

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro, on the one hand, (“DiPirro”) and VS Athletics (“VS Athletics”), on the other hand, with DiPirro and VS Athletics individually referred to as a “Party” and collectively as the “Parties.” VS Athletics and any other noticed violators are collectively referred to as the “Noticed Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic Chemical and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.2 General Allegations

DiPirro alleges that the Noticed Parties manufacture, import, sell, or distribute for sale, in the State of California Shot/Discuss Carrier containing Diethylhexylphthalate (“DEHP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DEHP (hereinafter the “Listed Chemical”) is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer and reproductive harm (male). DiPirro alleges VS Athletics 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”).

1.3 Products Description

The Products covered by this Settlement Agreement are Shot/Discuss Carriers containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by the Noticed Parties, including, but not limited to *Shot/Discuss Carrier with Handle, Item # 3825-BK* (the “Products”).

1.4 Notice of Violation

On or about January 13, 2023, DiPirro served VS Athletics 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 it had violated Proposition 65 by failing to

warn its customers and consumers in California 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

The Noticed Parties deny 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 Noticed Parties 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 Noticed Parties of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Parties. This section shall not, however, diminish or otherwise affect the Noticed Parties' 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 of the final signature to this agreement.

2. INJUNCTIVE RELIEF: PRODUCTS WARNINGS OR REFORMULATION

2.1 Injunctive Relief. The Noticed Parties agree to provide the requisite hazard warning as set forth in subsection 2.3 through 2.7 below for all Products unless they are reformulated.

2.2 Reformulation Standards. A "reformulated" product contains less than 0.1 percent (1,000 parts per million) of DEHP as determined through independent testing using a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. Testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CHC1001-09.3 or CPSC-CHC1001-09.4 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D. In addition to the above tests, the Settling Entity may use equivalent methods utilized by any California or federal agency to determine DEHP content in a solid substance.

2.3 Products Warnings. Within 60 days of the Effective 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 Products as set forth below in this Section 2 containing the following elements:

2.3.1 A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word "WARNING".

2.3.2 The word "WARNING" in all capital letters and bold print, and:

2.3.3 The words, "This product can expose you to chemicals including DEHP, which is 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."

2.4 On-Product Warning - An on-product warning may be provided using all the following elements:

2.4.1 The symbol required in subsection 2.1.1.

2.4.2 The word "WARNING" in all capital letters, in bold print.

2.4.3 The words "Cancer and Reproductive Harm - www.P65Warnings.ca.gov."

2.5 Placement of Warning - a warning meets the requirements of this Section if it complies with the content requirements in 2.1 or 2.2 and is provided using one or more of the following methods:

2.5.1 A product-specific warning provided on a posted sign, shelf tag, or shelf sign, for the consumer product at each point of display of the product.

2.5.2 A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the consumer product, without requiring the purchaser to seek out the warning.

2.5.3 A label that complies with the content requirements in Section 25603(a).

2.5.4 An on-product warning that complies with the content requirements in Section 25603(b). The entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the warning appear in a type size smaller than 6-point type.

2.6 Internet Warning - For internet purchases, a warning that complies with the content requirements of this Section 2 must be provided by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. If an on-product warning is provided pursuant to 2.2, the warning provided on the website may use the same content as the on-product warning. For purposes of this subsection, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.

2.7 Catalog Purchases - For catalog purchases, the warning must be provided in the catalog in a manner that clearly associates it with the item being purchased. If an on-product warning is being provided pursuant to 2.2, the warning provided in the catalog may use the same content as the on-product warning.

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 \$1,000.00, in accordance with this section, within fifteen 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. The complete settlement payment for both civil penalties and attorneys' fees and costs in the total amount of \$46,250.00 shall be delivered within fifteen business days of the Effective Date or receipt of the completed W-9s of the recipients, whichever is later, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a check made payable to: “Jeremy Fietz, Attorney at Law.” Counsel for DiPirro agree to forward all appropriate funds to OEHHA in a timely manner.

For any payment that is returned for any reason, including insufficient funds, a payment must be made by the Noticed Parties in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any payment that is not actually received by the due date will also be subject to a 10% late fee.

3.3 Form 1099. The Noticed Party shall provide DiPirro's counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on **IRS Form 1099 MISC** with the entire settlement amount (civil penalties as well as attorneys' fees and costs) reported in **box 10** (“*Gross proceeds paid to an attorney*”). The Noticed Party acknowledges that 1099 NEC shall **NOT** be issued. A W-9 shall be provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties to this agreement.

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. The Noticed Parties 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. The Noticed Parties shall together pay a total of \$45,250. 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.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Release of VS Athletics

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 either of the Noticed Parties, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products ("Releasees"), including its downstream distributors and retailers for unwarmed 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 Noticed Parties Release of DiPirro

Each Noticed Party, 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 VS Athletics:

Steven Taber, Esq.
LEECH TISHMAN FUSCALDO & LAMPL, INC.
200 South Los Robles Avenue, Suite 300
Pasadena, CA 91101
staber@leechtishman.com

For DiPirro:

Jeremy Fietz, Attorney at Law
1510 Fourth Street
Santa Rosa CA 95404
jeremy@superawesomelawyer.com

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.

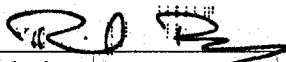
AGREED TO:

AGREED TO:

Date: June 2, 2023

Date: June 01, 2023

By: 
Michael DiPirro

By: 
VS Athletics
Print Name: RICHARD BENOY
Title: President