

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Avery Outdoors, Inc. ("Avery"), a Tennessee corporation, as of February 2, 2000 (the "Effective Date"). The parties agree to the following terms and conditions: 4, per [signature]

WHEREAS:

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

B. Avery is a company that currently distributes certain sporting goods as set forth in Exhibit A that contain lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm);

C. A list of the products which contain lead (the "Listed Chemical") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured, distributed and sold by Avery for use in California since at least August 1997; and

D. On October 22, 1999, Michael DiPirro first served Avery and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Avery and such public enforcers with notice that Avery was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On January 21, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Avery Outdoors, Inc. in the San Francisco County Superior Court, naming Avery as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to chemicals listed pursuant to Proposition 65 contained in certain Avery products.

F. Nothing in this Agreement shall be construed as an admission by Avery of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Avery of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Avery under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND AVERY AGREE AS FOLLOWS:

1. Product Warnings. Avery shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Beginning on February 29, 2000, Avery agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemical for sale in the State of California unless such Products comply with section 1.1 below:

1.1 For all Products containing lead (except the "Wave Maker" Decoy), such Products shall bear the warning statement on the Product label as set forth on Exhibit "C" attached hereto and incorporated herein by reference.

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

OR

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

The warning statement shall be prominently placed upon the Product's label with such conspicuousness, as compared with other words, statements, designs or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2. Payment Pursuant To Health & Safety Code 25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Avery shall pay a civil penalty of \$12,000 in three installments. The first payment of \$3,000 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The second payment of \$4,500 shall be made on or before January 30, 2001. However, the second payment shall be waived if Avery undertakes its best efforts to seek an alternative to the use of lead in one or more of the Products by December 31, 2000. Certification of Avery's reformulation efforts, including a detailed description of the actions undertaken by Avery, must be provided to DiPirro by January 15, 2001. The third payment of \$4,500 shall be made on or before July 15, 2001. However, the third payment shall be waived if Avery reformulates one or more of its Products to remove lead, or offers a substantially similar Product or Products without the use of lead or if Avery is unable to obtain a reasonable alternative, discontinue sales of Products containing lead for sale in California by June 15, 2001. Certification of the reformulation or introduction of the non-lead alternative must be provided to DiPirro by July 1, 2001. The penalty payments are to be made payable to "Chanler Law Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to

the State of California's Department of Toxic Substances Control.

3. Reimbursement Of Fees And Costs. The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Avery then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5

Avery shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Avery's attention, litigating and negotiating a settlement in the public interest. Avery shall pay \$5,500 for investigation fees, attorneys' fees and litigation costs. Avery agrees to pay \$5,500 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

4. Michael DiPirro's Release Of Avery. Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Avery and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 *et seq.* based on Avery's failure to warn about exposure to the Listed Chemical contained in any of the Products.

5. Waiver of the Provisions of the California Civil Code, Section 1542. DiPirro, on behalf of himself, his agents, representatives, attorneys, successors and assigns, and *not* in his representative capacity on behalf of citizens of the State of California, hereby waives the provision of the California Civil Code, Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him, must have materially affected his settlement with the debtor."

6. Avery's Release Of Michael DiPirro. Avery, by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200 against Avery.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Avery shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco County Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not

by the Court, this Agreement shall be deemed null and void.

8. Avery Sales Data. Avery understands that the sales data provided to counsel for DiPirro by Avery 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 Avery knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which 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 Avery 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 rescind the Agreement and re-institute an enforcement action against Avery, provided that all sums paid by Avery pursuant to paragraphs 2 and 3 are returned to Avery within ten (10) days from the date on which DiPirro notifies Avery of his intent to rescind this Agreement. 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 Avery that he is rescinding this Agreement pursuant to this Paragraph.

9. Product Characterization. Avery acknowledges that each of the Products listed in Exhibit A contains lead and Plaintiff alleges that the customary use or application of the Products is likely to expose, users to lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm). In the event that Avery obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code 25249.10(c) and Avery seeks to eliminate the warnings, then Avery shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Avery Exposure Data, DiPirro shall provide Avery with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Avery written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Avery notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Avery shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Avery of his intent to challenge the Exposure Data, DiPirro and Avery (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Avery notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Avery agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination. Notwithstanding the foregoing, in the event that Avery is no longer required to

provide the warnings provided for herein under applicable law, regulation or court order, then Avery may discontinue the warnings with no further liability or obligations to the extent that new law, regulation or court order provides.

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

11. Attorney's Fees. In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

13. Notices. All correspondence to Michael DiPirro shall be mailed to:

Hudson Bair, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
(510) 645-0027

or

Clifford A. Chanler
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to Avery shall be mailed to:

John A. Williamson
Martin, Tate, Morrow & Marston
22 North Front Street
Memphis, TN 38103
(901) 522-9000

14. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Instead, concurrently with the submission of this Agreement to the Court, Avery shall send this

Agreement to the California Attorney General's office by certified mail, return receipt requested and file with the San Francisco Superior Court the stipulated judgment set forth in paragraph 9 along with an affidavit verifying that the Agreement has been submitted to the California Attorney General. The parties do provide an affidavit that a copy of this Agreement was submitted to the California Attorney General's Office. (See Exhibit B.)

15. 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.

16. 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: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: FEBRUARY 7, 2000

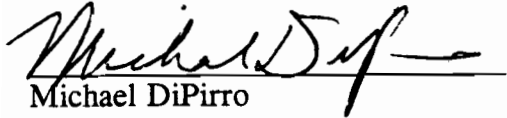
Avery Outdoors, Inc.
DEFENDANT

By: Paul A. Nickel
PAUL A. NICKEL

Its: CHIEF FINANCIAL OFFICER

AGREED TO:

DATE: 2/7/00


Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Avery Outdoors, Inc.
DEFENDANT

By: _____

Its: _____