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7 Attorneys for Plaintiff  
8 Michael DiPirro

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

14 MICHAEL DIPIRRO,  
15 Plaintiff,

16 v.

17 UNITED PACIFIC INDUSTRIES, INC.; and  
18 DOES 1-150,  
19 Defendants.  
20

Case No. 22-CV-019163

**[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 UNITED PACIFIC INDUSTRIES, INC. (“Defendant” or “UNITED PACIFIC”), with DiPirro  
5 and 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 Arm  
16 Rests that expose users to Diethylhexyl phthalate (“DEHP”), a toxic chemical, and Shift Boots that  
17 expose users to Diisononyl phthalate (“DINP”), a toxic chemical, without first providing the clear and  
18 reasonable exposure warnings required by Proposition 65. DEHP was listed pursuant to Proposition  
19 65 as a chemical that is known to the State of California to cause cancer on January 1, 1988, and has  
20 been subject to the warning requirements since January 1, 1989. DINP was listed pursuant to  
21 Proposition 65 as a chemical that is known to the State of California to cause cancer on December 20,  
22 2013, and has been subject to the warning requirements since December 20, 2014.

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are Arm Rests that are sold, or distributed for  
25 sale in California by Defendant, including, but not limited to the *Universal Burgundy Padded Vinyl*  
26 *Arm Rest, Item #90255*; and Shift Boots that are sold, or distributed for sale in California by  
27 Defendant, including, but not limited to the *30" Vinyl Shift Boot-Black; Item# 91011* (the  
28 “Products”).

1           **1.6 Notices of Violation**

2           On or about June 17, 2022, DiPirro served Defendant and certain requisite public enforcement  
3 agencies with a “60-Day Notice of Violation” (“June 2022 Notice”), a document that informed the  
4 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its  
5 customers and consumers in California that the Products expose users to DEHP. To the best of the  
6 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations  
7 set forth in the June 2022 Notice.

8           On or about December 13, 2022, DiPirro served Defendant and certain requisite public  
9 enforcement agencies with a “60-Day Notice of Violation” (“December 2022 Notice”), a document  
10 that informed the recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing  
11 to warn its customers and consumers in California that the Products expose users to DINP. On or  
12 about January 15, 2023, DiPirro served Defendant and certain requisite public enforcement agencies  
13 with an “Amended 60-Day Notice of Violation” (“2023 Notice”), which amended the December  
14 2022 Notice. To the best of the Parties’ knowledge, no public enforcer has commenced and is  
15 diligently prosecuting the allegations set forth in the December 2022 Notice and/or the 2023 Notice.

16           **1.7 Complaint**

17           On or about October 6, 2022, DiPirro filed the instant action against Defendant for the alleged  
18 violations of Health & Safety Code § 25249.6 that are the subject of the June 17, 2022 Notice. On or  
19 about March 17, 2023, DiPirro amended the instant action against Defendant for the alleged  
20 violations of Health & Safety Code § 25249.6 related to Shift Boots and DINP that are the subject of  
21 the December 2022 Notice and 2023 Notice (collectively with the December 2022 Notice, the  
22 “Notices”).

23           **1.8 No Admission**

24           Defendant denies the material, factual, and legal allegations contained in the Notices and  
25 contends that it sells Products to California residents in accordance with applicable state laws and  
26 requirements. Nothing in this Consent Judgment shall be construed as an admission by Defendant of  
27 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this  
28 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,

1 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.  
2 This section shall not, however, diminish or otherwise affect Defendant’s obligations,  
3 responsibilities, and duties under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

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

9 **1.10 Effective Date**

10 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date of entry  
11 of this Consent Judgment by this Court.

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

13 **2.1** Within thirty days of the Effective Date (a.k.a. the “Warning Date”), as to all Products  
14 that contain the DEHP or DINP (“Listed Chemicals”) and are sold by and shipped to a California  
15 address for sale by United Pacific, United Pacific shall provide a clear and reasonable warning on  
16 each Product as set forth below in Section 2.3. Each warning shall be prominently placed with such  
17 conspicuousness as compared with other words, statements, designs, or devices as to render it likely  
18 to be read and understood by an ordinary individual under customary conditions before purchase or  
19 use. Each warning shall be provided in a manner such that the consumer or user understands to  
20 which specific Product the warning applies, so as to minimize the risk of consumer confusion. United  
21 Pacific’s compliance with the warning requirements set forth in Sections 2.1 through 2.3 or the  
22 warning requirements of Proposition 65 and related regulations, as may be amended from time to  
23 time, shall be deemed compliance with this Consent Judgment, provided that if any changes are made  
24 to the warning which deviate from the requirements of this Consent Judgment or Proposition 65 and  
25 its related regulations, such changes must be agreed to by Michael DiPirro through his counsel in  
26 writing.

27 **2.2 Internet Warnings.** By the Warning Date, for all Products that United Pacific  
28 offers for sale directly to consumers in California via the internet, United Pacific shall provide a

1 warning for such Products by including the warning set forth below in Section 2.3 on one or more  
2 of the following: a) on the product display page; b) on the product packaging box, or c) by including  
3 a warning in the shipment to the California consumer.

4 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light  
5 background, in a font that is easy to read and legible, but in no case less than a size 12 font. United  
6 Pacific shall use the warning language as set forth below in 2.3(a) or 2.3(b) for Products containing  
7 DEHP or the warning language as set forth below in 2.3(c) or 2.3(d) for Products containing DINP,  
8 which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle  
9 with a bold black outline as shown below (the symbol may be black or white if the color yellow is  
10 otherwise not used on the Product's packaging).

11 **a. Full Warning.**



12 **WARNING: This product can expose you to DEHP, a chemical known to the**  
13 **State of California to cause cancer and reproductive harm (male). For**  
14 **more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

15 **b. Short-Form Warning.**

16  **WARNING: Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

17 **c. Full Warning.**



18 **WARNING: This product can expose you to DINP, a chemical known to the**  
19 **State of California to cause cancer. For more information go to**  
20 **[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

21 **d. Short-Form Warning.**

22  **WARNING: Cancer Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

23 **3. MONETARY PAYMENTS**

24 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** Defendant  
25 shall make a civil penalty payment of \$3,000 (three thousand dollars), in accordance with this  
26 section, via check deposited with a courier within five (5) business days of the Effective Date. The  
27 penalty payment will be allocated in accordance with California Health & Safety Code §  
28

1 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
2 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in  
3 accordance with Section 3.2 below. The penalty payment shall be remitted in accordance with the  
4 procedure set out in Section 3.2.

5 **3.2 Payments.** All payments shall be deposited with a courier **within five (5) business days**  
6 of the Effective Date for overnight delivery to Jeremy Fietz, Attorney at Law, 1510 Fourth Street,  
7 Santa Rosa CA 95404, and shall be in the form of three checks for the following amounts made  
8 payable to:

9 (a) “Jeremy Fietz, Attorney at Law” in the amount of \$2,250 (two  
10 thousand two hundred fifty dollars) for payment of 75% of the civil penalty  
11 to OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a  
12 timely manner. Alternatively, at Defendant’s option, it can choose to deliver  
13 a certified or cashier’s check made payable to “Office of Environmental  
14 Health Hazard Assessment.”

15 (b) “Jeremy Fietz, Attorney at Law ” in the amount of \$750 (seven hundred fifty  
16 dollars), as payment of 25% of the civil penalty to Michael DiPirro. Counsel  
17 for DiPirro agree to forward such funds in a timely manner. Alternatively, at  
18 Defendant’s option, it can choose to deliver a certified or cashier’s check  
19 made payable to “Michael DiPirro.”

20 (c) “Jeremy Fietz, Attorney at Law ” in the amount of \$83,750 (eighty-three  
21 thousand seven hundred fifty dollars) as payment for attorneys’ fees and  
22 costs pursuant to Section 4 below.

23 For any payment that is returned for any reason, including insufficient funds, a payment must be  
24 made by United Pacific in form of a cashier’s check deposited with a courier within three (3)  
25 business days after United Pacific’s receipt of notification of insufficient funds for overnight  
26 delivery to DiPirro’s counsel or they will owe an additional sum equal to 10% of the penalty and  
27 fees amounts set forth in Section 3.1 and 3.2(a)-3.2(c) above, due within 5 business days of the  
28 extinguishment of the foregoing three (3) business day period.

1           **3.3 Issuance of 1099 Forms.** Defendant shall provide DiPirro’s counsel with a separate  
2 1099 form for each of its payments under this Agreement to:

- 3                   (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010,  
4 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;  
5                   (b) “Michael DiPirro,” whose address and tax identification number shall be  
6 furnished on the Effective Date, after this Agreement has been fully executed  
7 by the Parties, for his portion of the civil penalties paid; and  
8                   (c) “Jeremy Fietz, Attorney at Law” whose address and tax identification  
9 number shall be furnished on the Effective Date, after this Agreement has  
10 been fully executed by the Parties, for fees and costs reimbursed pursuant to  
11 Section 4.

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

13           The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without  
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
15 issue to be resolved after the material terms of the agreement had been settled. Defendant then  
16 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
17 finalized. The parties then attempted to (and did) reach an accord on the compensation due to  
18 DiPirro and his counsel under general contract principles and the private attorney general doctrine  
19 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual  
20 execution of this agreement. Defendant shall pay the amount set forth in Section 3.2(c) for fees and  
21 costs incurred as a result of investigating, bringing this matter to Defendant’s attention, and  
22 negotiating a settlement in the public interest. Defendant shall deliver payments as described in  
23 Section 3, above.

24 **5. CLAIMS COVERED AND RELEASED**

25 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

26           DiPirro, acting on his own behalf and in the public interest, releases Defendant, any persons  
27 or entities identified on any of the Notices as an alleged violator, retailer, manufacturer, or  
28 distributor (collectively, “Noticed Parties”), and each of the respective officers, directors,

1 shareholders, employees, attorneys, representatives, shareholders, subsidiaries, affiliates, parents,  
2 divisions, successors, assigns, insurers, dealers, distributors, retailers, and customers of Defendant  
3 or any Noticed Party (collectively, “Affiliates”), and any other person or entity to whom Defendant  
4 or any Noticed Party directly or indirectly distributes or sells the Products (collectively with  
5 Defendant, the Noticed Parties, and Affiliates, the “Releasees”), from all claims for violations of  
6 Proposition 65 up through the Effective Date based on exposures to any Listed Chemicals from the  
7 use of any Products, as set forth in the Notices and the Complaint. Compliance with the terms of  
8 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
9 Listed Chemicals from the use of the Products sold by Defendant after the Effective Date, as set  
10 forth in the Notices.

## 11 **5.2 DiPirro’s Individual Release of Claims**

12 In further consideration of the promises and agreements herein contained, DiPirro, *not* in his  
13 representative capacity, but on behalf of himself and his past and current agents, representatives,  
14 attorneys, successors, and assigns, hereby waives all rights to institute or participate in, directly or  
15 indirectly, any form of legal action, and releases any and all actions, causes of action, obligations,  
16 costs, expenses, fees, attorneys’ fees, fines, penalties, damages, losses, claims, suits, liabilities, and  
17 demands that he has or may have against Defendant and/or any other Releasee, of any nature,  
18 character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or  
19 actual exposures to any Listed Chemicals from the use of any of the Products sold or distributed for  
20 sale by Defendant in the State of California before the Warning Date.

21 DiPirro, in his individual capacity and not in his representative capacity, waives and  
22 relinquishes all rights and benefits of California Civil Code section 1542 with respect to any and  
23 claims relating to the Products and/or the Notices, and does so understanding and acknowledging the  
24 significance and consequence of specifically waiving section 1542. California Civil Code § 1542  
25 states as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
27 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
28 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY



1           AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
2           PARTY.

3           Thus, notwithstanding the provisions of section 1542, DiPirro expressly acknowledges this  
4           Consent Judgment is intended to include in its effect, without limitation, all claims relating to the  
5           Products and/or the Notices that DiPirro does not know or suspect to exist in his favor at the time of  
6           signing this Consent Judgment, and that this Consent Judgment contemplates the extinguishment of  
7           any such claims.

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 UNITED PACIFIC:

10 United Pacific Industries Inc.  
11 Attn: Po-Shou Lin, CEO  
12 3788 E. Conant St.  
13 Long Beach, CA 90808  
14 With courtesy copy by email to: plin@upauto.com

15 For Plaintiff DiPirro:

16 Jeremy Fietz, Attorney-at-Law  
17 1510 Fourth Street  
18 Santa Rosa CA 95404  
19 With courtesy copy by email to: 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. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

23 This Consent Judgment contains the entire and only agreement between the Parties and any  
24 and all prior negotiations and understandings related hereto shall be deemed to have been merged  
25 within it. There are no representations or terms of agreement made by any Party with respect to the  
26 subject matter hereof or the other Party except for those contained in this Consent Judgment. This  
27 Consent Judgment may be executed in counterparts, and by facsimile or portable document format  
28 (PDF) signature, each of which shall be deemed an original, and all of which, when taken together,  
shall constitute one and the same document.

1 **11. POST EXECUTION ACTIVITIES**

2 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety  
3 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code  
4 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance  
5 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and  
6 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain  
7 judicial approval of the settlement in a timely manner.

8 **12. MODIFICATION**

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

12 **13. AUTHORIZATION**

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

16  
17 AGREED TO:

AGREED TO:

18 Date: 02/07/2023

19 Date: 02/08/2023

20  
21 By: 

MICHAEL DIPIRRO

By: 

UNITED PACIFIC INDUSTRIES INC.

Print Name: Paul Lin

Title: CFO