

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

4 LAW OFFICE OF DAVID R. BUSH
David R. Bush, State Bar No. 154511
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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
12
13

14 MICHAEL DIPIRRO,
15 Plaintiff,
16
17 v.

18 PRO SPORTS, INCORPORATED; and DOES
1-150,
19 Defendants.
20

Case No. 22-CV-0

[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 PRO SPORTS, INC. d/b/a Champion Sports; (“Defendant” or “PRO SPORTS”), 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 Vinyl
16 Discuss Carriers that expose users to Diisononyl Phthalate (“DINP”) without first providing a
17 Proposition 65 warning. DINP was listed pursuant to Proposition 65 as a chemical that is known to
18 the State of California to cause cancer on December 20, 2013, and has been subject to the warning
19 requirements since December 20, 2014.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are Vinyl Discuss Carriers that are sold, or
22 distributed for sale in California by Defendant, including, but not limited to the *Vinyl Discuss*
23 *Carrier, Black; Item #SD10, 10-D2.*

24 **1.6 Notice of Violation**

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

1 users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On or about January 18, 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 Notice.

6 **1.8 No Admission**

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

15 **1.9 Consent to Jurisdiction**

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

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
22 Consent Judgment is confirmed by the Court.

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

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

1 compared with other words, statements, designs, or devices as to render it likely to be read and
2 understood by an ordinary individual under customary conditions before purchase or use. Each
3 warning shall be provided in a manner such that the consumer or user understands to which specific
4 Product the warning applies, so as to minimize the risk of consumer confusion.

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

11 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light
12 background, in a font that is easy to read and legible, but in no case less than a size 6-point font. The
13 Noticed Parties shall use the warning language as set forth below, which shall include a
14 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
15 outline as shown below (the symbol may be black or white if the color yellow is otherwise not used
16 on the Product's packaging).

17
18 a)



21 **WARNING: This product can expose you to DINP, a chemical known to the**
22 **State of California to cause cancer. For more information go to**
23 **www.P65Warnings.ca.gov.**

24 or

25 b)  **WARNING: Cancer- www.P65Warnings.ca.gov.**

26 **2.4 Compliance.** Notwithstanding the foregoing, the Parties agree that Pro Sports shall be
27 deemed to be in compliance with this Settlement Agreement by either providing the warning of § 2.3
28 of this Settlement Agreement or by complying with warning requirements adopted by the State of
California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date

1 or otherwise. If Office of Environmental Health Hazard Assessment regulations require or permit
2 specific safe harbor warning text and/or methods of transmission different than those set forth above,
3 Defendant shall be entitled to use, at its discretion, such other specific safe harbor warning text and/or
4 methods of transmission without being deemed in breach of this Settlement Agreement. In the event
5 that (a) the Office of Environmental Health Hazard Assessment or another authorized agency
6 promulgates one or more regulations, (b) legislation is enacted by the California legislature, United
7 States Congress or the voters, or (c) a published opinion is issued by a court of competent jurisdiction
8 in the State of California, requiring, permitting or establishing warning text and/or methods of
9 transmission different than those set forth above, Pro Sports shall be entitled to use, at its discretion,
10 such other warning text, method of transmission, without being deemed in breach of this Agreement.
11 If regulations, legislation, or judicial rulings are enacted or issued providing that a Proposition 65
12 warning for the product is no longer required, a lack of warning will not thereafter be a breach of this
13 Agreement.

14
15 **3. MONETARY PAYMENTS**

16 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The
17 Noticed Parties shall make a civil penalty payment of \$4,000 (four thousand dollars), in accordance
18 with this section, within 15 business days of the Effective Date. The penalty payment will be
19 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
20 the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”)
21 and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.2 below. The
22 penalty payment shall be remitted in accordance with the procedure set out in Section 3.2.

23 **3.2 Payment.** The complete settlement payment in the amount of \$75,500 (seventy-five
24 thousand five hundred) shall be delivered within fifteen business days of the Effective Date, to the
25 bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number
26 provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241
27 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a
28 check made payable to: “Jeremy Fietz, Attorney at Law”.

1 **3.3 Issuance of 1099 Form.** The Noticed Party shall provide DiPirro’s counsel,
2 Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099
3 shall be made on the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds
4 paid to an attorney”). The Noticed Party acknowledges that 1099 shall NOT be issued under
5 form 1099 NEC.

6 A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully
7 executed by the Parties to this agreement.

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

9 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
11 issue to be resolved after the material terms of the agreement had been settled. Defendant then
12 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
13 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
14 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
16 mutual execution of this agreement. Defendant shall pay \$71,500. (seventy-one thousand five
17 hundred) for fees and costs incurred as a result of investigating, bringing this matter to Defendant’s
18 attention, and negotiating a settlement in the public interest. Defendant shall deliver payments as
19 described in Section 3, above.

20 **5. CLAIMS COVERED AND RELEASED**

21 **5.1 Binding Resolution.** This consent judgment is a full, final, and binding resolution
22 between DiPirro acting in the public interest, and Defendant, its owners, investors employees,
23 directors, officers, managers, attorneys, parents, shareholders, divisions, subdivisions, subsidiaries,
24 partners, licensors, sister companies, and affiliates, and their successors and assigns (Defendant
25 Releasees”), and all entities from whom they obtain and to whom they directly or indirectly
26 distribute or sell Covered Products, including but not limited to manufacturers, suppliers,
27 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
28 members, and their successors and assigns (“Downstream Defendant Releasees”).

1 **5.2 DiPirro’s Public Release of Proposition 65 Claims**

2 DiPirro, acting on his own behalf and in the public interest, releases Defendant, Defendant
3 Releasees, and Downstream Defendant Releasees, from all claims for violations of Proposition 65
4 up through the Effective Date based on exposures to DINP from the use of the Products, as set forth
5 in the Notice and the Complaint, regardless of the date any other Releasee distributes the Products.
6 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
7 with respect to exposures to DINP from the use of the Products sold by Defendant after the
8 Effective Date, as set forth in the Notice.

9 **5.3 DiPirro’s Individual Release of Claims**

10 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a
11 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
12 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, fines, penalties,
13 losses, claims, liabilities and demands of DiPirro of any nature, character or kind, whether known or
14 unknown, suspected or unsuspected, arising out of alleged or actual exposures to DINP from the use
15 of the Products sold or distributed for sale by Defendant, Defendant Releasees, and Downstream
16 Defendant Releasees, in the State of California before the Effective Date. With respect to the
17 foregoing waivers and releases in this paragraph, DiPirro hereby specifically waives any and all
18 rights and benefits which he now has, or in the future may have, conferred by virtue of the provisions
19 of Section 1542 of the California Civil Code, which provides as follows:
20

21 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**
22 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
23 **FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY**
24 **HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
25 **WITH THE DEBTOR OR RELEASED PARTY.**

26
27 **5.4 Defendant’s Release of DiPirro**

28 Defendant, on its own behalf and on behalf of its past and current agents, representatives, 6

1 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
2 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
3 (or those that could have been taken or made) by DiPirro and his attorneys and other
4 representatives, whether in the course of investigating claims, otherwise seeking to enforce
5 Proposition 65 against it in this matter, or with respect to the Products.

6 **5.5. Public Benefit**

7 It is the Parties' understanding that the commitments Defendant has agreed to herein, and
8 actions to be taken by Defendant under this Settlement Agreement, would confer a significant benefit
9 to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, §
10 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an
11 action alleging a violation of Proposition 65 with respect to Defendant's or Releasees' failure to
12 provide a warning concerning exposure to lead prior to use of the Products Defendant has
13 manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell,
14 or offer for sale in California, such private party action would not confer a significant benefit on the
15 general public as to those Products addressed in this Settlement Agreement, provided that Defendant
16 is in material compliance with this Settlement Agreement

17 **6. COURT APPROVAL**

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

21 **7. SEVERABILITY**

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

25 **8. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed, or is otherwise
28 rendered inapplicable for reasons, including but not limited to changes in the law, then Pro Sports 7

1 may provide written notice to DiPirro of any asserted change, and shall have no further injunctive
2 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
3 Products are so affected.

4 **9. NOTICES**

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

9
10 For Defendant PRO SPORTS:
11 Ryan S. Landis, Partner
12 GORDON REES SCULLY MANSUKHANI
13 rlandis@grsm.com
14 ph: 949-255-6950

13 and

14 Scott E. Charney, Esq.
15 Charney IP Law LLC
16 233 Mount Airy Road - Suite 100
17 Basking Ridge, New Jersey 07920
18 Scott@charneyiplaw.com

17 For Plaintiff DiPirro:
18 Jeremy Fietz, Attorney-at-Law
19 1510 Fourth Street
20 Santa Rosa CA 95404
21 Jeremy@superawesomelawyer.com

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

23 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27
28

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 **AGREED TO:**

17 Date: July 21, 2023

18
19
20 By: 
21 Michael DiPirro

16 **AGREED TO:**

17 Date: July 28, 2023

18
19
20 By: 
21 Steven Meller, Print name
22 CEO, Position
23 PRO SPORTS, INCORPORATED