

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into by and between Michael DiPirro, a California citizen ("Plaintiff"), and Sears Roebuck and Co. ("Sears") to resolve all claims raised in the matter entitled *Michael DiPirro v. Sears, Roebuck and Co.*, San Francisco Superior Court Case No. 307649. This Agreement shall be effective August 9, 2000 ("Effective Date"), provided it is approved by this Court and entered as a Stipulated Judgment in this case no later than October 1, 2000. If this Court fails to approve this Agreement or to enter it as a full and final judgment as to Sears, this Agreement shall be null and void.

Plaintiff and Sears (collectively, "The Parties") agree to the following terms and conditions:

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 (or produced by) consumer and industrial products;

1.2 Sears is a company that distributes and/or sells fishing tackle products in the State of California that allegedly contain lead, a substance listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.);

1.3 The fishing tackle products which are covered by this Agreement are set forth in Exhibit A (the "Covered Products");

1.4 On or about August 4, 1999, Michael DiPirro first served Sears and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Sears and such public enforcers with notice that Sears 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;

1.5 On September 9, 1999, Michael DiPirro filed a complaint entitled *Michael DiPirro v. Western Hoegge, et al.*, in San Francisco Superior Court, Case No. 306243 (the "Litigation"), naming Sears as 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 lead, a Proposition 65 Listed Chemical, from the customary use and application of the Covered Products;

1.6 Sears denies the material factual and legal allegations contained in the 60-Day Notice, the complaint filed by DiPirro for alleged violation of Proposition 65 and Business & Professions Code Sections 172000 et seq., and maintains that all Covered Products distributed and/or sold by Sears in California are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Sears 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 Sears 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 Sears under this Agreement;

1.7 For purposes of avoiding protracted discovery, the Parties have exchanged information concerning the claims asserted and factual matters alleged in the complaint and now enter into this Agreement as a full and final settlement of all claims that were raised or which could have been raised in the Litigation;

1.8 For purposes of this Agreement, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the complaint and personal jurisdiction over Sears as to the acts and omissions alleged in the complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter a Stipulated Judgment pursuant to this Agreement as a full and final settlement, resolution and adjudication of all claims which were or could have been made based on the facts alleged in the Complaint or arising therefrom.

2. Proposition 65 Warnings.

2.1 Product Warnings

Beginning on the Effective Date of this Agreement, Sears shall initiate efforts to ensure that the product labels or packaging for the Covered Products are consistent with this Agreement ("Revised Labels"). Sears agrees to use reasonable efforts to ensure that all Covered Products which Sears intends for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable. This requirement shall not apply to Covered Products currently in stock. Following 60 calendar days from the effective date of this Agreement, Sears agrees that it shall not add any Covered Products to its inventory for sale or use in the State of California unless each such product is accompanied by a Revised Label on or affixed to the product (or its packaging) with the following statement:

2.2 Packaged Products

For all Covered Products containing lead, a chemical listed by the State of California as known to cause cancer:

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.”

or

“WARNING: This product contains or produces a chemical known to the State of California to cause cancer and birth defects and other reproductive harm. (California Health & Safety Code §25249.5 et. seq.)”

or

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects and other reproductive harm. Do not place your hands in your mouth after handling the product. Do not place the product in your mouth. Wash your hands after touching this product.”

The warning statement shall be prominent and displayed on the product label with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. For purposes of complying with this paragraph, an owner’s manual is not to be considered as product packaging.

2.3 *Unpackaged Bulk Products.*

Sears hereby commits not to sell any unpackaged, bare lead Fishing Products in bulk in California after 60 days from the Effective Date of this Agreement.

2.4 *Limited to California Sales.*

Nothing in this Agreement shall require that warnings be given for Covered Products sold for use outside the State of California.

2.5 *Sears Subsidiaries.*

This Agreement shall cover the sale of Covered Products, if any, by Sears subsidiaries, including Orchard Supply Hardware Corporation, in the State of California.

3. Civil Penalties

Sears shall pay a civil penalty pursuant to Health & Safety Code §25249.7(b) of \$1,000.00 within fifteen (15) calendar days after the Effective Date of this Agreement. These funds will be held by the Chanler Law Group in trust for Michael DiPirro and the California Department of Toxic Substances until the Court enters the Stipulated Judgment pursuant to this Agreement. Once the Judgment is entered by the Court, 75% of this sum shall be paid to the California Department of Toxic Substances; the remaining 25% of this sum shall be paid to Michael DiPirro. If the Stipulated Judgment pursuant to this Agreement is not entered by the Court by October 1, 2000, said payment shall be refunded to Sears by the Chanler Law Group no later than October 15, 2000.

4. Reimbursement of Fees and Costs.

Within fifteen (15) days of the Effective Date of this Agreement, Sears agrees to reimburse DiPirro for his investigative fees and costs, attorneys fees and costs and, any other cost incurred herein in the sum of \$6,800.00. Payment will be made payable to the "Chanler Law Group". These funds will be held in trust by the Chanler Law Group until the Court enters the Stipulated Judgment pursuant to this Agreement. If such Judgment is not entered by the Court by October 1, 2000, said payment shall be refunded to Sears by the Chanler Law Group no later than October 15, 2000.

The parties acknowledge that DiPirro offered to resolve this 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 settlement had been reached and the matter settled. Sears then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties then reached this accord relating to the amount due to DiPirro and his counsel under the private attorney general doctrine codified at Code of Civil Procedure §1021.5.

5. Michael DiPirro's Release of Sears.

Except with respect to the obligations set forth in this Agreement, DiPirro, on his own behalf and on behalf of those whom he represents, waives and releases any and all claims, demands, liens, causes of action and/or rights to institute any form of legal action (including but not limited to claims for damages, penalties, equitable relief and/or attorney's fees ("Claims")) against Sears, its officers, directors, agents, employees, shareholders, insurers and attorneys, and Sears parents, affiliates and subsidiaries (including Orchard Supply Hardware Corporation) and any of their officers, directors, agents, employees, shareholders, insurers and attorneys, with regard to the Covered Products, including but not limited to such Claims that were or could have been asserted in the Litigation or that otherwise arise under Proposition 65, Business and Professions Code §§17200 et seq., or any other statute or common law remedy, which claims relate to or arise out of Sears alleged failure to warn or exposure to consumers or other persons to lead or any other chemical listed under Proposition 65 from the use of the Covered Products.

6. Intent of Parties that Settlement Agreement have Preclusive Effect.

DiPirro and Sears agree that this Agreement is intended to resolve and preclude any and all Claims that were or could have been brought in the Litigation, or otherwise brought by any person or entity under Proposition 65, Business and Professions Code Sections 17200 et seq., or any other statute or common law remedy, which claims involve, relate to or arise out of exposure to Listed Chemicals from the Covered Products. DiPirro and Sears further agree that

Sears is entering into this Agreement on behalf of its officers, directors, agents, employees, shareholders, insurers and attorneys, and its parents, affiliates and subsidiaries (including Orchard Supply Hardware Corporation) or any of their officers, directors, agents, employees, shareholders, insurers and attorneys, for each location at which it or any of its affiliates or subsidiaries (including Orchard Supply Hardware Corporation) operates in the State of California.

DiPirro and Sears further agree that DiPirro is entering into this Agreement as the statutory representative of the People of the State of California as authorized by Proposition 65 and any other applicable law, and that this Agreement is accordingly intended to have, and shall have, full preclusive effect to the extent permitted by California law against any other person or entity with respect to such Claims, whether purporting to act in his, her or its own interests or in the public interest. DiPirro and Sears agree that this Agreement is adequate and appropriate to protect the public from any of the acts alleged, or that could have been alleged in the Litigation and that this Agreement is also intended to, and is appropriate and adequate to provide restitution to the public as a result of such acts or any gains Sears may have obtained from such acts.

7. Sears Release of Michael DiPirro.

Sears, 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 & Professions Code §17200 against Sears with regard to the Covered Products.

8. Stipulated Judgment.

Concurrently with the execution of this Agreement, Michael DiPirro and Sears 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 approved by the Court, this Agreement shall be deemed null and void and all funds received in trust by Michael DiPirro or the Chanler Law Group will be refunded to Sears.

9. Sears Sales Data.

Sears understands that the sales data provided to counsel for DiPirro by Sears 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. 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 Sears 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 reinstitute an enforcement action against Sears, provided that all sums paid by Sears pursuant to paragraphs 2 and 3 are returned to Sears within ten (10) days from the date on which DiPirro notifies Sears 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 Sears that he is rescinding this Agreement pursuant to this Paragraph.

10. Product Characterization.

In the event that Sears obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all of the Covered Products poses "no significant risk" or will have "no observable effect," as such standard is applicable and as each is defined under Health & Safety Code §25249.10(c), Sears 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 Sears Exposure Data, DiPirro shall provide Sears 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 Sears written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Sears notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Sears 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 Sears of his intent to challenge the Exposure Data, DiPirro and Sears shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Sears notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Sears 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 attorney's fees and costs associated with bringing a motion brought under this paragraph to the Court for determination.

11. 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.

12. 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 attorney's fees.

13. Governing Law.

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

14. Notices.

All correspondence to Michael DiPirro shall be mailed to:

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

All correspondence to Sears shall be mailed to:

David F. Wood, Esq.
Wood, Smith, Henning & Berman LLP
801 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017
(213) 622-9300

15. 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. Sears represents that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the San Francisco County Superior Court.

16. Application of Settlement Agreement.

This Agreement shall apply to and be binding upon the Plaintiff, acting in the public interest pursuant to Health & Safety Code §25249.7(d) and on behalf of the General Public pursuant to Business and Professions Code §17204, and Sears, its parents, affiliates and subsidiaries (including Orchard Supply Hardware Corporation).

17. 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.

18. Authorization.

Each party has been advised and represented by counsel in connection with the negotiation and preparation of this Agreement, and each shall be deemed its author for purposes of construction of it. 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.

19. Retention of Jurisdiction.

This Court shall retain jurisdiction of this matter to implement the Agreement.

20. Modification of Settlement Agreement.

This Agreement may be modified by written stipulation between Plaintiff and Sears upon entry of a Modified Judgment by the Court thereon or upon motion by the Plaintiff or any settling Defendant as provided by law and upon entry of a Modified Judgment by the Court. The California Attorney General's Office shall be served with a copy of any stipulation or motion brought before the Court pursuant to this Paragraph.

AGREED TO:

DATE: August 11, 2000

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: August 11, 2000

Victoria S. Bergel
Sears, Roebuck and Co. *Associate*
DEFENDANT *General*
Counsel

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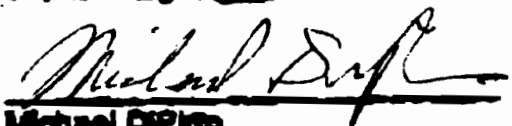
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AGREED TO:

DATE: August 15, 2009


Michael DiPinto
PLAINTIFF

AGREED TO:

DATE: August 11, 2009


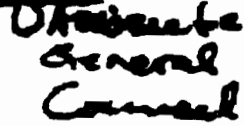

Sears, Roebuck and Co. 
DEFENDANT
Attorney
General
Council

Exhibit A

EXHIBIT A

List of Products Covered by this Stipulated Judgment

It is the intent of this Stipulated Judgment to cover all fishing tackle products and components that contain lead, and that the term "fishing tackle" shall be broadly construed to include all articles, components, devices, accouterments and other equipment that an individual may use to catch a fish contain lead, including metal alloys and other substrates that contain lead. For example, "fishing tackle" includes all fishing tackle products and components, and is not limited to the following:

Sinkers, weights and anchors

Jigs, jig heads, and lead heads

Lures, lure heads and "leaded" core line

Hooks

Bobbers and floats

Buoys

Spinners and spinner blades

Spinnerbaits

Leaders, ganions and rigs

Fittings, closures, and decorations on fishing tackle (such as, tackle boxes, rods, reels and waders)

Components: swivels, snaps, bells, rings

Accessories: handles, plates, bait threading needles, traps, nets, baskets, cages, gaffs, sinker releases, rod holders, skimmers, hook removers, bait boxes, swagger, line, winders, wire, wire twisters, line protectors, and fisherman's tools.