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Attorneys for Plaintiff

Michael DiPirro

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,

Plaintiff,

v.

KELLY PRESLEY L.L.C.; and DOES 1-150,

Defendants.

Case No. 26CV186609

[PROPOSED] CONSENT JUDGMENT

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

1 **INTRODUCTION**

2 **1.1 Parties.**

3 This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff,
4 Michael DiPirro (“DiPirro”), and Kelly Presley L.L.C. (“Defendant”). DiPirro and Defendant are
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
8 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances 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
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations.**

15 DiPirro alleges that Defendant manufactures or sells, Lead Weights in the State of
16 California, which exposes consumers to Lead and lead compounds (“Lead”), a toxic chemical,
17 without first providing the clear and reasonable exposure warnings required by Proposition 65.
18 Lead was listed pursuant to Proposition 65 as a chemical that is known to the State of California
19 to cause reproductive toxicity on February 27, 1987, and has been subject to the warning
20 requirements for reproductive harm since February 27, 1988. On October 1, 1992, California
21 identified and listed Lead and lead compounds as a chemical known to cause cancer. Lead and
22 lead compounds became subject to the “clear and reasonable warning” requirements of the act for
23 cancer one year later on October 1, 1993, for cancer.

24 **1.5 Product Description.**

25 The products covered by this Consent Judgment are Lead Weights that are sold, or
26 distributed for sale in California by Defendant, including, but not limited to the Presleys Outdoors
27 Strap Decoy Weight 8oz (the “Products”).

1 **1.6 Notices of Violation.**

2 On or about May 8, 2025, DiPirro served Noticed Party and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed
4 the recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its
5 customers and consumers in California that the Products expose users to Lead and lead
6 compounds. To the best of the Parties’ knowledge, no public enforcer has commenced and is
7 diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint.**

9 On or about May 6, 2026, DiPirro filed the instant action against Defendant for the alleged
10 violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

11 **1.8 No Admission.**

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

20 **1.9 Consent to Jurisdiction.**

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

25 **1.10 Effective Date.**

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

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

2 **2.1** Within thirty days of the Effective Date (a.k.a. the “Warning Date”), as to all
3 Products that contain lead (hereinafter the “Listed Chemical”) and are sold in California by
4 Defendant other than for Defendant’s sales directly to consumers in California via the internet
5 which is covered by Section 2.2, Defendant shall provide a clear and reasonable warning on the
6 label of each Product as set forth below in Section 2.3. Each warning shall be prominently placed
7 with such conspicuousness as compared with other words, statements, designs, or devices as to
8 render it likely to be read and understood by an ordinary individual under customary conditions
9 before purchase or use. Each warning shall be provided in a manner such that the consumer or
10 user understands to which specific Product the warning applies, so as to minimize the risk of
11 consumer confusion. Compliance with the warning requirements set forth in Sections 2.1 through
12 2.3 or the warning requirements of Proposition 65 and related regulations, as may be amended
13 from time to time, shall be deemed compliance with this Consent Judgment. This injunctive relief
14 as specified herein is an integral component of this agreement.

15 **2.2 Internet Warnings.** For all Products that Defendant sells directly to consumers in
16 California via the internet on or after the Warning Date, Defendant’s obligation to warn for such
17 Products is satisfied by including the warning set forth below in Section 2.3 on one or more of the
18 following: (a) on the same web page on which a Product is displayed; (b) on the same web page as
19 the order form for a Product; (c) on the same web page as the price for any Product; or (d) on one
20 or more web pages displayed to a purchaser during the checkout process. The internet warning
21 described above can also be delivered through a hyperlink using the word “[California Prop 65]
22 WARNING” (language in brackets optional).

23 **2.3 Text of the Warning.** The text of the warning shall be printed in black ink on a
24 light background, in a font that is easy to read and legible, but in no case less than a size 6 font.
25 Defendant shall use the warning language as set forth below in 2.3(a) or 2.3(b) for Products
26 containing Lead and lead compounds, which shall include a symbol consisting of a black
27 exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the
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symbol may be black or white if the color yellow is otherwise not used on the Product's packaging).

a. **Full Warning.**



WARNING: This product can expose you to chemicals including Lead and lead compounds which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

b. **Short-Form Warning.**



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

In the event that Defendant continues to distribute the Products on or after January 1, 2028, Defendant agrees to comply with 27 C.C.R. § 25603 on and after that date, and will utilize the following Short-Form Warning:



WARNING: Risk of cancer and reproductive harm from exposure to lead.

See www.P65Warnings.ca.gov.

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

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

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Defendant shall make a civil penalty payment of \$3,000 as a component of this settlement. The penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the

1 penalty remitted to DiPirro. The award of penalty as specified herein is an integral component of
2 this agreement.

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

5 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
7 this fee issue to be resolved after the material terms of the agreement had been tentatively agreed
8 upon. The Defendant then expressed a desire to resolve the fee and cost issue shortly after the
9 other settlement terms had been finalized. The parties then attempted to (and did) reach an accord
10 on the compensation due to DiPirro and his counsel under general contract principles and the
11 private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all
12 work performed through the mutual execution of this agreement. The Defendant shall pay a total
13 of \$57,000 for fees and costs incurred as a result of investigating, working with toxicology
14 experts, bringing this matter to the Defendant's attention, document preparation, negotiating a
15 settlement in the public interest, time spent in litigation, and post-settlement audit and compliance
16 work. The award of fees and costs as specified herein is an integral component of this agreement.

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18 **5. PAYMENT AND FORM 1099**

19 **5.1 Payment.** The complete settlement payment in the amount of \$60,000 shall be paid
20 within seven business days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at
21 Law (via wire transfer, or ACH payment; number provided upon request) or by physical check to
22 the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA
23 95405, and for the latter option shall be in the form of a check made payable to: "Jeremy Fietz,
24 Attorney at Law". For any payment that is returned for any reason, including insufficient funds, a
25 payment must be made in the form of a cashier's check within three (3) calendar days of
26 notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys.

27 **5.2 Issuance of 1099 Form.** The Defendant shall provide DiPirro's counsel, Jeremy
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1 Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall
2 be made on the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds paid to
3 an attorney”). The Defendant acknowledges that 1099 shall NOT be issued under form 1099
4 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been
5 fully executed by the Parties to this agreement. Issuance of the incorrect form of 1099 shall
6 result in a fee of \$1,000 payable to “Jeremy Fietz, Attorney at Law”, unless promptly corrected
7 upon notice by Plaintiff to Defendant.
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9 **6. CLAIMS COVERED AND RELEASED**

10 **6.1 DiPirro’s Public Release of Proposition 65 Claims**

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

24 **6.2 DiPirro’s Individual Release of Claims**

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

8 DiPirro, in his individual capacity and not in his representative capacity, waives and
9 relinquishes all rights and benefits of California Civil Code section 1542 with respect to any and
10 claims relating to the Products and/or the Notices, and does so understanding and acknowledging
11 the significance and consequence of specifically waiving section 1542. California Civil Code §
12 1542 states as follows:

13 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
14 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
15 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
16 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
17 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
18 DEBTOR OR RELEASED PARTY.

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

24 **6.3 Defendant's Release of DiPirro**

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

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5 **7. COURT APPROVAL**

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

9 **8. SEVERABILITY**

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

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15 **9. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of
17 California and apply within the State of California. In the event that Proposition 65 is repealed or
18 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then
19 Defendant may apply to the Court for a modification of its obligations hereunder, with respect to,
20 and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be
21 interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal
22 toxics control laws.

23
24 **10. NOTICES**

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

For Kelly Presley L.L.C.:

Cathleen S. Huang
Bowles & Verna, LLP
2121 N. California Blvd., Suite 875
Walnut Creek, CA, 94596-8180

For Plaintiff DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

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.

11. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment contains the entire and only agreement between the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. There are no representations or terms of agreement made by any Party with respect to the subject matter hereof or the other Party except for those contained in this Consent Judgment. This Consent Judgment may be executed in counterparts, and by facsimile or portable 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.

12. POST EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In

1 furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their
2 best efforts, and that of their counsel, to support the entry of this agreement as a Consent
3 Judgment, and to obtain judicial approval of the settlement. Plaintiff's counsel shall be
4 responsible for preparation and filing of the Motion to Confirm and for compliance with
5 regulatory notice requirements. Upon request of Plaintiff's counsel, Defendant and/or their
6 counsel, shall timely provide a declaration/affidavit in full support of any and all aspects of this
7 proposed Consent Judgment.

8
9 **13. MODIFICATION**

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

13 **14. AUTHORIZATION**

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

17
18 **15. RETENTION OF JURISDICTION AND ENFORCEMENT**

19 DiPirro represents and warrants neither he nor his agents or attorneys have assigned or
20 otherwise transferred, or attempted to assign, or transfer, any claim or claims against Defendant.
21 DiPirro further warrants that neither he nor his agents or attorneys are aware of any other potential
22 private enforcer or attorney who intends to bring litigation based on the 60-Day Notice. Any
23 further action taken to enforce the terms of this agreement after approval by the Court shall carry
24 the right to recover attorneys' fees and costs incurred in such effort. This Court shall retain
25 jurisdiction of this matter to implement and enforce the terms of this Consent Judgment under
26 Code of Civil Procedure § 664.6. Public agency prosecutors may enforce the settlement under
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1 H&S §25249.7(c) and private party enforcers acting "in the public interest" may enforce the
2 settlement under H&S §25249.7(d).

3 AGREED TO:

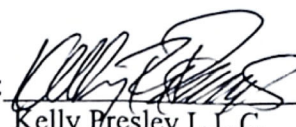
AGREED TO:

4 Date: 09/28/2026

Date: 09-28-2026

6 By: 

7 MICHAEL DIPIRRO

By: 

Kelly Presley L.L.C.

8 Print Name: Kelly Presley

9 Title: Owner

10 SO ORDERED:

11 DATED:

12 ALAMEDA COUNTY SUPERIOR COURT