

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Michael DiPirro, a California citizen (“DiPirro”), and Custom Accessories, Inc., an Illinois corporation (“Custom”), as of December 7, 1999 (the “Effective Date”). The parties agree to the following terms and conditions:

WHEREAS:

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

B. DiPirro alleges that Custom is a company that distributes (i) adhesive products that contain toluene, a substance known to the State of California to cause reproductive toxicity (the “Adhesives”), and (ii) a soldering iron (the “Soldering Iron”) and lead-containing solder rosin (the “Solder”) that, when used in a normal and foreseeable manner, cause exposure to lead, a substance known to the State of California to cause cancer and reproductive toxicity;

C. A list of Custom’s products that are covered by this Agreement is provided in Exhibit A. The Adhesives have been distributed by Custom for use in California since at least 1989, and the Soldering Iron and Solder have been distributed by Custom for use in California since at least 1998; and

D. On August 4, 1999, DiPirro first served Custom and all of the requisite public enforcement agencies with a document entitled “60-Day Notice” (the “Initial Notice”) which provided Custom and such public enforcers with notice that Custom was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that the Adhesives and the Soldering Iron it sells in California expose users to Proposition 65-listed chemicals; and

E. On September 27, 1999, DiPirro served Custom and all of the requisite public enforcement agencies with a document entitled “Supplemental 60-Day Notice” (the “Supplemental Notice” and together with the Initial Notice, collectively, the “60-Day Notice”), which provided Custom and such public enforcers with notice that Custom was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that the Adhesives, the Soldering Iron, and the Solder it sells in California expose users to Proposition 65-listed chemicals; and

F. On October 14, 1999, DiPirro filed a complaint entitled Michael DiPirro v. Custom Accessories, Inc., et al. (No. H209864-9) (the “Complaint”) in the Alameda Superior Court, naming Custom as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 with respect to the Adhesives and the Soldering Iron, on behalf of individuals in California who allegedly have been exposed to chemicals listed pursuant to Proposition 65 contained in certain Custom products.

G. Custom 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 Custom of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Custom 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 Custom under this Agreement.

NOW THEREFORE, DIPIRRO AND CUSTOM AGREE AS FOLLOWS:

1. **Product Warnings.** Custom agrees to initiate revisions to its health hazard warnings for its products to provide the language set forth in the Sections 1.1, 1.2, and 1.3 below (as applicable) immediately. Beginning on the Effective Date, Custom agrees that it will not knowingly ship (or cause to be shipped) any of its products for sale in the State of California unless such products comply with Section 1.1, 1.2, and 1.3 below, as applicable:

1.1 For each of the products containing toluene, such product shall bear the following warning statement on its label:

“WARNING: This product contains toluene, a chemical known to the State of California to cause birth defects or other reproductive harm.”

1.2 For each of the products containing lead, such product shall bear the following warning statement on its label:

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”

1.3 For each of the products causing exposure to lead, such product shall bear the following warning statement on its label:

“WARNING: The use of this product is likely to cause exposure to 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 on the package in which the product is sold 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.

2. **Payment Pursuant To Health and Safety §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Custom shall pay, within ten (10) days of the Effective Date of this Agreement, a civil penalty of \$5,000.00 (the “Initial Penalty”). If, by December 1, 2000, Custom continues to distribute in the State of California either (i) the toluene-containing Adhesives or (ii)

the lead-containing Solder, Custom shall pay a civil penalty of \$4,000.00 (the "Second Penalty" and together with the Initial Penalty, collectively, the "Penalties"). If Custom elects to discontinue its distribution into California of the toluene-containing Adhesives and the lead-containing Solder (the "Reformulation Option"), Custom will notify DiPirro of such election on or before December 8, 2000. If Custom does not elect the Reformulation Option, Custom shall pay the Second Penalty on or before December 15, 2000. Payment of the Penalties shall be made payable to the "Chanler Law Group In Trust For Michael DiPirro." All 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 ten (10) days of the Effective Date of this Agreement, Custom shall reimburse DiPirro for his investigation fees and costs, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Custom's attention, litigating and negotiating a settlement in the public interest, as follows: Custom shall pay \$9,000.00 for pre-notice investigation fees; and \$8,700.00 in attorneys' and post-notice investigation fees and costs. ("Attorneys' fees and costs" shall include, without limitation, all fees and costs incurred by DiPirro's counsel in the preparation, review and filing of all correspondence, notices, pleadings, and discovery, negotiations related to this matter, and the preparation and review of all settlement related documents, and any fees and costs incurred for similar activities with respect to DiPirro's enforcement actions against any of Custom's downstream retailers or customers or Custom's upstream distributors or suppliers, and any other related parties). Payment shall be made payable to the "Chanler Law Group."

4. **DiPirro's Release Of Custom.** 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 Custom and its distributors, downstream customers, upstream suppliers and manufacturers, agents and retailers, whether under Proposition 65 or Business & Profession Code §17200 et seq. and/or any other statute, related to Custom's alleged failure to warn about exposure to toluene or lead contained in, or fumes produced through the normal and foreseeable use of, any of Custom's products listed in Exhibit A.

6. **Custom's Release Of DiPirro.** Custom, 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 DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200 et seq. against Custom.

7. **Releases.** Custom and DiPirro (in his individual capacity and not in his representative capacity) are fully informed of California Civil Code Section 1542, which states as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor.

Having been fully informed of the provisions of California Civil Code Section 1542, Custom and DiPirro (in his individual capacity and not in his representative capacity) nevertheless hereby waive any rights they may have to dispute the scope of this Agreement or the scope of the releases provided in paragraphs 5 and 6 of this Agreement on the grounds of California Civil Code Section 1542, and expressly include within the scope of the releases provided in paragraphs 5 and 6 of this Agreement any claims which are not known to any of the parties to this Agreement.

8. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Custom 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. If for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void.

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. **Attorney's 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:

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

All correspondence to Custom shall be mailed to:

Norman L. Matthew
Custom Accessories, Inc.
6440 West Howard
Niles, IL 60714

Peter Hsiao
Scott McPhee
Morrison & Foerster, LLP
555 W. Fifth Street, Suite 3500
Los Angeles, CA 90013-1024

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, understand and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: _____

DATE: 12/10/99 _____

By: _____
DiPirro
PLAINTIFF

By: [Signature] Ex. Vice President
Custom Accessories, Inc.
DEFENDANT

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, understand and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE:

12/8/99

DATE:

By:

Mark DiPirro

DiPirro

PLAINTIFF

By:

Custom Accessories, Inc.
DEFENDANT

Exhibit A

EXHIBIT A

1. Custom's "Master Tire Repair Rubber Cement" products.
2. Custom's "Electro-Tek Soldering Iron" products.
3. Custom's "Electro-Tek Solder" products.