

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro and his attorneys Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law, on the one hand, (“DiPirro”) and CycoActive, Inc. (“CycoActive”) and its attorneys Tether Law on the other hand, with DiPirro and CycoActive individually referred to as a “Party” and collectively as the “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. CycoActive 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 CycoActive manufactures, imports, sells, or distributes for sale, in the State of California hand tools for motorcycles containing Diethylhexyl phthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and reproductive harm (male) (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are hand tools for motorcycles containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by CycoActive, including, but not limited to the *Cruztools Maxhook Spring Hook, Item #SH2* (the “Products”).

1.4 Notice of Violation

On or about June 17, 2022, DiPirro served CycoActive and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that

informed the recipients of DiPirro's allegation that CycoActive violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. 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

CycoActive denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has 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 CycoActive 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 CycoActive of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by CycoActive. This section shall not, however, diminish or otherwise affect CycoActive'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 day the final requisite signature is applied to the Settlement Agreement.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings. Within sixty days of the Effective Date, for all Products that contain the Listed Chemical, and are shipped to a California address for sale by CycoActive, or any agent, distributor, or affiliated company working on behalf of CycoActive, CycoActive shall provide a clear and reasonable warning on each Product as set forth below in Section 2.4. 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 CycoActive offers for sale directly to consumers in California via the internet, CycoActive shall provide a warning for such Products by including the warning set forth below in Section 2.4 on one or more of the following: a) on the product display page; b) on the product packaging box, or c) by including a warning in the shipment to the California consumer.

2.3 There shall be no obligation for CycoActive to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date.

2.4 Text of the Warning. The text of the warning shall be printed in black ink on a light background, in a font that is easy to read and legible, and consistent with the OEHHA requirements for safe harbor warnings (27 Cal. Code Regs. §25601). CycoActive shall use the warning language as 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).



WARNING: This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate (DEHP), which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

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

CycoActive shall make a civil penalty payment of \$4,000 (four thousand dollars), in accordance with this section, within ten (10) 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 ten (10) business days of the Effective Date to the bank account of (via Zelle, wire transfer, or ACH payment; number provided upon settlement) or the office of Jeremy Fietz, Attorney at Law, 1510 Fourth Street, Santa Rosa CA 95404, and for the latter option 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 \$3,000 (three thousand dollars) for payment of 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 \$1,000 (one thousand dollars), as payment of 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."
- (c) "Jeremy Fietz, Attorney at Law" in the amount of \$38,000 (thirty eight thousand dollars) 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 CycoActive in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a one hundred dollar (\$100) service fee paid to DiPirro's attorneys.

Any payment that is not actually received by the due date will also be subject to a \$100 late fee.

3.3 Issuance of 1099 Forms. CycoActive 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" whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties, 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. CycoActive 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. CycoActive shall pay a total of \$38,000 (thirty eight thousand dollars) for fees and costs incurred as a result of investigating, bringing this matter to CycoActive's attention, and negotiating a settlement in the public interest. CycoActive 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 ten 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 CycoActive

This Settlement Agreement is a full, final, and binding resolution between DiPirro and CycoActive 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 CycoActive, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CycoActive directly or indirectly distributes or sells the Products ("Releasees"), including its downstream distributors and retailers including but not limited to Western Power Sports, LLC and Amazon.com, but not including its upstream suppliers and manufacturers, for unwarned exposures to the Listed Chemical from the Products manufactured, distributed, sold or distributed for sale in California by CycoActive 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 CycoActive 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 manufactured, distributed, sold, or distributed for sale in California by CycoActive prior to the Effective Date.

5.2 CycoActive Release of DiPirro

CycoActive, 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.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. DiPirro on behalf of himself only, on one hand, and CycoActive, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

DiPirro and CycoActive each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by CycoActive with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

5.5. Public Benefit. It is the Parties' understanding that the commitments agreed to herein, and actions to be taken by CycoActive under this Settlement Agreement, will confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the Parties' intent that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to CycoActive's alleged failure to provide a warning concerning exposure to DEHP prior to use of the Products it

has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that CycoActive is in material compliance with this Settlement Agreement.

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 CycoActive 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 CycoActive, Inc.:

Ivan Tether, TETHER LAW
860 Via de la Paz, Suite E-3D
Pacific Palisades, CA 90272

(Accompanied by email of the written correspondence or notice to ivan@tetherlaw.com)

And for Michael 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

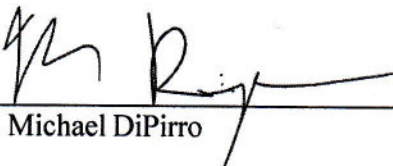
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: 08/16/2022

Date: 8-18-2022

By: 
Michael DiPirro

By: 
CycoActive, Inc.
Print Name: Paul Guillien
Title: CEO