

1 David Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
2 BUSH & HENRY
ATTORNEYS AT LAW
3 4400 Keller Avenue, Suite 200
Oakland, CA 94605
4 Tel: (510) 577-0747

5 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
6 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840
7 Tel: (203) 966-9911

8 Attorneys for Plaintiff
MICHAEL DIPIRRO

9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
12 UNLIMITED CIVIL JURISDICTION

13

14 MICHAEL DIPIRRO,
15 Plaintiff,

16 v.

17 AMERICAN HONDA MOTOR CO.;
OAKLAND ACURA; HONDA OF
18 HAYWARD; HONDA OF STEVENS CREEK;
LOS GATOS ACURA; and
19 DOES 1 through 1000,

20 Defendants.

No. H220843-9

SETTLEMENT AGREEMENT

21

22 This Settlement Agreement ("Agreement" or "Consent Judgment") is entered into
23 by and between Michael DiPirro and American Honda Motor Co., a California corporation
24 ("American Honda"), as of December 17, 2001 (the "Effective Date"). The parties agree to the
25 following terms and conditions:

26

27

28

1 **WHEREAS:**

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

5 B. American Honda is a company that currently distributes and sells certain
6 touch-up paint as set forth in Exhibit A that contains toluene, a substance known to the State of
7 California to cause birth defects (or other reproductive harm);

8 C. Named defendants Oakland Acura, Honda of Hayward, Honda of Stevens
9 Creek and Los Gatos Acura (collectively, "named Dealers") are companies that sell touch-up
10 paint, including certain products on Exhibit A.

11 D. A list of the products which contain toluene (the "Listed Chemical") and
12 which are covered by this Agreement is provided in Exhibit A (the "Products"). The products
13 have been distributed and sold by American Honda through its dealers in California since
14 June 27, 1998; and

15 E. On April 23, 2001, Michael DiPirro first served American Honda and
16 other public enforcement agencies with a document entitled "60-Day Notice of Violation" which
17 alleged that American Honda was in violation of Health & Safety Code § 25249.6 for allegedly
18 failing to warn purchasers that certain products it sells in California expose users to the Listed
19 Chemical; and

20 F. On June 27, 2001, Michael DiPirro filed a complaint entitled Michael
21 DiPirro v. American Honda Motor Co., et al. in the Alameda County Superior Court, naming
22 American Honda and the named Dealers as defendants and alleging violations of Business &
23 Professions Code § 17200 and Health & Safety Code § 25249.6 in the interest of the general
24 public in California who allegedly have been exposed to the Listed Chemical contained in certain
25 products that American Honda and the named Dealers distribute and sell.

26 G. American Honda and the named Dealers expressly deny the allegations of
27 the Complaint. DiPirro and American Honda and the named Dealers have agreed that settlement
28 of this matter and entry of this Consent Judgment are in good faith and protective of the public

1 interest and will eliminate the expense and uncertainty of litigation between the parties.

2 H. Nothing in this Agreement shall be construed as an admission by
3 American Honda, of any fact, finding, issue of law, or violation of law, nor shall compliance
4 with this Agreement constitute or be construed as an admission by American Honda of any fact,
5 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish
6 or otherwise affect the obligations, responsibilities, and duties of American Honda under this
7 Agreement.

8
9 **NOW THEREFORE, MICHAEL DIPIRRO AND AMERICAN HONDA AGREE AS**
10 **FOLLOWS:**

11 1. **Product Warnings.** American Honda shall promptly arrange to provide
12 the language set forth in the section 1.1 below on the labels of the Products to be sold in
13 California. Beginning on March 31, 2002, American Honda agrees that it will not knowingly
14 ship, or cause to be shipped, any Products containing the Listed Chemical in the State of
15 California unless such Products comply with section 1.1 below:

16 1.1 For all touch-up paint containing toluene, such Products shall bear
17 the following warning statement:

18 **“WARNING: This product contains toluene, a chemical known to**
19 **the State of California to cause birth defects (or other**
20 **reproductive harm).”;**

21 or

22 **“WARNING: This product contains a chemical known, to the State**
23 **of California to cause birth defects (or other**
24 **reproductive harm).”;**

25 The warning statement shall be prominently placed on the Products with
26 such conspicuousness, as compared with other words, statements, designs or devices on the
27 label, by way of adhesive sticker or, otherwise printed on the label, as to render it likely to be
28 read and understood by an ordinary individual under customary conditions of purchase.

1.2 American Honda also agrees that, beginning on December 15,
2002, it shall not ship (or cause to be shipped) any of the Products unless the Products' label

1 identifies the presence of any toxic chemicals, including toluene, that American Honda knows
2 constitutes either six percent (6%) or more of the Products by weight, or whatever concentration
3 level of chemical in the Product by weight that is ultimately determined either through a final
4 adjudication or settlement in the enforcement action entitled *Michael DiPirro v. Bondo*
5 *Corporation, et al.* (Case No. 01-032519).

6 **2. Payment Pursuant To Health & Safety Code § 25249.7(b).** Pursuant to
7 Health & Safety Code § 25249.7(b), American Honda shall pay a civil penalty of \$6,000 within
8 ten (10) calendar days after the Effective Date of this Agreement. This sum shall be held by
9 DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent
10 Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return all funds,
11 with interest thereon at a rate of four percent (4%) per annum, within ten (10) calendar days of
12 notice of the Court's decision. The penalty payments are to be made payable to "Chanler Law
13 Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in
14 accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of
15 California's Department of Toxic Substances Control.

16 **3. Reimbursement Of Fees And Costs.** The parties acknowledge that
17 DiPirro and his counsel offered to resolve the dispute without reaching terms on the amount of
18 fees and costs to be reimbursed under the private attorney general doctrine codified at C.C.P. §
19 1021.5, thereby leaving this open issue to be resolved after the material terms of the agreement
20 had been reached, and the matter settled. American Honda then expressed a desire to resolve the
21 fee and cost issue concurrently with other settlement terms, so the parties reached an accord on
22 the compensation due to DiPirro and his counsel.

23 American Honda shall reimburse DiPirro and his counsel for his fees and costs,
24 incurred as a result of investigating, bringing this matter to American Honda's attention,
25 litigating and negotiating a settlement in the public interest. American Honda shall pay \$18,000,
26 and any additional amount as provided for in paragraph 3.1 below, for all attorneys' fees, expert
27 and investigation fees, and litigation costs. American Honda agrees to pay the total sum of
28 \$18,000, within ten (10) Calendar days of the Effective Date. Such sum shall be held by

1 DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent
2 Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return all funds,
3 with interest thereon at a rate of four percent (4%) per annum, within ten (10) calendar days of
4 notice of the Court's decision. Payment should be made payable do the "Chanler Law Group".

5 **3.1 Additional Fees and Costs in Seeking Judicial Approval.** The parties
6 acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to
7 obtain judicial approval of this Agreement. Accordingly, the parties have agreed to file a *Joint*
8 *Motion to Approve the Agreement* shortly after the California Attorney General's Office thirty
9 (30) day review period has expired. (See paragraph 13 below).

10 Pursuant to CCP § 1021.5, American Honda agrees to reimburse DiPirro and his
11 counsel for their reasonable fees and costs incurred in seeking judicial approval of this
12 Agreement. Such additional fees or costs relating to achieving settlement approval for this
13 Agreement include, but are not limited to: drafting and filing a brief in support of such a Motion
14 to Approve Settlement; any appearance made before the Court related to such approval; any
15 further editing and finalizing of the Agreement to respond to any concerns expressed by any
16 public enforcer or the Court; corresponding or otherwise communicating with opposing counsel
17 on this subject; any retention of one or more experts if scientific issues become a focal point
18 during the approval process; and presenting of the Agreement (or any modifications thereof) to
19 the California Attorney General's Office for further comment.

20 DiPirro and his counsel expressly agree that American Honda's liability for
21 payment due under this paragraph shall not exceed \$9,000. In the event that any public enforcer
22 (including the California Attorney General's Office) objects or otherwise comments to one or
23 more provisions of this Agreement, American Honda agrees to use its best efforts to support each
24 of the terms of the Agreement, as well as to seek judicial approval of this Agreement.

25 American Honda's payment of DiPirro's legal fees and costs under this paragraph
26 shall be due within ten (10) calendar days after receipt of both notice of the Court's approval of
27 the Agreement and a billing statement from DiPirro ("Additional Fee Claim"). Payment of the
28 Additional Fee Claim shall be made payable to the "Chanler Law Group." American Honda has

1 the right to object to DiPirro's reimbursement request and may submit the resolution of this issue
2 to the American Arbitration Association (AAA) in Northern California to determine the
3 reasonableness of the additional fees and costs sought, provided that an arbitration claim has
4 been filed with AAA and served on DiPirro within ten (10) calendar days following DiPirro's
5 service of the Additional Fee Claim on American Honda. If an arbitration notice is not filed with
6 AAA in a timely manner, DiPirro may file a motion, pursuant to CCP §1021.5, with the Court
7 seeking the fees and costs incurred as set forth in this paragraph.

8 **4. Michael DiPirro's Release Of American Honda.** Michael DiPirro, by
9 this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the
10 interest of the general public, waives all rights to institute or participate in, directly or indirectly,
11 any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses,
12 fines and damages, against American Honda and its distributors, retailers (including, but not
13 limited to Oakland Acura, Honda Of Hayward, Honda Of Stevens Creek and Los Gatos Acura),
14 customers, directors, officers, employees, successors and assigns, whether under Proposition 65
15 or the Business & Profession Code § 17200 et seq. (including Business & Profession Code
16 § 17500) arising from or based on American Honda's alleged failure to warn about exposure to
17 the Listed Chemical or any other toxic chemical contained in any of the Products. The parties
18 agree that this paragraph expressly does not release the supplier or private-label packager of the
19 Products (e.g., Bondo Corporation) from any alleged liability under any of the statutes
20 referenced-above as such liability may apply to the Products or any other touch-up paint
21 containing toluene or other toxic chemicals. However, nothing in this Paragraph shall be
22 construed to allow DiPirro to seek recovery of any civil penalties, attorneys' fees, and/or costs
23 (that are to be paid by American Honda under this Agreement), from Bondo Corporation.

24 **5. American Honda's Release Of Michael DiPirro.** American Honda,
25 by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro
26 and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and
27 his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or
28 Business & Profession Code § 17200 et seq. against American Honda or its named Dealers

1 within the Michael DiPirro v. American Honda Motor Co., et al. matter, or any of the actions
2 relating to the 60-day notices referenced in Paragraph E.

3 **6. Court Approval.** If, for any reason, this Consent Judgment is not
4 approved by the Court, this Agreement shall be deemed null and void. Within five (5) calendar
5 days of plaintiff's receipt of Entry of Order of this Consent Judgment, plaintiff will dismiss the
6 named Dealers with prejudice, with each party to pay its own costs.

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

22 **8. Product Characterization.** American Honda acknowledges that each of
23 the Products listed in Exhibit A contains toluene and Plaintiff alleges that the customary use or
24 application of the Products is likely to expose users to toluene, a substance known to the State of
25 California to cause birth defects (or other reproductive harm). In the event that American Honda
26 obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to
27 any or all Products will have "no observable effect," as such standard is applicable and as is
28 defined under Health & Safety Code § 25249.10(c) and American Honda seeks to eliminate the

1 warnings, then American Honda shall provide DiPirro with ninety (90) days prior written notice
2 of its intent to limit or eliminate the warning provisions under this Agreement based on the
3 Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety
4 (90) days of receipt of American Honda Exposure Data, DiPirro shall provide American Honda
5 with written notice of his intent to challenge the Exposure Data (in the event that he chooses to
6 make such a challenge). If DiPirro fails to provide American Honda written notice of his intent
7 to challenge the Exposure Data within ninety (90) days of receipt of American Honda's notice
8 and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and
9 American Honda shall be entitled to limit or eliminate the warning provisions required under this
10 Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro
11 timely notifies American Honda of his intent to challenge the Exposure Data, DiPirro and
12 American Honda may (a) stop its efforts to eliminate the warnings upon notice to DiPirro with
13 no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed
14 thirty (30) days following receipt of American Honda's notice to attempt to reach a settlement of
15 this issue. If a settlement is not reached, DiPirro and American Honda agree to submit such
16 challenge to the superior court for determination, pursuant to the court's continuing jurisdiction
17 of this matter under C.C.P. § 664.6 and this Agreement. The prevailing party shall be entitled to
18 reasonable attorneys' fees and costs associated with bringing a motion to the Court for
19 determination under this paragraph.

20 If the Alameda County Superior Court enters a final judgment or settlement in
21 DiPirro's lawsuit against Bondo Corporation (Case No. 1-032519, which involves touch-up paint
22 containing the Listed Chemical) that does not require Bondo Corporation to provide a
23 reproductive toxicity warning for any of its touch-up paints that contain at least 20% toluene by
24 weight, then American Honda shall be allowed to seek a modification of paragraph 1.1 above to
25 eliminate its duty to provide the requisite warning statement set forth in paragraph 1.1 above.

26 **9. Compliance With Terms Of The Settlement Agreement.** The parties
27 have agreed that American Honda's compliance with the terms of this settlement agreement is
28 one of the ways that American Honda could satisfy the provisions of Health & Safety Code

1 § 25249.6 and 22 CCR § 12601(b).

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

5 **11. Attorney's Fees.** In the event that a dispute arises with respect to any
6 provision(s) of this Agreement (including, but not limited to, disputes arising from the payments
7 provisions in paragraphs 2 and 3), the prevailing party shall be entitled to recover costs and
8 reasonable attorneys' fees, including any action brought pursuant to paragraph 3.1 herein.

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

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

12 Jennifer Henry or David Bush
13 Bush & Henry
14 4400 Keller Ave., Suite 200
Oakland, CA 94605
(510) 577-0747

15 All correspondence to American Honda shall be mailed to:

16 Rick R. Rothman, Esq.
17 McCutchen, Doyle, Brown & Enersen, LLP
18 355 South Grand Ave., Suite 4400
Los Angeles, CA 90071-3106
(213) 680-6590

19 and

20 William R. Willen, Esq.
21 American Honda Motor Company, Inc.
22 1919 Torrance Boulevard
Mail Stop 500-2C-8A
Torrance, CA 90501-2746

23 **14. Compliance With Reporting Requirements (Health & Safety Code**
24 **§ 25249.7(f)).** The parties acknowledge that the reporting provisions of Health & Safety Code
25 § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with that section
26 by submitting the required reporting form to, and serving a copy of this Consent Judgment on,
27 the California Attorney General's Office within two business days after the parties execute this
28 Consent Judgment. Following the expiration of the Attorney General's thirty-day review period,

1 counsel for DiPirro shall submit the Consent Judgment to the Court in accordance with the
2 requirements of Health & Safety Code § 25249.7(f) and its implementing regulations, thereby
3 allowing the Attorney General to serve any comments to this Consent Judgment prior to the end
4 of the thirty (30) day period.

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

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


11

12 AGREED TO:

AGREED TO:

13 DATE: 12/17/01

DATE:

14 
15 Michael DiPirro
16 PLAINTIFF

American Honda Motor Co.
DEFENDANT

17

18 APPROVED AS TO FORM

APPROVED AS TO FORM:

19 DATE:

DATE:

20 
21 David Bush
22 Attorneys for Plaintiff
23 MICHAEL DIPIRRO

Rick R. Rothman
Attorneys for Defendant
AMERICAN HONDA MOTOR CO.

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DEC. 18, 2001 5:16PM

NO. 3204 P. 2/2

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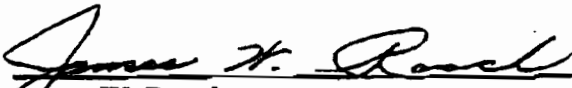
11
12 **AGREED TO:**

AGREED TO:

13 **DATE:**

DATE:

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15 _____
16 Michael DiPirro
17 PLAINTIFF


18 _____
19 James W. Roach
20 American Honda Motor Co.
21 DEFENDANT

18
19 **APPROVED AS TO FORM**

APPROVED AS TO FORM:

20 **DATE:**

DATE:

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22 _____
23 David Bush
24 Attorneys for Plaintiff
25 MICHAEL DIPIRRO

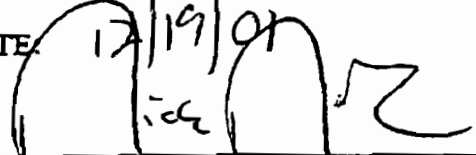

26 _____
27 Rick R. Rothman
28 Attorneys for Defendant
AMERICAN HONDA MOTOR CO.

EXHIBIT A

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All Touch-Up Paint Containing Toluene for Automobiles Sold Under the Honda/Acura Name

All Touch-Up Paint Containing Toluene for Motorcycles Sold Under the Honda Name

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AGREED TO:

13 DATE:

DATE:

14

15 _____
16 Michael DiPirro
PLAINTIFF

_____ American Honda Motor Co.
DEFENDANT

17

18 **APPROVED AS TO FORM**

APPROVED AS TO FORM:

19 DATE:

DATE:

20

21 _____
22 David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

_____ Rick R. Rothman
Attorneys for Defendant
AMERICAN HONDA MOTOR CO.

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10 terms and conditions of this Agreement.

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12 **AGREED TO:**

AGREED TO:

13 DATE:

DATE:

14

15 _____
16 Michael DiPirro
PLAINTIFF

American Honda Motor Co.
DEFENDANT

17

18 **APPROVED AS TO FORM**

APPROVED AS TO FORM:

19 DATE:

DATE:

20

21 

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Rick R. Rothman
Attorneys for Defendant
AMERICAN HONDA MOTOR CO.

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