

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into between Michael DiPirro, a California citizen, and Binney & Smith, Inc., on or about January 15, 2001 (the "Effective Date").

WHEREAS:

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;

Binney & Smith, Inc. ("Binney") manufactures, distributes, markets, and/or sells, and may continue to distribute, market, and/or sell certain crayons (the "Products") in the State of California;

On or about May 26, 2000, Michael DiPirro, pursuant to Health & Safety Code § 25249.7(d) and 22 CCR § 12903, served Binney and all of the requisite public enforcement agencies with a document entitled "60-Day Notice." The 60-Day Notice provided Binney and the recipient public enforcers with notice that Binney was allegedly in violation of Proposition 65, California Health & Safety Code §§ 25249.5 *et seq.*, for allegedly failing to warn purchasers and others that the Products allegedly expose individuals in California to chemicals listed pursuant to Proposition 65, allegedly including asbestos and talc containing asbestiform fibers, ("Listed Chemicals").

On or about August 15, 2000, Michael DiPirro filed a complaint entitled *Michael DiPirro v. Binney & Smith, Inc., et al.* in the Alameda County Superior Court (Case No. H215002-6), naming Binney as defendant and alleging violations of Business & Professions Code §§17200 *et seq.* and Health & Safety Code §25249.6 on behalf of

individuals in California who may have been exposed to Listed Chemicals contained in or otherwise associated with use of Products (the "Complaint").

Binney denies all material allegations contained in the Complaint and avers that it has numerous affirmative defenses; however, to avoid the cost and expense of formal litigation of their respective positions, the parties have engaged in an informal discovery process, whereby they exchanged information concerning the Products. After assessing their respective positions, the parties engaged in arms length settlement discussions to attempt to resolve the claims raised in the Complaint without further litigation.

WHEREUPON, THE PARTIES NOW AGREE AS FOLLOWS:

Reformulation Commitment: Binney shall abide by the following schedule concerning reformulation of the Products:

Beginning immediately, Binney shall initiate or otherwise arrange for diligent efforts to be undertaken to revise the Product's formulations so as to completely eliminate the addition of talc containing asbestiform fibers or other material known to contain asbestos. As of the Effective Date, Binney shall not manufacture (or cause to be manufactured on its behalf) any of the Products which constitute the one hundred twenty (120) colors of the Products most frequently sold in the State of California unless each such Product has been manufactured so as to completely eliminate the addition of talc containing asbestiform fibers or other material known to contain asbestos ("Reformulated Product"). Within one hundred forty (140) calendar days of the Effective Date, Binney shall not manufacture (or cause to be manufactured on its behalf) any Product for sale or use in the State of California unless each such Product has been manufactured so as to constitute a Reformulated Product. Within two hundred (200) calendar days of the Effective Date, Binney shall cease shipment to California of any of the Products which constitute the twenty four (24) colors of the Products most frequently sold in California

unless each such Product constitutes a Reformulated Product. Within three hundred twenty (320) calendar days of the Effective Date, Binney shall cease shipment of any non-Reformulated Products to California.

Verification. Within fifteen (15) calendar days of each of the deadlines set forth above, Binney shall provide counsel to DiPirro with a written certification that it has satisfactorily complied with each such requirement.

Contribution of Talc-Free Products to Low Income Recipients. Within thirty (30) calendar days of the Effective Date, Binney shall donate forty thousand (40,000) non-talc containing washable classic broadline markers (grouped into 5,000 packages of eight) to the California Child Care Resource & Referral Network ("CCCRRN") and shall arrange delivery of such markers to CCCRRN or designees of CCCRRN which are day care providers serving low income families in California in accordance with whatever delivery schedule and addresses are established by CCCRRN. Binney shall also donate an additional forty thousand (40,000) Reformulated Products (grouped into 5000 packages of eight or into such number of larger packages as to constitute a total of at least 40,000 crayons) to CCCRRN within two hundred thirty (230) calendar days of the Effective Date and shall arrange delivery of such markers to CCCRRN or designees of CCCRRN which are day care providers serving low income families in California in accordance with whatever delivery schedule and addresses are established by CCCRRN.

Verification. Within fifteen (15) calendar days of each of the deadlines set forth above, Binney shall provide counsel to DiPirro with a written certification that it has satisfactorily complied with each such requirement.

Reimbursement of Fees and Costs. Within fifteen (15) calendar days of the Effective Date of this Agreement, Binney shall pay \$79,500 for investigation fees, attorneys' fees, and other costs incurred by Michael DiPirro and Michael DiPirro's legal counsel in this

matter. Such monies shall be held in trust by counsel for Michael DiPirro and will not be released until counsel for Binney is in receipt of an approved stipulated judgment incorporating the terms of this Agreement from the Alameda County Superior Court. Payment by Binney shall be made payable to "Chanler Law Group." In the event the court rejects this settlement, the amount paid by Binney shall be returned within five (5) calendar days of receipt of notice of the court's rejection.

The parties acknowledge that Michael 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 in further proceedings after the matter settled. Because of the defense costs involved with resolving it at a separate stage of the proceedings, Binney then expressed a desire to resolve the issue of reimbursement of Michael DiPirro's fees and costs concurrently with other settlement terms, so the parties reached an accord on the compensation to be paid to Michael DiPirro and his counsel under the private attorney general doctrine codified in C.C.P. § 1021.5.

Plaintiffs' Release. Michael DiPirro, by this Agreement, on behalf of himself, his agents and assignees, and acting in the public interest pursuant to Health and Safety Code §25249.7(d) with respect to all matters identified in the Notice Letters and on behalf of the general public pursuant to Business and Professions Code §17204, waives all rights to institute any form of legal action (and releases all claims) against Binney, its parent, affiliates, distributors, retailers, customers, successors, and assigns, whether under Proposition 65 or Business & Profession Code §§17200 *et seq.*, related to its alleged failure to warn about exposure to Listed Chemicals contained in, or otherwise associated with the use of, any of the Products.

Defendants' Release. Binney, 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 *et seq.* against Binney in this action.

Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement.

Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code Section 29249.7(f). If, as of the Effective Date, an approved form is available for use, such form shall be promptly completed and then sent to the California Attorney General's office, along with this Agreement, by certified mail, return receipt requested. If, on the other hand, an approved form is not available for use, Binney shall promptly send this Agreement to the California Attorney General's office by certified mail, return receipt requested, along with a cover letter stating that: "The attached Agreement is provided to you pursuant to Health & Safety Code Section 25249.7(f)." Exhibit A contains a statement by counsel that, consistent with this paragraph, the Agreement is being submitted concurrently to the California Attorney General's office with its presentation to the Alameda County Superior Court.

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:

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

All correspondence to Binney shall be mailed to:

Robert L. Falk, Esq.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482

No Admissions. Nothing in this Agreement shall constitute or be construed as an admission by Binney 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 Binney of any fact, finding, conclusion, issue of law, or violation of law. Binney 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 Binney under this Agreement.

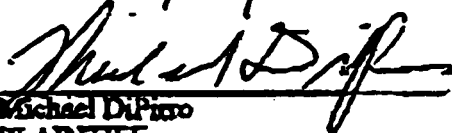
Counterparts/Facsimiles. This Agreement may be executed in counterparts and/or by means of facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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:

DATE:

1/20/01



Michael DiPietro
PLAINTIFF

AGREED TO:

DATE:

Mark Schwab,
President and CEO,
Binney & Smith, Inc.
DEFENDANT

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.

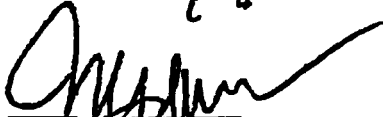
AGREED TO:

AGREED TO:

DATE: _____

DATE: 1/24/01

Michael DiPirro
PLAINTIFF



Mark Schwab,
President and CEO,
Binney & Smith, Inc.
DEFENDANT

Exhibit A

I, Robert L. Falk, as counsel for a party herein, hereby state that this Agreement was sent to the California Attorney General's office by certified mail, return receipt requested on January 24, 2001

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in San Francisco, California, this 24 day of January, 2001.