

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro ("DiPirro"), a California citizen, the Ecological Rights Foundation ("ERF"), a non-profit California corporation, and Sportcraft, Ltd. ("Sportcraft"), a Delaware corporation, as of August 4, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. 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. Ecological Rights Foundation is a non-profit California corporation dedicated, among other things, to the protection of the environment and human health by reducing or eliminating hazardous substances contained in consumer and industrial products;

C. Sportcraft is a company that distributed a sporting equipment adhesive that contained toluene, a substance known to the State of California to cause birth defects (or other reproductive harm);

D. A list of the Sportcraft products which contained toluene ("the Listed Chemical") and which are covered by this Agreement is provided in Exhibit A ("the Products"). The Products were assembled and distributed by Sportcraft for use in California since at least February 4, 1996;

E. On September 27, 1999, Michael DiPirro first served Wal-Mart Stores, Inc. and various public enforcement agencies with a document entitled "60 day Notice of Violation" which provided Wal-Mart and such public enforcers with notice that Wal-Mart was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products, specifically ones including adhesives containing toluene distributed by Sportcraft and sold by Wal-Mart in California, expose users to Proposition 65-listed chemicals;

F. On December 13, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. WalMart Stores, Inc., et al. in the Alameda County Superior Court (Case No. H210769-7) naming Wal-Mart 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 in certain Sportcraft products, specifically ones including adhesives containing toluene distributed by Sportcraft and sold by Wal-Mart in California.

G. On February 4, 2000, DiPirro first served Sportcraft and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("the DePirro Notice") which provided Sportcraft and the public enforcement agencies with notice that Sportcraft was

allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it distributes in California expose users to Proposition 65-listed chemicals ;

H. On November 23, 1999, ERF first served Sportcraft and various public enforcement agencies with a document entitled "60-Day Notice of Violation" ("the ERF Notice") which provided Sportcraft and the public enforcement agencies with notice that Sportcraft was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it distributes in California expose users to Proposition 65-listed chemicals; and

I. On February 28, 2000, ERF filed a complaint entitled Ecological Rights Foundation v. Sportcraft, Ltd. in the San Francisco County Superior Court ("the ERF Action"), naming Sportcraft 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 without having been provided warning to chemicals listed pursuant to Proposition 65 contained in certain Sportcraft products.

NOW THEREFORE, DIPIRRO, ERF AND SPORTCRAFT AGREE AS FOLLOWS:

1. No Admissions Nothing in this Agreement shall be construed as an admission by Sportcraft 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 Sportcraft 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 Sportcraft under this Agreement.

2. Product Warnings. Beginning thirty (30) days from the Effective Date, Sportcraft 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 bear the following warning statement on the Product label ("the Warning Statement"):

"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.

3. Payment Pursuant To Health & Safety Code § 25249.7(b). Pursuant to Health & Safety Code § 25249.7(b), Sportcraft shall pay a civil penalty of \$12,000 in two installments. The first installment of \$3,000 shall be paid within five (5) calendar days after receipt by Sportcraft of a conformed copy of the stipulated judgment entered pursuant to Paragraph 5 of this

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Agreement ("the Entry Date"). The second installment of \$9,000 shall be made within sixty (60) days following the Entry Date. However, the second payment shall be waived if, prior to sixty (60) days following the Effective Date, Sportcraft has reformulated one of its Products to remove the presence of toluene ("the Reformulation"). In order to obtain waiver of the second installment, written certification of the Reformulation must be provided by Sportcraft to DiPirro and ERF within (60) days following the Effective Date. The first penalty installment is to be paid in two simultaneous fifteen hundred dollar (\$1500.00) payments, one payable to "Chanler Law Group In Trust For Michael DiPirro," and the second payable to "The Law Offices of David Williams in Trust for the Ecological Rights Foundation." Similarly, the second penalty installment is to be paid in two equal simultaneous payments, one made payable to "Chanler Law Group In Trust For Michael DiPirro," and the second payable to "The Law Offices of David Williams in Trust for the Ecological Rights Foundation." Penalty monies shall be apportioned by ERF and DiPirro in accordance with Health & Safety Code § 25192.

4. Reimbursement Of Fees And Costs. In full reimbursement for all costs and legal fees incurred by DiPirro and ERF in investigation and prosecution of the issues raised in both the DiPirro Notices and the ERF Notice with regard to the Products, the parties agree that Sportcraft will pay DiPirro and ERF the sum of \$15,000 ("the Payment") within five (5) days of the Entry Date, in two equal portions, one made payable to "The Chanler Law Group" and the other made payable to "The Law Offices of David Williams In Trust For The Ecological Rights Foundation."

5. Stipulated Judgment. Concurrently with the execution of this Agreement, ERF and Sportcraft shall execute and file a proposed stipulated judgment in the ERF Action 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 all or any part of the proposed stipulated judgment is modified or disapproved by the Court, this Agreement shall continue in full force and effect, the *res judicata* effect of which shall be limited to the scope of the stipulated judgment, if any, as entered by the Court.

6. DiPirro's Release Of Sportcraft. 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 Sportcraft and its distributors, retailers (including, but not limited to, WalMart), licensors, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code § 17200 et seq. based on any failure to warn about exposure to the Listed Chemical contained in any of the Products.

7. ERF's Release Of Sportcraft. ERF, by this Agreement, on behalf of itself, its 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 Sportcraft and its distributors, retailers (including, but not limited to, K-Mart and WalMart), licensors (including but not limited to Wilson Sporting Goods Company), customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code

§ 17200 et seq., based on any failure to warn about exposure to the Listed Chemical contained in any of the Products.

8. Sportcraft's Release Of DiPirro. Sportcraft, by this Agreement, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, for all actions or statements made by DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code § 17200 with regard to Sportcraft's failure to warn about exposure to the Listed Chemical contained in any of the Products.

9. Sportcraft's Release Of ERF. Sportcraft, by this Agreement, waives all rights to institute any form of legal action against ERF and its attorneys or representatives, for all actions or statements made by ERF, and its attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code § 17200 with regard to Sportcraft's failure to warn about exposure to the Listed Chemical contained in any of the Products.

10. Severability. In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the remaining provisions shall remain valid and enforceable.

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

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

13. Notices.

All correspondence to Michael DiPirro shall be mailed to:

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

or

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

All correspondence to the Ecological Rights Foundation shall be mailed to:

Fredrick Evenson
Public Interest Lawyers Group
2070 Allston Way, Suite 300

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Berkeley, CA 94712-3157
(510) 647-1900

All correspondence to Sportcraft shall be mailed to:

Patricia L. Shanks, Esq.
McCutchen, Doyle, Brown & Enersen, LLP
355 South Grand Avenue, Suite 4400
Los Angeles, CA 90071-1560
(213) 680-6400

14. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Sportcraft represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with lodging the Stipulated Judgement with the San Francisco County Superior Court.

15. Counterparts and Facsimile. This Agreement may be executed in counterparts and by facsimile. Each executed counterpart shall be deemed an original and all executed counterparts, when taken together, shall constitute one and the same document.

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

Dated: _____

MICHAEL DIPIRRO

By _____
Michael DiPirro

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Fredrick Evenson
Public Interest Lawyers Group
2070 Allison Way, Suite 300
Berkeley, CA 94712-3157
(510) 647-1900

All correspondence to Sportcraft shall be mailed to:

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17. **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.

Dated: 8/15/00

CHANLER LAW GROUP and
KAPSACK & BAIR

By Clifford A. Chanler

Attorneys for Michael DiPirro

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EXHIBIT A

LIST OF SPORTCRAFT PRODUCTS

<u>ITEM NUMBER</u>	<u>DESCRIPTION</u>
01910	Billiard Glue Cement
01911	Billiard Glue Cement - TSA
01913	Cement/Tips
01920	Cement/Tips - TSA
01970	Repair Kit - Billiard
01975	Deluxe Repair Kit - Billiard
01976	Billiard Repair Kit - TSA
91972	Billiard Repair Kit