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7
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9 Precision Airguns, and Marksman Products

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MICHAEL DIPIRRO,

Plaintiff,

vs.

BEEMAN PRECISION AIRGUNS,

Defendants.

CASE NO. H210622-3

CONSENT JUDGMENT

This Consent Judgment is entered into by and between Michael DiPirro, a California citizen ("Plaintiff"), and S/R Industries, Inc., a Delaware corporation, and its divisions, Beeman Precision Airguns ("Beeman"), and Marksman Products ("Marksman") (collectively "Defendants") on March 27, 2000 ("the Effective Date") to resolve all claims raised in the above-captioned action. The parties agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 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.

1.2 S/R Industries, Inc. and its divisions, Beeman and Marksman, manufacture and distribute airgun ammunition that contain lead, a substance known to the State of California to

1 cause cancer and birth defects (or other reproductive harm) and have elected to settle this matter
2 by entering into this Consent Judgment.

3 1.3 A list of the products which contain lead and that are covered by this Consent
4 Judgment is provided in Exhibit A (the "Products").

5 1.4 On December 2, 1999, Michael DiPirro, on behalf of the general public, filed a
6 Complaint under the Safe Drinking Water and Toxics Enforcement Act of 1986 ("Proposition
7 65"), Cal. Health and Safety Code §§ 25249.5, *et seq.* and Business and Professions Code
8 §§ 17200, *et seq.* ("Complaint"). The Complaint alleges that Defendants have violated
9 Proposition 65 and the Business and Professions Code by exposing individuals in California to
10 lead, a Proposition 65-listed carcinogen and reproductive toxin, without first providing a clear
11 and reasonable warning to such individuals. Said Complaint is attached as Exhibit B. Plaintiff
12 seeks Damages, Injunctive Relief, Civil Penalties and Restitution ("Complaint") in the Superior
13 Court for the County of Alameda ("Action"), arising from alleged violations of the
14 aforementioned laws, by Defendants.

15 1.5 Prior to filing the Complaint, on September 27, 1999, Michael DiPirro first
16 served the Office of the Attorney General, designated public enforcement agencies and
17 Defendants with a Proposition 65 60-Day Notice of Violation ("Notice") pursuant to Health &
18 Safety Code § 25249.7(d), giving notice to Defendants, the Attorney General of California and
19 such public officials authorized to bring suit under Proposition 65 of the alleged violations
20 referred to in paragraph 1.1 above. The Notice is attached as Exhibit C. Defendants stipulate
21 that the Notice is adequate to comply with Cal. Code Regs. tit. 22, § 12903.

22 1.6 Neither the Attorney General nor any of the other designated public prosecutors
23 has commenced any action in response to the Notice. For purposes of this Consent Judgment,
24 Plaintiff acts on behalf of the general public as to those matters described in the Complaint and
25 Notice.

26 1.7 For purposes of this Consent Judgment, the Parties stipulate that this Court has
27 subject matter jurisdiction over the allegations contained in the Complaint. Without conceding
28 that this Court has personal jurisdiction over any of the Defendants, Defendants do not contest

1 the exercise of personal jurisdiction by this Court or venue in Alameda County solely and
2 exclusively for the purposes of this Consent Judgment; or the exercise of jurisdiction by this
3 Court to enter this Consent Judgment as a resolution of the claims that were or could have been
4 raised in the Complaint based on the facts alleged therein.

5 1.8 The Parties enter into this Consent Judgment to settle disputed claims between
6 them; to avoid prolonged litigation; to ensure that the objectives of Proposition 65 are
7 expeditiously carried out; and to provide a prompt remedy for the matters alleged in the
8 Complaint. By execution of this Consent Judgment, Defendants do not admit any violations of
9 Proposition 65 or the Business and Professions Code, or any other law or standard applicable to
10 warning or disclosure concerning the manufacture, distribution and/or sale of airgun
11 ammunition that contain lead. Nothing in this Consent Judgment shall be construed as an
12 admission by Defendants of any fact, issue of law, or violation of law; nor shall compliance
13 with this Consent Judgment constitute or be construed as an admission by Defendants or any
14 fact, issue of law, or violation of law. Defendants specifically deny that they have committed
15 any such violation or that any present warning program is not sufficient to comply with any
16 duties under Proposition 65 that relate to the manufacture, distribution or sale of airgun
17 ammunition that contain lead. Defendants assert that their manufacture, distribution or sale of
18 airgun ammunition that contain lead has posed and poses no health or safety risk to persons who
19 handle or use such products; that there has been no violation by them of Proposition 65; that
20 they have violated no other state or federal law (including the common law) or regulation
21 relating to the manufacture, distribution or sale of such products; and that they have no
22 obligation to provide warnings other than those already provided regarding the manufacture,
23 distribution or sale of such products. Nothing in this Consent Judgment shall prejudice, waive
24 or impair any right, remedy or defense the Parties may have in any other or further legal
25 proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,
26 responsibilities, and duties of Defendants under this Consent Judgment.

1 suppliers to identify alternative materials to reduce or eliminate lead exposure from the use of
2 airgun ammunition; (2) for any alternative materials that are identified, perform an analysis of
3 the technological feasibility of using such alternatives; (3) offer a substitute form of non-lead
4 pellet for any airgun product Defendants sells for which it is technologically and economically
5 feasible; (4) review Defendants' operations and where technologically and economically
6 feasible, implement changes to reduce exposure to lead in California; and (5) request that any
7 trade association(s) in which it is a member consider adopting a policy to urge members to
8 reduce lead exposure due to airgun use." Certification of Defendants' reformulation efforts,
9 including a copy of the Corporate Policy and detailed description of its implementation must be
10 provided to DiPirro by December 10, 2000. A third payment of \$50,000 shall be made on or
11 before April 1, 2001. However, the third payment shall be waived if Defendants reformulate
12 one or more of their Products to remove lead, or offer a substantially similar airgun ammunition
13 without the use of lead for sale in California by March 15, 2001. Certification of the
14 reformulation or introduction of the non-lead alternative must be provided to DiPirro by
15 March 1, 2001. For purposes of this paragraph and paragraph 4, efforts by Defendants, S/R
16 Industries, Beeman and Marksman, shall be considered collectively, and successful introduction
17 of a lead-free, airgun ammunition alternative shall satisfy the conditions of this paragraph with
18 regard to all divisions.

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

20 The parties acknowledge that DiPirro offered to resolve the dispute without reaching
21 terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be
22 resolved after the material terms of the agreement had been reached, and the matter settled.
23 Defendants then expressed a desire to resolve the fee and cost issue concurrently with other
24 settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and
25 his counsel under the private attorney general doctrine codified at C.C.P. § 1021.5. Defendants
26 shall pay the sum of thirty-six (\$36,000) in three installments to Plaintiff as reimbursement for
27 plaintiff's attorneys' fees and costs incurred to investigate and prosecute this matter, and to
28 negotiate this Consent Judgment. The first payment of \$21,000 shall be paid within ten (10)

1 calendar days after the Effective Date of this Consent Judgment. The second payment of
2 \$10,000 shall be made on or before December 15, 2000, or within five calendar days of
3 notification of Plaintiff's approval of Defendants' certification of its reformulation efforts,
4 whichever is sooner. However, \$5,000 of the second payment shall be waived if Defendants
5 undertake their best efforts to seek an alternative to the use of lead in one or more of the
6 Products by December 1, 2000. The third payment of \$5,000 shall be made on or before March
7 15, 2001, or within five calendar days of Plaintiff's approval of Defendant's certification of its
8 lead reduction efforts, whichever is sooner. However, the third payment shall be waived if
9 Defendants reformulate one or more of their Products to remove lead, or offer a substantially
10 similar airgun ammunition without the use of lead for sale in California by March 15, 2001.
11 Such payments shall be made by certified check, made payable to "Chanler Law Group In Trust
12 For Michael DiPirro." This amount includes all fees and costs that may be incurred in the
13 implementation of this Consent Judgment, and additional work to be performed by Chanler Law
14 Group from March 28, 2000 until the entry of judgment. Except as specifically provided in this
15 paragraph, each party shall bear its own costs and attorneys' fees.

16 **5. MICHAEL DIPIRRO'S RELEASE OF DEFENDANTS**

17 Michael DiPirro, by this Consent Judgment, on behalf of himself, his agents,
18 representatives, attorneys, assigns and the citizens of the State of California, waives all rights to
19 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
20 liabilities, obligations, losses, costs, expenses, fines and damages, against Defendants and their
21 distributors, retailers, customers, directors, officers, employees, affiliates, successors and
22 assigns, whether under Proposition 65 or the Business & Profession Code § 17200 *et seq.* based
23 on Defendants' failure to warn about exposure to lead contained in any of the Products.

24 **6. DEFENDANTS' RELEASE OF MICHAEL DIPIRRO.**

25 Defendants, by this Consent Judgment, waive all rights to institute any form of legal
26 action against Michael DiPirro and his attorneys or representatives, for all actions or statements
27 made by Michael DiPirro and his attorneys or representatives, up to the date of this Consent
28

1 Judgment in the course of seeking enforcement of Proposition 65 or Business & Profession
2 Code § 17200 against Defendants.

3 7. **WAIVER OF THE PROVISIONS OF THE CALIFORNIA CIVIL CODE,**

4 **SECTION 1542**

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

11 8. **CLAIMS COVERED**

12 8.1 This Consent Judgment is a final and binding resolution between and among the
13 Plaintiff and its agents and attorneys, acting on behalf of the general public, and Defendants,
14 (defined for purposes of paragraph 9 to include their parent, subsidiaries, affiliates, divisions,
15 subdivisions, directors, officers, employees, agents or attorneys), and their customers,
16 distributors, wholesalers, retailers or any other person in the course of business who may use,
17 maintain, or sell airgun ammunition that contain lead that were sold or distributed by a
18 Defendant, with respect to any and all Claims, as defined in paragraphs 8.3 and 8.4, which
19 Defendants or DiPirro each now have or may hereafter have against each other, or any of them,
20 whether based on actions committed by any of Defendants, or by any entity within their chain of
21 distribution, including, but not limited to, retail sellers, wholesalers, and any other person in the
22 course of business, with respect to airguns and airgun ammunition that contain lead sold or
23 distributed by Defendants. The Parties mutually release each other with respect to all such
24 Claims.

25 8.2 Plaintiff further release the Defendants from any claim of alleged occupational or
26 environmental exposure to lead from airguns and airgun ammunition that contains lead.

27 8.3 Compliance with the terms of this Consent Judgment resolves any issue, now and
28 in the past, concerning compliance by any Defendant, its parent, subsidiaries, affiliates,

1 successors, divisions, subdivisions, directors, officers or employees, and its customers,
2 distributors, wholesalers, retailers (including, but not limited to Big 5 Corporation) or any other
3 person in the course of doing business who may use, maintain or sell airguns and airgun
4 ammunition that contain lead, that were manufactured, sold, distributed, or labeled by
5 Defendants, with the requirements of Proposition 65 and Business and Professions Code
6 § 17200, *et seq.*

7 8.4 For purposes of paragraph 8 of this Consent Judgment, "Claims" shall mean any
8 and all manner of action or actions, cause or causes of action, in law or in equity, administrative
9 actions, petitions, suits, debts, liens, contracts, agreements, promises, liabilities, claims,
10 demands, known or unknown, fixed or contingent, that have existed, or now exist, all to the
11 extent based upon, arising out of or relating to the compliance of Defendants with
12 Proposition 65, or regulations promulgated thereunder, and Business and Professions Code
13 § 17200, *et seq.*, with respect to the distribution or use of the products identified on the Notices
14 attached at Exhibit B.

15 **9. USE OF DOCUMENTS AND INFORMATION**

16 The Plaintiff shall not use documents or information that Defendants have produced in
17 the course of this action or in settlement discussions, except in the course of monitoring
18 compliance with the terms of this Consent Judgment. Within thirty (30) days of receiving a
19 written request to do so, Plaintiff shall return all sales data that have been produced in the course
20 of this action.

21 **10. RETENTION OF JURISDICTION**

22 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

23 **11. DEFENDANTS' SALES DATA.**

24 Defendants understand that the sales data provided to counsel for DiPirro by Defendants
25 was a material factor upon which DiPirro has relied to determine the amount of payments made
26 pursuant to Health & Safety Code § 25249.7(b) in this Consent Judgment. To the best of
27 Defendants' knowledge, the sales data provided is true and accurate. In the event that DiPirro
28 discovers facts which demonstrate to a reasonable degree of certainty that the sales data is

1 materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within
2 ten (10) days of Defendants' receipt of notice from DiPirro of his intent to challenge the
3 accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro
4 shall have the right to rescind the Consent Judgment and re-institute an enforcement action
5 against Defendants, provided that all sums paid by Defendants pursuant to paragraphs 3 and 4
6 are returned to Defendants within ten (10) days from the date on which DiPirro notifies
7 Defendants of his intent to rescind this Consent Judgment. In such case, all applicable statutes
8 of limitation shall be deemed tolled for the period between the date DiPirro filed the instant
9 action and the date DiPirro notifies Defendants that he is rescinding this Consent Judgment
10 pursuant to this paragraph.

11 **12. PRODUCT CHARACTERIZATION.**

12 Defendants acknowledge that each of the Products listed in Exhibit A contains, or in the
13 customary use or application of the Products is likely to expose, users to lead, a substance
14 known to the State of California to cause cancer and birth defects (or other reproductive harm).
15 In the event that Defendants obtain analytical, risk assessment or other data ("Exposure Data")
16 that shows an exposure to any or all Products poses "no significant risk" or will have "no
17 observable effect," as each such standard is applicable and as each is defined under Health &
18 Safety Code 25249.10(c), and if they tend to modify the warnings given under this Consent
19 Judgment, Defendants shall provide DiPirro with ninety (90) days prior written notice of their
20 intent to limit or eliminate the warning provisions under this Consent Judgment based on the
21 Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety
22 (90) days of receipt of Defendants' Exposure Data, DiPirro shall provide Defendants with
23 written notice of his intent to challenge the Exposure Data (in the event that he chooses to make
24 such a challenge). If DiPirro fails to provide Defendants written notice of his intent to challenge
25 the Exposure Data within ninety (90) days of receipt of Defendants' notice and the Exposure
26 Data, DiPirro shall waive all rights to challenge the Exposure Data, and Defendants shall be
27 entitled to limit or eliminate the warning provisions required under this Consent Judgment with
28 respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies

1 Defendants of his intent to challenge the Exposure Data, DiPirro and Defendants shall negotiate
2 in good faith for a period not to exceed thirty (30) days following receipt of Defendants' notice
3 to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and
4 Defendants agree to submit such challenge to the superior court for determination, pursuant to
5 the Court's continuing jurisdiction of this matter under C.C.P. § 664.6 and this Consent
6 Judgment. The prevailing party shall be entitled to reasonable attorneys' fees and costs
7 associated with bringing a motion brought under this paragraph to the court for determination.

8 **13. SEVERABILITY.**

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

11 **14. ATTORNEYS' FEES.**

12 In the event that a dispute arises with respect to any provision(s) of this Consent
13 Judgment, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

14 **15. GOVERNING LAW.**

15 The terms of this Consent Judgment shall be governed by the laws of the State of
16 California.

17 **16. NOTICES.**

18 All correspondence to Michael DiPirro shall be mailed to:

19 Hudson Bair, Esq.
20 Kapsack & Bair, LLP
21 1440 Broadway, Suite 610
22 Oakland, CA 94612
23 (510) 645-0027

24 or

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

1 All correspondence to Defendants shall be mailed to:

2 Carol René Brophy
3 McKenna & Cuneo, LLP
4 Stuart Street Tower
5 One Market
6 San Francisco, CA 94105-1475
7 (415) 267-4000

8 **17. COMPLIANCE WITH REPORTING REQUIREMENTS.**

9 The parties agree to comply with the reporting form requirements referenced in Health &
10 Safety Code § 25249.7(f). Defendants certify that they will provide a copy of this Consent
11 Judgment to the California Attorney General's Office prior to submission of this Agreement to
12 the Court for entry of Judgment.

13 **18. GOOD FAITH SETTLEMENT**

14 DiPirro represents that this settlement reflects his best and final settlement terms, and
15 that he has taken into account Defendants' prompt action to modify the toxicity warnings that
16 appear on the Products and Defendants' commitment to reduce lead exposure from airgun
17 ammunition in determining the payments to be made under Health & Safety Code § 25249.7(b).
18 In consideration for the above referenced commitments, DiPirro agrees not to settle his
19 Proposition 65 claims (concerning manufacture, sales, or distribution of airgun ammunition
20 containing lead) with any other airgun ammunition manufacturer that has a market share in
21 California equal to or greater than that of Defendants on terms that require less payment under
22 Health & Safety Code § 25249.7(b) than the first payment required of Defendants pursuant to
23 this Agreement.

24 **19. COUNTERPARTS AND FACSIMILE.**

25 This consent judgment may be executed in counterparts and facsimile, each of which
26 shall be deemed an original, and all of which, when taken together, shall constitute one and the
27 same documents.
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20. 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.

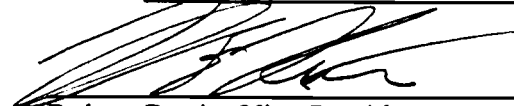
AGREED TO:

AGREED TO:

DATE: _____

DATE: March 28

Michael DiPirro
PLAINTIFF



Robert Ruxin, Vice President
S/R Industries, Inc., Beeman Precision Airguns
and Marksman Products
DEFENDANT

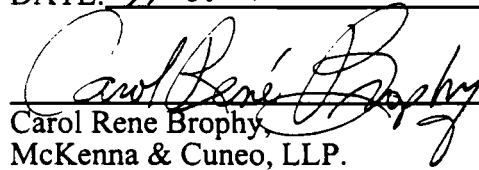
APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: March 28

Clifford A. Chanler,
Counsel for Michael DiPirro



Carol Rene Brophy,
McKenna & Cuneo, LLP.
Counsel for S/R Industries, Inc., Beeman
Precision Airguns and Marksman Products

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20. 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: 3/28/00

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Robert Ruxin, Vice President
S/R Industries, Inc., Beeman Precision Airguns
and Marksman Products
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 3/28/00

DATE: _____

Clifford A. Chanler
Clifford A. Chanler
Counsel for Michael DiPirro

Carol Rene Brophy,
McKenna & Cuneo, LLP
Counsel for S/R Industries, Inc., Beeman
Precision Airguns and Marksman Products

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IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE: APR 25 2000

BS Judge Barbara J. Miller
JUDGE OF THE SUPERIOR COURT

Exhibit A

1999 Beeman Pellet Sales

SKU#	Description
3000	Crow Magnum .177
3001	Crow Magnum .20
3002	Crow Magnum .22
3003	Crow Magnum .25
301051	Perf Match Pistol .177 Disc
3011	H &N Match .177
3011CMP	H &N Match .177 Civilian Marksmanship Program
3011HS	H&N Match Hi-speed .177
3016	H&N Match .20
3018	H&N Match .22
3019	H&N Match .25
3021	Siver Sting .20
3023	Silver Sting .177
3031	Silver Bear .177
3035	Siver Bear .20
3065	Siver Ace .25
3075	Silver Jet .20
3086	Silver Arrow .177
3087	Silver Arrow .20
3088	Silver Arrow .22
3089	Silver Arrow .25
3090	Laser .177
3095	Laser .20
3125	Laser .25
3140	Ram Jet .177
3145	Ram Jet .20
3150	Ram Jet .22
3155	Ram Jet .25
3160	Laser Sport .177
3161	Laser Sport .177 (200)
3171	Bearcub .177
3172	Bearcub .22
3245	Kodiak .177
3246	Kodiak Match .177
3247	Kodiak .20
3250	Kodiak .22
3252	Kodiak .25
3253	Kodiak Match .25
3265	Ram Point .25
3270	Flat Head Belt Pack .177
327048	Fin Match Rifle 4.48/T500
327049	Fin Match Rifle 4.49/T500

327050 Fin Match Rifle 4.5/.200
327051 Fin Match Rifle 4.51/T500
327148 Fin Match Pistol 4.48/T500
327149 Fin Match Pistol 4.49/T500
327150 Fin Match Pistol 4.50/T500
327151 Fin Match Pistol 4.51/T500
3280 Copper Point Belt Pack .177
328049 Fin Match Rifle 4.49/F200
328050 Fin Match Rifle 4.5/F200
328051 Fin Match Rifle 4.51/F200
3290 Hollow Point Belt Pack .177
3300 Pellet Sampler Pack .177
3301 Pellet Sampler Pack .20
3302 Pellet Sampler Pack .22
33020 Silver Sting .177
33025 Silver Sting .22
33026 Silver Sting .25
3303 Pellet Sampler Pack .25
33030 Silver Bear .177
33040 Silver Bear .22
33042 Silver Bear .25
3305 5 Pack Assortment .177
33050 Silver Ace .177
33055 Silver Ace .20
33060 Silver Ace .22
33070 Silver Jet .177
33100 Laser .22
3320 5 pack assortment .20
3325 3 Pack Assortment .25
3450 Perfect Rounds .177
3463 Perfect Rounds .25
3500 Trophy Pellet .177
3502 Trophy Pellet .22

1999 Marksman Pellet Sales

SKU #	Description
1215	Airgun Pellets .177
1215B	.177 Pellets Blister
1216	Belt Pack .177
1224	Airgun Pellets .22
1224B	Airgun Pellets .22 Blister
1240	Medalist Pellets .177
1250	Field Target Pellets .177
1250B	.177 Pellets Blister
1252	Pellets .20
1255	Fld Tgt Pellets .22
1260	Mako Pellets .177
1280	Copper Point Pellets .177
1281	Copper Point .177 Blister
1290	Hollow Point .177
1291	Hollow Point Blister

Exhibit B

1 MICHAEL DIPIRRO, by and through his counsel, hereby alleges:

2 INTRODUCTION

3 1. This complaint seeks to remedy defendants'
4 continuing failure to warn thousands of individuals in
5 California of their exposure to chemicals known to the State
6 of California to cause cancer and birth defects (or other
7 reproductive harm). Such exposure has occurred, and continues
8 to occur, through the use of defendants' pellet products (such
9 as Silver Bear hi-impact pellets) (the "PRODUCTS").

10 2. Under California's Safe Drinking Water and
11 Toxic Enforcement Act of 1986, Health & Safety Code §25249.5
12 et seq.¹ (also known as "Proposition 65"), a business must
13 provide individuals with a "clear and reasonable warning"
14 before exposing them to certain toxic chemicals designated by
15 the State of California as known to cause cancer or birth
16 defects (or other reproductive harm), unless the business
17 responsible for the exposure can prove that it fits within a
18 statutory exemption.

19 3. Defendants' failure to provide proper warnings
20 with the sale of the PRODUCTS is a violation of Proposition 65
21 and constitutes an act of unfair competition which may be
22 enjoined by the Court pursuant to Health & Safety Code
23 §25249.7(a) and Business & Professions Code §17203.

24 4. Plaintiff seeks injunctive relief to compel
25 defendants to provide California users of the PRODUCTS with
26

27 ¹ Unless specifically noted, all statutory citations refer to
California law.

1 clear and reasonable warnings regarding the known toxicity of
2 lead (and lead compounds) contained in the PRODUCTS (the
3 "Listed Chemical").

4 5. Plaintiff also seeks civil penalties against
5 defendants for their violations of Proposition 65, as provided
6 for by Health & Safety Code §25249.7(b), as well as
7 restitution, as provided for by Health & Safety Code §25249.7
8 and Business & Professions Code §17203.

9 PARTIES

10 6. Plaintiff Michael DIPIRRO is a citizen of
11 California residing in the City and County of San Francisco,
12 who is dedicated to protecting the health of California
13 citizens, including the elimination or reduction of toxic
14 exposures.

15 7. Michael DIPIRRO is bringing this enforcement
16 action in the public interest pursuant to Health & Safety Code
17 §25249.7(d) and Business & Professions Code §17204.

18 8. Defendant BEEMAN PRECISION AIRGUNS (hereinafter
19 referred to as "BEEMAN"), is a person within the meaning of
20 Business & Professions Code §17201 and a person doing business
21 within the meaning of Health & Safety Code §25249.

22 9. BEEMAN manufactures and distributes the PRODUCTS
23 for sale or use in California.

24 10. DOES 1-99 ("DISTRIBUTOR DEFENDANTS") are each a
25 person within the meaning of Business & Professions Code
26 §17201 and a person doing business within the meaning of
27 Health & Safety Code §25249.11.

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 contacts in California; is a citizen of California; or which
2 otherwise purposefully avails itself of the California market.
3 Defendants' purposeful availment renders the exercise of
4 jurisdiction by California courts consistent with traditional
5 notions of fair play and substantial justice.

6 18. Venue is proper in the Alameda Superior Court
7 because one or more of the violations arise in the County of
8 Alameda.

9 **BACKGROUND FACTS**

10 19. Proposition 65 requires that individuals be
11 provided with a "clear and reasonable warning" before being
12 exposed to chemicals listed by the State of California as
13 carcinogens or reproductive toxins. Health & Safety Code
14 §25249.6 states, in pertinent part: "No person in the course
15 of doing business shall knowingly and intentionally expose any
16 individual to a chemical known to the state to cause cancer or
17 reproductive toxicity without first giving clear and
18 reasonable warning to such individual. . . ."

19 20. Based on information and a good faith belief,
20 plaintiff alleges that one or more of the PRODUCTS have been
21 offered for sale to, or used by, individuals in California
22 without clear and reasonable warning since September 27, 1995.
23 The PRODUCTS continue to be offered for sale in California
24 without the requisite warning.

25 21. As a proximate result of acts by BEEMAN,
26 DISTRIBUTOR DEFENDANTS and/or RETAIL DEFENDANTS as persons in
27 the course of doing business within the meaning of Health &

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 Safety Code §25249.6 and §25249.11, individuals throughout the
2 State of California have been exposed to the Listed Chemical
3 without "clear and reasonable warnings." The individuals
4 subject to exposure include normal and foreseeable users of
5 the PRODUCTS, and all other persons exposed to the hazardous
6 chemical at issue. This complaint seeks relief only to the
7 extent it would be consistent with the June 6, 1997, decision
8 of the U.S. Occupational Safety & Health Administration with
9 respect to exposures occurring in settings regulated by the
10 OSH Act as a result of PRODUCTS manufactured outside the State
11 of California.

12 22. Based on information and good faith belief,
13 plaintiff alleges that, at all times relevant to this action,
14 BEEMAN, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS knew and
15 intended that the PRODUCTS contained and continue to contain
16 lead (and lead compounds) (the "Listed Chemical"), and knew
17 and intended that individuals using these PRODUCTS would be
18 exposed to the Listed Chemical.

19 23. Individuals using the PRODUCTS are exposed to
20 the Listed Chemical in excess of the level determined to cause
21 no significant risk of cancer and to cause no observable
22 reproductive effect.

23 24. Beginning on September 27, 1999 "60-Day
24 Notices" of Proposition 65 violations were provided to public
25 enforcement agencies and to BEEMAN, DISTRIBUTOR DEFENDANTS and
26 RETAIL DEFENDANTS stating that exposures to the Listed
27 Chemical were occurring in California from the use of the
28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 PRODUCTS, which give no prior "clear and reasonable warning"
2 of the significant risk of cancer or the observable
3 reproductive effect from such use.

4 **FIRST CAUSE OF ACTION**
5 **(Violation of Proposition 65)**

6 25. Plaintiff realleges and incorporates by
7 reference, as if specifically set forth herein, Paragraphs 1
8 through 24, inclusive.

9 26. The People of the State of California have
10 declared in Proposition 65 their right "[t]o be informed about
11 exposures to chemicals that cause cancer, birth defects, or
12 other reproductive harm." Proposition 65, §1(b).

13 27. To effectuate the goal, Proposition 65 requires
14 that persons who, in the course of business, knowingly and
15 intentionally expose any individual to a chemical, deemed a
16 carcinogen or a reproductive toxin by the State of California,
17 must provide "clear and reasonable warning" prior to exposure.

18 28. Based on information and good faith belief,
19 plaintiff alleges that, since September 27, 1995, BEEMAN,
20 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
21 conduct which violates Health & Safety Code §25249.6 et seq.
22 This conduct includes placing into commerce PRODUCTS
23 containing the Listed Chemical without a "clear and reasonable
24 warning," within the meaning of Health & Safety Code §§25249.6
25 and 25249.11.

26 29. On October 1, 1992, the State of California
27 officially listed lead and lead compounds as a chemical known

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 to cause cancer. Lead and lead compounds became subject to
2 the warning requirement one year later and was therefore
3 subject to the "clear and reasonable warning" requirements of
4 Proposition 65, beginning on October 1, 1993. 22 Code of
5 Regulations §12000(b); Health and Safety Code §25249.5 et seq.

6 30. On February 27, 1987, the State of California
7 officially listed lead as a chemical known to cause birth
8 defects or other reproductive harm. Lead became subject to
9 the warning requirement one year later and was therefore
10 subject to the "clear and reasonable warning" requirements of
11 Proposition 65, beginning on February 27, 1988. 22 Code of
12 Regulations §12000(c); Health and Safety Code §25249.5 et seq.

13 31. At all times relevant to this action, BEEMAN,
14 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly
15 and intentionally made or sold the PRODUCTS containing the
16 Listed Chemical available for sale or use to California
17 businesses, consumers and other individuals.

18 32. At all times relevant to this action, BEEMAN,
19 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have known and
20 intended that the normal and foreseeable use of the PRODUCTS
21 containing the Listed Chemical would expose individuals to a
22 known carcinogen.

23 33. At all times relevant to this action, BEEMAN,
24 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have known and
25 intended that the normal and foreseeable use of the PRODUCTS
26 containing the Listed Chemical would expose individuals to a
27 known reproductive toxicant.

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 34. BEEMAN, DISTRIBUTOR DEFENDANTS and RETAIL
2 DEFENDANTS have not given prior "clear and reasonable warning"
3 of the Listed Chemical exposure to normal and foreseeable
4 users of the PRODUCTS.

5 35. Contrary to the express policy and statutory
6 prohibition of Proposition 65, enacted directly by California
7 voters, individuals exposed to the Listed Chemical in the
8 PRODUCTS have suffered and still suffer irreparable harm,
9 without prior "clear and reasonable warning."

10 36. By committing the acts alleged above, BEEMAN,
11 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have, in the
12 course of business, knowingly and intentionally exposed
13 individuals to the Listed Chemical without first giving "clear
14 and reasonable warning" to such individuals within the meaning
15 of Health & Safety Code §25249.6.

16 37. The appropriate public enforcement agencies
17 have failed to commence and diligently prosecute a cause of
18 action under Health & Safety Code §25249.6 et seq. against
19 BEEMAN, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS based on
20 the claims asserted herein.

21 38. By the above-described acts, BEEMAN,
22 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS are liable,
23 pursuant to Health & Safety Code §25249.7(b), for a maximum
24 civil penalty of \$2,500 per day for each violation.

25 39. Health & Safety Code §25249.7 specifically
26 authorizes action for injunctive relief under Proposition 65.

27 40. Continuing commission by BEEMAN, DISTRIBUTOR
28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 DEFENDANTS and RETAIL DEFENDANTS of the acts alleged above
2 will irreparably harm plaintiff and the citizens of the State
3 of California, for which harm they have no plain, speedy or
4 adequate remedy at law.

5 Wherefore, plaintiff prays judgment against BEEMAN,
6 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS as set forth
7 hereafter.

8 **SECOND CAUSE OF ACTION**

9 **(Violation of Business & Professions Code §17200 for
10 violations of Proposition 65)**

11 41. Plaintiff realleges and incorporates by
12 reference, as if specifically set forth herein, Paragraphs 1
13 through 40 inclusive.

14 42. Based on information and good faith belief,
15 plaintiff alleges that, since September 27, 1995, BEEMAN,
16 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
17 conduct which violates Health & Safety Code §25249.6 et seq.
18 This conduct includes placing into commerce PRODUCTS
19 containing the Listed Chemical without "clear and reasonable
20 warning" within the meaning of Health & Safety Code §§25249.6
21 and 25249.11.

22 43. At all times relevant to this action, BEEMAN,
23 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly
24 and intentionally made available PRODUCTS containing the
25 Listed Chemical for sale or use in California.

26 44. At all times relevant to this action, BEEMAN,
27 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly

28 **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

1 and intentionally exposed individuals to the Listed Chemical
2 through normal and foreseeable uses of the PRODUCTS.

3 45. BEEMAN, DISTRIBUTOR DEFENDANTS and RETAIL
4 DEFENDANTS have failed to provide "clear and reasonable"
5 warning to individuals, prior to their exposure to the Listed
6 Chemical through the normal and foreseeable use of the
7 PRODUCTS.

8 46. Individuals have suffered and continue to
9 suffer irreparable harm due to exposure to the Listed Chemical
10 from the PRODUCTS without prior "clear and reasonable"
11 warning, contrary to the express policy and statutory
12 prohibition enacted by direct vote of the People of California
13 in Proposition 65.

14 47. By committing the acts alleged above, BEEMAN,
15 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have, in the
16 course of doing business, knowingly and intentionally exposed
17 individuals to the Listed Chemical, without prior "clear and
18 reasonable" warning within the meaning of Health & Safety Code
19 §25249.6.

20 48. By committing the acts alleged above, BEEMAN,
21 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
22 an unlawful business practice which constitutes unfair
23 competition within the meaning of Business & Professions Code
24 §17200 et seq.

25 49. An action for injunctive relief and restitution
26 under the Unfair Practices Act is specifically authorized by
27 Business & Professions Code §§17203 and 17204.

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

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4. That the Court grant plaintiff its reasonable attorneys' fees and costs of suit; and

5. That the Court grant such other and further relief as may be just and proper.

Dated: December 2, 1999

Respectfully Submitted,
CHANLER LAW GROUP

Clifford A. Chanler/p.s.
Clifford A. Chanler
Attorneys for Plaintiff
MICHAEL DIPIRRO

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6 Tel: (203) 966-9911

7 Attorneys for Plaintiff
MICHAEL DIPIRRO
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 IN AND FOR THE COUNTY OF ALAMEDA

11 MICHAEL DIPIRRO,) No. H210268-3
12)
Plaintiff,)
13)
v.)
14) STIPULATION FOR
FRY'S ELECTRONICS; COM-KYL,) ENTRY OF JUDGMENT
15 INC.; CONTACT EAST; NEWARK)
ELECTRONICS; and DOES 1 through)
16 1000,)
17 Defendants.)
18

19 IT IS HEREBY STIPULATED, by and between plaintiff Michael
20 DiPirro and defendant Contact East, through their respective
21 counsel that judgment in the above-entitled action be entered
22 in accordance with the terms of the settlement agreement
23 between the parties, which is attached hereto as Exhibit A.
24

25 ///

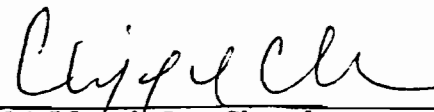
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Dated: 2/8, 2000

by: 
Clifford A. Chanler
Attorney for Plaintiff
MICHAEL DIPIRRO

Dated: Feb 7, 2000


by: 
Donald D. Cooper
Attorney for Defendant
CONTACT EAST

Exhibit C

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(D)

SEPTEMBER 27, 1999

My name is Michael DiPirro. I am a citizen of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in or produced by consumer and industrial products. This letter is provided to you pursuant to Health & Safety Code §25249.6 *et seq* ("Proposition 65"). As required, notice is also being provided to the violator, Beeman Precision Airguns ("Violator"). The violations covered by this notice consist of the routes of exposures to the following toxic chemicals:

CHEMICAL(S)

ROUTE(S) OF EXPOSURE

1. Lead (and lead compounds)

Ingestion, Dermal

A list of the specific types of products that are causing consumer and occupational exposures in violation of Proposition 65 (and are covered by this notice) is provided below as Exhibit A. The Violator's sales of these products have been occurring from September 27, 1995 to the present. As a result of the sale of these products, exposures to Proposition 65 chemicals have been occurring without adequate warnings.

California consumers purchase the products at issue and are exposed to the listed chemical in the products. Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. In addition, these products are used by airgun enthusiast, sole proprietors and other persons in settings not covered by the OSH Act. Without proper warnings as to the toxic effects of exposures to the listed chemical in the products, California citizens lack the information necessary to make informed decisions whether to eliminate or reduce risk of exposure to the toxic chemicals in the products.

Please direct all questions concerning this notice to my attorneys at the following addresses:

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

or

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

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

EXHIBIT A

Product

Toxin

Pellets
(such as Silver Bear hi-impact pellets)

Lead (and lead compounds)
