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7
8 Attorneys for Plaintiff
9 MICHAEL DIPIRRO

10
11 .. SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF SAN FRANCISCO
14
15 UNLIMITED CIVIL JURISDICTION

16 MICHAEL DIPIRRO,) Case No. 405900
17)
18 Plaintiff,)
19)
20 v.) SETTLEMENT AGREEMENT
21)
22 INTERVET INC.; and DOES 1)
23 through 1000,)
24)
25 Defendants.)
26)
27)
28)

29 This Settlement Agreement ("Agreement" or "Consent
30 Judgment") is entered into by and between Michael DiPirro
31 ("DiPirro"), and Intervet Inc., a Delaware corporation
32 ("Intervet") as of March 22, 2002 (the "Effective Date").
33 The parties agree to the following terms and conditions:

34 **WHEREAS:**

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

1 products;

2 B. Intervet is a company that currently manufactures,
3 sells and distributes certain concentrate agricultural products,
4 such as Taktic Emulsifiable, that contain amitraz, a substance
5 known to the State of California to cause birth defects or other
6 reproductive harm.

7 C. A list of the products which contain amitraz (the
8 "Listed Chemical") and which are covered by this Agreement is
9 provided in Exhibit A (the "Products"). The Products have been
10 distributed and sold to individual owners of cattle (through
11 online distributors and retail outlets) and large ranchers
12 (through sale and normal distribution channels) by Intervet in
13 California; and

14 D. On December 28, 2001, DiPirro first served
15 Intervet and other public enforcement agencies with a document
16 entitled "60-Day Notice of Violation" which provided Intervet and
17 such public enforcers with notice that Intervet was in violation
18 of Health & Safety Code §25249.6 for allegedly failing to warn
19 purchasers that certain products it sells in California expose
20 users to the Listed Chemical; and

21 E. On or about March 22, 2002, DiPirro filed a
22 complaint entitled Michael DiPirro v. Intervet Inc., et al. in
23 the San Francisco County Superior Court, naming Intervet as a
24 defendant and alleging violations of Business & Professions Code
25 §17200 and Health & Safety Code §25249.6 in the interest of the
26 general public in California who allegedly have been exposed to
27 the Listed Chemical contained in certain products that Intervet
28 manufactures, sells and distributes.

1 F. Intervet denies all material allegations contained
2 in the Complaint and aver that they have numerous affirmative
3 defenses (including the assertion that the Products contained a
4 pre-existing potentially adequate warning and safe use
5 instructions approved by the United States Environmental
6 Protection Agency ("EPA") and the California Department of
7 Pesticide Regulation ("CDPR") under applicable law including but
8 not limited to the Federal Insecticide, Fungicide, and
9 Rodenticide Act ("Approved Health Hazard Label and
10 Instructions"); that the products are intended to be used only in
11 an industrial setting in accordance with its prescribed Approved
12 Health Hazard Label and Instructions; and that sales of these
13 products in California have been relatively minimal). However,
14 for purposes of judicial and fiscal economy, the parties have
15 engaged in an informal discovery process, whereby they exchanged
16 various types of information concerning the Products.

17 G. The parties agree that they also have different
18 interpretations of the underlying toxicological studies that form
19 the basis for federal and state agencies' listing of amitraz as a
20 reproductive toxicant. While the parties' experts agree that a
21 foreseeable use of the Products is likely to cause "an exposure"
22 to the Listed Chemical, they disagree on the magnitude of such an
23 exposure. After assessing in depth their respective positions,
24 the parties engaged in arms length settlement discussions (both
25 with and without their toxicologists) to attempt to resolve the
26 claims raised in the Complaint without further litigation. This
27 Agreement is the end result of such negotiations.

1 H. Nothing in this Agreement shall be construed as an
2 admission by Intervet 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 Intervet 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 Intervet under
8 this Agreement.

9
10 NOW THEREFORE, DIPIRRO AND INTERVET AGREE AS FOLLOWS:

11 1. Product Warnings. As of the Effective Date of
12 this Agreement, Intervet shall begin to initiate revisions to its
13 Approved Health Hazard Label and Instructions for its Products to
14 provide the language set forth in the section 1.1 below.
15 Beginning on July 15, 2002, however, Intervet agrees that it will
16 not knowingly ship, or cause to be shipped, any Products
17 containing the Listed Chemical for sale in the State of
18 California unless such Products comply with section 1.1 below:

19 1.1 For all Products containing amitraz, such
20 Products shall bear the following warning statement:

21 "NOTICE: This product contains amitraz, a
22 chemical known to the State of
23 California to cause birth defects or
24 other reproductive harm."

25 or

26 "NOTICE: This product contains a chemical known
27 to the State of California to cause
28 birth defects or other reproductive
harm."

This warning statement shall be prominently placed on the
Product label with such conspicuousness (as compared with other

1 words, statements, designs or devices), as to render it likely to
2 be read and understood by an ordinary individual under customary
3 conditions of purchase. Beginning immediately, Intervet agrees
4 to use its best efforts to obtain approval or concurrence by EPA
5 as required under applicable law, and the CDPR if and as required
6 under applicable law, of the warning statement and its placement
7 on the Products' label as referenced above. If the U.S. EPA
8 and/or CDPR object to the warning language and/or placement, then
9 Intervet and DiPirro agree to work with the federal and/or state
10 agencies to ensure that the Products' warning statement and
11 placement are consistent with California's Health & Safety Code
12 §25249.6 and other federal and state applicable law.

13 **2. Payment Pursuant To Health & Safety Code**

14 **§25249.7(b).** In light of the factors enumerated in Health &
15 Safety Code §25249.7(b), Intervet agrees to pay a payment of
16 \$4,000 on or before December 1, 2002. However, this payment will
17 be waived if Intervet certifies on or before November 15, 2002
18 that it will only sell the Products for sale in California if
19 they have been reformulated to eliminate the presence of amitraz
20 in the Products. The payment is to be made payable to "Chanler
21 Law Group In Trust For Michael DiPirro". If the Consent Judgment
22 is not approved by the Court, DiPirro will return all funds, with
23 interest thereon at the prevailing federal funds rate (currently
24 set at 1.75%), within ten (10) calendar days of notice of the
25 Court's final decision. Penalty monies shall be apportioned by
26 DiPirro in accordance with Health & Safety Code §25192, with 75%
27 of these funds remitted to the State of California's Department
28 of Toxic Substances Control.

1 3. **Reimbursement Of Fees And Costs.** The parties
2 acknowledge that, once the injunctive relief provisions and other
3 monetary terms had been resolved, DiPirro and his counsel offered
4 to resolve the issue of reimbursement of attorneys' fees and
5 costs through a noticed motion pursuant to C.C.P. §1021.5.
6 Intervet then expressed a desire to resolve the fee and cost
7 issue shortly after the other settlement terms had been
8 finalized. The parties then attempted to (and did) reach an
9 accord on the compensation due to DiPirro and his counsel under
10 the private attorney general doctrine codified at C.C.P. §1021.5
11 for all work performed through the Effective Date of the
12 Agreement.

13 Pursuant to C.C.P. §1021.5, Intervet agrees to
14 reimburse DiPirro and his counsel for their reasonable attorneys'
15 fees and costs incurred as a result of investigating, litigating
16 and negotiating a settlement in the public interest in the amount
17 of \$17,700. Intervet agrees to pay the total sum of \$17,700
18 within ten (10) calendar days of the Effective Date. Payment
19 should be made payable to the "Chanler Law Group". If the
20 Consent Judgment is not approved by the Court, DiPirro will
21 return all funds, with interest thereon at the prevailing federal
22 funds rate (currently set at 1.75%), within ten (10) calendar
23 days of notice of the Court's final decision.

24 **3.1 Additional Fees and Costs in Seeking Judicial**
25 **Approval.** The parties acknowledge that, pursuant to recent
26 interpretation of Health & Safety Code §25249.7, a noticed motion
27 is required to obtain judicial approval of this Agreement.
28 Accordingly, the parties agree to file a *Joint Motion to Approve*

1 the Agreement within a reasonable period of time after execution
2 of this Agreement. Pursuant to C.C.P. §1021.5, Intervet agrees
3 to reimburse DiPirro and his counsel for their reasonable fees
4 and costs incurred in seeking judicial approval of this
5 Agreement.

6 DiPirro and his counsel expressly agree that Intervet's
7 liability for payment due under this paragraph for work performed
8 in the trial court shall not exceed \$4,800 as long as no
9 objection to the motion is filed. In the event that any public
10 enforcer (including the California Attorney General's Office)
11 objects or otherwise comments to one or more provisions of this
12 Agreement, Intervet agrees to use its best efforts to support
13 each of the terms of the Agreement, as well as to seek judicial
14 approval of this Agreement.

15 Intervet's payment of DiPirro's legal fees and costs
16 under this subparagraph shall be due within ten (10) calendar
17 days after receipt of a billing statement from DiPirro
18 ("Additional Fee Claim"). Payment of the Additional Fee Claim
19 shall be made payable to the "Chanler Law Group." The billing
20 statement shall provide reasonable definition and detail in
21 describing the nature of the work performed for the claimed fees
22 and costs. Intervet has the right to object to DiPirro's
23 reimbursement request and may submit the resolution of this issue
24 to the American Arbitration Association (AAA) in Northern
25 California to determine the reasonableness of the additional fees
26 and costs sought, provided that an arbitration claim has been
27 filed with AAA and served on DiPirro within ten (10) calendar
28 days following DiPirro's service of the Additional Fee Claim on

1 Intervet. If Intervet does not provide payment as required above
2 and an arbitration notice is not filed with AAA in a timely
3 manner, DiPirro may file a motion, pursuant to C.C.P. §1021.5,
4 with the Court seeking his (and his attorneys') fees and costs
5 incurred as set forth in this paragraph.

6 **4. Claims Covered And Releases.**

7 A. This Agreement is a complete, final and
8 binding resolution and release by and between Intervet and
9 Jeffers, Inc. (an Intervet distributor of the Products named in
10 the Notice), and each of their past and present officers,
11 directors, trustees, agents, employees, attorneys, parents,
12 subsidiaries, affiliates, divisions, successors and assigns
13 (collectively, "Releasees") and DiPirro on behalf of himself, his
14 agents, representatives, attorneys, assigns and the general
15 public in whose interest and on whose behalf DiPirro brought this
16 action, of all claims, violations or causes of action for
17 violation of Proposition 65, the Unfair Competition Act, or any
18 other statutory or common law claim that could have been asserted
19 against any Releasee by DiPirro based upon the facts alleged in
20 the Notice and Complaint, including failure to provide clear,
21 reasonable, and lawful warnings of exposure to chemicals in the
22 Products by any Releasee or any person within Intervet's chain of
23 distribution, including, but not limited to, suppliers,
24 wholesalers, distributors, retailers, sales personnel, customers,
25 and any other person in the course of doing business, with
26 respect to the Products and chemicals or chemical emissions
27 relating to or arising out of the sale or use of the Products
28 manufactured, distributed or sold by any Releasee. This Release

1 does not extend to any claim for personal injury or property
2 damage, except as such claim might be asserted by DiPirro as an
3 individual plaintiff.

4 B. Subject to Paragraphs 1 and 1.1 of this
5 Agreement, compliance with the terms of this Agreement
6 constitutes compliance by each Releasee, and its suppliers,
7 distributors, wholesalers, retailers, sales personnel, customers
8 and any person selling the Products manufactured, distributed or
9 sold by a Releasee, or any other person in the course of doing
10 business who may use, maintain or sell the Products manufactured,
11 distributed or sold by any Releasee with any requirement to
12 provide a clear and reasonable warning with respect to the
13 Products, and any resulting exposure. To the extent that the
14 warning specified in Paragraphs 1 and 1.1 of this Agreement is
15 given, it satisfies the warning requirements of Proposition 65 as
16 to all exposures arising from the sale and use of the Products
17 manufactured, distributed or sold by any Releasee.

18 C. Release by Intervet. Intervet hereby
19 releases DiPirro and his successors, assigns and attorneys, from
20 all claims which arise from all actions or statements made or
21 undertaken by DiPirro and/or his attorneys in the course of
22 seeking enforcement of Proposition 65 or Business and Professions
23 Code section 1720 et seq., against Intervet prior to the date
24 hereof.

25 5. **Court Approval.** If, for any reason, this Consent
26 Judgment is not ultimately approved by the Court, this Agreement
27 shall be deemed null and void.
28

1 6. Intervet Sales Data. Intervet understands that
2 the sales data provided to counsel for DiPirro by Intervet was a
3 material factor upon which DiPirro has relied to determine the
4 amount of payments made pursuant to Health & Safety Code
5 §25249.7(b) in this Agreement. To the best of Intervet's
6 knowledge, the sales data provided is true and accurate. In the
7 event that DiPirro discovers facts which demonstrate to a
8 reasonable degree of certainty that the sales data is materially
9 inaccurate, the parties shall meet in a good faith attempt to
10 resolve the matter within ten (10) days of Intervet's receipt of
11 notice from DiPirro of his intent to challenge the accuracy of
12 the sales data. If this good faith attempt fails to resolve
13 DiPirro's concerns, DiPirro shall have the right to rescind the
14 Agreement and re-institute an enforcement action against
15 Intervet, provided that all sums paid by Intervet pursuant to
16 paragraphs 2 and 3 are returned to Intervet within ten (10) days
17 from the date on which DiPirro notifies Intervet of his intent to
18 rescind this Agreement. In such case, all applicable statutes of
19 limitation shall be deemed tolled for the period between the date
20 DiPirro filed the instant action and the date DiPirro notifies
21 Intervet that he is rescinding this Agreement pursuant to this
22 Paragraph.

23 7. Duration Of Warning Requirement. Intervet's
24 responsibility to provide the warning under Paragraph 1.1 of this
25 Agreement shall continue for the period of time in which
26 Proposition 65 remains in full force and effect or the Court
27 determines no warning is required. Intervet may move by properly
28 noticed motion to the Superior Court for a determination that a

1 warning is no longer required. Notice of such motion shall be
2 given to DiPirro and to the California Attorney General.

3 **8. Duties Limited To California.** This Agreement
4 shall have no effect on Products manufactured for sale outside
5 California, or offered for sale outside California.

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

10 **10. Attorney's Fees.** Unless otherwise noted, in the
11 event that a dispute arises with respect to any provision(s) of
12 this Agreement (including, but not limited to, disputes arising
13 from the payments to be made under this Agreement), the
14 prevailing party shall be entitled to recover costs and
15 reasonable attorneys' fees.

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

18 **12. Notices.** All correspondence to Michael DiPirro
19 shall be mailed to:

20 Clifford A. Chanler
21 Chanler Law Group
22 Magnolia Lane (off Huckleberry Hill)
23 New Canaan, CT 06840-3801
24 (203) 966-9911

25 All correspondence to Intervet shall be mailed to:

26 Randolph C. Visser, Esq.
27 Morgan, Lewis & Bockius LLP
28 300 South Grand Avenue, 22nd Floor
29 Los Angeles, CA 90071-3132
30 (213) 612-2500

31 **13. Compliance With Reporting Requirements (Health &**
32 **Safety Code §25249.7(f)).** The parties acknowledge that the

1 reporting provisions of Health & Safety Code §25249.7(f) apply to
2 this Consent Judgment. Counsel for DiPirro shall comply with
3 that section by submitting the required reporting form to, and
4 serving a copy of this Consent Judgment on, the California
5 Attorney General's Office when noticing the Motion to Approve
6 hearing. Counsel for DiPirro shall submit the Consent Judgment
7 to the Court in accordance with the requirements of Health &
8 Safety Code §25249.7(f) and its implementing regulations, thereby
9 allowing the Attorney General to serve any comments to this
10 Consent Judgment as provided by law.

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

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

19 **16. Modification To Consent Agreement.** This Agreement
20 may be modified only upon written agreement of the parties and
21 upon entry of a modified Consent Agreement by the Court thereon,
22 or upon motion of any party as provided by law and upon entry or
23 approval of a modified Consent Agreement by the Court.

24 ///

25 ///

26 ///

27 ///

28 ///

1 AGREED TO:

2 DATE: March 26, 2002

3 
4 Michael DiPirro
5 PLAINTIFF

AGREED TO:

DATE: _____

Intervet Inc.
DEFENDANT

Intervet Inc.
DEFENDANT

9 APPROVED AS TO FORM:

10 DATE: _____
11
12

13 Clifford A. Chanler
14 Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: _____

Randolph C. Visser
Attorneys for Defendant
INTERVET INC.

1 AGREED TO:

2 DATE: March 26, 20023 *Michael DiPirro*
4 Michael DiPirro
PLAINTIFF5
6
7
8
9 APPROVED AS TO FORM:

10 DATE: _____

11
12
13 Clifford A. Chanler
Attorneys for Plaintiff
14 MICHAEL DIPIRRO

AGREED TO:

DATE: 4/4/2002*R. Visser*
Intervet Inc.
DEFENDANTIntervet Inc.
DEFENDANT

APPROVED AS TO FORM:

DATE: _____

Randolph C. Visser
Attorneys for Defendant
INTERVET INC.25
26
27
28
SETTLEMENT AGREEMENT

1 AGREED TO:

AGREED TO:

2 DATE: _____

DATE: _____

3
4 Michael DiPirro
5 PLAINTIFF

Intervet Inc.
DEFENDANT

6 Intervet Inc.
7 DEFENDANT

8
9 APPROVED AS TO FORM:

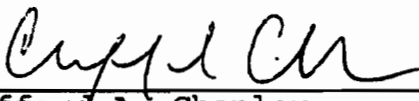
APPROVED AS TO FORM:

10 DATE: _____

3/22/02

DATE: _____

July 5, 2012

11
12 
13 Clifford A. Chanler
14 Attorneys for Plaintiff
MICHAEL DIPIRRO


15
16 
17 Randolph C. Visser
18 Attorneys for Defendant
19 INTERVET INC.

EXHIBIT A
(Intervet Products Covered by Consent Agreement)

Taktic Emulsifiable Concentrate Miticide/Insecticide