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Michael DiPirro

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17 Attorneys for Defendant
Wilson Sporting Goods Co.

18 SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA

19 MICHAEL DiPIRRO,
20 Defendant,

21 vs.

22 WILSON SPORTING GOODS, CO. ;
23 and DOES 1 through 1000,
24 Defendants.

ENDORSED
FILED
ALAMEDA COUNTY
APR 25 2001
CLERK OF THE SUPERIOR COURT
By LINDNELL WILLIAMS
Deputy

No. H-216056-6
CONSENT JUDGMENT

1 **1. INTRODUCTION**
2

3 1.1. Michael DiPirro ("DiPirro") is an individual residing in San Francisco
4 who seeks to promote awareness of exposures to toxic chemicals and improve
5 human health by reducing or eliminating hazardous substances contained in
6 consumer and industrial products;
7

8 1.2. Wilson Sporting Goods Co. ("Wilson") manufactured, distributed or
9 sold in the State of California certain products that Plaintiff contends contain
10 chemicals listed pursuant to Proposition 65 (California Health & Safety Code
11 §§25249.5 *et seq.*).
12

13 1.3. Wilson asserts that Apple Sports Inc. ("Apple") is a licensee of Wilson
14 who manufactured, distributed or sold in the State of California certain products
15 that Plaintiff contends contain chemicals listed pursuant to Proposition 65
16 (California Health & Safety Code §§25249.5 *et seq.*).
17

18 1.4. The products that contain one or more of the chemicals listed pursuant
19 to Proposition 65 and which are covered by this Consent Judgment are set forth in
20 Exhibit A (the "Products"), which is attached hereto and incorporated herein by this
21 reference.
22

23 1.5. By notice dated August 4, 2000, DiPirro first served Wilson and all of
24 the requisite public enforcement agencies with a document entitled "60-Day
25 Notice" which provided Wilson and such public agencies with notice that Wilson
26 was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn
27 purchasers that the Products exposed users to certain Proposition 65 Listed
28 Chemicals;

1 1.6. On October 19, 2000, DiPirro filed a complaint entitled *Michael*
2 *DiPirro v. Wilson Sporting Goods Co.*, Case No. H-216056-6, in the Superior Court
3 in and for the County of Alameda, naming Wilson and various does as defendants
4 and alleging violations of Business & Professions Code §17200 *et seq.*, and
5 Health & Safety Code §25249 *et seq.*, on behalf of individuals in California who
6 may have been exposed to certain chemicals listed pursuant to Proposition 65
7 contained in certain products. Wilson filed its answer to the complaint on November
8 28, 2000.

9
10 1.7. Wilson denies the material factual and legal allegations contained in
11 the 60-Day Notice and the Complaint filed by DiPirro for alleged violations of
12 Proposition 65 and Business & Professions Code §17200 *et seq.*, and maintains
13 that all Products manufactured, distributed or sold by Wilson and its licensees in
14 California have been and are in compliance with all laws.

15
16 1.8 For purposes of this Consent Judgment, the term "Effective Date"
17 shall mean March 21, 2001.

18
19 1.9 For purposes of this Consent Judgment, the term "Covered Products"
20 includes all products listed on Exhibit A hereto, and any other substantially similar
21 products which may be manufactured, distributed and/or sold by Wilson, or its
22 licensee identified in Section 1.3 of this Consent Judgment, in California after the
23 Effective Date which now or in the future contain Listed Chemicals.

24
25 1.10 For purposes of this Consent Judgment, the term "New Products"
26 shall include any Products that are substantially similar to those included in Exhibit
27 A which contain a Listed Chemical and which were not manufactured, distributed
28

1 and/or sold by Wilson, or its licensee identified in Section 1.3 of this Consent
2 Judgment, into California on or before the Effective Date.

3

4 1.11 For purposes of this Consent Judgment, "Listed Chemicals" means
5 chemicals that are currently or may in the future be listed pursuant to Proposition
6 65.

7

8 2. **INJUNCTIVE RELIEF**

9

10 2.1. **Future Sales of Covered Products.** Wilson will not distribute or sell any
11 Covered Products into California after April 21, 2001 that Wilson knows contain
12 lead, unless such Covered Products contain the labeling set forth in Section 2.2.
13 For any Covered Products that Wilson knows contain lead and that Wilson licenses
14 for Apple to distribute or sell into California after April 21, 2001, Wilson shall
15 specify that such Covered Products contain the labeling set forth in Section 2.2.

16

17 2.2 **Product Labeling.** If Wilson distributes or sells into California after
18 April 21, 2001, any Covered Products that it knows contain lead, then Wilson shall
19 itself (for those Covered Products that it distributes or sells) or shall specify for its
20 licensee identified in Section 1.3 (for those Covered Products that its licensee
21 identified in Section 1.3 distributes or sells) that the product or packaging labels for
22 those Covered Products be revised so as to be consistent with this Consent
23 Judgment ("Revised Labels"). Wilson shall use reasonable efforts to ensure that all
24 Covered Products in its possession, that it knows contain lead and that are
25 intended for distribution or sale in California, are packaged or sold using Revised
26 Labels as soon as commercially reasonable; and shall use reasonable efforts to
27 specify that all Covered Products in the possession of the licensee identified in
28 Section 1.3 that Wilson knows contain lead and that are intended for distribution

1 or sale in California are packaged or sold using Revised Labels as soon as
2 commercially reasonable. However, after April 21, 2001 (the "Revised Label
3 Compliance Date") Wilson shall not knowingly ship (or cause to be shipped) to
4 California for sale or distribution any Covered Products that it knows contain lead
5 unless each such Covered Product is accompanied by a Revised Label on or within
6 the Covered Product package, or affixed to Covered Products, as set forth below,
7 or an equivalent warning that complies with Section 12601 of Title 22 of the
8 California Code of Regulations. Wilson shall also specify that its licensee identified
9 in Section 1.3 of this Consent Judgment will not knowingly ship (or cause to be
10 shipped) after April 21, 2001 to California for sale or distribution any Covered
11 Products that it knows contains lead unless each such Covered Product is
12 accompanied by a Revised Label on or within the Covered Product package, or
13 affixed to Covered Products, as set forth below, or an equivalent warning that
14 complies with Section 12601 of Title 22 of the California Code of Regulations.

15
16 **"WARNING: This product contains lead, a chemical known to the State of**
17 **California to cause cancer and birth defects (or other reproductive harm)."**

18
19 The warning statement shall be prominent and displayed with such
20 conspicuousness, as compared with other words, statements, or designs, as to
21 render it likely to be read and reasonably understood by an ordinary individual under
22 customary conditions of purchase or use. For purposes of this Consent Judgment,
23 "Revised Label" does not include an MSDS form that otherwise meets the
24 requirements of Paragraph 2. The labeling revisions may be made in the form of an
25 adhesive sticker, stamp or permanent changes to the outside packaging of the
26 product package.

27
28

1 **2.3. Deemed Compliance.** Any New Products that are manufactured,
2 distributed and/or sold by Wilson or Apple after the Revised Label Compliance Date
3 shall be deemed to comply with the provisions of this Consent Judgment and the
4 requirements of Proposition 65 with respect to product warnings if they are
5 accompanied by Revised Labels as set forth in Section 2.2 of this Consent
6 Judgment.

7
8 **2.4. Product Characterization.** Plaintiff contends that each of the Covered
9 Products listed in Exhibit A contains one or more substances known to the State of
10 California to cause cancer or birth defects (or other reproductive harm). In the event
11 that Wilson obtains analytical, risk assessment or other data ("Exposure Data") that
12 shows that an exposure to any or all Covered Products poses "no significant risk"
13 or will have "no observable effect," as each such standard is applicable and as each
14 is defined under Health & Safety Code §25249.10(c), Wilson shall provide DiPirro
15 with 90 days prior written notice of its intent to limit or eliminate the Revised
16 Labels under this Consent Judgment based on the Exposure Data and shall provide
17 DiPirro with all such supporting Exposure Data. Within thirty (30) days of receipt of
18 Wilson's Exposure Data, DiPirro shall provide Wilson with written notice of his
19 intent to challenge the Exposure Data (in the event that he chooses to make such a
20 challenge). If DiPirro fails to provide Wilson written notice of his intent to challenge
21 the Exposure Data within thirty (30) days of receipt of Wilson's notice and the
22 Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and
23 Wilson shall be entitled to limit or eliminate the Revised Labels required under this
24 Consent Judgment with respect to those Covered Product(s) to which the Exposure
25 Data applies. If DiPirro timely notifies Wilson of his intent to challenge the Exposure
26 Data, DiPirro and Wilson shall negotiate in good faith to attempt to reach a
27 settlement. In the event that no settlement is reached within thirty (30) days of
28 mailing by DiPirro of such notice of challenge, DiPirro and Wilson agree to submit

1 such challenge to the Court for determination, pursuant to the Court's continuing
2 jurisdiction of this matter under California Code of Civil Procedure Section 664.6
3 and this Consent Judgment. The prevailing party shall be entitled to reasonable
4 attorneys' fees and costs associated with such a determination. If DiPirro does not
5 challenge Wilson's notice or the Court determines that no warning is required for
6 particular Covered Products, Wilson shall no longer be required to provide the
7 warnings described in this Consent Judgment for those Covered Products.

8
9 **3. MONETARY PAYMENTS**

10
11 **3.1. Civil Penalty.** Subject to the limitations set forth below, Wilson shall,
12 pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$6,000 in
13 two installments. The first payment of \$3,000 shall be made to DiPirro within ten
14 (10) calendar days of the Effective Date. The second payment of \$3,000, which
15 shall be due by March 31, 2002, shall be waived if Wilson has sent DiPirro a
16 notice, no later than March 31, 2002, certifying that Wilson has not sold or
17 distributed Covered Products which it knows contains lead into California between
18 April 21, 2001 and March 21, 2002. The first \$3,000 payment shall be made
19 payable to the "Chanler Law Group in Trust for Michael DiPirro" and shall be held in
20 escrow by DiPirro's counsel until this Consent Judgment has been entered. If the
21 second \$3,000 payment is made, it shall be made payable to the "Chanler Law
22 Group in Trust for Michael DiPirro." Any penalty monies received shall be
23 apportioned by DiPirro in accordance with Health & Safety Code § 25192, with
24 75% of these funds remitted to the State of California. DiPirro shall bear all
25 responsibility for apportioning and paying to the State of California the appropriate
26 civil penalties paid in accordance with this paragraph. In the event this Consent
27 Judgment is not entered, any payment made pursuant to this paragraph shall be
28 returned to Wilson, with interest thereon at a rate of six percent (6%) per annum,

1 within five (5) days of receipt of notice of the Court's rejection of this proposed
2 Consent Judgment.

3
4 **3.2. Reimbursement of Fees and Costs.** The parties acknowledge that
5 DiPirro offered to resolve the dispute without reaching terms on the amount of fees
6 and costs to be reimbursed, thereby leaving this open issue to be resolved after the
7 material terms of the agreement had been reached and the matter settled. Wilson
8 then expressed a desire to resolve the fee and cost issue concurrently with other
9 settlement terms, so the parties reached an accord on the compensation due to
10 DiPirro and his counsel under the private attorney general doctrine codified at
11 California Code of Civil Procedure Section 1021.5.

12
13 Wilson shall reimburse DiPirro for his fees and costs, incurred as a result of
14 investigating, bringing this matter to Wilson's attention, litigating and negotiating a
15 settlement in the public interest. Wilson shall within ten (10) calendar days of the
16 Effective Date, pay to DiPirro the sum of \$17,000 for his investigation, expert,
17 attorneys' and paraprofessional fees and costs incurred in this matter. The
18 \$17,000 amount shall be made payable to the "Chanler Law Group" and held in
19 escrow by DiPirro's counsel until this Consent Judgment has been entered by the
20 court. In the event this Consent Judgment is not entered, any payment made
21 pursuant to this paragraph shall be returned to Wilson, with interest thereon at a
22 rate of six percent (6%) per annum, within five (5) days of receipt of notice of the
23 Court's rejection of this proposed Consent Judgment.

24
25 **4. RELEASE OF ALL CLAIMS**

26
27 **4.1. DiPirro's Release of Wilson.** In further consideration of the promises
28 and agreements herein contained, and for the payments to be made pursuant to

1 Section 3, DiPirro, on behalf of himself, his agents, representatives, attorneys,
2 and/or assignees, and the People of the State of California on whose behalf this
3 action was brought, hereby waives all rights to institute and participate in, directly
4 or indirectly, any form of legal action and releases all claims, including, without
5 limitation, all actions, causes of action, in law or in equity, suits, liabilities,
6 demands, damages, fines, penalties, losses or expenses (including investigation
7 fees, expert fees and attorneys' fees and other costs) of any nature whatsoever,
8 whether known or unknown, fixed or contingent (collectively, "Claims"), against
9 Wilson and any of its parent companies and affiliated companies, divisions,
10 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of
11 them), and its licensees (including, but not limited to Apple) and their respective
12 officers, directors, attorneys, representatives, shareholders, partners, agents, and
13 employees (collectively, "Wilson Releasees"). This waiver and release shall pertain
14 to Claims arising under Proposition 65 or Business & Professions Code §17200 *et*
15 *seq.*, related to the Wilson Releasees alleged failure to warn about exposures on or
16 before the Effective Date to certain Listed Chemicals contained in any of the
17 Covered Products listed in Exhibit A. It is specifically understood and agreed that
18 Wilson's compliance with the terms of this Release resolves all issues and liability,
19 now and in the future, concerning the Wilson Releasees' past compliance with the
20 requirements of Proposition 65 or Business and Professions Code §17200 *et seq.*,
21 arising from the Wilson Releasees' alleged failure to comply with Proposition 65 in
22 connection with the Covered Products listed on Exhibit A occurring on or before the
23 Effective Date.

24
25 **4.2. DiPirro's Release of "Downstream Persons."** DiPirro, on behalf of
26 himself, his agents, and/or assignees and the People of the State of California on
27 whose behalf this action was brought, further waives all rights to institute any form
28 of legal action and releases all Claims against each licensee, distributor, wholesaler,

1 retailer, dealer, customer, owner, operator, lessor, lessee or user of the Covered
2 Products, or any of their respective parent and affiliated companies, divisions,
3 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of
4 them) and their respective officers, directors, shareholders, partners, attorneys,
5 representatives, agents, employees (collectively, "Downstream Persons"). This
6 waiver and release shall pertain to Claims arising under Proposition 65 or
7 Business & Professions Code §17200 et seq., related to the Downstream Persons'
8 alleged failure to warn about exposures on or before the Effective Date to certain
9 Listed Chemicals contained in any of the Covered Products listed in Exhibit A. It is
10 specifically understood and agreed that this Consent Judgment resolves all issues
11 and liability, now and in the future, concerning the Downstream Persons' past
12 compliance with the requirements of Proposition 65 or Business & Professions Code
13 §17200, et seq., arising from the Wilson Releasees' or the Downstream Persons'
14 alleged failure to comply with Proposition 65 in connection with the Covered
15 Products on or before the Effective Date.

16
17 **4.3. Wilson Release.** Wilson waives all rights to institute any form of legal
18 action against DiPirro, and his attorneys or representatives, for all actions taken or
19 statements made on or before the Effective Date by DiPirro, in the course of
20 seeking enforcement of Proposition 65 or Business & Professions Code §17200, et
21 seq. against Wilson.

22
23 **5. WILSON'S COVERED PRODUCT INFORMATION**

24
25 **5.1** Wilson understands that the Covered Product sales (and other)
26 information provided to counsel for DiPirro by Wilson was a material factor upon
27 which DiPirro has relied to determine a fair and reasonable settlement. To the best
28 of Wilson's knowledge, the information provided is true and accurate. In the event

1 DiPirro discovers facts which demonstrate to a reasonable degree of certainty that
2 the information is materially inaccurate, all other parts of this Consent Judgment
3 notwithstanding, DiPirro shall have the right to vacate this Consent Judgment and
4 re-institute an enforcement action against Wilson, provided that all sums paid by
5 Wilson pursuant to Section 3.2 are returned to Wilson, with interest thereon at a
6 rate of six percent (6%) per annum, within five (5) days from the date on which
7 DiPirro notifies Wilson of his intent to vacate this Consent Judgment. In such case,
8 all applicable statutes of limitation shall be deemed tolled for the period between
9 the date DiPirro filed the instant action and the date DiPirro notifies Wilson that he
10 is seeking to vacate this Consent Judgment pursuant to this paragraph, provided
11 that, in no event shall any statute of limitation be tolled beyond four (4) years from
12 the date this action was filed.

13

14 **6. COURT APPROVAL**

15

16 6.1. If this Consent Judgment is not approved and entered by the Court
17 within 60 days of the Effective Date, it shall be deemed null and void as of the
18 sixty-first (61st) day after the Effective Date and cannot be used in any proceeding.

19

20 **7. SEVERABILITY**

21

22 7.1. In the event that any of the provisions of this Consent Judgment are
23 held by a court to be unenforceable, the validity of the enforceable provisions
24 remaining shall not be adversely affected thereby.

25

26 **8. ATTORNEY'S FEES**

27

28 8.1 In the event a dispute arises with respect to any provision(s) of this

1 Consent Judgment, the prevailing party shall be entitled to recover costs and
2 reasonable attorneys' fees.

3

4 **9. GOVERNING LAW**

5

6 **9.1** The terms of this Consent Judgment shall be governed by the laws of
7 the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Covered Products
9 specifically, Wilson shall have no further obligations pursuant to this Consent
10 Judgment with respect to, and to the extent that, those Covered Products are so
11 affected.

12

13 **10. NOTICES**

14

15 **10.1.** All correspondence and notices required to be provided pursuant to
16 this Consent Judgment shall be in writing and shall be personally delivered or sent
17 by first-class, registered, certified mail, overnight courier, and/or via facsimile
18 transmission (with presentation of facsimile transmission confirmation) addressed
19 as follows:

20

If to DiPirro: Chanler Law Group
Magnolia Lane
New Canaan, Connecticut 06840-3801
(Fax) 203/801-5222

22

23 If to Wilson: Raymond M. Berens, Esq.
General Counsel
Wilson Sporting Goods Co.
8700 West Bryn Mawr
Chicago, Illinois 60631
(Fax) 773-714-4557

24

25

26 with copies to: Jeffrey Key, Esq.
3941 South Keeler Avenue
Chicago, Illinois 60632
27 (fax) 312-957-1236
28

1 John E. Dittoe, Esq.
2 Crosby, Heafey, Roach & May
3 1999 Harrison Street
4 P.O. Box 2084
5 Oakland, CA 94604-2084
6 (Fax) 510/273-8832

7
8 Either party, from time to time, may specify- a change of address or facsimile
9 number to which all notices and other communications shall be sent.

10
11 **11. NO ADMISSIONS**

12 **11.1. No Admissions.** Nothing in this Consent Judgment shall constitute or
13 be construed as an admission by Wilson or its licensees of any fact, finding,
14 conclusion, issue of law, or violation of law, nor shall compliance with this Consent
15 Judgment constitute or be construed as an admission by Wilson or its licensees of
16 any fact, finding, conclusion, issue of issue of law, or violation of law, such being
17 specifically denied by Wilson. Wilson and its licensees reserve all of their rights and
18 defenses with regard to any claim by any party under Proposition 65 or otherwise.
19 However, this Paragraph shall not diminish or otherwise affect the obligations,
20 responsibilities, and duties of Wilson under this Consent Judgment.

21 **12. ENTIRE AGREEMENT; MODIFICATION**

22 **12.1** This Consent Judgment constitutes the entire agreement between the
23 parties relating to the rights and obligations herein granted and assumed, and
24 supersedes all prior agreements and understandings between the parties. This
25 Consent Judgment may be modified only upon the written agreement of the
26 parties.
27
28

1 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

2

3 **13.1** This Consent Judgment may be approved as to form by counsel for
4 the parties in counterparts and by facsimile, each of which shall be deemed an
5 original, and all of which, when taken together, shall constitute one and the same
6 document.

7

8 **14. COMPLIANCE WITH REPORTING REQUIREMENTS**

9

10 **14.1** The parties shall cooperate in complying with the reporting
11 requirements set forth in Health & Safety Code §25249.7(f). If, as of the Effective
12 Date, a form approved by the Attorney General's Office is available for use, such
13 form shall be promptly completed and then sent to the California Attorney General's
14 Office, along with a copy of this proposed Consent Judgment, by certified mail,
15 return receipt requested. If a form approved by the Attorney General's office is not
16 available as of the Effective Date, Wilson shall promptly send this Consent
17 Judgment to the California Attorney General's Office by certified mail, return
18 receipt requested, along with a cover letter stating that "The attached proposed
19 Consent Judgment is provided to you pursuant to Health & Safety Code
20 §25249.7(f)." Exhibit B attached hereto contains a statement by counsel for Wilson
21 that, consistent with this Section 14.1, the proposed Consent Judgment is being
22 submitted concurrently to the California Attorney General's Office with its
23 presentation to the Alameda County Superior Court.

24

25 **15. AUTHORIZATION**

26

27 **15.1** The undersigned are authorized to execute this Consent Judgment on
28 behalf of their respective parties and have read, understood and agree to all of the

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terms and conditions of this Consent Judgment.

DATED: April __, 2001

By: _____
Michael DiPirro

DATED: April __, 2001

By: _____
Raymond M. Berens
General Counsel
Wilson Sporting Goods Co.

APPROVED AS TO FORM:

DATED: April __, 2001

CHANLER LAW GROUP

By: _____
Clifford A. Chanler
Attorney for Plaintiff Michael DiPirro

DATED: April __, 2001

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By: _____
John E. Dittoe
Attorneys for Defendant Wilson
Sporting Goods Co.

IT IS TO ORDERED.

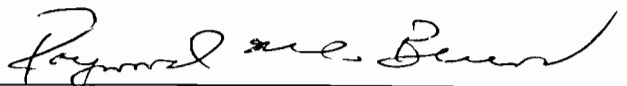
DATED: _____, 2001

Judge of the Superior Court

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Michael DiPirro

DATED: April 3, 2001

By: 
Raymond M. Berens
General Counsel
Wilson Sporting Goods Co.

APPROVED AS TO FORM:

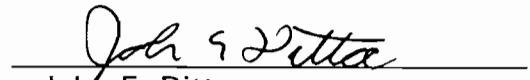
DATED: April __, 2001

CHANLER LAW GROUP

By: _____
Clifford A. Chanler
Attorney for Plaintiff Michael DiPirro

DATED: April 6, 2001

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By: 
John E. Dittoe
Attorneys for Defendant Wilson
Sporting Goods Co.

IT IS TO ORDERED.

DATED: _____, 2001

Judge of the Superior Court

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DATED: April 2, 2001

By: 
Michael DiPirro

DATED: April __, 2001

By: _____
Raymond M. Berens
General Counsel
Wilson Sporting Goods Co.

APPROVED AS TO FORM:

DATED: April 3, 2001

CHANLER LAW GROUP

By: 
for Clifford A. Chanler
Attorney for Plaintiff Michael DiPirro

DATED: April __, 2001

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By: _____
John E. Dittoe
Attorneys for Defendant Wilson
Sporting Goods Co.

IT IS TO ORDERED.

DATED: Apr 25, 2001

DAVID E. HUNTER

Judge of the Superior Court

Exhibit A

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EXHIBIT A – WILSON SPORTING GOODS CO.

1. Wilson Golf Club Head Weights
2. Wilson Swing Weights For Tennis Racquets

Exhibit B

EXHIBIT B

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As counsel for Wilson Sporting Goods Co. in the matter of Michael DiPirro v. Wilson Sporting Goods, Co., Alameda County Superior Court No. H-216056-6, the undersigned hereby represents that this proposed Consent Judgment was sent to the California Attorney General's Office by certified mail, return receipt requested, on April 12, 2001.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: April 12, 2001.



John E. Ditto
CROSBY, HEAFEY, ROACH & MAY
Attorneys for Wilson Sporting Goods Co.

CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION