

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and A. Tool Shed, Inc., a California corporation, as of December 7, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

### WHEREAS:

A. Michael DiPirro is an individual residing in San Francisco, California, who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in or produced by consumer and industrial products;

B. A. Tool Shed, Inc. is a company that currently manufactures, distributes, rents and/or sells certain rental equipment, including, but not limited to, welding machines, power sources and other welding equipment in the State of California that contain, or whose customary use and application may produce fumes or gases which contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including, but not limited to, lead (and lead compounds), nickel and nickel compounds, formaldehyde, chromium (hexavalent compounds) and carbon monoxide (the "Listed Chemicals");

C. The products that contain, or whose customary use and application may produce fumes or gases which contain, one or more of the "Listed Chemicals" and which are covered by this Agreement are set forth in Exhibit A (the "Products"). The Products have been manufactured, distributed, rented and/or sold by A. Tool Shed, Inc. for use in California since at least August 4, 1996; and

D. On August 4, 2000, Michael DiPirro first served A. Tool Shed, Inc. and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided A. Tool Shed, Inc. and such public enforcers with notice that A. Tool Shed, Inc. was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells, rents or otherwise offers for use in California expose users to Proposition 65-listed chemicals; and

E. On October 19, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. A Tool Shed, Inc., et al. in the Alameda County Superior Court, naming A. Tool Shed, Inc. as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to the "Listed Chemicals" contained in or produced by certain A. Tool Shed, Inc. products.

F. A. Tool Shed, Inc. denies the material, factual and legal allegations contained in the 60-Day Notice and the Complaint filed by DiPirro for alleged violation of Proposition 65 and Business and Professions Code §17200 et seq. and maintains that all products

manufactured, distributed, and rented or sold in California are in the compliance with all laws. Nothing in this Agreement shall be construed as an admission by A. Tool Shed, Inc. of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by A. Tool Shed, Inc. of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of A. Tool Shed, Inc. under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND A. TOOL SHED, INC. AGREE AS FOLLOWS:**

1. **Product Warnings.** A. Tool Shed, Inc. shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Beginning on January 1, 2001, A. Tool Shed, Inc. agrees that it will not knowingly rent or sell (or cause to be rented or sold) any Products that contain, or produce fumes or gases that contain, the Listed Chemicals for sale in the State of California unless such Products comply with section 1.1 below:

1.1 For all Products that contain, or produce fumes or gases that contain, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, such Products shall bear the following warning statement:

**"WARNING: This product contains or produces nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)";**

or

**"WARNING: This product contains or produces one or more chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)";**

1.2 For all Products that contain, or produce fumes or gases that contain, only one of the Listed Chemicals, or any combination of the Listed Chemicals, such Products shall bear the following warning statement:

**"WARNING: This product contains or produces one or more chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)";**

The warning statement shall be prominently placed upon the Product's label with such conspicuousness, as compared with other words, statements, designs or devices

on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. In addition, such a warning statement shall be prominently placed upon any form or agreement regarding the rental or sale of the Product with such conspicuousness, as compared with other words, statements, designs or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of rental or purchase.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), A. Tool Shed, Inc. shall pay a civil penalty of \$1,200. The payment of \$1,200 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The penalty payment is to be made payable to "Chanler Law Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control.

**3. Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. A. Tool Shed, Inc. then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

A. Tool Shed, Inc. shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to A. Tool Shed, Inc.'s attention, litigating and negotiating a settlement in the public interest. A. Tool Shed, Inc. shall pay the total sum of \$9,670 for investigation fees, attorneys' fees and litigation costs. A. Tool Shed, Inc. agrees to pay \$9,670 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

**4. Michael DiPirro's Release Of A. Tool Shed, Inc.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, damages, losses, claims, costs or expenses (including attorneys' fees and other costs) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims") against A. Tool Shed, Inc. and its owners, shareholders, directors, officers, employees, affiliates, successors and assigns, including, but not limited to, claims arising under Proposition 65 or the Business & Profession Code §17200 et seq. based on A. Tool Shed, Inc.'s alleged failure to warn about exposure to the Listed Chemicals contained in or produced by any of the Products.

**5. A. Tool Shed, Inc.'s Release Of Michael DiPirro.** A. Tool Shed, Inc.,

by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200 against A. Tool Shed, Inc.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and A. Tool Shed, Inc. shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void.

**7. A. Tool Shed, Inc. Sales Data.** A. Tool Shed, Inc. understands that the rental and/or sales data provided to counsel for DiPirro by A. Tool Shed, Inc. was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of A. Tool Shed, Inc.'s knowledge, the rental and/or sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the rental and/or sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of A. Tool Shed, Inc.'s receipt of notice from DiPirro of his intent to challenge the accuracy of the rental and/or sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against A. Tool Shed, Inc., provided that all sums paid by A. Tool Shed, Inc. pursuant to paragraphs 2 and 3 are returned to A. Tool Shed, Inc. within ten (10) days from the date on which DiPirro notifies A. Tool Shed, Inc. of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies A. Tool Shed, Inc. that he is rescinding this Agreement pursuant to this Paragraph.

**8. Product Characterization.** A. Tool Shed, Inc. acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products may produce fumes or gases that contain, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide and Plaintiff alleges that the customary use or application of the Products is likely to expose users to nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that A. Tool Shed, Inc. obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c) and A. Tool Shed, Inc. seeks to eliminate the warnings, then A. Tool Shed, Inc. shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of A. Tool Shed, Inc. Exposure Data, DiPirro shall provide A. Tool Shed, Inc. with written notice of his intent to challenge the Exposure Data

(in the event that he chooses to make such a challenge). If DiPirro fails to provide A. Tool Shed, Inc. written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of A. Tool Shed, Inc.'s notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and A. Tool Shed, Inc. shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies A. Tool Shed, Inc. of his intent to challenge the Exposure Data, DiPirro and A. Tool Shed, Inc. (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of A. Tool Shed, Inc.'s notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and A. Tool Shed, Inc. agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.

**9. Severability.** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**10. Attorney's Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

**11. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

**12. Notices.** All correspondence to Michael DiPirro shall be mailed to:

Jennifer Henry, Esq.  
Law Offices of Jennifer Henry  
9000 Crow Canyon Road, Suite S, PMB 399  
Danville, CA 94506-1175  
(925) 830-2860

or

Clifford A. Chanler, Esq.  
Chanler Law Group  
Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801  
(203) 966-9911

All correspondence to A. Tool Shed, Inc. shall be mailed to:

Leslie E. Chayo, Esq.  
Law Offices of Leslie E. Chayo  
9560 Wilshire Boulevard, Fifth Floor  
Beverly Hills, CA 90212  
(310) 276-2216

**13. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. A. Tool Shed, Inc. represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

**14. Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

**16. No Admissions.** Nothing in this Agreement shall constitute or be construed as an admission by A. Tool Shed, Inc. of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by A. Tool Shed, Inc. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by A. Tool Shed, Inc. A. Tool Shed, Inc. reserves all its rights and defenses with regard to any claim of any party under Proposition 65 or otherwise. However, this paragraph shall not diminish or otherwise effect the obligation, responsibilities and duties of A. Tool Shed, Inc. under this Agreement.

**AGREED TO:**

DATE:

12/13/00

  
Michael DiPirro  
PLAINTIFF

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
A Tool Shed, Inc.  
DEFENDANT

Leslie E. Chayo, Esq.  
Law Office of Leslie E. Chayo  
9380 Wilshire Boulevard, Fifth Floor  
Beverly Hills, CA 90212  
(310) 276-2216

13. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(D). As of the Effective Date, the California Attorney General's reporting forms are not available. A. Tool Shed, Inc. represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

14. **Counterparts and Executives.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

16. **No Admission.** Nothing in this Agreement shall constitute or be construed as an admission by A. Tool Shed, Inc. of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by A. Tool Shed, Inc. of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by A. Tool Shed, Inc. A. Tool Shed, Inc. reserves all its rights and defenses with regard to any claim of any party under Proposition 65 or otherwise. However, this paragraph shall not diminish or otherwise affect the obligation, responsibility and duties of A. Tool Shed, Inc. under this Agreement.

AGREED TO:

AGREED TO:

DATE: \_\_\_\_\_

DATE: 12/11/00

\_\_\_\_\_  
Michael DiPiero  
PLAINTIFF

  
\_\_\_\_\_  
A Tool Shed, Inc.  
DEFENDANT

# Exhibit A

## **EXHIBIT A**

1. All equipment distributed, rented or owned by A. Tool Shed, Inc. that contains or produces fumes or gases that contain nickel and nickel compounds, chromium diesel exhaust (hexavalent compounds) and carbon monoxide diesel exhaust