

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Associated Electrics, Inc., a California corporation ("Associated Electrics"), as of August 23, 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 consumer and industrial products;

B. Associated Electrics is a company that currently manufactures, distributes and/or sells certain counter weights and other balancing products in the State of California that contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead compounds) (the "Listed Chemical");

C. The products that contain one or more of the "Listed Chemical" and which are covered by this Agreement are set forth in Exhibit A (the "Products"). Plaintiff alleges that the Products have been manufactured, distributed and/or sold by Associated Electrics for use in California since at least March 16, 1996; and

D. On March 16, 2000, Michael DiPirro first served Associated Electrics and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Associated Electrics and such public enforcers with notice that Associated Electrics 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 June 1, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Associated Electrics, Inc., et al. in the San Francisco County Superior Court, naming Associated Electrics 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 Chemical" contained in certain Associated Electrics products.

F. Nothing in this Agreement shall be construed as an admission by Associated Electrics 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 Associated Electrics 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 Associated Electrics under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND ASSOCIATED ELECTRICS AGREE AS FOLLOWS:**

**1. Product Warnings.** Associated Electrics 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 September 15, 2000, Associated Electrics agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemical for sale in the State of California unless such Products comply with section 1.1 below:

**1.1** For all Products containing lead, such Products shall bear the following warning statement:

**"WARNING: This product contains lead, 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)";**

The warning statement shall be placed upon the Product's label with so that, as compared with other words, statements, designs or devices on the label, it will likely be read and understood by an ordinary individual under customary conditions of purchase or use.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Associated Electrics shall pay a civil penalty of \$1,000. This payment shall be paid ten (10) calendar days after the day this Agreement is signed by Michael DiPirro. 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. Associated Electrics then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties reached an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

Associated Electrics shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Associated Electrics' attention, litigating and negotiating a settlement in the public interest. Associated Electrics shall pay the total sum of \$6,937 for investigation fees, attorneys' fees and litigation costs. Associated Electrics agrees to pay \$6,937 within ten (10) days after this Agreement is signed by Michael DiPirro. Payment should be made payable to the "Chanler Law Group".

**4. Release Of Associated Electrics.** 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, liabilities, obligations, losses, costs, expenses, fines and damages, against Associated Electrics and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 *et seq.* based on Associated Electrics' failure to warn about exposure to the Listed Chemical contained in any of the Products. To the maximum extent allowed by law, DiPirro hereby releases Associated Electrics from all claims and rights held by any and all persons or entities who have purchased, been exposed to or come into contact with the Products.

**5. Associated Electrics' Release Of Michael DiPirro.** Associated Electrics, 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 Associated Electrics.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Associated Electrics shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco 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. Associated Electrics Sales Data.** Associated Electrics understands that the sales data provided to counsel for DiPirro by Associated Electrics 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 Associated Electrics' knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers, within one year from the Effective Date of this Agreement, 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 Associated Electrics' 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 Associated Electrics, provided

that all sums paid by Associated Electrics pursuant to paragraphs 2 and 3 are returned to Associated Electrics within ten (10) days from the date on which DiPirro notifies Associated Electrics 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 Associated Electrics that he is rescinding this Agreement pursuant to this Paragraph, however such tolling shall not extend beyond one year from the Effective Date.

**8. Product Characterization.** Plaintiff alleges that each of the Products listed in Exhibit A contains lead and the customary use or application of the Products is likely to expose users to lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm). In the event that Associated Electrics 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 Associated Electrics seeks to eliminate the warnings, then Associated Electrics 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 Associated Electrics Exposure Data, DiPirro shall provide Associated Electrics 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 Associated Electrics written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Associated Electrics' notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Associated Electrics 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 Associated Electrics of his intent to challenge the Exposure Data, DiPirro and Associated Electrics (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 Associated Electrics' notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Associated Electrics 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. Notwithstanding the foregoing, in the event that Associated Electrics is no longer required to provide the warnings provided for herein under applicable law, regulation or court order, then Associated Electrics may discontinue the warnings with no further liability or obligations to the extent that new law, regulation or court order provides.

**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:

Hudson Bair, Esq.  
Kapsack & Bair, LLP  
1440 Broadway, Suite 610  
Oakland, CA 94612  
(510) 645-0027

or

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

All correspondence to Associated Electrics shall be mailed to:

Charles H. Kanter, Esq.  
Palmieri, Tyler, Wiener, Wilhelm & Waldron LLP  
2603 Main Street  
East Tower - Suite 1300  
Irvine, CA 92614-6228  
(949)851-9400

and

Roger Curtis, President  
Associated Electrics, Inc.  
3585 Cadillac Avenue  
Costa Mesa, CA 92626-1401

**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.

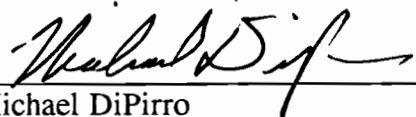
Associated Electrics represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the San Francisco County Superior Court.

**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.

**AGREED TO:**

DATE: 8/28/00

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

**AGREED TO:**

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

\_\_\_\_\_  
Associated Electrics, Inc.  
DEFENDANT

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**AGREED TO:**

**AGREED TO:**

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

DATE: 8/31/00

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

  
\_\_\_\_\_  
Associated Electrics, Inc.  
DEFENDANT