

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into between Michael DiPirro, a California citizen, and ArcOne; A Division of A.C.E. International Company, Inc. (a Massachusetts corporation), as of December 20, 1999, (the "Effective Date").

WHEREAS:

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 consumer and industrial products;

B. ArcOne, A Division of A.C.E. International Company, Inc. ("ArcOne") manufactures and distributes various products in the State of California that, through their normal and foreseeable use produce fumes that contain chemicals listed pursuant to Proposition 65 ("Listed Chemicals").

C. The products that produce fumes that contain one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products");

D. The Products have been distributed and sold by ArcOne for use in California since June 1998;

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

F. On May 7, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. ArcOne; A Division of A.C.E. International Company, Inc., et al. (No. 303352) in the San Francisco Superior Court, naming ArcOne as defendant and alleging violations of Business & Professions Code Section 17200 and Health & Safety Code Section 25249.6 on behalf of individuals in California who may have been exposed to chemicals listed pursuant to Proposition 65 contained in certain ArcOne products.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Product Labeling. Beginning immediately, ArcOne shall initiate revisions consistent with this Agreement to its current labels for the Products ("Revised Labels"). ArcOne shall use reasonable efforts to ensure that all Products in its possession intended for shipment into California are packaged using Revised Labels as quickly as possible; however, ArcOne agrees that as of January 1, 2000, it shall not ship (or cause to be shipped on its behalf) any of the Products for sale or use in the State of California unless each such Product contains the appropriate warning statement on its label as follows:

For Products, such as welding machines, power sources and similar products:

"WARNING: This product, when used for welding or cutting, produces fumes or gases which contain chemicals known to the State of California to cause birth defects and, in some cases, 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.

Civil Penalty. Pursuant to Health & Safety Code Section 25249.7(b), ArcOne shall pay a civil penalty of \$500 (five hundred) within five (5) calendar days of the Effective Date of the Agreement. Penalty monies shall be apportioned by Michael DiPirro in accordance with Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California. This payment shall be made payable to "Law Offices of David Bush, in trust for Michael DiPirro."

Reimbursement of Fees and Costs. Within five (5) calendar days of the Effective Date, ArcOne shall pay to Michael DiPirro \$4,000 (four thousand dollars) for his pre-notice investigation fees, and \$500 (five hundred dollars) for his reasonable attorneys' fees incurred in this matter. Payment shall be made payable to "Law Offices of David Bush."

Michael DiPirro Release. Michael DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, waives all rights to institute any form of legal action (and releases all claims) against ArcOne, whether under Proposition 65 or Business & Profession Code Section 17200 et seq., related to ArcOne's failure to warn about exposure to Listed Chemicals contained in any of the Products.

ArcOne Release. ArcOne, 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 Section 17200 et seq. against ArcOne.

Warranties and Representations. The parties make the following representations and warranties:

ArcOne represents and warrants as follows:

Each of the Products listed in Exhibit "A" produces fumes that contain one or more substances known to the State of California to cause cancer or birth defects or other reproductive toxicity, and that ArcOne has no knowledge that ArcOne has any analytical, risk assessment, or other data indicating that an exposure to fumes resulting from any or all Products listed in Exhibit "A" 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).

In the event that ArcOne obtains analytical, risk assessment, or other data that shows that an exposure to listed chemicals from use of any or all Products listed in Exhibit "A" 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), ArcOne shall provide Michael DiPirro with 90 days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on this information pursuant to this paragraph and shall provide Michael DiPirro with all such supporting data. Within thirty (30) days of receipt of ArcOne's exposure data, Michael DiPirro shall provide ArcOne with written notice of his desire to challenge the data (in the event that he chooses to make such a challenge), and Michael DiPirro and ArcOne shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by Michael DiPirro of such notice of challenge, Michael DiPirro and ArcOne agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. Section 664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If Michael DiPirro does not challenge ArcOne's notice or the Court determines that no warning is required for a particular Product or Products, ArcOne shall no longer be required to provide the warnings described in this Agreement for those Products.

Sales Data. ArcOne understands that the sales data provided to counsel for Michael DiPirro by ArcOne was a material factor upon

which Michael DiPirro has relied to determine the amount of penalties and restitution in this Agreement. To the best of ArcOne's knowledge, the sales data provided is true and accurate.

Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP Section 664.6 by the San Francisco Superior Court in accordance with the terms of this agreement.

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.

Attorneys' 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.

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

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

David Bush
Law Offices of David Bush
2214 Polk Street
San Francisco, CA 94109

All correspondence to ArcOne shall be mailed to:

Robert M. Lubin, Esq.
Law Offices of Robert M. Lubin
800 Oak Grove Avenue, Suite 200
Menlo Park, CA 94025

No Admissions. Nothing in this Agreement shall constitute or be construed as an admission by ArcOne 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 ArcOne of any fact, finding, conclusion, issue of law, or violation of law. ArcOne reserves all of its rights and defenses with regard to any future claim by any party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of ArcOne under this Agreement.

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.

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: 3/27/00

DATE: _____



Michael DiPirro
PLAINTIFF

ArcOne; A Division of A.C.E.
International Company, Inc.
DEFENDANT

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