

1 LAW OFFICES OF JEREMY FIETZ
Jeremy Fietz, State Bar No. 200396
2 1510 Fourth Street
Santa Rosa, CA 95404
3 Telephone: (707) 236-0088

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 BAILEY PLC
10 LONDON D. BAILEY (State Bar No. 240236)
1200 Suncast Lane, Suite 7
11 El Dorado Hills, CA 95762
Telephone: (916) 713-2580
12 Email: landon@baileyplc.com

13 Attorneys for Defendant Spyder Manufacturing, Inc.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF ALAMEDA
16 UNLIMITED CIVIL JURISDICTION
17

19 MICHAEL DIPIRRO,
20 Plaintiff,

21 v.

22
23 SPYDER MANUFACTURING, INC.; and
DOES 1-150,
24 Defendants.
25

Case No. 23-CV-031239

[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 Spyder Manufacturing, Inc. (“Defendant” or “SPYDER”), 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 Rope Bag that are sold, or distributed for
22 sale in California by Defendant, including, but not limited to the *Climb Right 30 L Rope Bag Deluxe*,
23 *Model #36144* (the “Products”).

24 **1.6 Notices of Violation**

25 On or about December 13, 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 April 14, 2023, DiPirro filed the instant action against Defendant for the alleged
5 violations of Health & Safety Code § 25249.6 that are the subject of the December 13, 2022 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 of the
22 final signature on the signature page of this Consent Judgment.

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

24 **2.1** Within thirty days of the Effective Date (a.k.a. the "Warning Date"), Defendant shall
25 only manufacture for sale, purchase for sale, or import for sale in California, Products that are
26 Reformulated Products as defined by Section 2.2, below, or Products that are labeled with a clear and
27 reasonable warning as set forth under Sections 2.3 through 2.6, below.

1 **2.2 Reformulation Standard.** “Reformulated Products” are Products containing DEHP
2 in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component
3 when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally
4 recognized accrediting organization. For purposes of compliance with this reformulation standard,
5 testing samples may be prepared and extracted using any methodologies utilized by federal or state
6 government agencies to determine phthalate content in a solid substance. Defendant may rely upon
7 test results commissioned by itself or by its suppliers in order to determine whether the Products are
8 “Reformulated Products” so long as the testing methodology, analysis, and results comport with the
9 standards set forth in this paragraph.

10 **2.3 Clear and Reasonable Warnings.**

11 Commencing on or before the Effective Date, Defendant shall provide clear and reasonable
12 warnings for all Products provided for sale to customers in California in accordance with this Section.
13 Such warning may consist of any warning that complies with Title 27, California Code of
14 Regulations, section 25600, *et. seq.*, as amended August 30, 2016 and subsequently thereafter, or,
15 alternatively, any warning that complies with Section 2.3(a) or Section 2.3(b) below. Each warning
16 shall be prominently placed with such conspicuousness as compared with other words, statements,
17 designs, or devices as to render it likely to be read and understood by an ordinary individual under
18 customary conditions before purchase or use and shall be provided in a manner such that it is clearly
19 associated with the specific Product to which the warning applies.

20 The text of the warning shall be printed in black ink on a light background, in a font that is
21 easy to read and legible, but in no case less than a size 12 font. SPYDER shall use the warning
22 language as set forth below in 2.3(a) or 2.3(b) for Products containing DEHP.

23 **a. Full Warning.**



25 **WARNING: This product can expose you to Di(2ethylhexyl) phthalate (DEHP),**
26 **a chemical known to the State of California to cause cancer and**
27 **reproductive harm (male). For more information go to**
28 **www.P65Warnings.ca.gov.**

1 **b. Short-Form Warning.**

2 **⚠ WARNING: Cancer and Reproductive Harm-DEHP -**
3 **www.P65Warnings.ca.gov.**

4 **2.4 Product Warnings**

5 Defendant shall affix a warning to the Product label or otherwise directly on each Product
6 provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to
7 customers located in California. For the purpose of this agreement, “Product label” means a display
8 of written, printed or graphic material that is printed on or affixed to a Product or its immediate
9 container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no
10 smaller than the largest type size used for other consumer information on the product. The warning
11 shall consist of either the Warning, the Short-Form Warning described in subsection 2.3(a) or (b),
12 respectively, or any warning that complies with Title 27, California Code of Regulations, section
13 25600, *et. seq.*, as amended August 30, 2016 and subsequently thereafter.

14 **2.5 Mail Order Catalog Warnings**

15 In the event that, after the Effective Date, Defendant sells Products via mail order through
16 catalogs to customers located in California, Defendant shall provide a warning for each Product both
17 on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly
18 associates the warning with the specific Product being purchased. Any warning provided in a mail
19 order catalog shall be in the same type size or larger than other consumer information provided for
20 the Product within the catalog and shall be provided on the same page and in the same location as the
21 display and/or description of the Product. The catalog warning may use the Short-Form Warning
22 content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-
23 Form Warning content.

24 **2.6 Internet Warnings**

25 If, after the Effective Date, Defendant sells Products via the internet to customers located in
26 California, Defendant shall provide warnings for each Product both on the Product label in
27 accordance with Section 2.4, and on the web page on which the Product is sold in a manner that
28 clearly associates it with the specific Product being purchased.

1 The internet warning may use the Short-Form Warning content described in Section 2.3(b) if
2 the warning provided on the Product label also uses the Short-Form Warning content.

3 **2.7 Products in the Stream of Commerce**

4 The reformulation and warning requirements described in this Section do not apply to any
5 Products that are already in the stream of commerce as of the Effective Date.

6 **2.8 Foreign Language Requirement**

7 Where a product sign, label or shelf tag used to provide a warning includes consumer
8 information in a language other than English, the Warning must also be provided in that language in
9 addition to English.

10 **3. MONETARY PAYMENTS**

11 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The Noticed
12 Parties shall make a civil penalty payment of \$ 4,000.00, in accordance with this section, on or before
13 the Effective Date. The penalty payment will be allocated in accordance with California Health &
14 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
15 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
16 remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be remitted in
17 accordance with the procedure set out in Section 3.2.

18 **3.2 Payments.** All payments shall be delivered **within ten business days** of the Effective
19 Date by ACH payment or wire transfer to the account of Jeremy Fietz (bank information given upon
20 settlement) or in the alternative parcel delivery to Jeremy Fietz, Attorney at Law, 4241 Montgomery
21 Drive #123, Santa Rosa, CA 95404, and shall be in the form of three checks for the following
22 amounts made payable to:

- 23 (a) “OEHHA” in the amount of \$3,000.00 for payment of 75% of the
24 civil penalty to OEHHA. Counsel for DiPirro agree to forward such funds to
25 OEHHA in a timely manner. Alternatively, at Defendant’s option, it can
26 choose to deliver a certified or cashier’s check made payable to “Office of
27 Environmental Health Hazard Assessment.”
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1 (b) "Jeremy Fietz, Attorney at Law" in the amount of \$1,000.00, as
2 payment of 25% of the civil penalty to Michael DiPirro. Counsel for DiPirro
3 agree to forward such funds in a timely manner. Alternatively, at Defendant's
4 option, it can choose to deliver a certified or cashier's check made payable to
5 "Michael DiPirro."

6 (c) "Jeremy Fietz, Attorney at Law" in the amount of \$69,500.00 as
7 payment for attorneys' fees and costs pursuant to Section 4 below.

8 *Any payment that is not received in-hand by the due date must also include a 10% late fee*
9 *payable to DiPirro's attorneys, and total payment must be made within 72 hours of notice of default.*

10 Reasons for the returned payment may include, but are not limited to insufficient funds,
11 failure of delivery, or bank delay. The 10% service fee must be paid to DiPirro's attorneys along
12 with payment for the entire amount of failure in the form of wire transfer or certified cashier's check
13 within three (3) calendar days of notification of failure to pay.

14 **3.3 Payment Timing; Payments Held in Trust**

15 All payments due under this Consent Judgment shall be held in trust until the Court approves
16 the Parties' settlement. Defendant shall deliver its civil penalty and attorneys' fee reimbursement
17 payments to its counsel within ten (10) business days of the date that this Consent Judgment is fully
18 executed by the Parties. DiPirro's counsel shall provide Defendant's counsel with written
19 confirmation following its receipt of the settlement funds. Thereafter, DiPirro's counsel shall hold
20 the settlement funds in trust until the Court enters an Order granting the motion for approval of this
21 Consent Judgment.

22 **3.4 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro's counsel with a
23 separate 1099 form for each of its payments under this Agreement to:

- 24 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
25 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
26 (b) "Michael DiPirro," whose address and tax identification number shall be
27 furnished upon request after this Agreement has been fully executed by the
28 Parties for his portion of the civil penalties paid; and

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

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

5 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
7 issue to be resolved after the material terms of the agreement had been settled. Defendant then
8 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
9 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
10 OEHHA, DiPirro and his counsel under general contract principles and the private attorney general
11 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the
12 mutual execution of this agreement. Defendant shall pay \$69,500.00 for fees and costs incurred as a
13 result of investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in
14 the public interest. Defendant shall deliver payments as described in Section 3, above.

15 **5. CLAIMS COVERED AND RELEASED**

16 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

17 DiPirro, acting on his own behalf and in the public interest, releases Defendant and its
18 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
19 and attorneys (Releasees) and each entity to whom Defendant directly or indirectly distributes or
20 sells the Products including, but not limited to, its downstream distributors, wholesalers, customers,
21 retailers, franchisers, cooperative members, licensors and licensees, if any (Downstream Releasees),
22 for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
23 manufactured, imported, distributed or sold by Defendant prior to the Effective Date, as set forth in
24 the Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes
25 compliance with Proposition 65 by Defendant with respect to any alleged or actual failure to warn
26 about exposures to DEHP from Products manufactured, sold or distributed for sale by Defendant
27 after the Effective Date.
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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 DEHP 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 The Parties acknowledge that, pursuant to California Health and Safety Code § 25249.7(f), a
20 noticed motion is required for judicial approval of this Consent Judgment, which motion DiPirro shall
21 draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their
22 best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and to
23 obtain judicial approval of their settlement in a timely manner. For purposes of this section, “best
24 efforts” shall include, at a minimum, supporting the motion for approval, responding to any objection
25 that any third-party may file or lodge, and appearing at the hearing before the Court if so requested.
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1 **7. SEVERABILITY**

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

5 **8. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
9 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
10 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.
11 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
12 comply with any pertinent state or federal toxics control laws.

13 **9. NOTICES**

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

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19 For Defendant SPYDER:

20 Landon Bailey
21 BAILEY PLC
22 1200 Suncast Lane, Ste. 7
23 El Dorado Hills, CA 95762
24 With courtesy copy by email to: landon@baileyplc.com

25 For Plaintiff DiPirro:

26 Jeremy Fietz, Attorney-at-Law
27 1510 Fourth Street
28 Santa Rosa CA 95404
With courtesy copy by email to: Jeremy@superawesomelawyer.com

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

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **11. POST EXECUTION ACTIVITIES**

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

12 **12. ENTIRE AGREEMENT**

13 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with
14 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
15 commitments, or understandings related thereto, if any, are hereby merged herein and therein. There
16 are no warranties, representations, or other agreements between the Parties except as expressly set
17 forth herein. No representations, oral or otherwise, express or implied, other than those specifically
18 referred to in this Consent Judgment have been made by any Party hereto. No other agreements not
19 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any
20 of the Parties hereto.

21 **13. MODIFICATION**

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

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1 **14. 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.

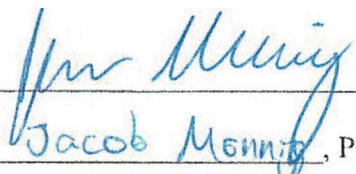
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6 **AGREED:**

7 Date: 10-05-2023

8
9 By: 
10 Michael DiPirro, Citizen Enforcer

6 **AGREED:**

7 Date: 10/3/23

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9 By: 
10 Jacob Monnig, Print name
11 0 FC, Position
12 SPYDER MANUFACTURING, INC.
13
14

15 **APPROVED AS TO FORM:**

16 Dated: 10-05-2023


LAW OFFICES OF JEREMY FIETZ

18
19  for

20 JEREMY FIETZ
21 Attorney for Plaintiff
22 Michael DiPirro

23 Dated: 10/3, 2023

BATLEY PLC

24
25 By: 
26 LANDON D. BAILEY
27 Attorney for Defendant
28 Spyder Manufacturing, Inc.

ORDER AND JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: _____, 2023

Judge of the Superior Court

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