minimize the risk of consumer confusion.

9
10 **2.2 Internet Warnings.** In addition to the warning specified in Section 2.1 above, for all
11 Products that Settling Defendant offers for sale directly to consumers in California via the
12 internet, Settling Defendant shall provide a warning for such Products by including the warning
13 set forth below in Section 2.3 on one or more of the following: (a) on the same web page on
14 which a Covered Product is displayed; (b) on the same web page as the order form for a
15 Covered Product; (c) on the same web page as the price for any Covered Product; or (d)
16 on one or more web pages displayed to a purchaser during the checkout process. The
17 internet warning described above can also be delivered through a hyperlink using the word
18 “[California Prop 65] WARNING” (language in brackets optional)

19
20 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light
21 background, in a font that is easy to read and legible, but in no case less than a size 6 font.
22 Defendant shall use the warning language as set forth below, which shall include a
23 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
24 outline as shown below (the symbol may be black or white if the color yellow is otherwise not used
25 on the Product’s packaging).



1 **WARNING: This product will expose you to DINP, a chemical known to the**
2 **State of California to cause cancer. For more information go to**
3 **www.P65Warnings.ca.gov.**

4 **3. MONETARY PAYMENTS**

5 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).**

6 Defendant shall make a civil penalty payment of \$2,000 (two thousand dollars), in accordance with
7 this section, on or before the Effective Date. The penalty payment will be allocated in accordance
8 with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the
9 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%
10 of the penalty remitted to DiPirro in accordance with Section 3.2 below. However, DiPirro shall be
11 solely responsible for making the payment (\$1,500) to OEHHA. The penalty payment shall be
12 remitted in accordance with the procedure set out in Section 3.2.

13 **3.2 Payments.** All payments shall be received within three business days of the Effective
14 Date by ACH payment, Zelle, or wire transfer to the account of Jeremy Fietz (bank information given
15 upon settlement) or in the alternative by check to Jeremy Fietz, Attorney at Law, 1510 Fourth Street,
16 Santa Rosa CA 95404. Payments by check shall be for the entire amount of all monetary payments
17 made payable to: “Jeremy Fietz, Attorney at Law” and must be in-hand no later than three business
18 days after the Effective Date. DiPirro shall be solely responsible for making the payment (\$1,500) to
19 OEHHA.

20 For any payment that is returned for any reason, including insufficient funds, a payment for
21 the entire amount owed must be made by ASA in the form of a wire transfer, as described above, or
22 by *cashier’s check* within three calendar days of notification to ASA of the returned check. A 10%
23 service fee shall be due to DiPirro’s attorneys for any late payment for any reason.

24 **3.3 Issuance of 1099 Forms.** Defendant shall provide DiPirro’s counsel with a separate
25 1099 form for its payment under this Agreement to:

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

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

2 DiPirro's attorneys have agreed to perform all work and cover all costs in this case as part of
3 their *pro bono* service to our client and the people of the State of California.

4 **5. CLAIMS COVERED AND RELEASED**

5 **5.1 DiPirro's Public Release of Proposition 65 Claims**

6 DiPirro, acting on his own behalf and in the public interest, releases Defendant, its officers,
7 directors, attorneys, representatives, shareholders, subsidiaries, affiliates, divisions and retailers,
8 from all claims for violations of Proposition 65 up through the Effective Date based on exposures to
9 DINP from the use of the Products, as set forth in the Notice and the Complaint. Compliance with
10 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
11 exposures to DINP from the use of the Products sold by Defendant after the Effective Date, as set
12 forth in the Notice.

13 **5.2 DiPirro's Individual Release of Claims**

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

20 **5.3 Defendant's Release of DiPirro**

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

27 **6. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved and entered by the Court and shall

1 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
2 has been fully executed by all Parties.

3 **7. SEVERABILITY**

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

7 **8. GOVERNING LAW**

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

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

15 **9. NOTICES**

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

20
21 For Defendant ASA:

22 Kevin J. Cole, Esq.
23 KJC LAW GROUP
24 9701 Wilshire Blvd., Ste. 1000
25 Beverly Hills, CA 90212
26 Kevin@kjclawgroup.com

27 For Plaintiff DiPirro:

28 Jeremy Fietz, Attorney-at-Law
1510 Fourth Street
Santa Rosa CA 95404
Jeremy@superawesomelawyer.com

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **11. POST EXECUTION ACTIVITIES**

8 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
9 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
10 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
11 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
12 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
13 judicial approval of the settlement in a timely manner.

14 **12. MODIFICATION**


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

1 **13. AUTHORIZATION**

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

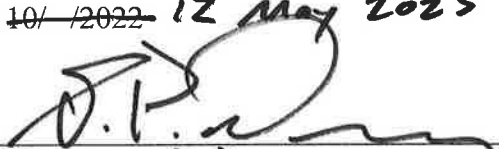
5
6 **AGREED TO:**

7 Date: [REDACTED] 05-15-2023

8
9 By: 
10 Michael DiPirro

6 **AGREED TO:**

7 Date: ~~10/ /2022~~ 12 May 2023

8
9 By: 
10 Stephen P. Dunn, Print name

11 _____, Position

12 ASA COMPANY

13 Vice-President and
14 General Counsel.