

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and American Art Clay Co., an Indiana corporation ("AMACO"), as of November 30, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

Recitals

A. Michael DiPirro is an individual residing in San Francisco 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. AMACO is a company that manufactures, distributes and/or sells products in the State of California that contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.) ("listed chemicals"); and

C. The products that 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 and/or sold by AMACO for use in California; and

D. On June 22, 1999, Michael DiPirro first served AMACO and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided AMACO and such public enforcers with notice that AMACO was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On September 3, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. American Art Clay Co., et al. (No. H209104-6) in the Alameda Superior Court, naming AMACO 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 listed chemicals contained in certain AMACO products; and

F. On September 24, 1999, Michael DiPirro served AMACO and all of the requisite public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided AMACO and such public enforcers with notice that AMACO was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals not included in the initial 60 Day Notice; and

G. On November 19, 1999, Michael DiPirro again served AMACO and all of the requisite public enforcement agencies with a document entitled "Second Supplemental 60-Day Notice of Violation" which provided AMACO and such public enforcers with notice that

AMACO was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals not included in the initial 60 Day Notice or the first Supplemental 60-Day Notice; and

H. AMACO at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint. Nothing in this Agreement shall be construed as an admission by AMACO 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 AMACO 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 AMACO under this Agreement.

Agreement

NOW THEREFORE, MICHAEL DiPIRRO AND AMACO AGREE AS FOLLOWS:

1.0. Product Warnings. Beginning immediately, AMACO shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). AMACO agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable. AMACO agrees that as of March 15, 2000, it shall not distribute or sell (or cause to be distributed or sold on its behalf) any of the Products for sale or use in the State of California unless each such Product is accompanied by a Revised Label on or affixed to the Product or its packaging with one of the following statements:

For products containing lead (including lead compounds) or cadmium:

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

"WARNING: This product contains cadmium, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

or

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)"

For products containing cobalt or respirable crystalline silica particles:

"WARNING: This product contains cobalt, a chemical known to the State of California to cause cancer;

"WARNING: This product contains respirable crystalline silica particles, a chemical known to the State of California to cause cancer;

or

"WARNING: This product contains a chemical known to the State of California to cause cancer

The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual.

1.1 Warning Labels for Products "In Commerce". The parties agree and acknowledge that an unknown volume of Products were introduced into the "stream of commerce" before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the listed chemicals in or from these "in commerce" Products, AMACO shall, within ninety (90) days from the Effective Date, either 1) provide Interim Warning Materials to its customers whom AMACO knows or has reason to believe currently distribute or sell Products in California; or 2) recall all of the Products so as to affix the Revised Labels to the Products being offered for sale in California that are allegedly in violation of Proposition 65. Such "Interim Warning Materials" shall include the following: (a) a reasonably sufficient number of warning stickers (considering the potential volume of Products that the recipient distributes or sells in California) bearing the language set forth in paragraph 1.0.; (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgment form to be signed by the customer and returned to AMACO.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), AMACO shall pay a civil penalty of \$24,000 in three equal installments. The first payment of \$8,000 shall be paid within five (5) calendar days after the Effective Date of the Agreement. The second payment of \$8,000 shall be made on March 15, 2000. However, the second payment shall be waived if AMACO recalls all of its Products as set forth in paragraph 1.1 above. Certification of the recall must be provided to DiPirro by March 10, 2000. The third payment of \$8,000 shall be made on July 30, 2001. The third payment shall be waived if fifty-percent (50%) of AMACO's lead glaze products are reformulated so as to remove the lead from such glazes or are discontinued for sale by July 15, 2001. The reformulation commitment is based on the number of lead-containing glazes, not on the volume of lead glazes sold. For example, assuming that AMACO presently sells 10 different lead-containing glazes in California, if AMACO reformulates (or discontinues) five or more of those glazes, then the penalty waiver commitment shall be achieved. If the product (or products) are

reformulated or discontinued, AMACO may not introduce any new lead-containing products into California. Certification of the reformulation or discontinuation of AMACO's Products must be provided to DiPirro by July 15, 2001. The penalty payments are 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. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to AMACO within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

3. Reimbursement Of Fees And Costs. Within five (5) calendar days of the Effective Date of the Agreement, AMACO shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to AMACO's attention, litigating and negotiating a settlement in the public interest. AMACO shall pay: \$9,000 for pre-notice investigation fees; \$700 for expert, investigation and litigation costs; and \$15,800 in attorneys' and post-notice investigation fees for a total reimbursement of fees and costs of \$25,500. Payment should be made payable to the "Chanler Law Group". In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to AMACO within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

4. DiPirro's Release Of AMACO DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California (in his representative capacity) waives all rights to institute any form of legal action (and releases all claims) against AMACO and its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives, attorneys, and AMACO's distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Profession Code §17200, related to AMACO's failure to warn California's citizens about exposure to lead (including lead compounds), cadmium, cobalt or respirable crystalline silica from any of the Products.

5. AMACO's Release Of Michael DiPirro. AMACO, by this Agreement, waives all rights to institute any form of legal action against 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 AMACO.

6. Amended Complaint and Stipulated Judgment. DiPirro has filed an amended complaint which shall include all of the Products in its claims and causes of action. Within 5 days of the filing of the amended complaint, DiPirro and AMACO shall execute and file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda 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. Settlement Contingent. In the event that any public enforcement agency should seek to proceed with litigation or take other action with respect to AMACO for any of the substances identified in the Second Supplemental 60-Day Notices identified in the Recitations above that was not covered by DiPirro previous 60-Day Notices and Amended Complaint, then this Agreement shall be deemed null and void with respect to those substances upon which such action is taken and AMACO shall be entitled to recover the penalties, fees and costs it paid related to such substances as follows: for each substance which is the subject of action by such agency ten percent (10%) of the total amount paid under the terms of this Agreement shall be refunded to AMACO (a total of \$4,150 unless the total amount actually paid under the terms of this Agreement dictates a different amount). Once the 60-Day Notice period for each new claim asserted in the Second Supplemental Notice has concluded and the amended complaint and consent judgment have been filed and approved as provided for herein, this Paragraph 7 shall no longer apply to the terms of this Agreement. However, if any action is taken against AMACO following that filing and approval of the consent judgment with respect to the Products identified herein, DiPirro agrees to reasonably assist AMACO in its efforts to terminate such proceedings and shall not seek any further compensation or reimbursement from AMACO as the result of or based upon such assistance.

8. Product Characterization. AMACO acknowledges that some of the products listed in the categories set forth in Exhibit A contain, or in the customary use or application of those Products, may when used produce fumes, gases or dust that contain one or more of the substances known to the State of California to cause cancer or birth defects (or other reproductive harm). In the event that AMACO obtains analytical, risk assessment or other data ("Exposure Data") which shows that an exposure to any or all such Products as formulated as of the Effective Date 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 section 25249.10(c), AMACO shall provide DiPirro with 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. Such Exposure Data will be provided pursuant to an acceptable confidentiality agreement to restrict the use and dissemination of such information only for the evaluation of the issue of risk from exposure to the Products. Within ninety (90) days of receipt of AMACO's Exposure Data, DiPirro shall provide AMACO with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). AMACO shall not be responsible to repay DiPirro for his costs of evaluating the Exposure Data. If DiPirro fails to provide AMACO with written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of AMACO'S notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and AMACO shall be entitled to limit or eliminate the warning provisions required under the terms of this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies AMACO of his intent to challenge the Exposure Data, DiPirro and AMACO shall negotiate in good faith to attempt to reach a resolution of the dispute. If DiPirro and AMACO

cannot reach an informal resolution of any such dispute, DiPirro shall be entitled to bring an action against AMACO for failure to warn under Proposition 65 and AMACO may defend itself based upon the Exposure Data or any other available defense and neither party shall be considered in violation of this Agreement. This Paragraph 8 shall apply only to the Proposition 65 substance containing Products in the categories set forth in Exhibit A which are produced by AMACO as of the Effective Date.

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. **Attorneys' Fees In The Event Of A Dispute.** 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. **AMACO Sales Data.** AMACO understands that the sales data provided to counsel for DiPirro by AMACO was a material factor upon which DiPirro has relied to determine the amount of payments in this Agreement. To the best of AMACO's knowledge, the sales data provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of AMACO's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data.

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

13. **Change in Law.** In the event that any law, rule, regulation, or final decision of any legislative, judicial, or executive body with jurisdiction becomes effective or is entered which renders the warning provisions described under section 1.1 unnecessary to comply with applicable laws, AMACO, at its option, may cease providing such warnings on or with its Products, to the extent provided by such change in law, rule, regulation, or final decision, of any legislative, judicial, or executive body.

14. **Notices.** All correspondence to DiPirro shall be mailed to:

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
New Canaan, CT 06840-3801

All correspondence to AMACO shall be mailed to:

Brian DeWitt, Esq.
Barnhorst, Schreiner & Goonan
550 West C Street, Suite 1350
San Diego, CA 92101-3509

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

16. 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.

17. Construction. Each party to this Agreement warrants and represents that it has participated fully in the negotiation, preparation and drafting of this Agreement, and that the language used in this Agreement is a product of that participation. The rule that an ambiguity in language is to be construed against the author accordingly shall have no effect as to this Agreement.

18. Entire Agreement. This Agreement is the complete and exclusive statement of agreement of the parties as to matters covered by it. This Agreement replaces and supersedes all prior written or oral agreements or statements by and among the parties with respect to the matters covered by it. No representation, statement, condition or warranty not contained in this Agreement is binding on the parties.

19. Additional Documents and Acts. Each party will execute and deliver such additional documents and instruments, and perform such additional acts, that are reasonable and necessary to perform its obligations in this Agreement.

AGREED TO:

AGREED TO:

DATE: _____

DATE: 12/6/99

Michael DiPirro
PLAINTIFF



American Art Clay Co.
DEFENDANT

Brian DeWitt, Esq.
Barnhorst, Schreiner & Goonan
550 West C Street, Suite 1350
San Diego, CA 92101-3509

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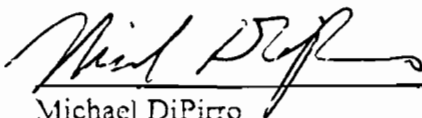
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Michael DiPirro
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DEFENDANT