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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement" or "Settlement Agreement") arises out of and concerns the following related actions, which were consolidated for purposes of case management and discovery by order of the Alameda County Superior Court, September 25, 2001: Michael DiPirro v. Virbac Corporation, Alameda County Case No. H219690-5, filed May 4, 2001 (the "Virbac Action") and Michael DiPirro v. Petsmart, Inc., Alameda County Case No. H219689-9, filed May 4, 2001 (the "Petsmart Action") (collectively the "Consolidated Actions"), as well as the November Notices, as defined below. This Agreement is entered into by and between Michael DiPirro ("DiPirro"), on the one hand, and Virbac Corporation ("Virbac") and Petsmart, Inc. ("Petsmart"), on the other hand, as of November 29, 2001 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. DiPirro, plaintiff in the Consolidated Actions, 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. Virbac, defendant in the Virbac Action, is a company that manufactures and distributes the tick collars, covered by this Agreement as set forth in Exhibit A, (the "Covered Products") which contain amitraz, a chemical known to the State of California to cause reproductive toxicity (the "Listed Chemical"). The Covered Products have been distributed and/or sold in California since March 1, 2000;

C. Petsmart, defendant in the Petsmart Action, is a company that sells Covered Products at its retail outlets in California;

D. On February 23, 2001, DiPirro first served Virbac, Petsmart and other public enforcement agencies with documents entitled "60-Day Notice of Violation" (the "60-

1 Day Notices"). The 60-Day Notices provided Virbac, Petsmart and such public enforcers with
2 notice of DiPirro's allegation that Virbac and Petsmart were in violation of Health & Safety
3 Code §25249.6 for allegedly failing to warn purchasers in California that the Covered Products
4 allegedly exposed users to amitraz. On November 20, 2001 DiPirro served similar 60-Day
5 Notices on Veterinary Centers of America, Los Angeles, CA; Broadway Pet Hospital, Oakland,
6 CA; Foster and Smith, Inc., Rhinelander, WI; Dr.'s Foster & Smith, Rhinelander, WI;
7 Swanson's Discount Pet Food, Inc., Lodi, CA; Lee's Pet Club Inc., Emeryville, CA; and Pet
8 Food Express, San Leandro, CA (the "November Notices");

9 E. The Consolidated Actions, filed by DiPirro, allege violations of Business
10 & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general
11 public in California who allegedly were exposed to amitraz; and

12 F. The Consolidated Actions both arise out of the alleged sale and/or
13 distribution of the Covered Products. The parties hereto intend that this Agreement become a
14 part of and incorporated into an Order re Settlement Agreement to be entered in the
15 Consolidated Actions.

16 **NOW THEREFORE, DIPIRRO, VIRBAC AND PETSMART AGREE AS FOLLOWS:**

17 1. **No Admissions.** Nothing in this Agreement shall be construed as an admission
18 by Virbac or Petsmart of any recital, fact, finding, issue of law, or violation of law, nor shall
19 compliance with this Agreement constitute or be construed as an admission by Virbac or
20 Petsmart of any fact, finding, conclusion, issue of law, or violation of law. However, this
21 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of
22 Virbac or Petsmart.

23 2. **Jurisdiction and Entry of Settlement Agreement.** Virbac and Petsmart hereby
24 submit to the jurisdiction of the Court in the Consolidated Actions for the sole purposes of
25 incorporating this Agreement into an Order re Settlement Agreement to be entered in the
26 Consolidated Actions and enforcing this Agreement under the Consolidated Actions.

1 §25192, with 75% of these funds remitted to the State of California's Department of Toxic
2 Substances Control.

3 The parties hereto agree that the payment schedule as stated in this Settlement
4 Agreement is a material factor upon which DiPirro has relied in entering into this Settlement
5 Agreement. The parties hereto agree that all payments will be made in a timely manner in
6 accordance with the payment due dates. Virbac will be given a five (5) calendar day grace
7 period from the date payment is due. Virbac agrees to pay Michael DiPirro a \$250 per calendar
8 day fee for each day the payment is not received after the grace period ends. For purposes of
9 this paragraph, each new day (requiring an additional \$250 payment) will begin at 5 p.m.
10 (PST).

11 **5. Reimbursement Of Attorneys' Fees And Costs.**

12 The parties acknowledge that DiPirro, on numerous occasions, offered to resolve the
13 dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby
14 leaving this open issue to be resolved after the material terms of the agreement had been
15 reached, and the matter settled. Virbac then expressed a desire to resolve the fee and cost issue
16 concurrently with other settlement terms, and the parties were able to reach an accord on the
17 compensation due to DiPirro and his counsel under the private attorney general doctrine
18 codified at C.C.P. §1021.5.

19 Virbac shall pay, on behalf of both Virbac and PetSmart in the Consolidated Actions,
20 DiPirro and his counsel the total sum of \$63,000 (sixty-three thousand dollars), except as
21 provided for in Paragraph 5.1 below, within five (5) calendar days of the Effective Date, for
22 DiPirro's fees, expert and investigation fees and litigation costs in the Consolidated Actions,
23 payable to the "Chanler Law Group". The parties hereto agree that such sums reimburse
24 DiPirro and his counsel for his attorneys' fees, expert and investigation fees, and litigation costs
25 incurred with respect to the Consolidated Actions and all allegations therein and that DiPirro
26 and his counsel are entitled to no additional attorneys' fees, expert and investigation fees or
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1 litigation costs for either the Virbac Action or the Petsmart Action except as provided by
2 paragraphs 5.1 and 8, below. Such sum shall be held in trust by DiPirro's counsel until the
3 Alameda County Superior Court approves and enters the Settlement Agreement. If the
4 Settlement Agreement is not approved by the Court, DiPirro will return all funds, with interest
5 thereon at a rate of six percent (6%) per annum, within five (5) calendar days of notice of the
6 Court's decision.

7 The parties agree that the payment schedule as stated in this Agreement is a material
8 factor upon which DiPirro has relied in entering into this Agreement. Virbac agrees that all
9 payments will be made in a timely manner in accordance with the payment due dates. Virbac
10 will be given a five (5) calendar day grace period from the date payment is due. Virbac, on
11 behalf of itself and Petsmart, agrees to pay Michael DiPirro a \$250 per calendar day fee for
12 each day the payment is not received after the grace period ends. For purposes of this
13 paragraph, each new day (requiring an additional \$250 payment) will begin at 5 p.m. (PST).
14

15 **5.1. Additional Contingent Fees and Costs.**

16 In the event that the California Attorney General's Office, pursuant to 11 CCR 3000, *et*
17 *seq.*, serves objections to this Settlement Agreement on any of the parties, such that it requires
18 plaintiff to incur additional legal fees or costs relating to this Settlement Agreement, Virbac on
19 behalf of itself and Petsmart, shall reimburse DiPirro for reasonable fees and costs incurred by
20 DiPirro and his counsel in excess of \$1,500, but not to exceed \$5,000, from the date of receipt
21 of the Attorney General's objections. Such additional legal fees or costs relating to this
22 Settlement Agreement include, but are not limited to: further editing and finalizing of the
23 Settlement Agreement; corresponding with opposing counsel; retention of experts; presenting
24 of the Settlement Agreement (or any modifications thereof) to the Attorney General for further
25 comment; and any briefing and/or appearance before the Court related to this Settlement
26 Agreement; all occurring as a result of the Attorney General's objections.
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1 Plaintiff agrees to document all fees and costs incurred from the date of receipt of the
2 Attorney General's objections through the date of court approval of the Settlement Agreement.
3 Prior to receiving such documentation, the parties hereto agree to enter into a letter agreement
4 in which the parties will agree that, by transmitting such information, no privilege will be
5 waived by any party hereto.

6 Such additional reimbursement of legal fees and costs shall be due within ten (10)
7 calendar days after receipt of both notice of Court approval of both Settlement Agreement and
8 final billing statement from plaintiff. Virbac or Petsmart have the right to object to such
9 reimbursement and may submit the resolution of this issue to Judicial Arbitration and
10 Mediation Services ("JAMS") in Northern California for final and binding arbitration to
11 determine the reasonableness of the additional fees and costs sought, provided that such notice
12 of objection or decision to arbitrate is received by plaintiff by the end of the ten (10) calendar
13 days. If an arbitration notice is not filed with JAMS in a timely manner, DiPirro may file a
14 motion with the Court for fees and costs pursuant to CCP §1021.5 and this Settlement
15 Agreement with respect to any additional fees and costs incurred as set forth in this paragraph.

16 **6. Scope of Consent Decree.** This Settlement Agreement is a full, final and
17 binding resolution between DiPirro, acting in the interest of the general public pursuant to
18 Health and Safety Code §25249.7(d) and Business and Professions Code §17204, and Virbac
19 and Petsmart concerning any actual or alleged violation of Proposition 65 and/or the Unfair
20 Competition Act regarding any claims made or which could have been made in the 60-Day
21 Notices, November Notices and/or the Consolidated Actions, or any other statutory or common
22 law claim that could have been asserted against Virbac or Petsmart or their respective
23 distributors, customers, retailers, directors, officers, employees, agents, attorneys, successors or
24 assigns, for alleged failure to provide sufficient health hazard warnings of exposure to amitraz
25 contained in or otherwise associated with Covered Products. Compliance with the terms of this
26 Settlement Agreement resolves any issue, now and in the future, concerning compliance by
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1 Virbac or Petsmart or their distributors, customers, retailers, directors, officers, employees,
2 agents, attorneys, successors or assigns, and any seller or distributor of Covered Products in the
3 State of California, with the requirements of Proposition 65 and the Unfair Competition Act
4 with respect to defendants' failure to warn for amitraz in the Covered Products.

5 **7. Michael DiPirro's Release Of Virbac and Petsmart.** Michael DiPirro, by this
6 Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the
7 interest of the general public, releases and waives all rights to institute or participate in, directly
8 or indirectly, any form of claim, complaint, lawsuit, allegation, proceeding, legal action,
9 equitable action or administrative action, and releases all claims, and allegations of liability,
10 obligations, losses, costs, expenses, fines and damages, against Virbac and Petsmart and their
11 respective distributors, customers, retailers, directors, officers, employees, agents, attorneys,
12 successors and assigns, including all distributors, customers and retailers named in the
13 November Notices, based upon or arising out of the Consolidated Actions, the 60-Day Notices,
14 the November Notices, or any claim, statement or allegation therein.

15 **8. Virbac's and Petsmart's Release Of Michael DiPirro.** Virbac and Petsmart,
16 by this Agreement, waive all rights to institute any form of legal action against Michael DiPirro
17 and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and
18 his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or
19 Business & Profession Code §17200 against Virbac or Petsmart.

20 **9. Court Approval.** If, for any reason, this Settlement Agreement is not approved
21 by the Court in the Consolidated Actions, this Agreement shall be deemed null and void.

22 **10. Virbac Sales Data.** Virbac understands that the sales data with respect to
23 Covered Products provided to counsel for DiPirro by Virbac is a material factor upon which
24 DiPirro has relied to determine the amount of payments made pursuant to Health & Safety
25 Code §25249.7(b) in this Agreement. To the best of Virbac's knowledge, the sales data
26 provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a
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1 reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet
2 in a good faith attempt to resolve the matter within ten (10) days of Virbac's receipt of notice
3 from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt
4 fails to resolve DiPirro's concerns, DiPirro shall have the right to submit the resolution of this
5 issue to JAMS in Northern California for final and binding arbitration to determine whether the
6 sales data provided was materially inaccurate, provided that DiPirro serves a request upon
7 JAMS to initiate arbitration proceedings and notifies Virbac of such request by the end of ten
8 (10) calendar days following the parties' meeting to attempt to resolve the matter. If DiPirro
9 does not request arbitration in the manner and within the time limits set forth in this paragraph,
10 DiPirro will be deemed to have waived his claim that the sales data is materially inaccurate. In
11 the event that the arbitrator makes a finding that the sales data is materially inaccurate, DiPirro
12 will have the right to rescind the Agreement and re-institute an enforcement action against
13 Virbac, provided that all sums paid by Virbac pursuant to paragraphs 4 and 5 are returned to
14 Virbac within ten (10) days from the date on which DiPirro notifies Virbac of his intent to
15 rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed
16 tolled for the period between the date DiPirro filed the instant action and the date DiPirro
17 notifies Virbac that he is rescinding this Agreement pursuant to this Paragraph.

18 **11. Product Characterization.** Virbac, on behalf of itself and PetSmart,
19 acknowledges that each of the Covered Products contains amitraz. DiPirro has alleged that the
20 customary use or application of the Covered Products is likely to expose users to amitraz, a
21 substance known to the State of California to cause birth defects or other reproductive harm. In
22 the event that Virbac proposes to limit or eliminate warnings on Covered Products as set forth
23 in paragraph 3.1 of this Agreement based upon data that does or could show that exposure to a
24 Covered Product will have "no observable effect," as that phrase is used in Health & Safety
25 Code §25249.10(c) and regulations pertinent thereto (Virbac's "Proposal"), then Virbac shall
26 notify DiPirro, and shall provide him with its Proposal, and the supporting data, no less than
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1 ninety (90) days prior to Virbac's limitation or elimination of such warnings. Within ninety
2 (90) days of receipt of Virbac's notice and data, DiPirro shall provide Virbac with written
3 notice of his intent to either challenge or accept Virbac's Proposal. If DiPirro fails to provide
4 Virbac written notice of his intent to challenge Virbac's Proposal within ninety (90) days of
5 receipt of Virbac's notice and data, DiPirro shall be deemed to have agreed to Virbac's
6 Proposal and waived his right to challenge it. If DiPirro timely notifies Virbac of his intent to
7 challenge Virbac's Proposal, Virbac may: (a) abandon its Proposal upon notice to DiPirro with
8 no further liability or obligations or (b) negotiate with DiPirro in good faith for a period not to
9 exceed thirty (30) days following receipt of Virbac's notice to attempt to reach a settlement of
10 this issue. If a settlement is not reached, DiPirro and Virbac agree to submit such challenge to
11 JAMS in Northern California for final and binding arbitration as to Virbac's Proposal. The
12 Arbitrator shall award the prevailing party its reasonable attorneys' fees and costs associated
13 with the arbitration.

14 **12. Severability.** In the event that any of the provisions of this Agreement are held
15 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
16 affected.

17 **13. Attorney's Fees.** In the event that a dispute arises with respect to any
18 provision(s) of this Agreement (including, but not limited to, disputes arising from the
19 provisions in paragraphs 4 and 5), the prevailing party shall be entitled to recover costs and
20 reasonable attorneys' fees.

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

23 **15. Notices.** All correspondence to Michael DiPirro shall be mailed to:

24 Jennifer Henry or David Bush
25 Bush & Henry
26 4400 Keller Ave., Suite 200
27 Oakland, CA 94605
28 (510) 577-0747

1 All correspondence to Virbac shall be mailed to:

2 J. Morrow Otis, Esq.
3 Robert L. Wainess, Esq.
4 Otis Canli & Duckworth, LLP
5 180 Montgomery Street, Suite 1240
6 San Francisco, CA 94104-4230
7 (415) 362-4442

8 **16. Compliance With Reporting Requirements (Health & Safety Code**

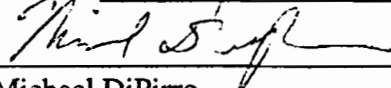
9 **§25249.7(f)).** The parties agree to comply with the reporting form requirements referenced in
10 Health & Safety Code §25249.7(f). DiPirro represents that his counsel will serve a copy of this
11 Agreement on the California Attorney General's Office within two days of the Effective Date.
12 Pursuant to the new regulations promulgated under Health & Safety Code §25249.7(f), DiPirro
13 shall present this Settlement Agreement to the Alameda County Superior Court thirty (30) days
14 later, thereby allowing the Attorney General to serve any comments to this Settlement
15 Agreement prior to the end of the thirty (30) day period.

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

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

22 **AGREED TO:**

23 DATE: 11/27/01

24 

25 Michael DiPirro
26 PLAINTIFF

27 **AGREED TO:**

28 DATE: _____

Virbac Corporation
DEFENDANT, on its own behalf and
on behalf of defendant Petsmart, Inc.

All correspondence to Virbac or Petsmart shall be mailed to:

J. Morrow Otis, Esq.
Robert L. Wainess, Esq.
Otis Canli & Duckworth, LLP
180 Montgomery Street, Suite 1240
San Francisco, CA 94104-4230
(415) 362-4442

16. Compliance With Reporting Requirements (Health & Safety Code

§25249.7(f). The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). DiPirro represents that his counsel will serve a copy of this Agreement on the California Attorney General's Office within two days of the Effective Date. Pursuant to the new regulations promulgated under Health & Safety Code §25249.7(f), DiPirro shall present this Settlement Agreement to the Alameda County Superior Court thirty (30) days later, thereby allowing the Attorney General to serve any comments to this Settlement Agreement prior to the end of the thirty (30) day period.

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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: 11/30/01 _____

Thomas L. Bell President + CEO
Virbac Corporation
DEFENDANT, on its own behalf and
on behalf of defendant Petsmart, Inc.

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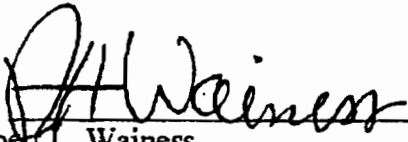
Date: Dec 4, 2001

Date: November 30, 2001

BUSH & HENRY

OTIS CANLI & DUCKWORTH, LLP

By: 
David Bush
Attorneys for Plaintiff
Michael DiPirro

By: 
Robert L. Wainess
Attorneys for Defendants
Virbac Corporation and
Petsmart, Inc.

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EXHIBIT A

Preventic® Collar, Tick Arrest Collar and Zema® Tick Detach™ Collar