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10 Attorneys for Defendants
 ADVANTAGE PUBLISHERS GROUP,
 11 ADVANCED MARKETING SERVICES,
 and SILVER DOLPHIN BOOKS

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
 14 UNLIMITED CIVIL JURISDICTION

16 MICHAEL DIPIRRO,) No. 01-032045
 17)
 Plaintiff,)
 18) CONSENT JUDGMENT
 v.)
 19)
 ADVANTAGE PUBLISHERS GROUP;)
 20 ADVANCED MARKETING SERVICES,)
 INC.; SILVER DOLPHIN BOOKS; and)
 21 DOES 1 through 1000,)
)
 22 Defendants.)
)

23
 24 This Consent Judgment ("Agreement" or "Consent
 25 Judgment") is entered into by and between Michael DiPirro and
 26 ADVANTAGE PUBLISHERS GROUP, ADVANCED MARKETING SERVICES, and
 27 SILVER DOLPHIN BOOKS (collectively hereafter "ADVANTAGE"), as of
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1 July 24, 2002 (the "Effective Date"). The parties agree to the
2 following terms and conditions:

3
4 WHEREAS:

5 A. Michael DiPirro is an individual residing in San
6 Francisco, California, who seeks to promote awareness of
7 exposures to toxic chemicals and improve human health by
8 reducing or eliminating hazardous substances contained in
9 consumer and industrial products;

10 B. ADVANTAGE is a company that distributes and sells
11 certain educational products and DiPirro alleged that in the
12 course of some of the printings of two (2) of those products the
13 manufacturer applied certain quantities of lead-containing paint
14 or ink to the products, and that lead compounds are substances
15 known to the State of California to cause birth defects (or
16 other reproductive harm);

17 C. The two (2) ADVANTAGE products which allegedly
18 contained certain quantities of lead-containing paint (the lead
19 or lead compound is hereinafter referred to as the "Listed
20 Chemical"), and which are covered by this Agreement, are
21 identified in Exhibit A (all such ADVANTAGE products are
22 collectively referred to hereinafter as the "Products");

23 D. On September 21, 2001, Michael DiPirro served
24 ADVANTAGE and other public enforcement agencies with a document
25 entitled "60-Day Notice of Violation" that provided ADVANTAGE.
26 and such public enforcers, with notice that ADVANTAGE was
27 allegedly in violation of Health & Safety Code §25249.6 for
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1 failing to warn purchasers that the Products sold in California
2 purportedly exposed users to the Listed Chemical; and

3 E. On November 26, 2001, Michael DiPirro filed a
4 complaint entitled Michael DiPirro v. Advantage Publishers
5 Group; Advanced Marketing Services, Inc.; Silver Dolphin Books
6 et al. in the Alameda County Superior Court, naming ADVANTAGE as
7 a defendant and alleging violations of Business & Professions
8 Code §17200 as well as Health & Safety Code §25249.6 on behalf
9 of individuals in California who have been exposed to one or
10 more chemicals, listed pursuant to Proposition 65, contained in
11 the Products sold by ADVANTAGE.

12 F. ADVANTAGE contends that any exposure to lead in
13 any lead-containing paints on any of the Products would not pose
14 a "significant risk" of causing cancer or reproductive toxicity
15 to users of the Products within the meaning of Health & Safety
16 Code § 25249.10(c) because the quantity of such paints on the
17 Products and any purported lead contained in those paints (where
18 detected) was insignificant.

19 G. ADVANTAGE contends that to the extent some of the
20 units of the Products may have been found to have lead-
21 containing paint applied to them, such units would have been
22 manufactured by the manufacturer using paints that violated
23 ADVANTAGE's specifications for the Products.

24 H. ADVANTAGE contends that at no time prior to late
25 May, 2001, did it have knowledge or information that lead-
26 containing paint was or may have been applied by the
27 manufacturer to some units of the Products.

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1 I. Nothing in this Agreement shall be construed as
 2 an admission by ADVANTAGE of any fact, finding, issue of law or
 3 violation of law, nor shall compliance with this Agreement
 4 constitute or be construed as an admission by ADVANTAGE of any
 5 fact, finding, conclusion, issue of law or violation of law.
 6 However, this paragraph shall not diminish or otherwise affect
 7 the obligations, responsibilities, and duties of ADVANTAGE under
 8 this Agreement.

9
 10 NOW THEREFORE, MICHAEL DIPIRRO AND ADVANTAGE AGREE AS FOLLOWS:

11 1.0 Product Warnings. In no event shall ADVANTAGE
 12 offer any of the Products for sale in California after July 24,
 13 2002 which have not been reformulated to eliminate the presence
 14 of lead-containing paints or which does not bear the following
 15 warning statement:

16 **"WARNING: This product contains lead,
 17 a chemical known to the State of California
 18 to cause birth defects (or other
 reproductive harm). Please wash hands after
 use.**

19 The warning stated above may be placed on: (a) a product label;
 20 (b) on the accompanying packaging as a sticker; or (c) on a
 21 store sign sufficiently near the Products' point of sale so that
 22 it is likely to be read by an ordinary individual under
 23 customary conditions of purchase for the Products. For purposes
 24 of this Consent Judgment, a warning sticker placed on product
 25 packaging that is not available to the consumer before purchase,
 26 or on product packaging that does not accompany the Products
 27 when purchased, is not reasonably calculated to transmit the
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1 requisite warning and, thus, may not be used to comply with this
2 paragraph.

3 Notwithstanding any other provision of this Agreement,
4 no warning for exposure to lead shall or need be provided by
5 ADVANTAGE for any paint or ink applied to the Products that
6 yields a human exposure of less than 0.5 micrograms (ugs) of
7 lead per day.

8 **1.1 Lead-Free Component Commitment.** As part of its
9 commitment to promote public health, ADVANTAGE agrees, over the
10 next 12 months from the Effective Date, to use its best efforts
11 to specify, or cause the specification of, lead-free paint
12 whenever such materials are used on the Products sold by
13 ADVANTAGE in the State of California.

14 **1.2 Interim Health Safety Efforts.** ADVANTAGE sold the
15 Products in California from February, 1999 until late May, 2001.
16 ADVANTAGE provided DiPirro with ample evidence that ADVANTAGE
17 voluntarily recalled the Products beginning on or about June 1,
18 2001, under the Consumer Product Safety Commission's ("CPSC")
19 Fast Track Product Recall Program. ADVANTAGE, with the
20 assistance and cooperation of the CPSC, voluntarily recalled the
21 Products due to the possibility that some of the units being
22 distributed or sold might contain a small quantity of lead-
23 containing paint and therefore might be in violation of CPSC's
24 federal regulations under the Ban of Lead-Containing Paint and
25 Certain Common Products Bearing Lead-Containing Paint, 16 C.F.R.
26 Part 1303.

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Between June 1, 2001 and July 12, 2001, ADVANTAGE, working with CPSC, voluntarily undertook the following actions to ensure the safety of the consumers of the Products:

- (1) Recalled approximately 160,000 units of the Products which had been distributed or sold (worldwide) between February, 1995 and May, 2001;
- (2) Notified all consumers, retailers and wholesalers (via letter) about the recall;
- (3) Notified the public of the recall via a joint news release with the CPSC;
- (4) Established a toll-free number for consumers to inquire about the recall;
- (5) Provided a lead-free replacement stencil sheet and lead-free replacement pen for consumers and retailers, along with a letter of explanation;
- (6) Provided information about the recall on ADVANTAGE's automated system and website; and
- (7) Provided retailers with a poster about the recall to display in each of their stores.

As such, the parties believe that no interim warning program is warranted in this matter.

2. Payment Pursuant To Health & Safety Code

\$25249.7(b). Pursuant to Health & Safety Code §25249.7(b), ADVANTAGE shall pay a civil penalty of \$500.00 (five hundred dollars), to be made within five (5) days of the Effective Date. The penalty payment is to be made payable to "Sheffer & Chan."

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1 LLP In Trust For Michael DiPirro". If the Consent Judgment is
2 not approved by the Court, DiPirro will return all funds, with
3 interest thereon at the prevailing federal funds rate (currently
4 set at 1.75% per annum), within five (5) calendar days of notice
5 of the Court's decision. All penalty monies shall be
6 apportioned by DiPirro in accordance with Health & Safety Code
7 §25192, with 75% of these funds remitted to the State of
8 California's Department of Toxic Substances Control.

9 **3.0 Reimbursement Of Fees And Costs.** The parties
10 acknowledge that DiPirro and his counsel offered to resolve this
11 dispute without reaching terms on the amount of fees and costs
12 to be reimbursed to them, thereby leaving this fee issue to be
13 resolved after the material terms of the agreement had been
14 settled. ADVANTAGE then expressed a desire to resolve the fee
15 and cost issue shortly after the other settlement terms had been
16 finalized. The parties then attempted to (and did) reach an
17 accord on the compensation due to DiPirro and his counsel under
18 the private attorney general doctrine codified at C.C.P. §1021.5
19 for all work performed through the Effective Date of the
20 Agreement.

21 Under the private attorney general doctrine codified
22 at C.C.P. §1021.5, ADVANTAGE shall reimburse DiPirro and his
23 counsel for his fees and costs, incurred as a result of
24 investigating, bringing this matter to ADVANTAGE's attention,
25 litigating and negotiating a settlement in the public interest.
26 ADVANTAGE shall pay DiPirro and his counsel \$4,500.00 (four
27 thousand five hundred dollars) except as provided for in
28 paragraph 3.1 to 3.6 below, for all attorneys' fees, expert fees,

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investigation fees, and litigation costs, within five (5) days of the Effective Date. Payment should be made payable to "Sheffer & Chanler LLP". If the Consent Judgment is not approved by the Court, DiPirro and Sheffer & Chanler LLP will return all funds, with interest thereon at the prevailing federal funds rate (currently set at 1.75% per annum), within five (5) calendar days of notice of the Court's decision.

3.1 Additional Fees and Costs in Seeking Judicial Approval. The parties acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the parties agree to use their best efforts to file a *Joint Motion to Approve the Agreement* within a reasonable period of time after execution of this Agreement. As part of its best efforts commitment, ADVANTAGE agrees to transmit a draft of the moving papers for the approval within fourteen (14) calendar days of the Effective Date of this Agreement. Pursuant to C.C.P. §1021.5, ADVANTAGE agrees to reimburse DiPirro and his counsel for their reasonable fees and costs incurred in seeking judicial approval of this Agreement to the extent described in paragraphs 3.2 through 3.6.

3.2 If no opposition to the motion to approve (nor objection to the terms of the agreement) is filed or otherwise transmitted by any third party, ADVANTAGE agrees to reimburse DiPirro under Section 3.1 for any additional reasonable fees and/or costs in an amount not to exceed \$1,500.

3.3. In the event that any third party, including any public enforcer, objects or otherwise comments to one or more

1 provisions of this Agreement, ADVANTAGE agrees to use its best
 2 efforts to support each of the terms of the Agreement, as well
 3 as to seek judicial approval of this Agreement. ADVANTAGE
 4 agrees to send DiPirro a draft of the moving papers referenced
 5 in paragraph 3.1 within fourteen (14) days of the Effective Date
 6 of this Agreement. If a joint motion cannot reasonably be filed
 7 within twenty-one (21) days of the Effective Date, DiPirro may
 8 file the motion to approve on his own.

9 3.4. In the event that such an objection or
 10 opposition is transmitted or filed by any third party, ADVANTAGE
 11 agrees to reimburse DiPirro under Section 3.1 and to reimburse
 12 DiPirro for his additional reasonable attorneys' fees and costs
 13 incurred in securing approval of this Consent Judgment in an
 14 amount not to exceed \$200.

15 3.5. In the event that defending this Agreement from
 16 such objection or opposition from any third party requires a
 17 declaration from an expert, then ADVANTAGE agrees to reimburse
 18 DiPirro, in addition to any attorney's fees and costs under
 19 section 3.4, for such expert's reasonable fees and costs in an
 20 amount not to exceed \$200.

21 3.6. ADVANTAGE's payment of DiPirro's legal fees and
 22 costs pursuant to sections 3.1-3.5 shall be due within ten (10)
 23 calendar days after receipt of a billing statement from DiPirro
 24 ("Additional Fee Claim"). Payment of the Additional Fee Claim
 25 shall be made payable to the "Sheffer & Chanler LLP." ADVANTAGE
 26 has the right to object to DiPirro's reimbursement request and
 27 may submit the resolution of this issue to the American
 28 Arbitration Association (AAA) in Northern California to

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1 determine the reasonableness of the additional fees and costs
2 sought. Any arbitration claim on this issue of reimbursement
3 for the Additional Fee Claim must be filed with AAA and served
4 on DiPirro within ten (10) calendar days following DiPirro's
5 service of the Additional Fee Claim on ADVANTAGE. If an
6 arbitration notice is not filed with AAA in a timely manner,
7 ADVANTAGE's right to arbitrate this matter is waived. DiPirro
8 may then file a motion, pursuant to C.C.P. §1021.5, with the
9 Court seeking his (and his attorneys') fees and costs incurred
10 as set forth in this paragraph.

11 4. Michael DiPirro's Release Of ADVANTAGE. Michael
12 DiPirro, by this Agreement, on behalf of himself, his agents,
13 representatives, attorneys, assigns, and in the interest of the
14 general public, waives all rights to institute or participate
15 in, directly or indirectly, any form of legal action, and
16 releases all claims, liabilities, obligations, losses, costs,
17 expenses, fines, penalties, fees, and damages, restitution,
18 injunction, and any other form of relief, whether legal or
19 equitable, against ADVANTAGE and its directors, officers,
20 employees, agents, parents, subsidiaries, successors and
21 assigns, whether under Proposition 65 or the Business &
22 Profession Code §17200, et seq. based on their alleged failure
23 to warn about exposure to the Listed Chemical contained in any
24 of the Products. This Agreement is a full, final, and binding
25 resolution between DiPirro, on behalf of himself and in the
26 interest of the general public, and ADVANTAGE, of any violation
27 of Proposition 65, Business & Professions Code section 17200, et
28 seq., or any other claim that could have been asserted by the

1 general public based on alleged failure to warn for exposure to
2 lead and/or lead compounds in the Products or other facts
3 alleged in the Complaint. The parties intend that compliance
4 with this Agreement to resolve any issue now, in the past, or in
5 the future concerning the Products' past and present, and future
6 (up to the date of compliance established in Paragraph 1, above,
7 and in the future so long as ADVANTAGE complies with this
8 Agreement) compliance with Proposition 65 as such compliance
9 pertains to the Products at issue. In addition, DiPirro, on
10 behalf of himself, his attorneys, and his agents, waives all
11 rights to institute any form of legal action against ADVANTAGE
12 and its attorneys or representatives, for all actions or
13 statements made by ADVANTAGE or its attorneys or
14 representatives, in the course of responding to alleged
15 violations of Proposition 65 or Business & Profession Code
16 §17200 by ADVANTAGE. Provided, however, that DiPirro shall
17 remain free to institute any form of legal action to enforce the
18 provisions of this Consent Judgment.

19 **5. ADVANTAGE's Release Of Michael DiPirro.**

20 ADVANTAGE, by this Agreement, waives all rights to institute any
21 form of legal action against Michael DiPirro and his attorneys
22 or representatives, for all actions or statements made by
23 Michael DiPirro or his attorneys or representatives, in the
24 course of seeking enforcement of Proposition 65 or Business &
25 Profession Code §17200 against ADVANTAGE in this litigation.
26 Provided, however, that ADVANTAGE shall remain free to institute
27 any form of legal action to enforce the provisions of this
28 Consent Judgment.

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6. Court Approval. If, for any reason, this Consent Judgment is not ultimately approved by the Court, this Agreement shall be deemed null and void.

7. ADVANTAGE Sales Data. ADVANTAGE understands that the sales data provided to counsel for DiPirro by ADVANTAGE was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of ADVANTAGE's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts that demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of ADVANTAGE's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to re-institute an enforcement action against ADVANTAGE, for those additional Products, based upon any existing 60-Day Notices of violation served on ADVANTAGE. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies ADVANTAGE that he is re-instituting the action for the additional Products. Provided, however, that ADVANTAGE shall have no additional liability, and DiPirro waives any claims that might otherwise be asserted, from the Effective Date until the date that DiPirro provides notice under this Paragraph 7, so long as ADVANTAGE has complied with the requirements of Section

1 2 for all of the Products, including those numbers of Products
2 additionally discovered.

3 8. Severability. In the event that any of the
4 provisions of this Agreement are held by a court to be
5 unenforceable, the validity of the enforceable provisions shall
6 not be adversely affected.

7 9. Attorney's Fees. In the event that a dispute
8 arises with respect to any provision(s) of this Agreement
9 (including, but not limited to, disputes arising from payments
10 to be made under this Agreement), reasonable attorneys' fees
11 incurred from the resolution of such dispute shall be available
12 to the prevailing party. This provision, however, shall not
13 apply to the procedure set forth in paragraphs 3.1 to 3.6 which
14 are to be governed by the principles of CCP § 1021.5.

15 10. Governing Law. The terms of this Agreement shall
16 be governed by the laws of the State of California.

17 11. Notices. All correspondence to Michael DiPirro
18 shall be mailed to:

19 Gregory M. Sheffer, Esq.
20 Sheffer & Chanler LLP
21 4400 Keller Ave., Suite 200
Oakland, CA 94605
Tel: (510) 577-0747

22 All correspondence to ADVANTAGE shall be mailed to:

23 John R. Zebrowski, Esq.
24 Hughes, Hubbard & Reed LLP
25 Two California Plaza
350 South Grand Avenue
26 Los Angeles, CA 90071
Tel: (213) 613-2800

27 12. Compliance With Reporting Requirements (Health &
28 Safety Code §25249.7(f)). The parties acknowledge that the

reporting provisions of Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney General's Office when noticing the Motion to Approve hearing, if one is required by law. Counsel for DiPirro shall submit the Consent Judgment to the Court in accordance with the requirements of Health & Safety Code § 25249.7(f) and its implementing regulations, thereby allowing the Attorney General to serve any comments to this Consent Judgment prior to the end of the review period.

13. Counterparts and Facsimile. This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

14. Authorization. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:
DATE: _____

AGREED TO:
DATE: 24 July 02

Michael DiPirro
PLAINTIFF

Sydney J. Stanley - VP
Advantage Publishers Group
DEFENDANT

AGREED TO:
DATE: _____

AGREED TO:
DATE: 24 July 02

California Department of
Justice/Office of the
Attorney General

Michael J
Advanced Marketing
Services, Inc.
DEFENDANT

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reporting provisions of Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney General's Office when noticing the Motion to Approve hearing, if one is required by law. Counsel for DiPirro shall submit the Consent Judgment to the Court in accordance with the requirements of Health & Safety Code § 25249.7(f) and its implementing regulations, thereby allowing the Attorney General to serve any comments to this Consent Judgment prior to the end of the review period.

13. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO: 7/26/02
DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO: 24 July 02
DATE: _____

Suzanne J. Stanley - VP
Advantage Publishers Group
DEFENDANT

AGREED TO: _____
DATE: _____

California Department of
Justice/Office of the
Attorney General

AGREED TO: 24 July 02
DATE: _____

Michael J.
Advanced Marketing
Services, Inc.
DEFENDANT

AGREED TO:
DATE: July 24, 2002

William Kuc
Silver Dolphin Books
DEFENDANT [Not a Person
or Entity]

APPROVED AS TO FORM:
DATE: July 25, 2002

[Signature]
Gregory Sheffer
Attorney for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:
DATE: 7/25/02

[Signature]
John R. Zabrowski
Attorney for Defendants
ADVANTAGE PUBLISHERS GROUP
ADVANCED MARKETING SERVICES,
INC., SILVER DOLPHIN BOOKS

EXHIBIT A

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EXHIBIT A

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- 1. Let's Start Numbers
- 2. Optical Illusions Lab: The Ultimate Optical Illusions Package