

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro, on the one hand, (“DiPirro”) and NAPCO, Inc. (“NAPCO”), on the other hand, with DiPirro and NAPCO individually referred to as a “Party” and collectively as the “Parties.” NAPCO, Follett Corporation (“Follett”), and Stanford University Book Store, are collectively referred to as the “Noticed Parties”. DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. NAPCO employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

DiPirro alleges that the Noticed Parties manufacture, import, sell, or distribute for sale, in the State of California binders containing Diisononyl Phthalate (“DINP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause cancer (hereinafter the “Listed Chemical”).

### 1.3 Product Description

The Products covered by this Settlement Agreement are binders manufactured by NAPCO containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by the Noticed Parties, including, but not limited to *Stanford University 1” Vinyl Binder* (the “Products”).

### 1.4 Notice of Violation

On or about April 8, 2022, DiPirro served NAPCO, Follett, Stanford University Book Store, and certain requisite public enforcement agencies with a “60-Day Notice of Violation,” a document that informed the recipients of DiPirro’s allegation that the Noticed Parties violated

Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. (the "Notice"). To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

NAPCO denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the NAPCO of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the NAPCO of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by NAPCO. This section shall not, however, diminish or otherwise affect the NAPCO's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that this Settlement Agreement is fully executed by all Parties.

## **2. INJUNCTIVE RELIEF: PRODUCT WARNINGS**

### **2.1 Product Warnings**

Within 60 days of the Effective Date (the "Compliance Date"), for all Products that contain the Listed Chemical, and are shipped to a California address for sale by the Noticed Parties, or any agent, distributor, or affiliated company working on behalf of the Noticed Parties, the Noticed Parties shall provide a clear and reasonable warning on each Product as set forth below in Section 2.3. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer

or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

**2.2 Internet Warnings.** For all Products that NAPCO offers for sale directly to consumers in California via the internet, it shall provide a warning for such Products by including one of the warnings set forth below in Section 2.3 on one or more of the following: a) on the product display page or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase; b) on the product packaging box, or c) by including a warning in the shipment to the California consumer.

**2.3 Text of the Warning.** The Noticed Parties shall use one of the warning options set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black or white if the color yellow is otherwise not used on the Product's packaging):

(a) Warning Option One:



**WARNING: This product can expose you to chemicals, including [DEHP and/or DINP], a chemical known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

(b) Warning Option Two:



**WARNING: Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).**

NAPCO shall be deemed to be in compliance with this Settlement Agreement by either adhering to the warning provisions contained in §§ 2.1 - 2.3 of this Settlement Agreement or by complying with warning regulations approved or adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the product and the exposure at issue.

### **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

**3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The

Noticed Parties shall make a civil penalty payment of \$1,500.00, in accordance with this section, within five business days of the Effective Date. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be remitted in accordance with the procedure set out in Section 3.2.

**3.2 Payments.** All payments shall be delivered, within five (5) business days of the Effective Date or five (5) days after NAPCO receives the W9 for the payees below, whichever is later, to the office of Jeremy Fietz, Attorney at Law, 1510 Fourth Street, Santa Rosa CA 95404, and shall be in the form of three checks for the following amounts made payable to:

- (a) “Jeremy Fietz, Attorney at Law” in the amount of \$1,125.00 for payment of 75% of the civil penalty to OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Office of Environmental Health Hazard Assessment.”
- (b) “Jeremy Fietz, Attorney at Law” in the amount of \$375.00, as payment of 25% of the civil penalty to Michael DiPirro. Counsel for DiPirro agree to forward such funds in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver a certified or cashier’s check made payable to “Michael DiPirro.”
- “Jeremy Fietz, Attorney at Law” in the amount of \$52,000.00 as payment for attorneys’ fees and costs pursuant to Section 4 below.

For any payment that is returned for any reason, including insufficient funds, a payment must be made by NAPCO in form of a cashier’s check within three (3) calendar days of notification of insufficient funds

**3.3 Issuance of 1099 Forms.** The Noticed Parties shall provide DiPirro’s counsel

with a separate 1099 form for each of its payments under this Agreement to:

- (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- (b) "Michael DiPirro," whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and
- (c) "Jeremy Fietz, Attorney at Law" for fees and costs reimbursed pursuant to Section 4.

**4. REIMBURSEMENT OF FEES AND COSTS**

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. NAPCO then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. NAPCO shall together pay a total of \$52,000.00 for fees and costs incurred as a result of investigating, bringing this matter to the Noticed Parties' attention, and negotiating a settlement in the public interest. The Noticed Parties shall issue a separate 1099 for fees and costs, shall make the check payable to "Jeremy Fietz, Attorney at Law" and shall deliver payment within five business days of the Effective Date to the address listed in Section 3.2 above.

**5. CLAIMS COVERED AND RELEASED**

**5.1 DiPirro's Release of NAPCO**

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Parties of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against each of the Noticed Parties, its parents,

subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom the Noticed Parties directly or indirectly distributes or sells the Products ("Releasees"), including its downstream distributors and retailers for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold, or distributed for sale in California by the Noticed Parties prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Noticed Parties and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from Products distributed, sold, or distributed for sale in California by the Noticed Parties prior to the Effective Date.

## **5.2 NAPCO's Release of DiPirro**

NAPCO, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

## **6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

## **7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed

or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then the Noticed Parties may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For NAPCO:

Kristine E. Kruger  
Jasmine W. Wetherell  
PERKINS COIE  
1201 Third Avenue, Ste. 4900  
Seattle, WA 98101-3099  
kkruger@perkinscoie.com  
jwetherell@perkinscoie.com

Date: 12/19/2022  
By: [Signature]  
PERKINS & COIE, INC.  
1201 3RD AVENUE, STE. 4900  
SEATTLE, WA 98101-3099

For DiPirro:

Jeremy Fietz, Attorney at Law  
1510 Fourth Street  
Santa Rosa CA 95404

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and

Safety Code section 25249.7(f).

11. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. **AUTHORIZATION**


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

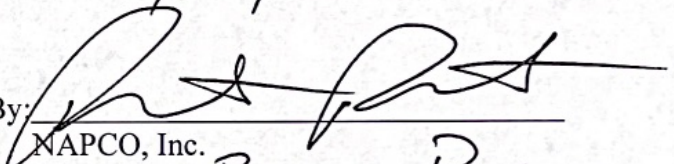
AGREED TO:

AGREED TO:

Date: 08/07/2022

Date: 8/4/2022

By:   
Michael DiPirro

By:   
NAPCO, Inc.  
Print Name: ROBERT PROFFITT  
Title: PRESIDENT