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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a CALIFORNIA non-profit  
corporation,

Plaintiff,

v.

HUCK SPAULDING ENTERPRISES, INC., a  
NEW YORK corporation; et al.

Defendants.

Case No. BC 319440

[Hon. Irving S. Feffer]

**[PROPOSED] CONSENT JUDGMENT  
ONLY AS TO DEFENDANTS HUCK  
SPAULDING ENTERPRISES, INC.,  
AND SPAULDING COLOR CORP.**

1<sup>st</sup> Amended Complaint Filed: July 18,  
2004  
Dept. 51, Room 511

This Consent Judgment is entered into by and between the AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, plaintiff in this matter (hereinafter “Plaintiff” or “the Institute”), and defendants HUCK SPAULDING ENTERPRISES, INC., AND SPAULDING COLOR CORP. (hereinafter “Defendants” or “Spaulding Companies”).

1. **Definitions.** As used in this Consent Judgment, the following definitions shall apply:

1.1 “Products” includes all tattoo inks and/or pigment products made by or on behalf of the Spaulding Companies, including but not limited to the Spaulding Companies “VooDoo” and “Spaulding” brands of tattoo inks.

1.2 “Products” shall also include any future tattoo inks and/or pigment products that are sold by or on behalf of the Spaulding Companies to California consumers under any product name or brand, whether a current or new name and/or brand.

1           **1.3**    “Antimony” means the chemicals Antimony oxide and Antimony trioxide  
2 (collectively referred to herein as “Antimony”), listed as subject to Proposition 65 regulation in  
3 Title 22, California Code of Regulations, section 12000.

4           **1.4**    “Arsenic” means the chemical Arsenic (inorganic arsenic compounds/inorganic  
5 oxides), listed as subject to Proposition 65 regulation in Title 22, California Code of  
6 Regulations, section 12000.

7           **1.5**    “Beryllium” means the chemicals Beryllium and Beryllium compounds  
8 (collectively referred to herein as “Beryllium”), listed as subject to Proposition 65 regulations in  
9 Title 22, California Code of Regulations, section 12000.

10          **1.6**    “Chromium” means the chemical Chromium (hexavalent compounds), listed as  
11 subject to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

12          **1.7**    “Cobalt” means the chemicals Cobalt metal powder and Cobalt (II) oxide  
13 (collectively referred to herein as “Cobalt”), listed as subject to Proposition 65 regulations in  
14 Title 22, California Code of Regulations, section 12000.

15          **1.8**    “Lead” means the chemicals lead and lead compounds listed as subject to  
16 Proposition 65 regulation in Title 22, California Code of Regulations, section 12000.

17          **1.9**    “Nickel” means the chemicals Nickel (Metallic), Nickel acetate, Nickel carbonate,  
18 Nickel carbonyl, Nickel hydroxide, Nickelocene, Nickel oxide, and Nickel subsulfide  
19 (collectively referred to herein as “Nickel”), listed as subject to Proposition 65 regulations in  
20 Title 22, California Code of Regulations, section 12000.

21          **1.10** “Selenium” means the chemical Selenium sulfide (“Selenium”), listed as subject  
22 to Proposition 65 regulations in Title 22, California Code of Regulations, section 12000.

23          **1.11** “Heavy Metals” means Antimony, Arsenic, Beryllium, Chromium, Cobalt, Lead,  
24 Nickel, and Selenium.

25          **1.12** “ppm” means parts-per-million in concentration.

26          **1.13** Plaintiff and Defendants will be referred to collectively as the “Parties” or  
27 individually as a “Party.”  
28

1 **2. Background.**

2 **2.1** Plaintiff American Environmental Safety Institute (“Institute”) is a non-profit  
3 California corporation dedicated to investigating environmental and public health hazards  
4 affecting children and adults in their regular daily lives. The Institute is based in Palo Alto,  
5 California, and was incorporated under the laws of the State of California in 1998. The Institute  
6 is a “person” within the meaning of Health & Safety Code (“H&S Code”) §25249.11(a), and  
7 brought this enforcement action in the public interest pursuant to H&S Code §25249.7(d).

8 **2.2** The Spaulding Companies are both New York corporations whose headquarters  
9 and principal place of business are both located at Route 85, New Scotland Road, Voorheesville,  
10 NY, 12186.

11 **2.3** On or about July 24, 2003 and January 14, 2005, the Institute served 60-Day  
12 “Notices of Violation of Proposition 65” (the “Notices”) on the California Attorney General, the  
13 District Attorneys of every county in California, the City Attorneys of every California city with  
14 a population greater than 750,000, and on the Defendants, alleging that Defendants was in  
15 violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety  
16 Code §§ 25249.5 et seq. (“Proposition 65”) for failing to warn purchasers of the Spaulding  
17 Companies’ Products sold in California that use of these Products expose users to Antimony,  
18 Arsenic, Beryllium, Cobalt, Lead and Lead compounds, Nickel and Selenium (collectively  
19 “Heavy Metals”). No public prosecutor has commenced an action regarding the matters raised  
20 in the Notices.

21 **2.4** On August 2, 2004, the Institute filed its complaint entitled *American*  
22 *Environmental Safety Institute v. Huck Spaulding Enterprises, Inc., et al*, in the Los Angeles  
23 County the Spaulding Companies Court, No. BC 319440 (the “Complaint”). On July 7, 2005,  
24 the Court permitted the Institute to file the now-operative First Amended Complaint  
25 (“Complaint”).

26 **2.5** For purposes of this Consent Judgment only, the Parties stipulate that this Court  
27 has jurisdiction over the allegations of the violations contained in the Notice and the Complaint,  
28 and personal jurisdiction over Defendants as to the acts or omissions alleged in the Complaint;

1 that venue is proper in the County of Los Angeles; and that this Court has jurisdiction to enter  
2 this Consent Judgment.

3       **2.6** Defendants deny that the Products have been or are in violation of Proposition 65  
4 or any other law, and further contend that all Products have been and are safe for use as directed.  
5 However, Defendants wishes to resolve this matter without further litigation or cost.

6       **2.7** The Parties enter into this Consent Judgment to settle certain disputed claims as  
7 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote  
8 the public interest. By executing and complying with this Consent Judgment, no Party admits  
9 any facts or conclusions of law including, but not limited to, any facts or conclusions of law  
10 regarding any violations of Proposition 65, the Unfair Competition Law or any other statutory,  
11 common law or equitable claim or requirement relating to or arising from Defendants' Products.  
12 This Consent Judgment shall not be construed as an admission by Defendants as to any of the  
13 allegations in the Notice or the Complaint.

14 **3. Injunctive Relief.**

15       **3.1 Sales of Tattoo Ink Require a Warning.**

16       (a) Effective December 1, 2005, the Spaulding Companies shall place the  
17 following warning prominently on the label of each of its Products shipped for sale by the  
18 Spaulding Companies into California:

19               “**WARNING:** Tattoo inks and pigments contain toxic metals,  
20 including Arsenic, Lead, Nickel and others, all of which are known  
21 to the State of California to cause cancer or birth defects and other  
22 reproductive harm.”

23       (b) On or before December 1, 2005, the Spaulding Companies shall send a  
24 letter on its business letterhead and a poster containing the text as set forth in Exhibit A of this  
25 Consent Judgment to each of its customers who has purchased a Product between July 1, 2005  
26 and November 30, 2005. The Spaulding Companies will instruct its customers to sign and return  
27 an acknowledgement stating that they will post the warning. The Spaulding Companies will  
28

1 inform the Institute if a customer does not return the acknowledgement within 60 days of the  
2 mailing by the Spaulding Companies.

3 (c) After December 1, 2005, the Spaulding Companies shall send a letter on its  
4 business letterhead and a poster containing the text as set forth in Exhibit A of this Consent  
5 Judgment to each new customer when that customer first purchases a Product. The Spaulding  
6 Companies will instruct each of these new customers to sign and return an acknowledgment  
7 stating that this new customer will post the warning. The Spaulding Companies will inform the  
8 Institute if a new customer does not return the acknowledgment within 60 days of the mailing by  
9 the Spaulding Companies. The Spaulding Companies will send a copy of this letter and poster at  
10 least once per year thereafter to each of its customers who continue to purchase Products subject  
11 to this Consent Judgment. The mailing may be coordinated with mailing required above in  
12 Section 3(b).

13 **3.2 Suspension of Sales of Products in California Permitted.**

14 (a) The Spaulding Companies may elect to stop selling any of its current or  
15 future Products as defined herein into the California market, including but not limited to  
16 stopping such sales via direct consumer purchase, sales to wholesalers or distributors specifically  
17 for resale into California, or sales via mail-order catalog, telephone order or Internet sales.

18 (b) If the Spaulding Companies elects to stop selling any of its current or  
19 future Products as defined herein into the California market, the Spaulding Companies shall give  
20 written notice to the Institute thirty (30) days prior to ending such sales.

21 **3.3 Future Tattoo Ink Sales Require a Warning.**

22 (a) If the Spaulding Companies exercises its rights under paragraph 3.2 above,  
23 but thereafter decides to recommence selling its Products as defined herein in any form or  
24 fashion into California, the Spaulding Companies shall do the following:

- 25 1. Give written notice to the Institute thirty (30) days prior to  
26 recommencing such sales; and  
27 2. Comply fully with the requirements of paragraph 3.1 above.

1           **3.4** Defendants may reformulate one or more of their Products (“Reformulated  
2 Product) to come into compliance with Proposition 65 (Health & Safety Code §25249.5 *et seq.*)  
3 and it’s implementing regulations at any time in the future, provided that:

4           (a) If Defendants develop such a Reformulated Product for sale in or into  
5 California, they shall give the Plaintiff written notice of that fact thirty (30) days prior to offering  
6 for sale in or into California such Reformulated Product, and Defendants shall include within  
7 that written notice scientific test results that each Reformulated Product complies with  
8 Proposition 65 (Health & Safety Code §25249.5 *et seq.*) and it’s implementing regulations in  
9 effect at that time. If Plaintiff disputes the written scientific test results, Plaintiff may seek to  
10 stop the sale of a Reformulated Product by filing a noticed motion pursuant to paragraph 7 of  
11 this Consent Judgment.

12           (b) If there is no dispute as to a Reformulated Product pursuant to paragraph  
13 3.4 (a) above, then the Reformulated Product may be sold by Defendants in or into California  
14 without complying with the terms of paragraph 3.1 of this Consent Judgment.

15 **4. Settlement and Attorney’s Fees Payments.** In keeping with the concept of, but in lieu  
16 of, the statutory penalties and/or restitution required under the statutes set forth in the Complaint,

17 Defendants shall pay to the Trust Account of the Carrick Law Group P.C., by wire transfer,  
18 certified or bank check in immediately available funds, the sum of \$375,000.00. This settlement  
19 amount shall be due and payable within five calendar days after the date of entry of this Consent  
20 Judgment. This sum of \$375,000.00 shall be disbursed by the Carrick Law Group P.C. as  
21 follows:

22           **4.1 To The Institute:** \$375,000.00, to be used by the Institute for its costs of  
23 litigation in this matter, for the on-going compliance monitoring costs of this Consent Judgment,  
24 and to enable the Institute to provide funds for future research, public education and/or advocacy  
25 regarding exposure of individuals to toxic chemicals on behalf of the public interest and the  
26 general public in conformity with Health and Safety Code §25192(a)(2) and its own non-profit  
27 articles of incorporation.

28 ///

1           **4.2    Attorneys Fees and Costs:** The parties shall each bear their own attorneys' fees  
2 and costs.

3           **5.    Termination of All Claims.**

4           **5.1    Claims Covered and Release.** This Consent Judgment includes the resolution of  
5 actual and potential claims that were considered or could have been brought by the Institute on  
6 behalf of the public interest and the general public regarding Heavy Metals in Defendants'  
7 Products. This Consent Judgment is a final and binding resolution between the Institute, on  
8 behalf of the public interest and the general public, and Defendants, of any and all alleged  
9 violations of Proposition 65 that was or could have been asserted in the Notice or Complaint by  
10 the Institute on behalf of the public interest and the general public against Defendants or  
11 purchasers or sellers of Defendants' Products arising from or related to Defendants' Products up  
12 through the date of entry of this Consent Judgment, including, but not limited to, any claims for  
13 attorneys' fees and costs. The Institute, on behalf of the public interest and the general public,  
14 hereby releases Defendants from and against the claims described in this paragraph to the extent  
15 such claims do, did, or could arise from or relate to Defendants' Products; however, the Institute  
16 cannot and does not release any claims, including specifically any personal injury or directly  
17 related claims, that could be brought by any individual or organization. Defendants hereby  
18 release the Institute from and against any claims arising out of the Institute's filing or  
19 prosecution of this action. Each Party respectively waives any right to appeal or other review of  
20 this Consent Judgment, except as expressly provided in this Consent Judgment.

21           **5.2    Waiver and Release of Unknown Claims; Dismissal of Spaulding & Rogers**  
22 **Mfg., Inc.** To the extent that California Civil Code section 1542 or similar provisions of law are  
23 deemed to apply to the releases by the Institute and the Spaulding Companies set forth above,  
24 both the Institute and the Spaulding Companies each acknowledges and agrees that the release  
25 set forth above applies to all claims for injuries, damages, restitution, penalties or losses related  
26 to or arising from Defendants' Products, whether those for injuries, damages, restitution,  
27 penalties or losses are known or unknown, foreseen or unforeseen, or patent or latent. The  
28 Institute and the Spaulding Companies each certifies that it has read California Civil Code

1 section 1542. The Institute hereby knowingly and expressly waives its rights, on behalf itself,  
2 the public interest and the general public, and the Spaulding Companies hereby knowingly and  
3 expressly waives its rights, respectively, under California Civil Code Section 1542, which  
4 provides as follows:

5 A general release does not extend to claims which the creditor does  
6 not know or suspect to exist in his favor at the time of executing the  
7 release which, if known by him must have materially affected his  
8 settlement with the debtor.

8 To the extent that California Civil Code § 1542 or similar provisions of law are deemed  
9 to apply to the release by Defendants set forth above, Defendants separately acknowledges and  
10 agrees that the release set forth above applies to any claim for malicious prosecution, abuse of  
11 process, damages, or other similar claim related to or arising out of the Institute's filing or  
12 prosecution of this action. Defendants hereby knowingly and expressly waives any rights under  
13 California Civil Code § 1542, the text of which is set forth above.

14 **5.3** Based on the agreement executed between the Institute and defendant  
15 SPAULDING & ROGERS MFG., INC. as set forth in Exhibit B to this Consent Judgment, the  
16 Institute agrees to dismiss defendant SPAULDING & ROGERS MFG., INC. with prejudice  
17 within ten calendar days after the date of entry of this Consent Judgment.

18 **6. Covenant Not To Sue.** The Institute and Defendants covenant and agree that with  
19 regard to those matters that the Institute has herein released and that are described above, neither  
20 the Institute nor Defendants will ever institute a lawsuit or administrative proceedings against  
21 another Party, nor shall any Party assert any claim of any nature against any person or entity  
22 hereby released with regard to any such matters which have been released. However, nothing in  
23 this paragraph shall be interpreted to preclude enforcement of this Consent Judgment pursuant to  
24 Section 7 below.

25 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to  
26 show cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To  
27 enforce this Consent Judgment, any Party must first give written notice of any violation of this  
28 Consent Judgment alleged to have occurred to the Party alleged to be in violation. The Parties



1 shall meet and confer in good faith and attempt to resolve the alleged violation. If a resolution is  
2 not reached within thirty (30) days of the date of the notice, the aggrieved Party may move the  
3 Court to hear and resolve the dispute. The prevailing Party in any proceeding brought to enforce  
4 this Consent Judgment shall be entitled to recover from the other Party the prevailing Party's  
5 reasonable attorneys' fees and costs incurred in the investigation and prosecution of such an  
6 enforcement proceeding.

7 **8. Application of Consent Judgment.** Sections 5 and 6 of this Consent Judgment shall  
8 apply to, be binding upon and inure to the benefit of, the Parties, their divisions, subdivisions,  
9 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers,  
10 employees, legal counsel, and agents of each of them, as applicable, and will inure to the benefit  
11 of the Parties' parent companies, all suppliers, distributors, wholesalers, retailers and contract  
12 manufacturers, and all of their respective directors, officers, employees, legal counsel, and  
13 agents.

14 **9. Modification/Termination of Consent Judgment.** This Consent Judgment may be  
15 modified upon written agreement of Defendants and the Institute, as to Defendants, with  
16 approval of the Court, or upon noticed motion for good cause shown. Such "good cause" shall  
17 include, but not be limited to, any change in applicable law relating to Proposition 65 within the  
18 State of California that, should its terms be applicable to Products similar to Defendants'  
19 Products or to ingredients of Defendants' Products, would materially alter the obligations of  
20 Defendants hereunder. If any of the statutes at issue in this action are individually or  
21 collectively amended by the California Legislature in the future, or if regulations implementing  
22 these statutes are lawfully adopted and/or amended by the appropriate administrative agency, the  
23 Parties shall comply with that provision of law or regulation as then-amended. If a final  
24 judgment against another defendant in this matter establishes alternative relief injunctive relief,  
25 Defendants may file a motion to comply with the terms of that alternative relief in lieu of the  
26 requirements of this Consent Judgment.

27 **10. Governing Law.** This Consent Judgment shall be governed by, and construed in  
28 accordance with, the laws of the State of California.

1 **11. Entire Agreement.** The Parties declare and represent that no promise, inducement or  
2 other agreement has been made conferring any benefit upon any party except those contained  
3 herein and that this Consent Judgment contains the entire agreement pertaining to the subject  
4 matter hereof. This Consent Judgment supersedes any prior or contemporaneous negotiations,  
5 representations, agreements and understandings of the Parties with respect to such matters,  
6 whether written or oral. Parol evidence shall be inadmissible to show agreement by, between or  
7 among the Parties to any term or condition contrary to or in addition to the terms and conditions  
8 contained in this Consent Judgment, The Parties acknowledge that each has not relied on any  
9 promise, representation or warranty, expressed or implied, not contained in this Consent  
10 Judgment except for those contained in the Confidentiality Undertaking except with regard to  
11 that certain declaration executed under penalty of perjury by the Spaulding Companies providing  
12 information that induced Plaintiff to enter into the financial terms of this Consent Judgment,  
13 which declaration may be used solely as evidence in any future enforcement proceeding brought  
14 pursuant to Section 7 above.

15 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment  
16 for good cause shown under Section 9 hereof, the Parties agree that they, individually or  
17 collectively, will not seek to challenge or to have determined invalid, void or unenforceable any  
18 provision of this Consent Judgment or this Consent Judgment itself. The Parties understand that  
19 this Consent Judgment contains the relinquishment of legal rights and each Party has, as each  
20 has deemed appropriate, sought the advice of legal counsel, which each of the Parties has  
21 encouraged the other to seek. Further, no Party has reposed trust or confidence in any other  
22 Party so as to create a fiduciary, agency or confidential relationship.

23 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The  
24 language of this Consent Judgment shall be construed as a whole according to its fair meaning  
25 and not strictly for or against any Party.

26 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment  
27 represents and warrants that each signatory has all requisite power, authority and legal right  
28 necessary to execute and deliver this Consent Judgment and to perform and carry out the

1 transactions contemplated by this Consent Judgment. Each signatory to this Consent Judgment  
2 represents that each has been duly authorized to execute this Consent Judgment. No other or  
3 further authorization or approval from any person will be required for the validity and  
4 enforceability of the provisions of this Consent Judgment.

5 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other  
6 documents and take such other actions as may be necessary to further the purposes and fulfill the  
7 terms of this Consent Judgment.

8 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the  
9 same force and effect as if all the signatures were obtained in one document.

10 **17. Notices.**

11 **17.1** All correspondence and notices required by this Consent Judgment to Plaintiff the  
12 Institute shall be sent to:

13 Roger Lane Carrick  
14 The Carrick Law Group, P.C.  
15 350 S. Grand Avenue, Suite 2930  
16 Los Angeles, CA 90071-3406  
17 Tel: (213) 346-7930  
18 Fax: (213) 346-7931  
19 E-mail: roger@carricklawgroup.com

17 **17.2** All correspondence and notices required by this Consent Judgment to Defendants  
18 the Spaulding Companies shall be sent to Defendants as follows:

19 Mr. Darwin Spaulding  
20 HUCK SPAULDING  
21 ENTERPRISES, INC., and  
22 SPAULDING COLOR CORP.  
23 Route 85, New Scotland Road,  
24 Voorheesville, NY, 12186.  
25 Tel.: (888) 982-8866  
26 Fax: (518) 768-2240.

With a copy to:

Laurie L. Largent, Esq.  
**Kolod, Wager & Nolan, PC**  
222 W. Second Avenue  
Escondido, CA 92025  
Tel.: (760) 480-8100  
Fax: (760) 480-4999  
E-mail: llargent@kolodwager.com

24 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent  
25 Judgment shall be null and void, and without any force or effect, unless fully approved as  
26 required by law and entered by the Court. If the Court does not enter this Consent Judgment, the  
27 execution thereof by Defendants or the Institute shall not be construed as an admission by  
28 Defendants or the Institute of any fact, issue of law or violation of law.

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19. Jurisdiction. This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

20. Compliance with Reporting Requirements. The Institute shall comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f) and established in 11 California Code of Regulations §§ 3000-3008. Copies of all such reports shall be supplied to the Spaulding Companies as provided in Section 17.2.

21. Non-Interference in Settlement Approval Process. The Parties will cooperate, as well as use their best efforts, to secure the Attorney General's approval of this Consent Judgment, and not to seek his disapproval of any portion of this Consent Judgment.

**IT IS SO STIPULATED.**

Date: October 31, 2005

HUCK SPAULDING ENTERPRISES, INC., AND SPAULDING COLOR CORP.

By: Darwin Spaulding  
Darwin Spaulding  
CEO

Date: October \_\_, 2005

AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, a non-profit California corporation

By: \_\_\_\_\_  
Deborah A. Sivas  
President and CEO

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**IT IS SO STIPULATED.**

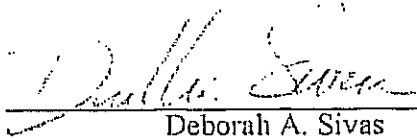
Date: October \_\_, 2005

HUCK SPAULDING ENTERPRISES, INC., AND  
SPAULDING COLOR CORP.

By: \_\_\_\_\_  
Darwin Spaulding  
CEO

Date: October 31, 2005

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a non-profit California corporation

By:  \_\_\_\_\_  
Deborah A. Sivas  
President and CEO

1 EXHIBIT A

2  
3 HUCK SPAULDING ENTERPRISES INC. LETTERHEAD

4 Dear Customer:

5 I am writing to alert you to the new warning language you will see on our tattoo ink  
6 and/or pigment products. This warning language results from a California lawsuit we recently  
7 settled. In the summer of 2004, the American Environmental Safety Institute sued a wide array  
8 of tattoo ink and/or pigment manufacturers, alleging violations of California's unique public  
9 health and consumer protection law, Proposition 65. This law requires that individuals be  
10 provided with a clear and reasonable warning before being exposed to chemicals listed by the  
11 State of California as causing cancer or birth defects and other reproductive harm.

12 The lawsuit alleged that tattoo inks and/or pigment products contain Antimony, Arsenic,  
13 Beryllium, Cobalt, Lead and Lead compounds, Nickel and Selenium (collectively "Toxic  
14 Metals"), each of which is a dangerous toxic chemical that is known to the State of California to  
15 cause cancer and/or reproductive harm. The lawsuit alleged that individuals in California are  
16 exposed to these Toxic Metals when tattoo artists use tattoo inks and/or pigment products in the  
17 application of tattoos on or under a person's skin.

18 In settling this lawsuit, the manufacturers of tattoo inks and/or pigments did not admit  
19 any violation of law, but did agree to put the new warning language on their products to avoid  
20 further litigation. This warning information must be passed on to your retail customers who are  
21 tattooed with this tattoo ink and/or pigment product. The Spaulding Companies request that you  
22 put up the enclosed poster in a prominent place in your place of business in order to give the  
23 following warning to your customers:

24 **WARNING:** Tattoo inks and pigments contain many heavy metals, including  
25 Lead, Arsenic and others. All of these heavy metals have been scientifically  
26 determined by the State of California to cause cancer or birth defects and other  
27 reproductive harm. Pregnant women and women of childbearing age in particular  
28 should consult with their doctor before getting any tattoo. A person is exposed to  
tattoo inks and/or pigments when they get a tattoo because they are injected with  
tattoo ink under their skin or the tattoo ink is applied on their skin.

29 Please acknowledge receipt of this letter and your commitment to comply with its terms  
30 by checking here \_\_\_\_, filling in your business name as follows:

31 \_\_\_\_\_, and then faxing a copy  
32 of this letter back to us at (\_\_\_\_) \_\_\_\_-\_\_\_\_. Thank you for your attention to this new legal  
33 requirement.

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## POSTER SIZE AND TEXT

(Size of poster must be no less than 20" by 24")

**WARNING:** Tattoo inks and pigments contain many heavy metals, including Lead, Arsenic and others. All of these heavy metals have been scientifically determined by the State of California to cause cancer or birth defects and other reproductive harm. Pregnant women and women of childbearing age in particular should consult with their doctor before getting any tattoo. A person is exposed to tattoo inks and/or pigments when they get a tattoo because they are injected with tattoo ink under their skin or the tattoo ink is applied on their skin.

1 **EXHIBIT B**

2  
3 **AGREEMENT**

4 This Agreement ("Agreement") is made as of this 21<sup>st</sup> day of October 2005, by and  
5 between AMERICAN ENVIRONMENTAL SAFETY INSTITUTE, (hereinafter "the Institute"),  
6 plaintiff in *American Environmental Safety Institute v. Huck Spaulding Enterprises, Inc., et al*,  
7 Los Angeles Superior Court Case No. BC 319440 (hereinafter "the Litigation"), and a defendant  
8 SPAULDING & ROGERS MFG., INC. (hereinafter "Spaulding Mfg."), in order to resolve the  
9 parties' dispute in the Litigation.

10 FOR AND IN CONSIDERATION of the mutual covenants set forth herein, the receipt  
11 and adequacy of which are hereby acknowledged, the parties ("Parties") to this Agreement agree  
12 as follows:

13 1. Relationship to the Litigation: The parties agree that this Agreement shall be  
14 made an exhibit to the Consent Judgment in the Litigation entered into by the Institute and  
15 defendants HUCK SPAULDING ENTERPRISES, INC., AND SPAULDING COLOR CORP.

16 2. Condition for Agreement to Take Effect: The parties agree that if the Consent  
17 Judgment in the Litigation entered into by the Institute and defendants HUCK SPAULDING  
18 ENTERPRISES, INC., AND SPAULDING COLOR CORP. is not entered by the Los Angeles  
19 Superior Court, then this Agreement is void, unenforceable and shall no effect.

20 3. Representation and Warranty by Spaulding Mfg.: Spaulding Mfg. represents and  
21 warrants that Spaulding Mfg. does not sell tattoo inks and/or pigment products, which are herein  
22 defined as "Products" are defined in the First Amended Complaint in the Litigation.

23 4. Future Sale of Products by Spaulding Mfg.: If at any time after the date of  
24 execution of this Agreement, Spaulding Mfg. engages in the sale of Products directly or  
25 indirectly into California, Spaulding Mfg. agrees to comply immediately with paragraphs 3.1, 3.  
26 2 and 3.3 of the Consent Judgment in the Litigation entered into by the Institute and defendants  
27 HUCK SPAULDING ENTERPRISES, INC., AND SPAULDING COLOR CORP. as if those  
28 terms and conditions were incorporated herein by reference as though set out in full.



1           5.     Dismissal with Prejudice: The Parties agree that when the Consent Judgment in  
2 the Litigation entered into by the Institute and defendants HUCK SPAULDING  
3 ENTERPRISES, INC., AND SPAULDING COLOR CORP. is entered by the Los Angeles  
4 Superior Court, the Institute shall dismiss defendant SPAULDING & ROGERS MFG., INC.  
5 with prejudice within ten calendar days after the date of entry by the court of this Consent  
6 Judgment.

7           6.     Specific Performance Required: Spaulding Mfg. and the Institute acknowledge  
8 and agree that they are entering into this Agreement to settle their disputes in the Litigation, and  
9 that there is no other adequate remedy at law beyond this Agreement by which to achieve this  
10 settlement, and that as a result, the Institute or Spaulding Mfg. may seek specific performance of  
11 this Agreement by noticed motion filed in the court retaining jurisdiction of the Litigation, and  
12 all Parties agree that such a motion is appropriately filed as to venue and jurisdiction.

13           7.     Attorneys' Fees and Costs: If either the Institute or Spaulding Mfg. seeks to  
14 enforce this Agreement and prevails in that motion, the losing party agrees to pay the prevailing  
15 party's reasonable attorneys' fees and costs in filing and prosecuting that motion.

16           8.     Interpretation of Agreement: This Agreement has been jointly negotiated and  
17 drafted. The language of this Agreement shall be construed as a whole according to its fair  
18 meaning and not strictly for or against any Party.

19           9.     Authority of Signatories: Each signatory to this Agreement represents and  
20 warrants that each signatory has all requisite power, authority and legal right necessary to  
21 execute and deliver this Agreement and to perform and carry out the transactions contemplated  
22 by this Agreement. Each signatory to this Agreement represents that each has been duly  
23 authorized to execute this Agreement. No other or further authorization or approval from any  
24 person will be required for the validity and enforceability of the provisions of this Agreement.

25           10.    Counterparts: This Agreement may be executed in counterparts and has the same  
26 force and effect as if all the signatures were obtained in one document.

27    ///

28    ///

11. Notices: Any and all correspondence and notices required by this Agreement to the Institute shall be sent to:

Roger Lane Carrick  
The Carrick Law Group, P.C.  
350 S. Grand Avenue, Suite 2930  
Los Angeles, CA 90071-3406  
Tel: (213) 346-7930  
Fax: (213) 346-7931  
E-mail: roger@carricklawgroup.com

Any and all correspondence and notices required by this Agreement to Spaulding Mfg. shall be sent to Spaulding Mfg. as follows:

Mr. Darwin Spaulding  
SPAULDING & ROGERS MFG.,  
INC.  
Route 85, New Scotland Road,  
Voorheesville, NY, 12186.  
Tel: (888) 982-8866  
Fax: (518) 768-2240.

With a copy to:  
Laurie L. Largent, Esq.  
Kolod, Wager & Nolan, PC  
222 W. Second Avenue  
Escondido, CA 92025  
Tel: (760) 460-8100  
Fax: (760) 460-4999  
E-mail: llargent@kolodwager.com

12. Jurisdiction: The Los Angeles Superior Court shall have sole jurisdiction to hear any motion regarding the interpretation or implementation of this Agreement

**IT IS SO AGREED.**

Date: October 31, 2005

SPAULDING & ROGERS MFG., INC.

By:   
Darwin Spaulding  
CEO

Date: October \_\_, 2005

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a non-profit California corporation

By: \_\_\_\_\_  
Deborah A. Sivas  
President and CFO

1 11. Notices: Any and all correspondence and notices required by this Agreement to  
2 the Institute shall be sent to:

3 Roger Lane Carrick  
4 The Carrick Law Group, P.C.  
5 350 S. Grand Avenue, Suite 2930  
6 Los Angeles, CA 90071-3406  
7 Tel: (213) 346-7930  
8 Fax: (213) 346-7931  
9 E-mail: roger@carricklawgroup.com

10 Any and all correspondence and notices required by this Agreement to Spaulding Mfg.  
11 shall be sent to Spaulding Mfg. as follows:

12 Mr. Darwin Spaulding  
13 SPAULDING & ROGERS MFG.,  
14 INC.  
15 Route 85, New Scotland Road,  
16 Voorheesville, NY, 12186.  
17 Tel.: (888) 982-8866  
18 Fax: (518) 768-2240.

19 With a copy to:  
20 Laurie L. Largent, Esq.  
21 **Kolod, Wager & Nolan, PC**  
22 222 W. Second Avenue  
23 Escondido, CA 92025  
24 Tel.: (760) 460-8100  
25 Fax: (760) 460-4999  
26 E-mail: llargent@kolodwager.com

27 12. Jurisdiction: The Los Angeles Superior Court shall have sole jurisdiction to hear  
28 any motion regarding the interpretation or implementation of this Agreement

**IT IS SO AGREED.**


19 Date: October \_\_, 2005

SPAULDING & ROGERS MFG., INC.

21 By: \_\_\_\_\_  
22 Darwin Spaulding  
23 CEO

24 Date: October 31, 2005

AMERICAN ENVIRONMENTAL SAFETY  
INSTITUTE, a non-profit California corporation

25 By:   
26 \_\_\_\_\_  
27 Deborah A. Sivas  
28 President and CEO

**THE COURT HEREBY FINDS:**

1  
2 1. The warning required by the foregoing stipulated Consent Judgment complies  
3 with the provisions of Health & Safety Code §§ 25249.5-25249.13.

4 2. The Parties' agreement that no civil penalties are warranted is in accord with the  
5 criteria set forth in Health & Safety Code § 25249.7(b)(2), in that payments totaling \$375,000.00  
6 in lieu of such penalties to American Environmental Safety Institute are to be used by the  
7 Institute for its costs of litigation in this matter, for the on-going compliance monitoring costs of  
8 this Consent Judgment, and to enable the Institute to provide funds for future research, public  
9 education and/or advocacy regarding exposure of individuals to toxic chemicals on behalf of the  
10 public interest and the general public in conformity with Health and Safety Code §25192(a)(2)  
11 and its own non-profit articles of incorporation, thus furthering the remedial purposes  
12 established under the Proposition 65 statute as set forth in the Complaint, in a manner that is  
13 consistent with the private enforcement mechanism and funds allocation scheme established by  
14 Health & Safety Code § 25192 and § 25249.7 *et. seq.*

15 4. This Consent Judgment is hereby adopted as the ORDER and JUDGMENT of this  
16 Court.

17 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

18  
19 DATED: \_\_\_\_\_  
20  
21

22 \_\_\_\_\_  
23 IRVING S. FEFFER  
24 JUDGE OF THE SUPERIOR COURT  
25  
26  
27  
28