

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and West Marine, Inc., a Delaware corporation ("West Marine"), as of December 21, 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. West Marine is a company that currently sells certain inflatable boat adhesive products as set forth in Exhibit A that contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq. , including methylene chloride and/or toluene (the "Listed Chemicals");

C. A list of the products which contain one or more of the "Listed Chemicals" and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been sold by West Marine for use in California since at least September 22, 1996; and

D. On July 12, 2000, Michael DiPirro first served West Marine and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided West Marine and such public enforcers with notice that West Marine was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On September 22, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. West Marine, Inc., et al. in the Alameda County Superior Court, naming West Marine 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 the "Listed Chemicals" contained in certain West Marine products.

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

EXHIBIT A

NOW THEREFORE, MICHAEL DIPIRRO AND WEST MARINE AGREE AS FOLLOWS:

1. **Product Warnings.** West Marine shall immediately begin to take steps to its sale of the Products to provide the language set forth in the section 1.1 below. Specifically, beginning on January 15, 2001, West Marine agrees that for sales occurring in its retail stores it will not knowingly and intentionally sell any Products containing the Listed Chemicals for sale in the State of California unless such Products comply with section 1.1 below. West Marine agrees that beginning in 2001 its catalog shall include the warning statement of section 1.1 below for sales in the State of California. For Internet sales, West Marine agrees to provide the warning statement of section 1.1 below beginning in April 1, 2001 for sales in the State of California. The Parties acknowledge that the manufacturer of the Products, Polymarine, has confirmed that it will place Proposition 65 warnings on the Products themselves.

1.1 For all Products containing methylene chloride and toluene, such Products shall bear substantially the following warning statement:

California Proposition 65

WARNING

This product contains chemicals known to
the State of California to cause cancer and birth defects
(or other reproductive harm).

or

California Proposition 65

WARNING

This product contains a chemical known to
the State of California to cause cancer and
birth defects or other reproductive harm.
WASH HANDS AFTER HANDLING!

The warning statement shall be prominently placed on or near the Products at the point of sale with such conspicuousness, as compared with other words, statements, designs or devices in proximity of the location of the Products or the store shelf or on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. For catalog sales, the warning statement shall be prominently placed on or near the page advertising the Product with such conspicuousness, as compared with other words, statements, designs or devices in the catalog, so as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. For internet sales, West Marine shall assure that any California consumer buying any Product shall be provided with the warning statement at or prior to the time of purchase.

2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), West Marine shall pay a civil penalty of \$6,012. The payment of \$6,012 shall be paid within five (5) calendar days after the Effective Date of this

Agreement. 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. West Marine 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.

West Marine shall reimburse DiPirro for his fees and costs, incurred as a result, of investigating, bringing this matter to West Marine's attention, litigating and negotiating a settlement in the public interest. West Marine shall pay the total sum of \$ 15,800 for investigation fees, attorneys' fees and litigation costs. West Marine agrees to pay \$ 15,800 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

4. **Michael DiPirro's Release Of West Marine.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens and government 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 West Marine and its customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on West Marine's alleged failure to warn about exposure to the Listed Chemicals contained in any of the Products.

5. **West Marine's Release Of Michael DiPirro.** West Marine, 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 West Marine.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and West Marine 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. **West Marine Sales Data.** West Marine understands that the sales data provided to counsel for DiPirro by West Marine, as reflected in the attached Exhibit B, was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.1(b) in this Agreement. To the best of West Marine's

knowledge, the sales data provided is true and accurate. 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 West Marine's 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 West Marine, provided that all sums paid by West Marine pursuant to paragraphs 2 and 3 are returned to West Marine within ten (10) days from the date on which DiPirro notifies West Marine of his intent to rescind this Agreement. DiPirro shall have one year from the date this agreement is executed within which to exercise his rights under this paragraph.

8. **Product Characterization.** West Marine acknowledges that it has been informed that each of the Products listed in Exhibit A contains methylene chloride and/or toluene and Plaintiff alleges that the customary use or application of the Products is likely to expose users to methylene chloride and/or toluene, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that West Marine obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code. §25249.10(c) and West Marine seeks to eliminate the warnings, then West Marine 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 West Marine Exposure Data, DiPirro shall provide West Marine 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 West Marine written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of West Marine's notice and the Exposure Data, DiPirro shall waive all rights to challenge the . Exposure Data, and West Marine 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 West Marine of his intent to challenge the Exposure Data, DiPirro, and West Marine (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no farther liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of West Marine's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and West Marine 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.

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:

Jennifer Henry, Esq.
Law Offices of Jennifer Henry
9000 Crow Canyon Road, Suite S, PMB 399
Danville, CA 94506-1175
(925) 830-2860

or

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

All correspondence to West Marine shall be mailed to:

Norman C. Hile, Esq.
Daniel P. Maguire, Esq.
Orrick, Herrington & Sutcliffe LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4407
(916) 447-9200

13. **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. West Marine represents, however, 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 Alameda County Superior Court.

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.

12/21/2000 09:21 FAX

0008

AGREED TO:

AGREED TO:

Date: _____

Date: 12-21-00

Michael DiPirro
PLAINTIFF

Russell Holt
West Marine, Inc.
DEFENDANT

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AGREED TO:

Date: 12/20/00

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

Date: _____

West Marine, Inc.
DEFENDANT

ENCLOSURE 27/0071

EXHIBIT A

1. Inflatable Boat Adhesives