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8  
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10 MICHAEL DIPIRRO

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

15 MICHAEL DIPIRRO, ) No. 02-039363  
16 Plaintiff, )  
17 v. ) SETTLEMENT AGREEMENT  
18 AUTOTYPE AMERICAS, INC.; and )  
19 DOES 1 through 1000, )  
20 Defendants. )  
21 \_\_\_\_\_ )

22 This Settlement Agreement ("Agreement" or "Consent  
23 Judgment") is entered into by and between Michael DiPirro and  
24 Autotype Americas, Inc., a Delaware corporation ("Autotype"),  
25 as of June 3, 2002 (the "Effective Date"). The parties agree  
26 to the following terms and conditions:

27 **WHEREAS:**

28 A. Michael DiPirro is an individual residing in  
San Francisco, California, who seeks to promote awareness of

1 exposures to toxic chemicals and improve human health by  
2 reducing or eliminating hazardous substances contained in  
3 consumer products;

4 B. Autotype is a company that currently  
5 distributes and sells certain Blueline Autobond X products  
6 that contain methylene chloride, a substance known to the  
7 State of California to cause cancer (the "Products");

8 C. The Products have been distributed and sold by  
9 Autotype in California since January 30, 1998; and

10 D. On or about November 8, 2001, Michael DiPirro  
11 first served Autotype and other public enforcement agencies  
12 with a document entitled "60-Day Notice of Violation" which  
13 provided Autotype and such public enforcers with notice that  
14 Autotype was in violation of Health & Safety Code §25249.6 for  
15 allegedly failing to warn purchasers that certain products it  
16 sells in California expose users to methylene chloride; In  
17 response to DiPirro's claims, Autotype asserts that it, in  
18 early 2001, initiated revisions to its health hazard warnings  
19 for its Products to provide the language set forth in section  
20 1.1 below. Autotype states that it completed the revisions to  
21 its health hazard warnings for the Product prior to December  
22 31, 2001. These revisions included adding supplemental labels  
23 to existing distributor stock as well as the affixing of  
24 revised labels to all Products shipped as of that date; and

25 E. On January 30, 2002, Michael DiPirro filed a  
26 complaint entitled Michael DiPirro v. Autotype Americas, Inc.,  
27 et al. in the Alameda County Superior Court, naming Autotype  
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1 as a defendant and alleging violations of Business &  
2 Professions Code §17200 and Health & Safety Code §25249.6 in  
3 the interest of the general public in California who allegedly  
4 have been exposed to methylene chloride contained in certain  
5 products that Autotype manufactures and distributes.

6 F. Nothing in this Agreement shall be construed as  
7 an admission by Autotype of any fact, finding, issue of law or  
8 violation of law; nor shall compliance with this Agreement  
9 constitute or be construed as an admission by Autotype of any  
10 fact, finding, conclusion, issue of law or violation of law.  
11 However, this paragraph shall not diminish or otherwise affect  
12 the obligations, responsibilities and duties of Autotype under  
13 this Agreement.

14 **NOW THEREFORE, MICHAEL DIPIRRO AND AUTOTYPE AGREE AS FOLLOWS:**

15 1. **Product Warnings.** Autotype agrees that it will  
16 not knowingly ship, or cause to be shipped, any Products  
17 containing the Listed Chemical for sale in the State of  
18 California unless such Products comply with section 1.1 below:

19 1.1 For all BlueLine Autobond X products  
20 containing methylene chloride, such Products shall bear the  
21 following warning statement:

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

24 This warning statement shall be prominently placed  
25 on the Products with such conspicuousness (as compared with  
26 other words, statements, designs or devices) on the product  
27 label, as to render it likely to be read and understood by an  
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1 ordinary individual under customary conditions of purchase.

2 **2. Payment Pursuant To Health & Safety Code**

3 **§25249.7(b)**. In light of the factors enumerated in Health &  
4 Safety Code §25249.7(b), Autotype agrees to pay a civil  
5 penalty of \$1,000 within five (5) calendar days of the  
6 Effective Date. The penalty payment is to be made payable to  
7 "Sheffer & Chanler In Trust For Michael DiPirro". If the  
8 Consent Judgment is not approved by the Court, DiPirro will  
9 return all funds, with interest thereon at the prevailing  
10 federal funds rate (currently set at 1.75%), within ten (10)  
11 calendar days of notice of the Court's final decision.

12 Penalty monies shall be apportioned by DiPirro in accordance  
13 with Health & Safety Code §25192, with 75% of these funds  
14 remitted to the State of California's Department of Toxic  
15 Substances Control.

16 **3. Reimbursement Of Fees And Costs.** The parties

17 acknowledge that, once the injunctive relief provisions and  
18 other monetary terms had been resolved, DiPirro and his  
19 counsel offered to resolve the issue of reimbursement of  
20 attorneys' fees and costs through a noticed motion pursuant to  
21 C.C.P. §1021.5. Autotype then expressed a desire to resolve  
22 the fee and cost issue shortly after the other settlement  
23 terms had been finalized. The parties then attempted to (and  
24 did) reach an accord on the compensation due to DiPirro and  
25 his counsel under the private attorney general doctrine  
26 codified at C.C.P. §1021.5 for all work performed through the  
27 Effective Date of the Agreement.

1 Pursuant to C.C.P. §1021.5, Autotype agrees to  
2 reimburse DiPirro and his counsel for their reasonable  
3 attorneys' fees and costs incurred as a result of  
4 investigating, litigating and negotiating a settlement in the  
5 public interest in the amount of \$12,000. Autotype agrees to  
6 pay the total sum of \$12,000 within ten (10) calendar days of  
7 the Effective Date. Payment should be made payable to the  
8 "Sheffer & Chanler". If the Consent Judgment is not approved  
9 by the Court, DiPirro will return all funds, with interest  
10 thereon at the prevailing federal funds rate (currently set at  
11 1.75%), within ten (10) calendar days of notice of the Court's  
12 final decision.

13 **3.1 Additional Fees and Costs in Seeking**  
14 **Judicial Approval.** The parties acknowledge that, pursuant to  
15 Health & Safety Code §25249.7, a noticed motion is required to  
16 obtain judicial approval of this Agreement. Accordingly, the  
17 parties agree to file a *Joint Motion to Approve the Agreement*  
18 within a reasonable period of time after execution of this  
19 Agreement. Pursuant to C.C.P. §1021.5, Autotype agrees to  
20 reimburse DiPirro and his counsel for their reasonable fees  
21 and costs incurred in seeking judicial approval of this  
22 Agreement.

23 DiPirro and his counsel expressly agree that  
24 Autotype's liability for payment due under this paragraph for  
25 work performed in the trial court shall not exceed \$6,000. In  
26 the event that any public enforcer (including the California  
27 Attorney General's Office) objects or otherwise comments to  
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1 one or more provisions of this Agreement, Autotype agrees to  
2 use its best efforts to support each of the terms of the  
3 Agreement, as well as to seek judicial approval of this  
4 Agreement.

5 Autotype's payment of DiPirro's legal fees and costs  
6 under this paragraph shall be due within ten (10) calendar  
7 days after receipt of a billing statement from DiPirro  
8 ("Additional Fee Claim"). Payment of the Additional Fee Claim  
9 shall be made payable to the "Chanler Law Group." Autotype has  
10 the right to object to DiPirro's reimbursement request and may  
11 submit the resolution of this issue to the American  
12 Arbitration Association (AAA) in Northern California to  
13 determine the reasonableness of the additional fees and costs  
14 sought, provided that an arbitration claim has been filed with  
15 AAA and served on DiPirro within ten (10) calendar days  
16 following DiPirro's service of the Additional Fee Claim on  
17 Autotype. If an arbitration notice is not filed with AAA in a  
18 timely manner, DiPirro may file a motion, pursuant to C.C.P.  
19 §1021.5, with the Court seeking his (and his attorneys') fees  
20 and costs incurred as set forth in this paragraph.

21 **4. Michael DiPirro's Release of Autotype.** Michael  
22 DiPirro, on behalf of himself, his agents, representatives,  
23 attorneys, assignees, and on behalf of and in the interest of  
24 the general public, hereby waives all rights to institute and  
25 participate in, directly or indirectly, any form of legal  
26 action, and releases all claims, including, without  
27 limitation, all actions, causes of action, in law or in  
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1 equity, suits, liabilities, demands, damages, fines,  
2 penalties, losses or expenses (including investigation fees,  
3 expert fees and attorneys' fees and other costs) of any nature  
4 whatsoever, whether known or unknown, fixed or contingent  
5 (collectively, "Claims"), against Autotype and any of its  
6 subsidiaries, parents or associated corporations (and the  
7 predecessors, successors and assigns of any of them), and  
8 their respective officers, directors, attorneys,  
9 representatives, shareholders, partners, agents, and employees  
10 (collectively, "Autotype Releasees"). This waiver and release  
11 shall pertain to Claims arising under Proposition 65 or  
12 Business & Professions Code §17200 et seq., related to the  
13 Autotype Releasees' alleged failure to warn about exposures to  
14 methylene chloride contained in any of the Products. The  
15 parties hereto specifically understand and agree that  
16 Autotype's compliance with the terms of this Agreement  
17 resolves all issues and liability, now and in the future,  
18 concerning compliance by the Autotype Releasees with the  
19 requirements of Proposition 65 or Business & Professions Code  
20 §17200 et seq., with respect to methylene chloride in the  
21 Products.

22 **4.1 Michael DiPirro's Release of "Downstream**  
23 **Persons."** DiPirro, on behalf of himself, his agents,  
24 assignees and on behalf of and in the interest of the general  
25 public, further waives all rights to institute any form of  
26 legal action and releases all Claims against each and every  
27 distributor, wholesaler, retailer, dealer, customer, owner,  
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1 operator, lessor, lessee or user of the Products, and any of  
2 their respective parent corporations or subsidiaries (and the  
3 predecessors, successors and assigns of any of them) and their  
4 respective officers, directors, shareholders, partners,  
5 attorneys, representatives, agents, employees (collectively,  
6 "Downstream Persons"), each of which is expressly intended to  
7 be a third-party beneficiary of this Agreement. This waiver  
8 and release shall pertain to Claims arising under Proposition  
9 65 or Business & Professions Code §17200 et seq., related to  
10 the Downstream Persons' alleged failure to warn about  
11 exposures to methylene chloride contained in any of the  
12 Products. The parties specifically understand and agree that  
13 this Agreement resolves all issues and liability, now and in  
14 the future, concerning the Downstream Persons' compliance with  
15 the requirements of Proposition 65 or Business & Professions  
16 Code §17200, et seq. with respect to methylene chloride in the  
17 Products.

18 **5. Autotype's Release Of Michael DiPirro.**

19 Autotype waives all rights to institute any form of legal  
20 action against DiPirro or his attorneys or representatives,  
21 for any and all actions taken or statements made on or before  
22 the Effective Date by DiPirro, in the course of seeking  
23 enforcement of Proposition 65 or Business & Professions Code  
24 §17200, et seq. against Autotype relative to the Products.

25 **6. Court Approval.** If, for any reason, this  
26 Consent Judgment is not ultimately approved by the Court, this  
27 Agreement shall be deemed null and void.



1  
2           **7. Autotype Sales Data.** Autotype understands that  
3 the sales data provided to counsel for DiPirro by Autotype was  
4 a material factor upon which DiPirro has relied to determine  
5 the amount of payments made pursuant to Health & Safety Code  
6 §25249.7(b) in this Agreement. To the best of Autotype's  
7 knowledge, the sales data provided is true and accurate. In  
8 the event that DiPirro discovers facts which demonstrate to a  
9 reasonable degree of certainty that the sales data is  
10 materially inaccurate, the parties shall meet in a good faith  
11 attempt to resolve the matter within ten (10) days of  
12 Autotype's receipt of notice from DiPirro of his intent to  
13 challenge the accuracy of the sales data. If this good faith  
14 attempt fails to resolve DiPirro's concerns, DiPirro shall  
15 have the right to rescind the Agreement and re-institute an  
16 enforcement action against Autotype, provided that all sums  
17 paid by Autotype pursuant to paragraphs 2 and 3 are returned  
18 to Autotype within ten (10) days from the date on which  
19 DiPirro notifies Autotype of his intent to rescind this  
20 Agreement. In such case, all applicable statutes of  
21 limitation shall be deemed tolled for the period between the  
22 date DiPirro filed the instant action and the date DiPirro  
23 notifies Autotype that he is rescinding this Agreement  
24 pursuant to this Paragraph.

25           **8. Severability.** In the event that any of the  
26 provisions of this Agreement are ultimately held by a court to  
27 be unenforceable, the validity of the enforceable provisions  
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1 shall not be adversely affected.

2           **9. Attorney's Fees.** In the event that a dispute  
3 arises with respect to any provision(s) of this Agreement  
4 (including, but not limited to, disputes arising from the  
5 payments to be made under this Agreement), the prevailing  
6 party shall be entitled to recover costs and reasonable  
7 attorneys' fees. However, this paragraph shall not apply to  
8 the procedures set forth in paragraphs 3.1 which is governed  
9 by the principles of CCP § 1021.5.

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

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

14                   Gregory M. Sheffer  
15                   Sheffer & Chanler  
16                   4400 Keller Ave., Suite 200  
                    Oakland, CA 94605  
                    (510) 577-0747

17 All correspondence to Autotype shall be mailed to:

18                   Thomas K. Bick, Esq.  
19                   Tighe Patton Armstrong Teasdale PLLC  
20                   1747 Pennsylvania Avenue, N. W., Suite 300  
                    Washington, DC 20006  
                    (202) 454-2800

21           **12. Compliance With Reporting Requirements (Health**  
22 **& Safety Code §25249.7(f)).** The parties acknowledge that the  
23 reporting provisions of Health & Safety Code §25249.7(f) apply  
24 to this Consent Judgment. Counsel for DiPirro shall comply  
25 with that section by submitting the required reporting form  
26 to, and serving a copy of this Consent Judgment on, the  
27 California Attorney General's Office when noticing the Motion  
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1 to Approve hearing. Counsel for DiPirro shall submit the  
2 Consent Judgment to the Court in accordance with the  
3 requirements of Health. & Safety Code §25249.7(f) and its  
4 implementing regulations, thereby allowing the Attorney  
5 General to serve any comments to this Consent Judgment as  
6 provided by law.

7 **13. Counterparts and Facsimile.** This Agreement may  
8 be executed in counterparts and facsimile, each of which shall  
9 be deemed an original, and all of which, when taken together,  
10 shall constitute one and the same document.

11 **14. Authorization.** The undersigned are authorized  
12 to execute this Agreement on behalf of their respective  
13 parties and have read, understood and agree to all of the  
14 terms and conditions of this Agreement.

15 **AGREED TO:**

16 **DATE:** 5/31/02

17  
18   
19 Michael DiPirro  
20 **PLAINTIFF**

**AGREED TO:**

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

\_\_\_\_\_  
**Autotype Americas, Inc.**  
**DEFENDANT**

21 **APPROVED AS TO FORM:**

22 **DATE:** 6/10/02

23  
24   
25 Gregory M. Sheffer  
26 **Attorneys for Plaintiff**  
**MICHAEL DIPIRRO**

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
**Thomas K. Bick**  
**Attorneys for Defendant**  
**AUTOTYPE AMERICAS, INC.**

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2 Consent Judgment to the Court in accordance with the  
3 requirements of Health & Safety Code §25249.7(f) and its  
4 implementing regulations, thereby allowing the Attorney  
5 General to serve any comments to this Consent Judgment as  
6 provided by law.

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14 terms and conditions of this Agreement.

15 AGREED TO:

16 DATE:

5/31/02

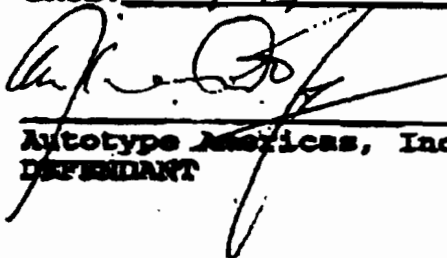
17 

18 Michael DiPirro  
19 PLAINTIFF

AGREED TO:

DATE:

6/17/02

20 

Autotype Americas, Inc.  
DEFENDANT

21 APPROVED AS TO FORM:


22 DATE:

23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 Gregory M. Sheffer  
26 Attorneys for Plaintiff  
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE:

6/12/02

27   
28 Thomas K. Bick  
Attorneys for Defendant  
AUTOTYPE AMERICAS, INC.