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8 Michael DiPirro

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

14 MICHAEL DIPIRRO,
15 Plaintiff,

16 v.

17
18 JEFFERS, INC.; and DOES 1-150,
19 Defendants.

Case No. 23 CV 049833

[PROPOSED] CONSENT JUDGMENT

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

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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff,
4 Michael DiPirro (“DiPirro”), and JEFFERS, INC. (“Defendant” or “JEFFERS”), with DiPirro and
5 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 Saddle
16 Covers that expose users to Di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical, and Hoof Picks
17 that expose users to Diisononyl phthalate (“DINP”), a toxic chemical, without first providing the
18 clear and reasonable exposure warnings required by Proposition 65. DINP and DEHP (hereinafter
19 the “Listed Chemicals”) are both listed pursuant to Proposition 65 as a chemical that is known to the
20 State of California to cause cancer, and DEHP is additionally listed as a reproductive toxin (male).

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are (a) hoof picks that are sold, or distributed
23 for sale in California by Defendant, including, but not limited to the Jeffers Hoof Pick; and (b) saddle
24 covers that are sold, or distributed for sale in California by Defendant, including, but not limited to
25 the Jeffers Clear Saddle Cover (collectively the “Products”).

26 **1.6 Notices of Violation**

27 On or about June 13, 2023, DiPirro served Defendant and certain requisite public enforcement
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1 agencies with a “60-Day Notice of Violation” (“June 2023 Notice”), a document that informed the
2 recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
3 customers and consumers in California that the Products expose users to DEHP. To the best of the
4 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations
5 set forth in the June 2023 Notice.

6 On or about March 31, 2023, DiPirro served Defendant and certain requisite public
7 enforcement agencies with a “60-Day Notice of Violation” (“March 2023 Notice”), a document that
8 informed the recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to
9 warn its customers and consumers in California that the Products expose users to DINP. To the best
10 of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the
11 allegations set forth in the March 2023 Notice.

12 **1.7 Complaint**

13 On or about November 3, 2023, DiPirro filed the instant action against Defendant for the
14 alleged violations of Health & Safety Code § 25249.6 that are the subject of the June 2023 Notice and
15 the March 2023 Notice (collectively the “Notices”).

16 **1.8 No Admission**

17 Defendant denies the material, factual, and legal allegations contained in the Notices and
18 contends that it sells Products to California residents in accordance with applicable state laws and
19 requirements. Nothing in this Consent Judgment shall be construed as an admission by Defendant of
20 any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
21 Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding,
22 conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant.
23 This section shall not, however, diminish or otherwise affect Defendant’s obligations,
24 responsibilities, and duties under this Consent Judgment.

25 **1.9 Consent to Jurisdiction**

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

3 **1.10 Effective Date**

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

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

7 **2.1** Within sixty days of the Effective Date (a.k.a. the “Warning Date”), as to all Products
8 that contain the DEHP or DINP (“Listed Chemicals”) and are sold by and shipped to a California
9 address for sale by Jeffers, Jeffers shall provide a clear and reasonable warning on each Product as set
10 forth below in Section 2.3. Each warning shall be prominently placed with such conspicuousness as
11 compared with other words, statements, designs, or devices as to render it likely to be read and
12 understood by an ordinary individual under customary conditions before purchase or use. Each
13 warning shall be provided in a manner such that the consumer or user understands to which specific
14 Product the warning applies, so as to minimize the risk of consumer confusion. Jeffers’ compliance
15 with the warning requirements set forth in Sections 2.1 through 2.3 or the warning requirements of
16 Proposition 65 and related regulations, as may be amended from time to time, shall be deemed
17 compliance with this Consent Judgment.

18 **2.2 Internet Warnings.** For all Products that Defendant offers for sale directly to
19 consumers in California via the internet on or after the Warning Date, Defendant shall provide a
20 warning for such Products by including the warning set forth below in Section 2.3 on one or more of
21 the following: (a) on the same web page on which a Product is displayed; (b) on the same web page as
22 the order form for a Product; (c) on the same web page as the price for any Product; or (d) on one or
23 more web pages displayed to a purchaser during the checkout process. The internet warning
24 described above can also be delivered through a hyperlink using the word “[California Prop 65]
25 WARNING” (language in brackets optional).

26 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a light
27 background, in a font that is easy to read and legible, but in no case less than a size 6 font. Jeffers
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1 shall use the warning language as set forth below in 2.3(a) or 2.3(b) for Products containing DEHP or
2 the warning language as set forth below in 2.3(c) or 2.3(d) for Products containing DINP, which shall
3 include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold
4 black outline as shown below (the symbol may be black or white if the color yellow is otherwise not
5 used on the Product's packaging).

6 **a. Full Warning – DEHP.**



8 **WARNING: This product can expose you to chemicals including Di(2-**
9 **ethylhexyl)phthalate (DEHP), which is known to the State of California to**
10 **cause cancer and birth defects or other reproductive harm. For more**
11 **information go to www.P65Warnings.ca.gov.**

12 **b. Short-Form Warning – DEHP.**

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

14 **c. Full Warning – DINP.**



16 **WARNING: This product can expose you to chemicals including Diisononyl**
17 **phthalate DINP, which is known to the State of California to cause cancer.**
18 **For more information go to www.P65Warnings.ca.gov.**

19 **d. Short-Form Warning – DINP.**

20  **WARNING: Cancer Harm - www.P65Warnings.ca.gov.**

21 **Foreign Language Requirement.** Where a product sign, label or shelf tag used to provide a warning
22 includes consumer information in a language other than English, the Warning must also be provided in
23 that language in addition to English.

24 **3. PENALTIES & PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

25 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The
26 Defendant shall make a civil penalty payment of \$4,000 as a component of this settlement. The
27 penalty payment will be allocated by DiPirro's counsel in accordance with California Health &
28 Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office

1 of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
2 remitted to DiPirro.

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

4 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. The Defendant then
7 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
8 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
9 DiPirro and his counsel under general contract principles and the private attorney general doctrine
10 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
11 execution of this agreement. The Defendant shall pay a total of \$ 81,000 for fees and costs incurred
12 as a result of investigating, working with toxicology experts, bringing this matter to the Defendant’s
13 attention, document preparation, and negotiating a settlement in the public interest.

14 **5. PAYMENT AND FORM 1099**

15 **5.1 Payment.** The complete settlement payment in the amount of \$85,000 shall be
16 delivered within seven business days of the Effective Date, to the bank account of Jeremy Fietz,
17 Attorney at Law (via wire transfer, or ACH payment; number provided upon request) or by physical
18 check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA
19 95405, and for the latter option shall be in the form of a check made payable to: “Jeremy Fietz,
20 Attorney at Law”. For any payment that is returned for any reason, including insufficient funds, a
21 payment must be made in form of a cashier’s check within three (3) business days of notification of
22 insufficient funds, plus a 10% service fee paid to DiPirro’s attorneys. Any payment that is not
23 actually received by the due date will also be subject to a 10% late fee.

24 **5.2 Issuance of 1099 Form.** The Defendant shall provide DiPirro’s counsel, Jeremy
25 Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be
26 made on the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds paid to an
27 attorney”). The Defendant acknowledges that 1099 shall NOT be issued under form 1099 NEC. A

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

3 **6. CLAIMS COVERED AND RELEASED**

4 **6.1 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 **6.2 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, Noticed Parties, and/or any other Releasee, of
25 any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of
26 alleged or actual exposures to any Listed Chemicals from the use of any of the Products sold or
27 distributed for 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 and all such claims.

17 **6.3 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 **7. 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.
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1 **8. 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 **9. 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 will have no
9 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
10 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant
11 from any obligation to comply with any applicable state or federal toxics control laws.

12 **10. NOTICES**

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

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18 For Defendant JEFFERS:

19 Jeffers Inc.
20 Attn: Matthew C. Bures
21 Wolfe & Wyman LLP
22 2212 Dupont Drive
23 Irvine CA 92612
24 With courtesy copy by email to: mcbures@ww.law

25 For Plaintiff DiPirro:

26 Jeremy Fietz, Attorney-at-Law
27 4241 Montgomery Drive, #123
28 Santa Rosa CA 95405
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 **11. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

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

9 **12. POST EXECUTION ACTIVITIES**

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

16 **13. MODIFICATION**

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

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14. AUTHORIZATION

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


AGREED TO:

AGREED TO:

Date: 01/29/24

Date: 1/19/24

By: 
MICHAEL DIPIRRO

By: 
JEFFERS INC.
Print Name: Greg Eveland
Title: President