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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 THE BOEING COMPANY; and DOES 1-150,
18 Defendants.
19

Case No. 23-CV-027488

[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 THE BOEING COMPANY. (“Defendant” or “BOEING”), with DiPirro and Defendant
5 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 Aviation
16 Chart Wallets that expose users to Diethylhexyl phthalate (“DEHP”), a toxic chemical, without first
17 providing the clear and reasonable exposure warnings required by Proposition 65. DEHP was listed
18 pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer on
19 January 1, 1988, and has been subject to the warning requirements since January 1, 1989.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are Aviation Chart Wallets that are sold, or
22 distributed for sale in California by Defendant, including, but not limited to the *Jeppesen-Chart*
23 *Wallet, Item #10009530, AM621162* (the “Products”).

24 **1.6 Notices of Violation**

25 On or about October 14, 2022, DiPirro served Defendant and certain requisite public
26 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the
27 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
28 customers and consumers in California that the Products expose users to DEHP. To the best of the

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

3 **1.7 Complaint**

4 On or about February 8, 2023, DiPirro filed the instant action against Defendant for the
5 alleged violations of Health & Safety Code § 25249.6 that are the subject of the October 14, 2022
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Consent to Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
23 which the Court approves this Consent Judgment and makes the order available on-line, in-court, or
24 through the USPS.

25 **1.11 Compliance Date**

26 For purposes of this Consent Judgment, the term "Compliance Date" shall mean thirty (30)
27 days after the Court enters the Consent Judgment.

1 **2. INJUNCTIVE RELIEF**

2 **2.1** As of the Compliance Date, Products that BOEING manufactures, imports, distributes,
3 sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2; or
4 (b) be labeled with a clear and reasonable exposure warning pursuant to § 2.3.

5 **2.2** “Reformulated Products” shall mean Products that contain concentrations less than or
6 equal to 0.1% (1,000 parts per million (ppm)) of DEHP (the “Reformulation Level”). The warning
7 requirement set forth in § 2.3 does not apply to any Reformulated Product.

8 **2.3** As of the Compliance Date, all Products that contain DEHP above the Reformulation
9 Level and which BOEING sells, or ships to a California address for sale, must be labeled with a clear
10 and reasonable warning on each Product as set forth below in Sections 2.3.1 - 2.3.2. Each warning
11 shall be prominently placed with such conspicuousness as compared with other words, statements,
12 designs, or devices as to render it likely to be read and understood by an ordinary individual under
13 customary conditions before purchase or use. Each warning shall be provided in a manner such that
14 the consumer or user understands to which specific Product the warning applies, so as to minimize
15 the risk of consumer confusion. BOEING’s compliance with the warning requirements set forth in
16 Section 2.3 or the warning requirements of Proposition 65 and related regulations, including Title 27,
17 California Code of Regulations, section 25600.2, as may be amended from time to time, shall be
18 deemed compliance with this Consent Judgment, provided that if any changes are made to the
19 warning which deviate both from the requirements of this Consent Judgment and Proposition 65 and
20 its related regulations, such changes must be agreed to by Michael DiPirro through his counsel in
21 writing.

22 **2.3.1 Internet Warnings.** In addition, for all Products that BOEING offers for
23 sale directly to consumers in California via websites under the exclusive control of
24 BOEING, Settling Defendant shall provide a warning for such Products by including the
25 warning set forth below in Section 2.3.2 on one or more of the following: (a) on the same
26 web page on which a Covered Product is displayed; (b) on the same web page as the order
27 form for a Covered Product; (c) on the same web page as the price for any Covered Product;
28 or (d) on one or more web pages displayed to a purchaser during the checkout process. The₃

1 internet warning described above can also be delivered through a hyperlink using the word
2 “[California Prop 65] WARNING”.

3 **2.3.2 Text of the Warning.** The text of the warning shall be printed in black ink on
4 a light background, in a font that is easy to read and legible. BOEING shall use the warning
5 language as set forth below in 2.3.2 (a) or 2.3.2(b) for Products containing DEHP, which shall
6 include a symbol consisting of a black exclamation point in a yellow equilateral triangle with
7 a bold black outline as shown below (the symbol may be black or white if the color yellow is
8 otherwise not used on the Product’s packaging).

9 **a. Full Warning.**



10 **WARNING:** This product can expose you to chemicals including DEHP, which is
11 known to the State of California to cause cancer and birth defects or
12 other reproductive harm. For more information go to
13 www.P65Warnings.ca.gov.

14 **b. Short-Form Warning.**

15  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

16
17 **3. MONETARY PAYMENTS**

18 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The Noticed
19 Parties shall make a civil penalty payment of \$ 4,000.00, in accordance with this section, on or before
20 the Effective Date. The penalty payment will be allocated in accordance with California Health &
21 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
22 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
23 remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be remitted in
24 accordance with the procedure set out in Section 3.2.

25 **3.2 Payments.** All payments shall be delivered **within twenty-one (21) calendar days** of
26 the Effective Date by ACH payment or wire transfer to the account of Jeremy Fietz (bank
27 information given upon settlement) or in the alternative parcel delivery to Jeremy Fietz, Attorney at
28

1 Law, 1510 Fourth Street, Santa Rosa CA 95404, and shall be in the form of three checks for the
2 following amounts made payable to:

- 3 (a) "Jeremy Fietz, Attorney at Law" in the amount of \$ 3,000.00 for
4 payment of 75% of the civil penalty to OEHHA. Counsel for DiPirro agree to
5 forward such funds to OEHHA in a timely manner. Alternatively, at
6 Defendant's option, it can choose to deliver a certified or cashier's check
7 made payable to "Office of Environmental Health Hazard Assessment."
- 8 (b) "Jeremy Fietz, Attorney at Law " in the amount of \$ 1,000.00, as payment of
9 25% of the civil penalty to Michael DiPirro. Counsel for DiPirro agree to
10 forward such funds in a timely manner. Alternatively, at Defendant's option,
11 it can choose to deliver a certified or cashier's check made payable to
12 "Michael DiPirro."
- 13 (c) "Jeremy Fietz, Attorney at Law " in the amount of \$ 74,500.00 as payment
14 for attorneys' fees and costs pursuant to Section 4 below.

15 **3.3 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro's counsel with a
16 separate 1099 form for each of its payments under this Agreement to:

- 17 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
18 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- 19 (b) "Michael DiPirro," whose address and tax identification number shall be
20 furnished upon request after this Agreement has been fully executed by the
21 Parties for his portion of the civil penalties paid; and
- 22 (c) "Jeremy Fietz, Attorney at Law" whose address and tax identification
23 number shall be furnished upon request after this Agreement has been fully
24 executed by the Parties, for fees and costs reimbursed pursuant to Section 4.

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

26 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
27 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
28 issue to be resolved after the material terms of the agreement had been settled. Defendant then

1 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
2 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
3 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
4 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
5 mutual execution of this agreement. Defendant shall pay \$ 74,500.00 for fees and costs incurred as a
6 result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in
7 the public interest. Defendant shall deliver payments as described in Section 3, above.

8 **5. CLAIMS COVERED AND RELEASED**

9 **5.1 DiPirro's Public Release of Proposition 65 Claims**

10 DiPirro, acting on his own behalf and *in the public interest*, releases Defendant, its officers,
11 directors, attorneys, representatives, shareholders, subsidiaries, affiliates, divisions, sister
12 companies, and their predecessors, successors and assigns ("Defendant Releasees"), and all entities
13 from whom they obtain and to whom they directly or indirectly distribute or sell Products, including
14 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,
15 licensees, retailers, franchisees, and cooperative members ("Downstream Releasees"), from all
16 claims for violations of Proposition 65 based on exposures to DEHP from the use of the Products,
17 as set forth in the Notice and the Complaint, with respect to any Products manufactured, distributed,
18 shipped, sold, or offered for sale by Defendant Releasees prior to the Compliance Date.

19 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
20 with respect to exposures to DEHP from the use of the Products sold by Defendant Releasees after
21 the Compliance Date, as set forth in the Notice. Plaintiff agrees that any and all claims in the
22 Complaint are resolved with prejudice by this Consent Judgment.

23 **5.2 DiPirro's Individual Release of Claims** DiPirro, in his individual capacity only and
24 *not* in his representative capacity, also provides a release herein which shall be effective as a full
25 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
26 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of DiPirro of any nature,
27 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
28 actual exposures to DEHP from the use of the Products sold or distributed for sale by Defendant in 6

1 the State of California before the Compliance Date. With respect to the foregoing waivers and
2 releases in this paragraph, DiPirro hereby specifically waives any and all rights and benefits which
3 he now has, or in the future may have, conferred by virtue of the provisions of Section 1542 of the
4 California Civil Code, which provides as follows:

5
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
10 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
11 DEBTOR OR RELEASED PARTY.

12 **5.3 Defendant's Release of DiPirro**

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

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and shall
21 be null and void if, for any reason, it is not approved and entered by the Court. If this Consent
22 Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into
23 evidence or otherwise used in any proceeding for any purpose.

24 **7. SEVERABILITY**

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

28 **8. GOVERNING LAW**

The terms of this Consent Judgment 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 Defendant may provide

1 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
2 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.
3 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
4 comply with any pertinent state or federal toxics control laws.

5 **9. NOTICES**

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

10
11 For Defendant BOEING:

12 Jasmine W. Wetherell, Esq.
13 Perkins Coie LLP
14 1888 Century Park East Suite 1700
15 Los Angeles, CA 90067-1721
16 D. +1.310.788.3294
17 F. +1.310.843.1269
18 E. JWetherell@perkinscoie.com

19 For Plaintiff DiPirro:

20 Jeremy Fietz, Attorney-at-Law
21 1510 Fourth Street
22 Santa Rosa CA 95404
23 With courtesy copy by email to: Jeremy@superawesomelawyer.com

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

26 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

27 This Consent Judgment may be executed in counterparts, and by facsimile or portable
28 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.

11. POST EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code

1 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. DiPirro’s
2 counsel shall prepare and file a Motion for Approval of this Consent Judgment. In furtherance of
3 obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and that
4 of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain judicial
5 approval of the settlement in a timely manner.

6 **12. MODIFICATION**

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

10 **13. RETENTION OF JURISDICTION**

11 This Court shall retain jurisdiction of this matter to implement or modify the Consent
12 Judgment.

13 **14. AUTHORIZATION**

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

17
18 **AGREED TO:**

AGREED TO:

19 Date: April 24, 2023

20 Date: April 28, 2023

21
22 By: 
23 Michael DiPirro, Citizen Enforcer

24
25 DocuSigned by:
26 
27 By: 5DD3AB2511D94CA...
28 Kimberly Valentine, Print name
BGS-C Senior Contracts Manager
THE BOEING COMPANY