

1 Clifford A. Chanler, State Bar No. 135534  
SHEFFER & CHANLER  
2 Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840  
3 Tel: (203) 966-9911

4 Attorneys for Plaintiff  
MICHAEL DIPIRRO

5 Chris M. Amantea, State Bar No. 147339  
6 MCDERMOTT, WILL & EMERY  
2049 Century Park East, Suite 3400  
7 Los Angeles, CA 90067  
8 Tel: (310) 277-4110

9 Attorneys for Defendant  
THE BELL GROUP

10

11

SUPERIOR COURT OF THE STATE OF CALIFORNIA

12

IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH

13

UNLIMITED CIVIL JURISDICTION

14

15 MICHAEL DIPIRRO,

No. 01-026179

16

Plaintiff,

CONSENT JUDGMENT

17

v.

18

THE BELL GROUP; and DOES 1  
through 1000,

19

Defendant.

20

21

22

This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by  
and between Michael Dipirro ("DiPirro") and The Bell Group, a New Mexico Corporation  
23 ("Bell"), as of May 15, 2002 (the "Effective Date").  
24

25

26

**RECITALS**

27

**WHEREAS:**

28

A. DiPirro is an individual residing in San Francisco, California, who

LAS99 1230887-1 062982.001+LAS99 1230887-  
2.062982.0011

1 seeks to promote awareness of exposures to toxic chemicals and improve human health by  
2 reducing or eliminating hazardous substances contained in consumer products.

3 B. Bell is a company that currently manufactures, distributes and/or sells  
4 certain solder products that contain lead (or lead compounds), substances known to the  
5 State of California to cause cancer and/or birth defects (or other reproductive harm). Bell  
6 previously manufactured, distributed and/or sold certain solder products that contained  
7 cadmium and cadmium compounds.

8 C. A list of the products which contain lead (or lead compounds) (the  
9 "Listed Chemicals") and which are covered by this Agreement is provided in Exhibit A  
10 (the "Products").

11 D. On or about July 23, 2001, DiPirro first served Bell and certain  
12 public enforcement agencies with a document entitled "60-Day Notice of Violation"  
13 which provided Bell and such public enforcers with notice that Bell was alleged to be in  
14 violation of the warning provisions of the California Safe Drinking Water and Toxic  
15 Enforcement Act (commonly known as "Proposition 65"), Health & Safety Code  
16 §25249.6, for allegedly failing to warn purchasers that certain products it sells in  
17 California allegedly expose users to the Listed Chemicals.

18 E. On or about October 4, 2001, DiPirro filed a complaint entitled  
19 Michael DiPirro v. The Bell Group, et al. in the Alameda County Superior Court, naming  
20 Bell as a defendant and alleging violations of the California Business & Professions Code  
21 §17200 and Proposition 65 ("Complaint").

22 F. On or about November 2, 2001, Bell asserts that it timely removed  
23 the action to the United States District Court for the Northern District of California  
24 (Oakland Division) pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. On or about January  
25 15, 2002, DiPirro filed a Notice of Motion and Motion to Remand the action back to the  
26 Alameda Superior Court. On or about April 4, 2002, the federal district court entered an  
27 order which granted Dipirro's motion to remand, but denied DiPirro's request for  
28

1 reimbursement of fees and costs.

2 G. DiPirro and Bell enter into this Consent Judgment as a full and final  
3 settlement of all claims that were raised in the Complaint, or which could have been raised  
4 in the Complaint, arising out of the facts or conduct alleged therein. By execution of this  
5 Consent Judgment and agreeing to provide the relief and remedies specified herein, Bell  
6 does not admit any violations of Proposition 65 or Business and Professions Code sections  
7 17200 *et seq.*, or any other law or legal duty, and specifically denies that it has committed  
8 any such violations. However, this paragraph shall not diminish or otherwise affect the  
9 obligations, responsibilities, and duties of the parties under this Consent Judgment.

10  
11 **AGREEMENT**

12 **NOW THEREFORE, MICHAEL DIPIRRO AND Bell AGREE AS FOLLOWS:**

13 1. **Product Warnings.** After receiving the “60 Day Notice of  
14 Violation”, Bell asserts that it began the process of ensuring that the sale of its Products in  
15 California contained the appropriate warning language. Bell agrees that for all solder  
16 products containing lead (or lead compounds) and cadmium and cadmium compounds,  
17 such Products will bear the following warning statement:

18 **WARNING: This product contains lead a**  
19 **chemical known to the State of**  
20 **California to cause cancer and birth**  
21 **defects (or other reproductive**  
22 **harm).**

23 *in the event the above solder product*  
24 Bell agrees, unless the formulation of the Products is changed such that a warning is no  
25 longer required, that, beginning June 15, 2002, it will not knowingly ship, or cause to be  
26 shipped, any Products containing the Listed Chemicals in the State of California unless  
27 such Products contain the warning set forth above. In order to be relieved of its duty to  
28 warn under this paragraph based on the reformulation of the Products, Bell must apply to  
the Court for a modification of the Consent Judgment. Bell shall provide DiPirro with  
thirty (30) days written notice of any such application to allow DiPirro to comment on the

1 application.

2 The warning statement shall be prominently placed on the Product's label  
3 (or given in accordance with any other acceptable method under Proposition 65's  
4 implementing regulations) with such conspicuousness, as compared with other words,  
5 statements, designs or devices on the label, as to render it likely to be read and understood  
6 by an ordinary individual under customary conditions of purchase. Nothing in this  
7 Consent Judgment requires that warnings be given for Products sold for use outside the  
8 State of California. Further, nothing in this Consent Judgment requires that Bell give  
9 Proposition 65 warnings for occupational exposures associated with any Product that is  
10 manufactured outside of the State of California, within the meaning of the June 6, 1997,  
11 U.S. Department of Labor, Occupational Safety and Health Administration, "Approval;  
12 California State Standard on Hazard Communication Incorporating Proposition 65," 62  
13 Federal Register 31159-81.

14 **2. Civil Fines Paid Pursuant To Health & Safety Code §25249.7(b).**

15 In light of the factors enumerated in Health & Safety Code §25249.7(b), Bell agrees to  
16 pay civil fines in the amount of \$15,000 ("Settlement Amount"). The Settlement Amount  
17 shall be paid within fifteen (15) calendar days of the Effective Date of this Agreement.  
18 The Settlement Amount is to be made payable to "Sheffer & Chanler In Trust For Michael  
19 DiPirro". If the Consent Judgment is not entered by the Court, DiPirro will return all  
20 funds, with interest thereon at the prevailing federal funds rate (currently set at 1.75%),  
21 within ten (10) calendar days of notice of the Court's decision. DiPirro shall remit 75% of  
22 the Settlement Amount to the State of California's Department of Toxic Substances  
23 Control.

24 **3. Reimbursement Of Fees And Costs.** As of the Effective Date of

25 this Agreement, the parties have not resolved the amount of fees and costs that DiPirro  
26 and his counsel claim they are entitled to receive for investigating, litigating and settling  
27 this matter in the public interest as well as for future efforts undertaken to seek judicial  
28

1 approval of the Agreement. In order to allow the parties to settle their dispute, the parties  
2 agree to resolve the fee and cost issue as an ancillary matter after the Effective Date of  
3 this Agreement. However, the parties do agree that, within ten (10) calendar days after  
4 this Agreement is fully executed (or within 5 calendar days of receiving certain fee and  
5 cost documentation, whichever is later), they will make a reasonable and good faith effort  
6 to negotiate DiPirro and his counsel's claim to reimbursement for attorneys fees and costs  
7 as governed by the principles of C.C.P. §1021.5.

8 If this additional 10-day negotiation period also proves unsuccessful, the  
9 parties agree that DiPirro and his counsel will move the superior court for the reasonable  
10 fees and costs they believe they are entitled to under C.C.P. § 1021.5 and that the Bell  
11 Group may, in its sole discretion, oppose the application as to the amount of (and  
12 categories appropriate for) such compensation.

13 As part of their fee and cost application, the parties expressly agree that  
14 DiPirro and his counsel are entitled to their reasonable fees and costs pursuant to C.C.P.  
15 §1021.5 (i.e., that the C.C.P. § 1021.5 statutory prerequisites for seeking reasonable fees  
16 and costs have been met). However, the parties acknowledge that the amount of (and  
17 categories appropriate for) such compensation are in dispute. Bell is preserving its  
18 argument that DiPirro and his counsel may not be entitled to compensation for certain  
19 categories of fees and costs, including without limitation, the fees and costs DiPirro  
20 claims for bringing its motion to remand.

21 **4. Michael DiPirro's Release Of Bell.** DiPirro, by this Agreement, on  
22 behalf of himself, his agents, representatives, attorneys, successors and assigns and in the  
23 interest of the general public, waives all rights to institute or participate in, directly or  
24 indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses,  
25 costs, expenses, fines and damages, against Bell and its distributors, suppliers,  
26 manufacturers, customers, directors, officers, employees, successors and assigns of each  
27 of them, whether under Proposition 65 or the Business & Profession Code §17200 et seq.

1 based on Bell's alleged failure to warn about exposure to the Listed Chemicals contained  
2 in any of the Products. The parties further agree and acknowledge, that this Consent  
3 Judgment is a full, final, and binding resolution of any violation of Proposition 65,  
4 Business & Professions Code sections 17200 *et seq.* that have been or could have been  
5 asserted in the Complaint against Bell for its alleged failure to provide clear and  
6 reasonable warnings of exposure to the Listed Chemicals to consumers from the use of the  
7 Products, or any other claim based on the facts or conduct alleged in the Complaint,  
8 whether based on actions committed by Bell or by any entity to whom they distribute or  
9 sell Products.

10 **5. Bell's Release Of Michael DiPirro.** Bell, by this Agreement,  
11 waives all rights to institute any form of legal action against Michael DiPirro or his  
12 attorneys or representatives, for all actions or statements made by Michael DiPirro, and  
13 his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or  
14 Business & Profession Code §17200 against Bell.

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

17 **7. Bell Sales Data.** Bell understands that the sales data provided to  
18 counsel for DiPirro by Bell was a material factor upon which DiPirro has relied to  
19 determine the amount of payments made pursuant to Health & Safety Code §25249.7(b)  
20 in this Agreement. To the best of Bell's knowledge, the sales data provided is true and  
21 accurate.

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

25 **9. Attorney's Fees.** In the event that a dispute arises with respect to  
26 any provision(s) of this Agreement (including, but not limited to, disputes arising from the  
27 payments to be made under this Agreement), the prevailing party shall be entitled to  
28

1 recover costs and reasonable attorneys' fees. This provision shall not apply to the fee and  
2 cost application referenced in paragraph 3, above, which is governed by the principles of  
3 C.C.P. § 1021.5.

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

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

7  
8 Clifford Chanler  
9 Sheffer & Chanler  
10 Magnolia Lane (off Huckleberry Hill)  
11 New Canaan, CT 06840  
12 (203) 966-9911

13 All correspondence to Bell shall be mailed to:

14 Chris M. Amantea, Esq.  
15 McDermott, Will & Emery, LLP  
16 2049 Century Park East,  
17 Suite 3400  
18 Los Angeles, CA 90067  
19 (310) 277-4110

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**13. 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.

**14. 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.

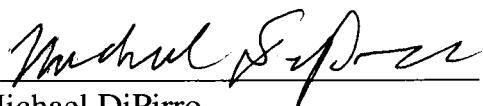
**15. Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement.

**AGREED TO:**

**AGREED TO:**

DATE: 6/5/02

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

  
Michael DiPirro  
PLAINTIFF


\_\_\_\_\_  
The Bell Group  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: 6/23/02

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

SHEFFER & CHANLER  
  
By: \_\_\_\_\_  
Clifford Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

MCDERMOTT, WILL & EMERY  
By: \_\_\_\_\_  
Chris M. Amantea  
Attorneys for Defendant  
THE BELL GROUP



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**13. 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.

**14. 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.

**15. Incorporation of Recitals.** The Recitals are hereby incorporated into this Agreement.

**AGREED TO:**

**AGREED TO:**

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

DATE: June 6, 2002

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

Andrea M. Heo  
The Bell Group  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

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

DATE: 6/10/02

SHEFFER & CHANLER

MCDERMOTT, WILL & EMERY

By: \_\_\_\_\_  
Clifford Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

By: Chris M. Amantea  
Chris M. Amantea  
Attorneys for Defendant  
THE BELL GROUP

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**Exhibit A**

- Solder, Rio Low Melt #750-120
- Solder, Rio Lo-Melt Paste #750-122
- Tix Solder, 20-3" Sticks #504-095
- Tix Solder, 60-3" Sticks #504-096