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10 Attorneys for Plaintiff  
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11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 UNLIMITED CIVIL JURISDICTION

15  
16 MICHAEL DIPIRRO,  
17 Plaintiff,

18 v.  
19

20 CHICK PUBLICATIONS, INC.; and DOES 1-  
150,

21 Defendants.  
22

Case No. 23CV049852

**[PROPOSED] CONSENT JUDGMENT**

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

23 **1. INTRODUCTION**

24 **1.1 Parties**

25 This consent Judgment is entered into by and between plaintiff, Michael DiPirro (“DiPirro”)  
26 and CHICK PUBLICATIONS, INC. (“Defendant” or “CHICK”), with DiPirro and Defendant  
27 individually referred to as a “Party” and collectively as the “Parties.”  
28

1           **1.2 Plaintiff**

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

5           **1.3 Defendant**

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

9           **1.4 General Allegations**

10          DiPirro alleges that Defendant sells, or distributes for sale in the State of California, Tract  
11 Wallets that expose users to Diisononyl phthalate (“DINP”), a toxic chemical, without first  
12 providing the clear and reasonable exposure warnings required by Proposition 65. DINP was  
13 listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause  
14 cancer on December 20, 2013, and has been subject to the warning requirements since December  
15 20, 2014.

16          **1.5 Product Description**

17          The products covered by this Consent Judgment are Tract Wallets that are sold, or distributed  
18 for sale in California by Defendant, including, but not limited to the Tract Wallet. (the  
19 “Products).

20          **1.6 Notices of Violation**

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

27         //

28         //

1           **1.7 Complaint**

2           On or about November 3, 2023, DiPirro filed the instant action against Defendant for the  
3 alleged violations of Health & Safety Code § 25249.6 that are the subject of the July 31, 2023  
4 Notice.

5           **1.8 No Admission**

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

14           **1.9 Consent to Jurisdiction**

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

19           **1.10 Effective Date**

20           For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on  
21 which it is entered as a judgment by the Court.

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

23           **2.1** Within thirty days of the Effective Date (a.k.a. the “Warning Date”), Defendant shall  
24 only manufacture for sale, purchase for sale, or import for sale in California, Products that are  
25 Reformulated Products as defined by Section 2.2, below, or Products that are labeled with a clear  
26 and reasonable warning as set forth under Sections 2.3 through 2.6, below.

27           **2.2 Reformulation Standard.** “Reformulated Products” are Products containing DINP in  
28 concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component

1 when analyzed by a laboratory accredited by the State of California, a federal agency, or a  
2 nationally recognized accrediting organization. For purposes of compliance with this  
3 reformulation standard, testing samples may be prepared and extracted using any methodologies  
4 utilized by federal or state government agencies to determine phthalate content in a solid  
5 substance. Defendant may rely upon test results commissioned by itself or by its suppliers in  
6 order to determine whether the Products are “Reformulated Products” so long as the testing  
7 methodology, analysis, and results comport with the standards set forth in this paragraph.

### 8 **2.3 Clear and Reasonable Warnings.**

9 Commencing on or before the Effective Date, Defendant shall provide clear and reasonable  
10 warnings for all Products provided for sale to customers in California in accordance with this  
11 Section. Defendant shall use one of the warnings set forth below, which shall include a symbol  
12 consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline  
13 as shown below (the symbol may be black or white if the color yellow is otherwise not used on  
14 the Product’s packaging). The symbol must be placed to the left of the text of the warning in a  
15 size no smaller than the height of the word “WARNING”:

#### 16 **a. Full Warning.**



17 **WARNING: This product can expose you to Diisononyl phthalate (DINP), a**  
18 **chemical known to the State of California to cause cancer. For more**  
19 **information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

#### 20 **b. Short-Form Warning.**

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

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

### 25 **2.4 Product Warnings**

26 Defendant shall affix a warning to the Product label or otherwise directly on each Product  
27 provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to  
28 customers located in California. For the purpose of this agreement, “Product label” means a

1 display of written, printed or graphic material that is printed on or affixed to a Product or its  
2 immediate container or wrapper. The entire warning shall appear in a type of size of at least 6-  
3 point type and no smaller than the largest type of size used for other consumer information on  
4 the product. The warning shall consist of either the Warning, the Short-Form Warning described  
5 in subsection 2.3(a) or (b), respectively, or any warning that complies with Title 27, California  
6 Code of Regulations, section 25600, *et seq.*, as amended August 30, 2016 and subsequently  
7 thereafter.

### 8 **2.5 Mail Order Catalog Warnings**

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

### 18 **2.6 Internet Warnings**

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

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

### 25 **2.7 Products in the Stream of Commerce**

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

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1 **3. MONETARY PAYMENTS**

2 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The Noticed  
3 Parties shall make a civil penalty payment of \$1,500, in accordance with this section, on or  
4 before the Effective Date. The penalty payment will be allocated in accordance with California  
5 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California  
6 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the  
7 penalty remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be  
8 remitted in accordance with the procedure set out in Section 3.2.

9 **3.2 Payments.** All payments shall be delivered **within ten business days** of the Effective  
10 Date by ACH payment or wire transfer to the account of Jeremy Fietz (bank information given  
11 upon settlement) or in the alternative parcel delivery to Jeremy Fietz, Attorney at Law, 4241  
12 Montgomery Drive #123, Santa Rosa, CA 95404, and shall be in the form of three checks for the  
13 following amounts made payable to:

14 (a) “OEHHA” in the amount of \$1,125, for payment of 75% of the civil penalty to  
15 OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a timely  
16 manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or  
17 cashier’s check made payable to “Office of Environmental Health Hazard Assessment.”

18 (b) “Jeremy Fietz, Attorney at Law” in the amount of \$375, as payment of 25% of the  
19 civil penalty to Michael DiPirro. Counsel for DiPirro agree to forward such funds in a  
20 timely manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or  
21 cashier’s check made payable to “Michael DiPirro.”

22 (c) “Jeremy Fietz, Attorney at Law” in the amount of \$48,500, as payment for attorneys’  
23 fees and costs pursuant to Section 4 below.

24 **3.3 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro’s counsel with a  
25 separate 1099 form for each of its payments under this Agreement to:

26 (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento,  
27 CA 95814 (EIN: 68-0284486) for civil penalties paid;

28 (b) “Michael DiPirro”, whose address and tax identification number shall be furnished

1 upon request after this Agreement has been fully executed by the Parties for his portion  
2 of the civil penalties paid; and

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

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

7 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without  
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
9 issue to be resolved after the material terms of the agreement had been settled. Defendant then  
10 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
11 been finalized. The parties then attempted to (and did) reach an accord on the compensation due  
12 to OEHHA, DiPirro and his counsel under general contract principles and the private attorney  
13 general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed  
14 through the mutual execution of this agreement. Defendant shall pay \$48,500 for fees and costs  
15 incurred as a result of investigating, bringing this matter to Defendant’s attention, and negotiating  
16 a settlement in the public interest. Defendant shall deliver payments as described in Section 3,  
17 above.

18 **5. CLAIMS COVERED AND RELEASED**

19 **5.1 DiPirro’s Public Release of Proposition 65 Claims**

20 DiPirro, acting on his own behalf and in the public interest, releases Defendant and its  
21 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,  
22 and attorneys (Releasees) and each entity to whom Defendant directly or indirectly distributes or  
23 sells the Products including, but not limited to, its downstream distributors, wholesalers,  
24 customers, retailers, franchisers, cooperative members, licensors and licensees, if any  
25 (Downstream Releasees), for any violations arising under Proposition 65 for unwarned exposures  
26 to DINP from the Products manufactured, imported, distributed or sold by Defendant prior to the  
27 Effective Date, as set forth in the Notice and Complaint. Compliance with the terms of this  
28 Consent Judgment constitutes compliance with Proposition 65 by Defendant with respect

1 to any alleged or actual failure to warn about exposures to DINP from Products manufactured,  
2 sold or distributed for sale by Defendant after the Effective Date.

3 **5.2 DiPirro's Individual Release of Claims**

4 DiPirro, in his individual capacity only and *not* in his representative capacity, also provides a  
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all  
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
7 liabilities and demands of DiPirro of any nature, character or kind, whether known or unknown,  
8 suspected or unsuspected, arising out of alleged or actual exposures to DINP from the use of the  
9 Products sold or distributed for sale by Defendant in the State of California before the Effective  
10 Date.

11 **5.3 Defendant's Release of DiPirro**

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

18 **6. COURT APPROVAL**

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

22 The Parties acknowledge that, pursuant to California Health and Safety Code § 25249.7(f), a  
23 noticed motion is required for judicial approval of this Consent Judgment, which motion DiPirro  
24 shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually  
25 employ their best efforts, and those of their counsel, to support the entry of this agreement as a  
26 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of  
27 this section, "best efforts" shall include, at minimum, supporting the motion for approval,  
28 responding to any objection that any third-party may file or lodge, and appearing at the hearing



1 before the Court if so requested.

2 **7. SEVERABILITY**

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

6 **8. GOVERNING LAW**

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

14 **9. NOTICES**

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

19 For Defendant CHICK:  
20 Michael Gleason  
21 Hahl Loeser & Parks  
22 1500 West Broadway, Suite 1500  
23 San Diego, CA 92101

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

24 Any party may, from time to time, specify in writing to the other party a change of address to  
25 which 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.

1 **11. POST EXECUTION ACTIVITIES**

2 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety  
3 Code § 252.49.7(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 this settlement. In  
5 furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their  
6 best efforts, and that of their counsel, to support the entry of this agreement as a Consent  
7 Judgment, and to obtain judicial approval of this settlement in a timely manner.

8 **12. ENTIRE AGREEMENT**

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

17 **13. MODIFICATION**

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

21 **14. AUTHORIZATION**

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


25 AGREED:

AGREED:

26 Date: 03/11/2024

Date: 03/15/24

27  
28 By:   
Michael DiPirro

By:   
Chick Publications, Inc.