

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and American Honda Motor Co., Inc., a California corporation ("Honda"), as of December 1, 2000 (the "Effective Date"). The terms "Honda" shall also refer to all affiliates, parents, and subsidiaries. The parties agree to the following terms and conditions:

- 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. Honda is a company that currently manufactures, distributes and/or sells certain welding machines in the State of California 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, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide (the "Listed Chemicals");
- C. The products 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 and/or sold by Honda for use in California since at least July 12, 1996;
- D. On July 12, 2000, Michael DiPirro first served Honda and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Honda and such public enforcers with notice that Honda was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells, or otherwise offers for use in California expose users to Proposition 65-listed chemicals; and
- E. On September 22, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. American Honda Motor Company, Inc., et al. In the Alameda County Superior Court, naming Honda 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" produced by certain Honda Products, used by consumers and in occupational settings. This suit was brought in the public interest and on behalf of the people of the State of California.

- F. Nothing in this Agreement shall be construed as an admission by Honda of any fact, finding, issue of law, or violation of law. Honda, in making the Products available for sale in California, wishes to resolve this matter solely to avoid the cost of further litigation. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Honda under this Agreement.

**NOW, THEREFORE, MICHAEL DIPIRRO AND HONDA AGREE AS FOLLOWS:**

1. **Product Warnings.** Honda 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 February 28, 2001, Honda agrees that it will not knowingly ship (or cause to be shipped) any Products produce fumes or gases that contain, Listed Chemicals for sale in the State of California unless such Products comply with section 1.1 below:

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

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

- 1.2 For all Products that 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 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 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. For

purposes of complying with this paragraph, an owner's manual is not to be considered as product packaging. However, Honda may elect to place a Proposition 65 warning in the owner's manual as well as on its product packaging.

2. **Payment Pursuant to Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Honda shall pay a civil penalty of \$1,600. The payment of \$1,600 shall be paid within fifteen (15) 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. Honda 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.

Honda shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Honda's attention, litigating and negotiating a settlement in the public interest. Honda shall pay the total sum of \$14,000 for investigation fees, attorneys' fees and litigation costs. Honda agrees to pay \$14,000 within fifteen (15) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

4. **Michael DiPirro's Release of Honda.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the People of the State of California in the public interest and on whose behalf this action was brought, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Honda and its distributors, retailers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 *et seq.* or any other statute, provision of common law or any theory or issue whatsoever based on the alleged failure of Honda to warn about exposure on or before the Effective Date to the Listed Chemicals produced by any of the Product. It is specifically understood and agreed that Honda's compliance

with the terms of this Agreement resolves all issues and liability, now and in the future, concerning Honda's past compliance with the requirements of Proposition 65, Business & Profession Code §17200 et seq., or any other Claims arising from Honda's alleged failure to comply with Proposition 65 in connection with the Product listed on Exhibit A occurring on or before the Effective Date.

5. **Honda's Release Of Michael DiPirro.** Honda, 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 Honda.
6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Honda 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. **Effect of Entry of Judgment. Entry of Judgment by Court pursuant to this Agreement shall, inter alia:**
  - (a) constitute a full and final adjudication of all Claims against Honda including but not limited to any Claims based upon alleged violations of Proposition 65 and of Business & Profession Code §17200 et seq., which arise from the alleged failure to provide reasonable warnings of exposure to the Listed Chemicals for use of Product offered for sale in California; and
  - (b) bar any and all other persons from prosecuting against Honda and Honda's directors, officers, agents, representatives, employees, successors and assigns any Claim, including but not limited to Claim based upon alleged violations of Proposition and of Business & Profession Code §17200 et seq. which arise from the alleged failure to provide clear and reasonable warning of exposure to the Listed Chemicals for use of the Products offered for sale in California.
8. **Honda Sales Data.** Honda understands that the sales data provided to counsel for DiPirro by Honda 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 Honda's knowledge, the sales data provided is true and accurate. In the event that 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 Honda's receipt of notice from DiPirro of his intent to challenge the accuracy of the 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 Honda, provided that all sums paid by Honda pursuant to paragraphs 2 and 3 are returned to Honda within ten (10) days from the date on which DiPirro notifies Honda 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 Honda that he is rescinding this Agreement pursuant to this Paragraph.

9. **Product Characterization.** Honda acknowledges that each of the Products listed in Exhibit A 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. 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 Honda 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 Honda seeks to eliminate the warnings, then Honda 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 Honda Exposure Data, DiPirro shall provide Honda 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 Honda written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Honda's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Honda 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 Honda of his intent to challenge the Exposure Data, DiPirro and Honda (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 Honda's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Honda 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.

10. **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.
11. **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 attorney's fees.
12. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.
13. **Notices.** All correspondence to Michael DiPirro shall be mailed to:

Jennifer Henry, Esq.  
Law Offices of Jennifer Henry  
9000 Crow Canyon Road, Suite S, PMG 9  
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 Honda shall be mailed to:

William Willen, Esq.  
American Honda Motor Co., Inc.  
1919 Torrance Blvd.  
Torrance, CA 90501  
(310) 783-3280

14. **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. Honda DiPirro represents, however, that its his 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.
15. **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.
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.

AGREED TO:


AGREED TO:

Date:

12/01/00

Date:

\_\_\_\_\_

  
\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

\_\_\_\_\_  
American Honda Motor Co., Inc.  
DEFENDANT

All correspondence to Honda shall be mailed to:

William Willen, Esq.  
American Honda Motor Co., Inc.  
1919 Torrance Blvd.  
Torrance, CA 90501  
(310) 783-3280

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AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: 12/6/00

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

Wade E. Perry VP Area Equipment  
American Honda Motor Co., Inc.  
DEFENDANT



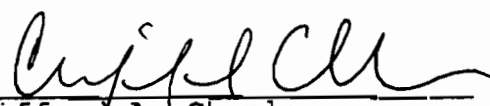
**EXHIBIT A**

**Definition of "Product":**


**Welders**

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Dated: 12/7, 2000

by:   
Clifford A. Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

Dated: 12/6, 2000

by:   
William Willen  
Attorneys for Defendant  
AMERICAN HONDA MOTOR COMPANY,  
INC.