

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

6 LAW OFFICE OF DAVID R. BUSH  
7 David R. Bush, State Bar No. 154511  
8 321 South Main Street #502  
9 Sebastopol, CA 95472  
10 Telephone: (707) 321-5028  
11 drbush@drbushlaw.com

12 Attorneys for Plaintiff  
13 Michael DiPirro

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

17 MICHAEL DIPIRRO,  
18 Plaintiff,

19 v.

20 UNITED PACIFIC INDUSTRIES, INC.; and  
21 DOES 1-150,  
22 Defendants.

Case No. 22-CV-019163

**[PROPOSED] AMENDED AND  
RESTATED CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Amended and Restated Consent Judgment (“Consent Judgment”) is entered into by and  
4 between plaintiff, Michael DiPirro (“DiPirro”), and UNITED PACIFIC INDUSTRIES, INC.  
5 (“Defendant” or “UNITED PACIFIC”), with DiPirro and Defendant individually referred to as a  
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

8 DiPirro is an individual residing in California who seeks to promote awareness of exposures  
9 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
10 contained in consumer products.

11 **1.3 Defendant**

12 Defendant employs ten or more persons and is a person in the course of doing business for  
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
14 section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 DiPirro alleges that Defendant sells, or distributes for sale in the State of California Arm  
17 Rests that expose users to Diethylhexyl phthalate (“DEHP”), a toxic chemical, and Shift Boots that  
18 expose users to Diisononyl phthalate (“DINP”), a toxic chemical, without first providing the clear and  
19 reasonable exposure warnings required by Proposition 65. DEHP was listed pursuant to Proposition  
20 65 as a chemical that is known to the State of California to cause cancer on January 1, 1988, and has  
21 been subject to the warning requirements since January 1, 1989. DINP was listed pursuant to  
22 Proposition 65 as a chemical that is known to the State of California to cause cancer on December 20,  
23 2013, and has been subject to the warning requirements since December 20, 2014.

24 **1.5 Product Description**

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

1 “Products”).

2 **1.6 Notices of Violation**

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

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

17 **1.7 Complaint**

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

24 **1.8 No Admission**

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

1 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,  
2 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.  
3 This section shall not, however, diminish or otherwise affect Defendant’s obligations,  
4 responsibilities, and duties under this Consent Judgment.

5 **1.9 Consent to Jurisdiction**

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

10 **1.10 Effective Date**

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

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

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



1                   **d. Short-Form Warning.**

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

3                   **3. MONETARY PAYMENTS**

4                   **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** Defendant  
5 shall make a civil penalty payment of \$3,000 (three thousand dollars), in accordance with this  
6 section, via check deposited with a courier within five (5) business days of the Effective Date. The  
7 penalty payment will be allocated in accordance with California Health & Safety Code §  
8 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
9 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in  
10 accordance with Section 3.2 below. The penalty payment shall be remitted in accordance with the  
11 procedure set out in Section 3.2.

12                   **3.2 Payments.** All payments shall be deposited with a courier **within five (5) business days**  
13 of the Effective Date for overnight delivery to Jeremy Fietz, Attorney at Law, 1510 Fourth Street,  
14 Santa Rosa CA 95404, and shall be in the form of three checks for the following amounts made  
15 payable to:

- 16                   (a)       “Jeremy Fietz, Attorney at Law” in the amount of \$2,250 (two  
17 thousand two hundred fifty dollars) for payment of 75% of the civil penalty  
18 to OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a  
19 timely manner. Alternatively, at Defendant’s option, it can choose to deliver  
20 a certified or cashier’s check made payable to “Office of Environmental  
21 Health Hazard Assessment.”
- 22                   (b)       “Jeremy Fietz, Attorney at Law ” in the amount of \$750 (seven hundred fifty  
23 dollars), as payment of 25% of the civil penalty to Michael DiPirro. Counsel  
24 for DiPirro agree to forward such funds in a timely manner. Alternatively, at  
25 Defendant’s option, it can choose to deliver a certified or cashier’s check  
26 made payable to “Michael DiPirro.”
- 27                   (c)       “Jeremy Fietz, Attorney at Law ” in the amount of \$83,750 (eighty-three  
28 thousand seven hundred fifty dollars) as payment for attorneys’ fees and 5

1 costs pursuant to Section 4 below.

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

8 **3.3 Issuance of 1099 Forms.** Defendant shall provide DiPirro's counsel with a separate  
9 1099 form for each of its payments under this Agreement to:

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

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

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

1 negotiating a settlement in the public interest. Defendant shall deliver payments as described in  
2 Section 3, above.

3 **5. CLAIMS COVERED AND RELEASED**

4 **5.1 DiPirro's Public Release of Proposition 65 Claims**

5 DiPirro, acting on his own behalf and in the public interest, releases Defendant, any persons  
6 or entities identified on any of the Notices as an alleged violator, retailer, manufacturer, or  
7 distributor (collectively, "Noticed Parties"), and each of the respective officers, directors,  
8 shareholders, employees, attorneys, representatives, shareholders, subsidiaries, affiliates, parents,  
9 divisions, successors, assigns, insurers, dealers, distributors, retailers, and customers of Defendant  
10 or any Noticed Party (collectively, "Affiliates"), and any other person or entity to whom Defendant  
11 or any Noticed Party directly or indirectly distributes or sells the Products (collectively with  
12 Defendant, the Noticed Parties, and Affiliates, the "Releasees"), from all claims for violations of  
13 Proposition 65 up through the Effective Date based on exposures to any Listed Chemicals from the  
14 use of any Products, as set forth in the Notices and the Complaint. Compliance with the terms of  
15 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to  
16 Listed Chemicals from the use of the Products sold by Defendant after the Effective Date, as set  
17 forth in the Notices.

18 **5.2 DiPirro's Individual Release of Claims**

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



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

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 RELEASE  
9 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
11 PARTY.

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

### 17 **5.3 Defendant's Release of DiPirro**

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

### 24 **6. COURT APPROVAL**

25 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
26 be null and void if, for any reason, it is not approved and entered by the Court within one year after it  
27 has been fully executed by all Parties.  
28

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:

18  
19             For Defendant UNITED PACIFIC:

20             United Pacific Industries Inc.  
21             Attn: Po-Shou Lin, CEO  
22             3788 E. Conant St.  
23             Long Beach, CA 90808  
24             With courtesy copy by email to: [plin@upauto.com](mailto:plin@upauto.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](mailto: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. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment amends, restates, supersedes, and replaces in its entirety the prior  
3 [Proposed] Consent Judgment executed by the Parties on or about February 8, 2023. This Consent  
4 Judgment contains the entire and only agreement between the Parties and any and all prior  
5 negotiations and understandings related hereto shall be deemed to have been merged within it. There  
6 are no representations or terms of agreement made by any Party with respect to the subject matter  
7 hereof or the other Party except for those contained in this Consent Judgment. This Consent  
8 Judgment may be executed in counterparts, and by facsimile or portable document format (PDF)  
9 signature, each of which shall be deemed an original, and all of which, when taken together, shall  
10 constitute one and the same document.

11 **11. POST EXECUTION ACTIVITIES**

12 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety  
13 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code  
14 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance  
15 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and  
16 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain  
17 judicial approval of the settlement in a timely manner.

18 **12. MODIFICATION**

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

22 ///

24 ///

26 ///

28 ///

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:

AGREED TO:

7 Date: 04/19/2023

Date: 4/19/2023

8  
9  
10 By: 

MICHAEL DIPIRRO

By: 

UNITED PACIFIC INDUSTRIES INC.

Print Name: Paul Lin

Title: CFO