

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, ("DiPirro") and Campbell Hausfeld/Scott Fetzer Company, a Delaware corporation ("Campbell Hausfeld") as of October 31, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

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 exposures to hazardous substances produced by consumer and industrial products;

B. Campbell Hausfeld is a company that manufactures and distributes products, the customary use and application of which is alleged by DiPirro to produce fumes or gases which contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.) ("listed chemicals").;

C. The products whose customary use and application produce fumes or gases which are alleged by DiPirro to contain one or more of the listed chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products"). Some of the Products have been manufactured or distributed by Campbell Hausfeld for use in California since at least April 2, 1995;

D. On April 2, 1999, Michael DiPirro first served Campbell Hausfeld and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Campbell Hausfeld and such public enforcers with notice that Campbell Hausfeld was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that the use of certain products it sells in California expose users to listed chemicals;

E. On June 17, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Campbell Hausfeld Co., et al. (No. H207863-2) in the Alameda Superior Court, naming Campbell Hausfeld 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 listed chemicals from the customary use and application of the Products;

F. On July 22, 1999, Michael DiPirro filed an Amended Complaint in the same action; and

G. Campbell Hausfeld at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice, the Complaint and the Amended Complaint. Nothing in this Agreement shall be construed as an admission by Campbell Hausfeld 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 Campbell Hausfeld 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 Campbell Hausfeld under this Agreement.

NOW THEREFORE, MICHAEL DiPIRRO AND CAMPBELL HAUSFELD AGREE AS FOLLOWS:

1. **Product Warnings.** Beginning on the date of Entry of the Stipulated Judgment herein, Campbell Hausfeld shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Campbell Hausfeld agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable. Following 60 days from the Entry of the Stipulated Judgment, Campbell Hausfeld agrees that it shall not distribute or sell any of the Products for sale or use in the State of California unless each such Product is accompanied by a Revised Label on or affixed to the Product (or its packaging) with the following statement:

For Products which produce fumes or gases that contain a chemical listed by the State of California as known to cause cancer:

"WARNING: This product, when used for welding and similar applications, produces a chemical known to the State of California to cause cancer."

or

"WARNING: This product contains or produces a chemical known to the State of California to cause cancer. (California Health & Safety Code §25249.5 et seq.)";

For Products the use of which produces fumes or gases that contain a chemical listed by the State of California as known to cause birth defects (or other reproductive harm):

"WARNING: This product, when used for welding and similar applications, produces a chemical known to the State of California to cause birth defects (or other reproductive harm)";

or

"WARNING: This product contains or produces a chemical known to the State of California to cause birth defects or other reproductive harm. (California Health & Safety Code §25249.5 et seq.)";

For Products the use of which produces fumes or gases that may contain any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm):

"WARNING: This product, when used for welding, contains or produces fumes or gases which contain chemicals known to the State of California to cause birth defects (or other reproductive harm), and in some cases, cancer. (California Health & Safety Code §25249.5 et seq.)";

or

"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 (or other reproductive harm), and in some

cases, cancer. (California Health & Safety Code §25249.5 et seq.)”;

or

“WARNING: This product contains or produces chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm). (California Health & Safety Code §25249.5 et seq.).”

The warning statement shall be prominent and displayed at the point of sale 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. For purposes of complying with this paragraph, an owner’s manual is not to be considered as product packaging. However, Campbell Hausfeld may elect to place a Proposition 65 warning in the owner’s manual as well as on its product packaging.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Campbell Hausfeld shall pay, within five (5) days of the Entry of Stipulated Judgment herein, a civil penalty of \$8,000. Payment of the penalties shall be made payable to the “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. Within five (5) days of the Entry of Stipulated Judgment herein, Campbell Hausfeld shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys’ fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Campbell Hausfeld’s attention, litigating and negotiating a settlement in the public interest. Campbell Hausfeld shall pay: \$9,000 for pre-notice investigation fees; \$850 for expert, investigation and litigation costs; and \$12,150 in attorneys’ and post-notice investigation fees. Payment shall be made payable to the “Chanler Law Group”.

4. DiPirro's Release Of Campbell Hausfeld. DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the people of the State of California on whose behalf this action was brought, waives all rights to institute any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, damages, losses, costs or expenses (including attorneys' fees and costs) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims") against Campbell Hausfeld and its parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them), distributors and retailers and their respective officers, directors, attorneys, representatives, agents and employees (collectively, "Campbell Hausfeld"), including, but not limited to, Claims arising under Proposition 65 or Business & Profession Code §§17200 et seq., related to Campbell Hausfeld's alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may be produced in fumes or gases resulting from customary use and application of the Products. It is specifically understood that Campbell Hausfeld's compliance with the terms of this Agreement resolves all issues, now and in the future, concerning the Campbell Hausfeld Releasees' past compliance with the requirements of Proposition 65, Business and Professions Code §§17200 et seq., or any other Claims arising from Campbell Hausfeld's alleged failure to comply with Proposition 65 in connection with the Products, occurring on or before the Effective Date.

5. Campbell Hausfeld's Release Of Michael DiPirro.

Campbell Hausfeld, by this Agreement, waives all rights to institute any form of legal action against 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 Campbell Hausfeld.

6. DiPirro's Release of "Downstream Parties." DiPirro, on behalf of himself, his agents and/or assignees, and the People of the State of California on whose behalf this action was brought, further waives all rights to institute any form of legal action and releases all Claims against each distributor, wholesaler, retailer, dealer, owner, operator, lessor, lessee or user of the Products or

any of their respective parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, agents and employees (collectively, "Downstream Parties") related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may be produced in fumes or gases resulting from customary use or application of the Products.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, DiPirro and Campbell Hausfeld shall execute and file a Stipulated Judgment to be approved pursuant to CCP §664.6 by the Alameda Superior Court in accordance with the terms of this Agreement ("Stipulated Judgment"). If, for any reason, the Stipulated Judgment is not approved by the Court, this Agreement shall be deemed null and void.

8. Product Characterization. Campbell Hausfeld acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products may when used produce fumes, gases or dust that contain one or more substances known to the State of California to cause cancer or birth defects (or other reproductive harm). In the event that Campbell Hausfeld 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), Campbell Hausfeld shall provide DiPirro with 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 thirty (30) days of receipt of Campbell Hausfeld's Exposure Data, DiPirro shall provide Campbell Hausfeld 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 Campbell Hausfeld written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Campbell Hausfeld's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Campbell Hausfeld 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 Campbell Hausfeld of his intent to challenge the

Exposure Data, DiPirro and Campbell Hausfeld shall negotiate in good faith to attempt to reach a settlement.

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. Attorneys' Fees In The Event Of A Dispute. 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 DiPirro shall be mailed to:

Hudson Bair, Esq.
Bruce Kapsack, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612

and

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

All correspondence to Campbell Hausfeld shall be mailed to:

Robert B. Leck III, Esq.
Maloney, Mullen & Leck, LLP
520 Broadway, Suite 300
Santa Monica, CA 90401

13. 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.

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.

AGREED TO:

AGREED TO:

DATE:

11/2/99

DATE:



MICHAEL DIPIRRO
Plaintiff

CAMPBELL HAUSFELD/SCOTT
FETZER COMPANY
Defendant

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DATE: _____

DATE: _____

MICHAEL DiPIRRO
Plaintiff



CAMPBELL HAUSEFELD/SCOTT
FETZER COMPANY
Defendant

Exhibit A

EXHIBIT A

MIG Wire

Flux Core Wire

Welding Rods

Brazing Rods

MIG Welders

Flux Core Wire Welders

Arc Welders

Oxy-Acetylene Kit

Shielding Gas