

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Hodgman, Inc. ("Hodgman"), an Illinois corporation, as of April 14, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

### 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. Hodgman is a company that currently manufactures and distributes repair kits with glue and other adhesives that contain toluene, a substance known to the State of California to cause birth defects (or other reproductive harm);

C. A list of the products which contain toluene (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 Hodgman for use in California since at least September 27, 1995; and

D. On September 27, 1999, Michael DiPirro first served Hodgman and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Hodgman and such public enforcers with notice that Hodgman 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 December 13, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Hodgman, Inc. in the Alameda County Superior Court, naming Hodgman 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 Hodgman products.

F. Nothing in this Agreement shall be construed as an admission by Hodgman 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 Hodgman 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 Hodgman under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND HODGMAN AGREE AS FOLLOWS:**

**1. Product Warnings.** Hodgman represents that it has revised the health hazard warnings for their Products to be consistent with the language set forth in the section 1.1 below. Beginning on April 30, 2000, Hodgman 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 toluene, such Products shall bear the following warning statement on the Product label:

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

or

**"WARNING: This product contains a chemical known to the State of California to cause 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), Hodgman shall pay a civil penalty of \$16,000 in two installments. The first payment of \$3,200 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The second payment of \$12,800 shall be made on or before April 30, 2001. However, the second payment shall be waived if Hodgman either A) reformulates its Felt Sole Replacement Kit to eliminate the presence of toluene; or (B) discontinues the sale of Felt Sole Replacement Kit in California before March 31, 2001. A letter signed by an officer of Hodgman certifying to the reformulation or discontinuation of sales in California must be provided by Hodgman to DiPirro by April 15, 2001. Hodgman shall be deemed to have complied with the reformulation or discontinuation of sales provision if Michael DiPirro fails to apply to the court to reopen this matter by May 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. Hodgman 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.

It has been agreed that Hodgman shall reimburse DiPirro and his counsel for the fees and costs incurred as a result of investigating, litigating and negotiating this settlement in the public interest, including, but not limited to, attorney's fees and costs, investigation fees and costs and expert fees and costs. Within five (5) calendar days of the Effective Date of this Agreement, Hodgman shall pay the sum of \$16,800 to the "Chanler Law Group" representing total payment due for all such fees and costs incurred.

**4. Michael DiPirro's Release of Hodgman.** 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 Hodgman and its distributors, retailers (including Sportmart, Inc, Garts Sports, Inc.; GD Wholesale; Hendrix Wholesale; Mel Cottons; Bob Marriotts, Smalley's Wholesale.), customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Hodgman's failure to warn about exposure to the Listed Chemical contained in any of the Products.

**5. Hodgman's Release of Michael DiPirro.** Hodgman, 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 Hodgman.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Hodgman shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void.

**7. Hodgman Sales Data.** Hodgman understands that the sales data provided to counsel for DiPirro by Hodgman 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 Hodgman knowledge, the sales data provided is true and accurate. In the event DiPirro, prior to March 1, 2001, 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 Hodgman 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 Hodgman, provided that all sums paid by Hodgman pursuant to paragraphs 2 and 3 are returned to Hodgman within ten (10) days from the date on which DiPirro notifies Hodgman 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 Hodgman that he is rescinding this Agreement pursuant to this Paragraph.

**8. Product Characterization.** Hodgman acknowledges that each of the Products listed in Exhibit A contains toluene and Plaintiff alleges that the customary use or application of the Products is likely to expose, users to toluene, a substance known to the State of California to cause birth defects (or other reproductive harm). In the event that Hodgman obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c) and Hodgman seeks to eliminate the warnings, then Hodgman 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 Hodgman Exposure Data, DiPirro shall provide Hodgman 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 Hodgman written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Hodgman notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Hodgman 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 Hodgman of his intent to challenge the Exposure Data, DiPirro and Hodgman (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 Hodgman notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Hodgman 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 Hodgman is no longer required to provide the warnings provided for herein under applicable law, regulation or court order, then Hodgman may discontinue the warnings with no further liability or obligations to the extent that new law, regulation or court order provides.

**9. 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.

**10. 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.

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

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

All correspondence to Hodgman shall be mailed to:

Carol René Brophy, Esq.  
McKenna & Cuneo, LLP  
Steuart Street Tower  
One Market  
San Francisco, CA 94105-1475  
(415) 267-4000


**13. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Hodgman certifies that it will provide a copy of this Consent Judgment to the California Attorney General's Office prior to submission of this Agreement to the Court for entry of Judgment.

**14. 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.

**15. 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: 5-11-00

  
Michael DiPirro  
PLAINTIFF

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Ron Foster  
Hodgman, Inc.  
DEFENDANT

**15. 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.

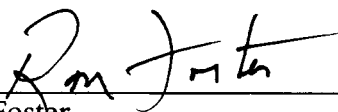
**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

**AGREED TO:**

DATE: 5-2-00

  
\_\_\_\_\_  
Ron Foster  
Hodgman, Inc.  
DEFENDANT

# **Exhibit A**



## **EXHIBIT A**

1. Felt Sole Replacement Kit
2. Universal Repair Kit
3. Neoprene Repair Kit