

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between: Michael DiPirro (referred to herein as “DiPirro”) represented by his attorneys, Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law, on the one hand; and Chick Harness & Supply, Inc. (referred to herein as “Noticed Party”) represented by its attorneys, Offit Kurman, on the other hand.

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. Noticed Party 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.* by selling products manufactured by others via a website accessible to California residents (“Proposition 65”).

1.2 General Allegations

DiPirro alleges that the Noticed Party sells or distributes for sale in the State of California a product containing Diisononyl phthalate (“DINP”) above acceptable levels 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 product giving rise to this Settlement Agreement is a Vinyl Coated Hoof Pick containing the Listed Chemical that was sold or distributed to consumers in the State of California by the Noticed Parties (hereinafter, the “Covered Product”).

1.4 Notice of Violation

On or about March 31, 2023, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the Noticed Party of DiPirro’s allegation that the Noticed Party violated Proposition 65 by failing to warn customers and consumers in California that the Covered Product sold or distributed through the Noticed Party’s website exposed users to the Listed Chemical. To the best of DiPirro’s

knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintains that all products they have sold or distributed for sale in California, including but not limited to the Covered Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Noticed Party 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 Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party's agreement and undertakings pursuant to 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 Internet Warnings. To the extent not already done by Noticed Party (which added Proposition 65 warnings to its website in April 2023), commencing within twenty (20) days of the Effective Date the Noticed Party shall provide a clear and reasonable warning on the website for the Covered Product. Such warning shall be in the form described hereinafter in Section 2.2. The warning shall be prominently displayed on one or more of the following: (a) on the same web page on which the Covered Product is displayed; (b) on the same web page as the order form for the Covered Product; (c) on the same web page as the price for the Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word "[California Prop 65] WARNING" (language in brackets optional), which then takes the user to a display of the warning set out in Paragraph 2.2.

The Noticed Party shall also ensure that a clear and reasonable warning is included with each Covered Product shipped into California using either text described in Section 2.2, below. 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 use. The warning shall be on the Covered Product's packaging, container, or labeling, or on a placard or insert enclosed with the Covered Product.

2.2 Text of the Warning. For the Covered Product, the Noticed Parties shall use the warning 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:



WARNING: This product may expose you to Diisononyl Phthalate (DINP), which is known to the State of California to cause cancer, and may contain other chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

For the complete list of chemicals covered by this the statute, please visit California's Office of Environmental Health Hazard Assessment at: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

For more information, please go to: <https://oehha.ca.gov/proposition-65>.

For products other than the Covered Product, any Proposition 65 warning that Noticed Parties elect to place on their website shall be deemed compliant if presented in the manner described in Section 2.1 and in the form as shown below:



WARNING: This product may contain chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.

For the complete list of chemicals covered by this the statute, please visit California's Office of Environmental Health Hazard Assessment at: <https://oehha.ca.gov/proposition-65/proposition-65-list>.

For more information, please go to: <https://oehha.ca.gov/proposition-65>.

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

Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Noticed Party shall make a civil penalty payment of **\$1,000.00** as a component of this settlement. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &

(d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”) and the remaining 25% of the penalty remitted to DiPirro.

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 Party 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 Party shall pay a total of **\$44,000.00** for fees and costs incurred as a result of investigating, working with toxicology experts, bringing this matter to the Noticed Party’s attention, document preparation, and negotiating a settlement in the public interest.

5. PAYMENT

The complete settlement payment in the amount of **\$45,000.00** shall be delivered within seven (7) business days of the Effective Date, 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”. 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 \$35.00 service fee paid to DiPirro’s attorneys. Any payment that is not actually received by the due date will also be subject to a late fee of 10% per annum.

Issuance of 1099 Form. 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 the Form 1099 MISC with the amount reported in box 10 (“Gross proceeds paid to an attorney”). The Noticed Party acknowledges that the 1099 shall NOT be issued under form 1099 NEC. A W9 shall be provided by Jeremy Fietz, Attorney-at-Law, to the Noticed Party within seven (7) days of the Effective Date.

6. CLAIMS COVERED AND RELEASED

6.1 DiPirro's Release of Noticed and Related Parties

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party 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 (collectively, "Releasors"), against the Noticed Party, 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 including any of its downstream distributors and retailers (collectively, "Releasees") for unwarned exposures to the Listed Chemical from the Covered Product and any similar or other product sold or distributed for sale in California by the Noticed Party prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of the Releasors, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action against the Noticed Party and Releasees, and releases all claims that he and Releasors may have against the Noticed Party 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 and any other chemical from the Covered Product and any similar of other product sold or distributed in California by the Noticed Party prior to the Effective Date.

6.2 Noticed Party's Release of DiPirro

The 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 Covered Products.

7. 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.

8. 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 Covered Product, then the Noticed Party 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 Covered Product is so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Noticed Party from any obligation to comply with any pertinent state or federal toxics control laws.

9. 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 Chick Harness & Supply, Inc.:

Warren Koshofer
Offit Kurman
Ten Penn Center, 1801 Market Street, Suite 2300
Philadelphia, PA, 19103

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

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.

10. 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.

12. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

13. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the parties to this Settlement Agreement.

14. 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:

Date: August 25, 2023 .

By: 
Michael DiPirro

AGREED TO:

Date: August 28, 2023

By: 
Chick Harness & Supply, Inc.
Print Name: Robert L. Fleming
Title: PRESIDENT

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