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EMERGED
FILED
ALAMEDA COUNTY

7
8 Attorneys for Defendant
9 HUNTER'S SPECIALTIES

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FILED
By Court Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

11 MICHAEL DIPIRRO, an individual,
12 Plaintiff,

13 vs.

14 HUNTER'S SPECIALTIES and DOES 1
15 through 1000,
16 Defendants.

CASE NO. H210765-1

DATE:
TIME:
DEPT:
JUDGE:

CONSENT JUDGMENT

DATE FILED: December 13, 1999
TRIAL DATE: None Assigned

17
18
19 This Consent Judgment is entered into by and between Michael DiPirro, a California
20 citizen ("Plaintiff"), and Hunter's Specialties ("Defendant") on March 27, 2000 ("the Effective
21 Date") to resolve all claims raised in the above-captioned action. The parties agree to the terms
22 and conditions set forth below.

23 **1. INTRODUCTION**

24 1.1 Michael DiPirro is an individual residing in San Francisco, California, who seeks
25 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
26 eliminating hazardous substances contained in consumer and industrial products.

27 1.2 Hunter's Specialties manufactures and distributes duck decoy weights that
28 contain lead, a substance known to the State of California to cause cancer and birth defects (or

1 other reproductive harm) and have elected to settle this matter by entering into this Consent
2 Judgment.

3 1.3 A list of the products which contain lead and that are covered by this Consent
4 Judgment is provided in Exhibit A (the "Products").

5 1.4 On December 2, 1999, Michael DiPirro, on behalf of the general public, filed a
6 Complaint under the Safe Drinking Water and Toxics Enforcement Act of 1986 ("Proposition
7 65"), Cal. Health and Safety Code §§ 25249.5, *et seq.* and Business and Professions Code
8 §§ 17200, *et seq.* ("Complaint"). The Complaint alleges that Defendant has violated
9 Proposition 65 and the Business and Professions Code by exposing individuals in California to
10 lead, a Proposition 65-listed carcinogen and reproductive toxin, without first providing a clear
11 and reasonable warning to such individuals. Said Complaint is attached as Exhibit B. Plaintiff
12 seeks Damages, Injunctive Relief, Civil Penalties and Restitution ("Complaint") in the Superior
13 Court for the County of Alameda ("Action"), arising from alleged violations of the
14 aforementioned laws, by Defendant.

15 1.5 Prior to filing the Complaint, on September 27, 1999, Michael DiPirro first
16 served the Office of the Attorney General, designated public enforcement agencies and
17 Defendant with a Proposition 65 60-Day Notice of Violation ("Notice") pursuant to Health &
18 Safety Code § 25249.7(d), giving notice to Defendant, the Attorney General of California and
19 such public officials authorized to bring suit under Proposition 65 of the alleged violations
20 referred to in paragraph 1.1 above. The Notice is attached as Exhibit C. Defendant stipulates
21 that the Notice is adequate to comply with Cal. Code Regs. tit. 22, § 12903.

22 1.6 Neither the Attorney General nor any of the other designated public prosecutors
23 has commenced any action in response to the Notice. For purposes of this Consent Judgment,
24 Plaintiff acts on behalf of the general public as to those matters described in the Complaint and
25 Notice.

26 1.7 For purposes of this Consent Judgment, the Parties stipulate that this Court has
27 subject matter jurisdiction over the allegations contained in the Complaint. Without conceding
28 that this Court has personal jurisdiction over any of the Defendant, Defendant does not contest

1 the exercise of personal jurisdiction by this Court or venue in Alameda County solely and
2 exclusively for the purposes of this Consent Judgment; or the exercise of jurisdiction by this
3 Court to enter this Consent Judgment as a resolution of the claims that were or could have been
4 raised in the Complaint based on the facts alleged therein.

5 1.8 The Parties enter into this Consent Judgment to settle disputed claims between
6 them; to avoid prolonged litigation; to ensure that the objectives of Proposition 65 are
7 expeditiously carried out; and to provide a prompt remedy for the matters alleged in the
8 Complaint. By execution of this Consent Judgment, Defendant does not admit any violations of
9 Proposition 65 or the Business and Professions Code, or any other law or standard applicable to
10 warning or disclosure concerning the manufacture, distribution and/or sale of duck decoy
11 weights that contain lead. Nothing in this Consent Judgment shall be construed as an admission
12 by Defendant of any fact, issue of law, or violation of law; nor shall compliance with this
13 Consent Judgment constitute or be construed as an admission by Defendant or any fact, issue of
14 law, or violation of law. Defendant specifically denies that it has committed any such violation
15 or that any present warning program is not sufficient to comply with any duties under
16 Proposition 65 that relate to the manufacture or distribution or sale of duck decoy weights that
17 contain lead. Defendant asserts that its manufacture, distribution or sale of duck decoy weights
18 that contain lead has posed and poses no health or safety risk to persons who handle or use such
19 products; that there has been no violation by it of Proposition 65; that it has violated no other
20 state or federal law (including the common law) or regulation relating to the manufacture,
21 distribution or sale of such products; and that it has no obligation to provide warnings other than
22 those already provided regarding the manufacture, distribution or sale of such products.
23 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy or defense
24 the Parties may have in any other or further legal proceeding. However, this paragraph shall not
25 diminish or otherwise affect the obligations, responsibilities, and duties of Defendant under this
26 Consent Judgment.

1 **2. PROPOSITION 65 WARNINGS**

2 2.1 Defendant represents that it has revised the health hazard warnings for its
3 Products to be consistent with the language set forth in the section 2.2 below. Beginning on
4 April 1, 2000, Defendant agrees that it will not knowingly ship (or cause to be shipped) any
5 Products containing lead for sale in the State of California unless such Products comply with
6 section 2.2 below.

7 2.2 For all Products containing lead, such Products shall bear the following warning
8 statement on the Product label:

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

11 **or**

12 **“WARNING: This product contains a chemical known to the
13 State of California to cause cancer and birth
 defects and other reproductive harm”;**

14
15 The warning statement shall be prominent and displayed at the point of sale with such
16 conspicuousness, as compared with other words, statements, or designs as to render it likely to
17 be read and understood by an ordinary individual.

18 **3. CIVIL PENALTIES**

19 Pursuant to Health & Safety Code § 25249.7(b), Defendant shall pay a civil penalty of
20 \$10,000. The penalty payment shall be made within ten (10) calendar days of the effective date
21 of this Agreement by check made payable to “Chanler Law Group In Trust For Michael
22 DiPirro”. Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety
23 Code § 25192, with 75% of these funds remitted to the State of California’s Department of
24 Toxic Substances Control.

25 **4. REIMBURSEMENT OF FEES AND COSTS**

26 The parties acknowledge that DiPirro offered to resolve the dispute without reaching
27 terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be
28 resolved after the material terms of the agreement had been reached, and the matter settled.

1 Defendant then expressed a desire to resolve the fee and cost issue concurrently with other
2 settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and
3 his counsel under the private attorney general doctrine codified at C.C.P. § 1021.5. Within ten
4 (10) calendar days after the Effective Date of this Consent Judgment, the Defendant shall pay
5 the sum of sixteen thousand eight hundred dollars (\$16,800) to Plaintiff as reimbursement for
6 Plaintiff's attorneys' fees and costs incurred to investigate and prosecute this matter, and to
7 negotiate this Consent Judgment. Such payment shall be made payable to "Chanler Law
8 Group." This amount includes all fees and costs that may be incurred in the implementation of
9 this Consent Judgment, and additional work to be performed by Chanler Law Group until the
10 entry of judgment. Except as specifically provided in this paragraph, each party shall bear its
11 own costs and attorneys' fees.

12 **5. MICHAEL DIPIRRO'S RELEASE OF DEFENDANT**

13 Michael DiPirro, by this Consent Judgment, on behalf of himself, his agents,
14 representatives, attorneys, assigns and the citizens of the State of California, waives all rights to
15 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
16 liabilities, obligations, losses, costs, expenses, fines and damages, against Defendant and its
17 distributors, retailers, customers, directors, officers, employees, affiliates, successors and
18 assigns, whether under Proposition 65 or the Business & Profession Code § 17200 *et seq.* based
19 on Defendant's failure to warn about exposure to lead contained in any of the Products.

20 **6. DEFENDANT'S RELEASE OF MICHAEL DIPIRRO.**

21 Defendant, by this Consent Judgment, waives all rights to institute any form of legal
22 action against Michael DiPirro and his attorneys or representatives, for all actions or statements
23 made by Michael DiPirro and his attorneys or representatives, up to the date of this Consent
24 Judgment in the course of seeking enforcement of Proposition 65 or Business & Profession
25 Code § 17200 against Defendant.
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1 7. **WAIVER OF THE PROVISIONS OF THE CALIFORNIA CIVIL CODE,**

2 **SECTION 1542**

3 DiPirro, on behalf of himself, his agents, representatives, attorneys, successors and
4 assigns, and *not* in his representative capacity on behalf of citizens of the State of California,
5 and the Defendant, hereby waive the provision of the California Civil Code. Section 1542,
6 which provides as follows: “A general release does not extend to claims which the creditor does
7 not know or suspect to exist in his favor at the time of executing the release, which if known by
8 him, must have materially affected his settlement with the debtor.”

9 8. **CLAIMS COVERED**

10 8.1 This Consent Judgment is a final and binding resolution between and among the
11 Plaintiff and its agents and attorneys, acting on behalf of the general public, and Defendant,
12 (defined for purposes of this Judgment to include the parent, subsidiaries, affiliates, divisions,
13 subdivisions, directors, officers, employees, agents or attorneys), and its customers, distributors,
14 wholesalers, retailers or any other person in the course of business who may use, maintain, or
15 sell duck decoy weights that contain lead that were sold or distributed by a Defendant, with
16 respect to any and all Claims, as defined in paragraph 8.3-8.4, which Defendant or DiPirro each
17 now have or may hereafter have against each other, or any of them, whether based on actions
18 committed by Defendant, or by any entity within its chain of distribution, including, but not
19 limited to, retail sellers, wholesalers, and any other person in the course of business, with
20 respect to duck decoy weights that contain lead sold or distributed by Defendant. The Parties
21 mutually release each other with respect to all such Claims.

22 8.2 Plaintiff further releases the Defendant from any claim of alleged occupational or
23 environmental exposure to lead from duck decoy weights that contains lead.

24 8.3 Compliance with the terms of this Consent Judgment resolves any issue, now and
25 in the past, concerning compliance by Defendant, its parent, subsidiaries, affiliates, successors,
26 divisions, subdivisions, directors, officers or employees, and its customers, distributors,
27 wholesalers, retailers (including, but not limited to Big 5 Corporation and Wal-Mart) or any
28 other person in the course of doing business who may use, maintain or sell duck decoy weights

1 that contain lead, that were manufactured, sold, distributed, or labeled by Defendant, with the
2 requirements of Proposition 65 and Business and Professions Code § 17200. *et seq.* To
3 facilitate administration of this settlement with respect to entities in the chain of distribution of
4 Defendant's lead duck decoy weights, a partial list of Defendant's customers is attached as
5 Exhibit D.

6 8.4 For purposes of paragraph 8.1 of this Consent Judgment, "Claims" shall mean
7 any and all manner of action or actions, cause or causes of action, in law or in equity,
8 administrative actions, petitions, suits, debts, liens, contracts, agreements, promises, liabilities,
9 claims, demands, known or unknown, fixed or contingent, that have existed, or now exist, all to
10 the extent based upon, arising out of or relating to the compliance of Defendant with
11 Proposition 65, or regulations promulgated thereunder, and Business and Professions Code
12 § 17200, *et seq.*, with respect to the distribution or use of the products identified on the Notices
13 attached at Exhibit B.

14 **9. USE OF DOCUMENTS AND INFORMATION**

15 The Plaintiff shall not use documents or information that Defendant has produced in the
16 course of this action or in settlement discussions, except in the course of monitoring compliance
17 with the terms of this Consent Judgment. Within thirty (30) days of receiving a written request
18 to do so, plaintiff shall return all sales data that have been produced in the course of this action.

19 **10. RETENTION OF JURISDICTION**

20 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

21 **11. DEFENDANT'S SALES DATA.**

22 Defendant understands that the sales data provided to counsel for DiPirro by Defendant
23 was a material factor upon which DiPirro has relied to determine the amount of payments made
24 pursuant to Health & Safety Code § 25249.7(b) in this Consent Judgment. To the best of
25 Defendant's knowledge, the sales data provided is true and accurate. In the event that DiPirro
26 discovers facts which demonstrate to a reasonable degree of certainty that the sales data is
27 materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within
28 ten (10) days of Defendant's receipt of notice from DiPirro of his intent to challenge the

1 accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns. DiPirro
2 shall have the right to rescind the Consent Judgment and re-institute an enforcement action
3 against Defendant, provided that all sums paid by Defendant pursuant to paragraphs 3 and 4 are
4 returned to Defendant within ten (10) days from the date on which DiPirro notifies Defendant of
5 his intent to rescind this Consent Judgment. In such case, all applicable statutes of limitation
6 shall be deemed tolled for the period between the date DiPirro filed the instant action and the
7 date DiPirro notifies Defendant that he is rescinding this Consent Judgment pursuant to this
8 paragraph.

9 **12. PRODUCT CHARACTERIZATION.**

10 Defendant acknowledges that each of the Products listed in Exhibit A contains, or in the
11 customary use or application of the Products is likely to expose, users to lead, a substance
12 known to the State of California to cause cancer and birth defects (or other reproductive harm).
13 In the event that Defendant obtain analytical, risk assessment or other data ("Exposure Data")
14 that shows an exposure to any or all Products poses "no significant risk" or will have "no
15 observable effect," as each such standard is applicable and as each is defined under Health &
16 Safety Code 25249.10(c), and if it tends to modify the warnings given under this Consent
17 Judgment, Defendant shall provide DiPirro with ninety (90) days prior written notice of its
18 intent to limit or eliminate the warning provisions under this Consent Judgment based on the
19 Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety
20 (90) days of receipt of Defendant's Exposure Data, DiPirro shall provide Defendant with written
21 notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a
22 challenge). If DiPirro fails to provide Defendant written notice of his intent to challenge the
23 Exposure Data within ninety (90) days of receipt of Defendant's notice and the Exposure Data,
24 DiPirro shall waive all rights to challenge the Exposure Data, and Defendant shall be entitled to
25 limit or eliminate the warning provisions required under this Consent Judgment with respect to
26 those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Defendant of his
27 intent to challenge the Exposure Data, DiPirro and Defendant shall negotiate in good faith for a
28 period not to exceed thirty (30) days following receipt of Defendant's notice to attempt to reach

1 a settlement of this issue. If a settlement is not reached, DiPirro and Defendant agree to submit
2 such challenge to the superior court for determination, pursuant to the Court's continuing
3 jurisdiction of this matter under C.C.P. § 664.6 and this Consent Judgment. The prevailing
4 party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion
5 brought under this paragraph to the court for determination.

6 **13. SEVERABILITY.**

7 In the event that any of the provisions of this Consent Judgment are held by a court to be
8 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9 **14. ATTORNEYS' FEES.**

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

12 **15. GOVERNING LAW.**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California.

15 **16. NOTICES.**

16 All correspondence to Michael DiPirro shall be mailed to:

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

20 or

21 Clifford A Chanler, Esq.
22 Chanler Law Group
23 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
24 (203) 966-9911

25 All correspondence to Defendant shall be mailed to:

26 Carol René Brophy, Esq.
27 McKenna & Cuneo, LLP
Steuart Street Tower
28 One Market

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17. **COMPLIANCE WITH REPORTING REQUIREMENTS.**

The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Defendant certifies that it will provide a copy of this Consent Judgment to the California Attorney General's Office prior to submission of this Agreement to the Court for entry of Judgment

18. **COUNTERPARTS AND FACSIMILE.**

This Consent Judgment 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

19. **AUTHORIZATION.**

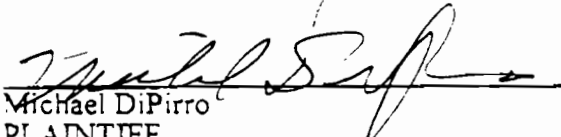
The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

DATE: 3/28/20

DATE: _____


Michael DiPirro
PLAINTIFF

Hunter's Specialties
DEFENDANT

17. **COMPLIANCE WITH REPORTING REQUIREMENTS.**

The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Defendant certifies that it will provide a copy of this Consent Judgment to the California Attorney General's Office prior to submission of this Agreement to the Court for entry of Judgment.

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19. **AUTHORIZATION.**

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

AGREED TO:

AGREED TO:

DATE: _____

DATE: March 30, 2000

Michael DiPirro
PLAINTIFF

Hunter's Specialties, Inc.

Carmen S. Forbes, Vice President
By: Carmen S. Forbes, Vice President
DEFENDANT

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IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE: APR 25 2000

BONNIE LEWMAN GABRAW
JUDGE OF THE SUPERIOR COURT

Exhibit A

COVERED PRODUCTS

1	#00193	Quik-Rig Cord Locks	Twenty-four cord locks
2	#00198	Quik-Rig Decoy cord with Decoy Weights	Twelve 6 oz. weights with decoy cord
3	#00199	Quik-Rig Decoy Weights	Twelve 6 oz. weights
4	#00200	2-in-1 Decoy Weights	Six 6 oz. decoy weights
5	#00201	2-in-1 Decoy Weights	Twelve 6 oz. decoy weights
6	#00202	2-in-1 Decoy Weights	Twelve 8 oz. decoy weights
7	#00203	Bulk 2-in-1 Decoy Weights	Fifty 6 oz. weights
8	#00203 M	Bulk 2-in-1 Decoy Weights	Fifty 6 oz. weights for Mills Farm
9	#00204	Bulk 2-in-1 Decoy Weights	Fifty 8 oz. weights
10	#00205	Decoy Strap Weights	Twelve 4 oz. weights
11	#00205B	Decoy Strap Weights	Fifty 4 oz. weights
12	#00206	Decoy Strap Weights	Twelve 6 oz. weights
13	#00206B	Decoy Strap Weights	Fifty 6 oz. weights
14	#00207	Decoy Strap Weights	Twelve 8 oz. weights
15	#00207B	Decoy strap Weights	Fifty 8 oz. weights

Exhibit B

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Hudson Bair, State Bar No. 172593
KAPSACK & BAIR, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
Tel: (510) 645-0027

Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
Tel: (203) 966-9911

ENDORSED
FILED
ALAMEDA COUNTY
DEC 13 1999

CLERK OF THE SUPERIOR COURT
By Susan C. Campaña
Deputy

Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO,)
)
)
Plaintiff)
)
v.)
)
HUNTER'S SPECIALTIES; and DOES 1)
through 1000,)
)
)
Defendants.)
)
)
_____)

Case No. H210765-1
COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES
Health & Safety Code §25249;
Bus. & Prof. Code §17200;
(other)

1 MICHAEL DIPIRRO, by and through his counsel, hereby alleges:

2 INTRODUCTION

3 1. This complaint seeks to remedy defendants'
4 continuing failure to warn thousands of individuals in
5 California of their exposure to one or more chemicals known to
6 the State of California to cause cancer and/or birth defects
7 (or other reproductive harm). Such exposure has occurred, and
8 continues to occur, through the normal and foreseeable use of
9 defendants' lead weights (such as Decoy Weights) (the
10 "PRODUCTS"). During these uses, individuals are exposed to
11 one or more chemicals listed under 22 CCR §12000.

12 2. Under California's Safe Drinking Water and
13 Toxic Enforcement Act of 1986, Health & Safety Code §25249.5
14 et seq.¹ (also known as "Proposition 65"), a business must
15 provide individuals with a "clear and reasonable warning"
16 before exposing them to certain toxic chemicals designated by
17 the State of California as known to cause cancer or birth
18 defects (or other reproductive harm), unless the business
19 responsible for the exposure can prove that it fits within a
20 statutory exemption.

21 3. Under Proposition 65, manufacturers,
22 distributors and retailers of the PRODUCTS are required to
23 provide individuals who use the PRODUCTS with a "clear and
24 reasonable warning" before exposing them to certain toxic
25 chemicals designated by the State of California as known to
26

27 ¹ Unless specifically noted, all statutory citations refer to
California law.

1 cause cancer or birth defects (or other reproductive harm),
2 unless the business responsible for the exposure can prove
3 that a statutory exemption applies.

4 4. Defendants' failure to provide proper warnings
5 with the sale of the PRODUCTS is a violation of Proposition 65
6 and constitutes an act of unfair competition which may be
7 enjoined by the Court pursuant to Health & Safety Code
8 §25249.7(a) and Business & Professions Code §17203.

9 5. Plaintiff seeks injunctive relief to compel
10 defendants to provide California users of the PRODUCTS with
11 clear and reasonable warnings regarding the known toxicity of
12 lead (and lead compounds) contained in the PRODUCTS (the
13 "Listed Chemical").

14 6. Plaintiff also seeks civil penalties against
15 defendants for their violations of Proposition 65, as provided
16 for by Health & Safety Code §25249.7(b), as well as
17 restitution, as provided for by Health & Safety Code §25249.7
18 and Business & Professions Code §17203.

19 **PARTIES**

20 7. Plaintiff Michael DiPirro is a citizen of
21 California residing in the City and County of San Francisco,
22 who is dedicated to protecting the health of California
23 citizens, including the elimination or reduction of toxic
24 exposures.

25 8. Michael DiPirro is bringing this enforcement
26 action in the public interest pursuant to Health & Safety Code
27 §25249.7(d) and Business & Professions Code §17204.

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 9. Defendant HUNTER'S SPECIALTIES (hereinafter
2 "HUNTER'S") is a person within the meaning of Business &
3 Professions Code §17201 and a person doing business within the
4 meaning of Health & Safety Code §25249.11.

5 10. HUNTER'S manufactures and distributes the
6 PRODUCTS for sale or use in California.

7 11. DOES 1-99 ("DISTRIBUTOR DEFENDANTS") are each a
8 person within the meaning of Business & Professions Code
9 §17201 and a person doing business within the meaning of
10 Health & Safety Code §25249.11.

11 12. DISTRIBUTOR DEFENDANTS distribute one or more
12 of the PRODUCTS directly to individuals, businesses or
13 retailers in California.

14 13. DOES 100-198 ("RETAIL DEFENDANTS") are each a
15 person within the meaning of Business & Professions Code
16 §17201 and a person doing business within the meaning of
17 Health & Safety Code §25249.11.

18 14. RETAIL DEFENDANTS sell one or more of the
19 PRODUCTS directly to individuals in California.

20 15. At this time, the true names of DOES 1 through
21 198 are unknown to plaintiff. When ascertained, their true
22 names shall be reflected in an amended complaint.

23 16. The PRODUCTS manufactured, packaged,
24 distributed and/or sold in California by HUNTER'S, DISTRIBUTOR
25 DEFENDANTS and RETAIL DEFENDANTS without the requisite
26 warnings, are the subject of this lawsuit.

27 ///

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

JURISDICTION

17. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statutes under which this action is brought do not specify any other basis of jurisdiction.

18. The California Superior Court has jurisdiction over HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a corporation which has sufficient minimum contacts in California; is a citizen of California; or which otherwise purposefully avails itself of the California market. Defendants' purposeful availment renders the exercise of jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

19. Venue is proper in the Alameda Superior Court because one or more of the violations arise in the County of Alameda.

BACKGROUND FACTS

20. Proposition 65 requires that individuals be provided with a "clear and reasonable warning" before being exposed to chemicals listed by the State of California as carcinogens or reproductive toxins. Health & Safety Code §25249.6 states, in pertinent part: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or

1 reproductive toxicity without first giving clear and
2 reasonable warning to such individual. . . ."

3 21. Based on information and a good faith belief,
4 plaintiff alleges that one or more of the PRODUCTS have been
5 offered for sale to, or used by, individuals in California
6 without clear and reasonable warning since September 27, 1995.
7 The PRODUCTS continue to be offered for sale in California
8 without the requisite warning.

9 22. As a proximate result of acts by HUNTER'S,
10 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS as a person in
11 the course of doing business within the meaning of Health &
12 Safety Code §25249.6 and §25249.11, individuals throughout the
13 State of California have been exposed to a Proposition 65-
14 listed chemical without "clear and reasonable warnings." The
15 individuals subject to exposure include normal and foreseeable
16 users of the PRODUCTS, and all other persons exposed to the
17 Listed Chemical. This complaint seeks relief only to the
18 extent it would be consistent with the June 6, 1997, decision
19 of the U.S. Occupational Safety & Health Administration with
20 respect to exposures occurring in settings regulated by the
21 OSH Act as a result of PRODUCTS manufactured outside the State
22 of California.

23 23. Based on information and good faith belief,
24 plaintiff alleges that, at all times relevant to this action,
25 HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS knew
26 and intended that the PRODUCTS contained and would continue to
27 contain the Listed Chemical, and knew and intended that

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 individuals using these PRODUCTS would be exposed to the
2 Listed Chemical.

3 24. Individuals using the PRODUCTS are exposed to
4 the Listed Chemical in excess of the level determined to cause
5 no significant risk of cancer or observable reproductive
6 effect.

7 25. Beginning on September 27, 1999, "60-Day
8 Notices" of Proposition 65 violations were provided to public
9 enforcement agencies and to HUNTER'S, DISTRIBUTOR DEFENDANTS
10 and RETAIL DEFENDANTS stating that exposures to the Listed
11 Chemical were occurring in California from the use of the
12 PRODUCTS, which give no prior "clear and reasonable warning"
13 of the significant risk of cancer or the observable
14 reproductive effects from such use.

15 **FIRST CAUSE OF ACTION**
16 **(Violation of Proposition 65)**

17 26. Plaintiff realleges and incorporates by
18 reference, as if specifically set forth herein, Paragraphs 1
19 through 25, inclusive.

20 27. The People of the State of California have
21 declared in Proposition 65 their right "[t]o be informed about
22 exposures to chemicals that cause cancer, birth defects, or
23 other reproductive harm." Proposition 65, §1(b).

24 28. To effectuate the goal, Proposition 65 requires
25 that persons who, in the course of business, knowingly and
26 intentionally expose any individual to a chemical, deemed a

27
28 **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

1 carcinogen by the State of California, must provide "clear and
2 reasonable warning" prior to exposure.

3 29. Based on information and good faith belief,
4 plaintiff alleges that, since September 27, 1995, HUNTER'S,
5 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
6 conduct which violates Health & Safety Code §25249.6 et seq.
7 This conduct includes placing into commerce PRODUCTS
8 containing the Listed Chemical, without a "clear and
9 reasonable warning," within the meaning of Health & Safety
10 Code §§25249.6 and 25249.11.

11 30. Beginning on February 27, 1987, the State of
12 California officially listed lead (and lead compounds) as
13 known to cause birth defects (or other reproductive harm).
14 (On October 1, 1992, the state also listed lead as a known
15 carcinogen.) This chemical became subject to the warning
16 requirement one year later and was therefore subject to the
17 "clear and reasonable warning" requirements of Proposition 65,
18 beginning on February 27, 1988 and October 1, 1993,
19 respectively. 22 Code of Regulations §12000(b)(c); Health and
20 Safety Code §25249.5 et seq.

21 31. At all times relevant to this action, HUNTER'S,
22 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly
23 and intentionally made the PRODUCTS available for sale or use
24 to California businesses, consumers and other individuals.

25 32. At all times relevant to this action, HUNTER'S,
26 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have known and
27

1 intended that the use of the PRODUCTS would expose individuals
2 to a known carcinogen and/or a known reproductive toxin.

3 33. HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL
4 DEFENDANTS have not given prior "clear and reasonable warning"
5 of exposure to users of the PRODUCTS.

6 34. Contrary to the express policy and statutory
7 prohibition of Proposition 65, enacted directly by California
8 voters, individuals exposed to the Listed Chemical in the
9 PRODUCTS have suffered and still suffer irreparable harm,
10 without prior "clear and reasonable warning."

11 35. By committing the acts alleged above, HUNTER'S,
12 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have, in the
13 course of business, knowingly and intentionally exposed
14 individuals to the Listed Chemical without first giving "clear
15 and reasonable warning" to such individuals within the meaning
16 of Health & Safety Code §25249.6.

17 36. The appropriate public enforcement agencies
18 have failed to commence and diligently prosecute a cause of
19 action under Health & Safety Code §25249.6 et seq. against
20 HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS based
21 on the claims asserted herein.

22 37. By the above-described acts, HUNTER'S,
23 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS are liable,
24 pursuant to Health & Safety Code §25249.7(b), for a maximum
25 civil penalty of \$2,500 per day for each violation.

26 38. Health & Safety Code §25249.7 specifically
27 authorizes action for injunctive relief under Proposition 65.

28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 39. Continuing commission by HUNTER'S, DISTRIBUTOR
2 DEFENDANTS and RETAIL DEFENDANTS of the acts alleged above
3 will irreparably harm plaintiff and the citizens of the State
4 of California, for which harm they have no plain, speedy or
5 adequate remedy at law.

6 Wherefore, plaintiff prays judgment against
7 HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS as set
8 forth hereafter.

9 SECOND CAUSE OF ACTION

10 (Violation of Business & Professions Code §17200 for
11 violations of Proposition 65)

12 40. Plaintiff realleges and incorporates by
13 reference, as if specifically set forth herein, Paragraphs 1
14 through 39, inclusive.

15 41. Based on information and good faith belief,
16 plaintiff alleges that, since September 27, 1995, HUNTER'S,
17 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
18 conduct which violates Health & Safety Code §25249.6 et seq.
19 This conduct includes placing into commerce PRODUCTS
20 containing the Listed Chemical without "clear and reasonable
21 warning" within the meaning of Health & Safety Code §§25249.6
22 and 25249.11.

23 42. At all times relevant to this action, HUNTER'S,
24 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly
25 and intentionally made the PRODUCTS available for sale or use
26 in California.

27
28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 43. At all times relevant to this action, HUNTER'S,
2 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have knowingly
3 and intentionally exposed individuals to the Listed Chemical
4 through uses of the PRODUCTS.

5 44. HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL
6 DEFENDANTS have failed to provide "clear and reasonable"
7 warning to individuals, prior to their exposure to the Listed
8 Chemical through the use of the PRODUCTS.

9 45. Individuals have suffered and continue to
10 suffer irreparable harm due to exposure to the Listed Chemical
11 from the PRODUCTS without prior "clear and reasonable"
12 warning, contrary to the express policy and statutory
13 prohibition enacted by direct vote of the People of California
14 in Proposition 65.

15 46. By committing the acts alleged above, HUNTER'S,
16 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have, in the
17 course of doing business, knowingly and intentionally exposed
18 individuals to the Listed Chemical, without prior "clear and
19 reasonable" warning within the meaning of Health & Safety Code
20 §25249.6.

21 47. By committing the acts alleged above, HUNTER'S,
22 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS have engaged in
23 an unlawful business practice which constitutes unfair
24 competition within the meaning of Business & Professions Code
25 §17200 et seq.

26
27
28 COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 48. An action for injunctive relief and restitution
2 under the Unfair Practices Act is specifically authorized by
3 Business & Professions Code §§17203 and 17204.

4 49. Continuing commission by HUNTER'S, DISTRIBUTOR
5 DEFENDANTS and RETAIL DEFENDANTS of the alleged acts will
6 irreparably harm California citizens, for which harm they have
7 no plain, speedy or adequate remedy at law.

8 Wherefore, plaintiff prays judgment against
9 HUNTER'S, DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS as set
10 forth hereafter.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against
13 defendants as follows:

14 1. That the Court, pursuant to Health & Safety
15 Code §25249.7(b) assess civil penalties against HUNTER'S,
16 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS in the amount of
17 \$2,500 per day for each violation alleged herein (First Cause
18 of Action only);

19 2. That the Court, pursuant to Health & Safety
20 Code §25249.7(a) and Business & Professions Code §§17203 and
21 17204, preliminarily and permanently enjoin HUNTER'S,
22 DISTRIBUTOR DEFENDANTS and RETAIL DEFENDANTS from offering the
23 PRODUCTS for sale in California, without providing "clear and
24 reasonable warning[s]," as plaintiff shall specify in further
25 application to the Court;

26 3. That the Court grant appropriate restitution to
27 individuals in the state of California for the PRODUCTS sold

28 **COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES**

1 in California in violation of the warning requirements of
2 Proposition 65;

3 4. That the Court grant plaintiff its reasonable
4 attorneys' fees and costs of suit; and

5 5. That the Court grant such other and further
6 relief as may be just and proper.

7
8 Dated: December 13, 1999

Respectfully Submitted,

9 CHANLER LAW GROUP

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Clifford A. Chanler /s/ *CS*
Clifford A. Chanler
Attorneys for Plaintiff
MICHAEL DIPIRRO

Exhibit C

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(D)

SEPTEMBER 27, 1999

My name is Michael DiPirro. I am a citizen of 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. This letter is provided to you pursuant to Health & Safety Code §25249.6 et seq ("Proposition 65"). As required, notice is also being provided to the violator, Hunter's Specialties ("Violator"). The violations covered by this notice consist of the routes of exposures to the following toxic chemicals:

CHEMICAL(S)

ROUTE(S) OF EXPOSURE

1. Lead (and lead compounds)

Ingestion, Dermal

A list of the specific types of products that are causing consumer and occupational exposures in violation of Proposition 65 (and are covered by this notice) is provided below as Exhibit A. The Violator's sales of these products have been occurring from September 27, 1995 to the present. As a result of the sale of these products, exposures to Proposition 65 chemicals have been occurring without adequate warnings.

California consumers purchase the products at issue and are exposed to the listed chemical in the products. Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. In addition, these products are used by hunting enthusiast, sole proprietors and other persons in settings not covered by the OSH Act. Without proper warnings as to the toxic effects of exposures to the listed chemical in the products, California citizens lack the information necessary to make informed decisions whether to eliminate or reduce risk of exposure to the toxic chemicals in the products.

Please direct all questions concerning this notice to my attorneys at the following addresses:

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

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

EXHIBIT A

Product

Toxin

Lead Weights
(such as Decoy Weights)

Lead (and lead compounds)

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 1440 Broadway, Suite 610, Oakland, CA 94612.

On September 27, 1999, I served the following document:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d)

on the Violator:


David R. Forbes, President
Hunter's Specialties
6000 Huntington Court NE
Cedar Rapids, IA 52402-1268

as well as providing copies of the notice to:

1. The Attorney General of the State of California;
2. The District Attorney for Each of the 58 counties in California; and
3. The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

I served these notices by placing a true and correct copy in a sealed envelope first class postage prepaid, addressed to each party and placing each envelope in a United States Postal Service mail box.

Executed on September 27, 1999, at Oakland, California.


Joyce van Ginkel