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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Century Manufacturing Co., a Minnesota corporation ("Century"), as of June 18, 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. Century Manufacturing Co. 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"). The Products have been manufactured and distributed by Century for use in California since at least October 15, 1994; and

D. On October 15, 1998, Michael DiPirro first served Century and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Century and such public enforcers with notice that Century 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; and

E. On March 30, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Century Manufacturing Co., et al. (No. 302339) in the San Francisco Superior Court, naming Century 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; and

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

NOW THEREFORE, MICHAEL DiPIRRO AND CENTURY AGREE AS FOLLOWS:

1. **Product Warnings.** Beginning on the date of Entry of the Stipulated Judgment herein, Century shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Century 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, Century 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 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 contains or produces a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm). (California Health & Safety Code §25249.5 et seq.)";

or

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

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, Century 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), Century shall pay, within five (5) days of the Entry of Stipulated Judgement herein, a civil penalty of \$13,000. 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 Judgement herein, Century 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 Century's attention, litigating and negotiating a settlement in the public interest. Century shall pay: \$9,000 for pre-notice investigation fees; \$850 for expert, investigation and litigation costs; and \$12,250 in attorneys' and post-notice investigation fees. Payment shall be made payable to the "Chanler Law Group".

4. **DiPirro's Release Of Century.** DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, waives all rights to institute any form of legal action and releases all claims against Century and its officers, directors,

employees, agents, parents, affiliates, distributors and retailers, whether under Proposition 65 or Business & Profession Code §§17200, related to Century's alleged failure to warn about exposure to lead (and lead compounds), nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide from the customary use and application of the Products.

5. **Century's Release Of Michael DiPirro.** Century, 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 Century.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Century shall execute and file a Stipulated Judgment to be approved pursuant to CCP §664.6 by the San Francisco 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.

7. **Product Characterization.** Century 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 Century 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), Century 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 Century's Exposure Data, DiPirro shall provide Century 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 Century written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Century's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Century 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 Century of his intent to challenge the Exposure Data, DiPirro and Century shall negotiate in good faith to attempt to reach a settlement.

8. 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.

9. 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.

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

11. Notices. All correspondence to DiPirro shall be mailed to:

Hudson Bair, Esq.
Bruce Kapsack, Esq.
Kapsack & Bair, LLP
353 Sacramento Street, Suite 1800
San Francisco, CA 94111

and

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

All correspondence to Century shall be mailed to:

Robert D. Wyatt, Esq.
Beveridge & Diamond, LLP
One Sansome Street, Suite 3400
San Francisco, CA 94104

12. 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.

13. 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: 6/24/99

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Century Manufacturing Co.
DEFENDANT

AGREED TO:

AGREED TO:

DATE: _____

DATE: 6/24/99

Michael DiPirro
PLAINTIFF

Debra Bennett VP Finance
Century Manufacturing Co.
DEFENDANT

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Exhibit A

Welding Equipment

MIG Welders
Arc Welders (electric and engine driven)
Wire Feed Welders
Plasma Cutting Equipment
TIG Welding Equipment
Gas Welding & Cutting Kits
Spot Welders
Stud (PIN) welders
Dent Pullers
Arc Stabilizers
Soldering Products

Welding Accessories

Welding Rod
Welding Wire
Brazing Rod & Filler Rod
Solder
Abrasives
Brushes
Files
Fluxes and other welding chemicals
Welding & Cutting Torches
Consumable Electrodes and Nozzles