

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Duncan Enterprises, Inc., a California corporation ("Duncan"), as of December 1, 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 hazardous substances contained in (or produced by) consumer and industrial products; and

B. Duncan is a company that manufactures, distributes and/or sells products in the State of California that allegedly contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§ 25249.5 et seq.) ("listed chemicals"); and

C. This Agreement covers all products manufactured, distributed and/or sold by Duncan that contain one or more of the Proposition 65-listed chemicals ("Products"). Some of Duncan's Products have been manufactured, distributed and/or sold by Duncan for use in California since at least August 4, 1995; and

D. On or about August 4, 1999 and thereafter, Michael DiPirro served Duncan and the requisite public enforcement agencies with documents entitled "60-Day Notice" which provided Duncan and such public enforcers with notice that Duncan was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it manufactures or sells in California expose users to Proposition 65-listed chemicals ("Notice Letters"); and

E. On October 12, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Duncan Enterprises, et al. (No. H209802-9) in the Alameda Superior Court, naming Duncan 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 contained in Duncan's Products; and

F. On November 18, 1999, Michael DiPirro filed a separate complaint entitled Michael DiPirro v. Duncan Enterprises, et al. (No. H210490-8) in the Alameda Superior Court, naming Duncan 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 contained in Duncan's Products (the October 12, 1999 complaint and November 18, 1999 complaint are collectively referred to herein as the "Actions"); and

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

NOW THEREFORE, MICHAEL DIPIRRO AND DUNCAN AGREE AS FOLLOWS:

1.0. Product Warnings. Beginning immediately, Duncan shall initiate efforts to revise its current product labels or packaging for the Products consistent with this Agreement and the language in paragraphs 1.A, 1.B or 1.C, below ("Revised Labels"). Duncan 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 by October 15, 2000. Duncan agrees that as of October 15, 2000, it shall not distribute or sell any of its 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 appropriate following statement:

A. For products that contain lead, the warning shall state:

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

B. For products that contain crystalline silica, the warning shall state:

"WARNING: This product contains crystalline silica, a chemical known to the State of California to cause cancer";

C. For products that contain both lead and crystalline silica, the warning shall state:

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)".

The warning statement shall be prominent and displayed 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.

1.1 Warning Labels for Products Already In The Stream of Commerce.

The parties agree and acknowledge that an unknown volume of Products were introduced into the "stream of commerce" before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the listed chemicals in or from these "in commerce" Products, Duncan shall, by March 1, 2000, provide Interim Warning Materials to its 10 distributors which Duncan knows or has reason to believe currently distribute or sell its Products in California. Such "Interim Warning Materials" shall include the following: (a) a total of 500 warning stickers to each distributor bearing the language set forth in paragraph 1.0 above (Duncan shall use reasonable effort to supply appropriate stickers considering the products that each distributor markets in California); (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgment form that the above materials have been received to be signed by the customer and returned to Duncan. The Interim Warning Materials warning stickers need not be placed on products which have labels bearing language similar to the following: "This product contains Lead Compounds, Chemicals known to the State of California to cause cancer and reproductive toxicity."

2. Payment Pursuant To Health & Safety Code § 25249.7(b). Pursuant to Health & Safety Code § 25249.7(b), Duncan shall pay a civil penalty of \$58,000 in three installments. The first payment of \$8,000 shall be made on or before December 15, 1999. A second payment of \$40,000 shall be due on November 15, 2000. However, \$10,000 of the second payment shall be waived for each glaze Product that Duncan reformulates so as to remove the lead from such product or cancels the manufacture of by November 1, 2000. Certification of the reformulation or cancellation of Duncan's Products must be

provided to DiPirro by November 8, 2000. A third payment of \$10,000 shall be due on November 15, 2001. However, \$5,000 of the third payment shall be waived for each glaze Product that Duncan reformulates so as to remove the lead from or cancels the manufacture of such product by November 1, 2001. Certification of the reformulation or cancellation of Duncan's glaze Products must be provided to DiPirro by November 8, 2001. If four glaze Products are reformulated to remove lead or are cancelled by November 1, 2000, then the entire \$40,000 second payment shall be waived. If two more glaze Products are reformulated to remove the lead or cancelled by November 1, 2001, then the entire \$10,000 third payment shall be waived. For each glaze Product Duncan reformulates or discontinues, Duncan may not introduce a new lead-containing glaze Product into California for one (1) year from the time Duncan provides certification of the reformulation or cancellation. The penalty payments are to be made payable to "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 ("DTSC"). DiPirro shall provide Duncan proof that such funds were remitted to the DTSC with thirty (30) days of receipt by Chanler. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to Duncan within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

3. Reimbursement Of Fees And Costs. On or before December 15, 1999, Duncan 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 Duncan's attention, litigating and negotiating a settlement in the public interest. Duncan shall pay: \$9,000 for pre-notice investigation fees; \$875.00 for expert, investigation and litigation costs; and \$14,240.00 in attorneys' and post-notice investigation fees, for a total payment of \$24,115. Payment of this \$24,115 should be made payable to the "Chanler Law Group". In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to Duncan within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

4. Release Of Claims. In consideration for the payments and other actions required by this Agreement, Plaintiff DiPirro, individually, as well as on behalf of any successors, predecessors, agents, representatives, executors, descendants, dependents, heirs, assignors and assignees, and as representative of the People of the State of California, regarding the subject matter of this Agreement does by this instrument fully and forever remise, release, and discharge Duncan as well as its distributors, resellers, sales representatives, attorneys, successors, predecessors, agents, representatives, heirs and assignees from ANY AND ALL sums of money, penalties, accounts, claims (including but not limited to claims for damages, penalties, equitable relief, expert or attorneys' fees), demands, contracts, actions, debts, controversies, agreements, liabilities, obligations, damages, and causes of action whatsoever, of whatever kind or nature, whether known or unknown, fixed or contingent, or suspected or unsuspected by them, which any of them now owns, holds, has, or claims to have, or at any prior time owned, held, had, or claimed to have, or which any of them may come to own, hold, have, or claim to have against Duncan as a result of the Products which are in the stream of commerce or which may be put into the stream of commerce until October 15, 2000 (collectively, the "Claim" or "Claims"). This includes any and all Claims connected with this Agreement, and/or otherwise arising out of or relating in any way to the specific allegations in the Notice Letters and/or the Actions and including Claims that were or could have been asserted whether suspected or unsuspected, known or unknown, anticipated or not anticipated, actual or contingent, or that otherwise arise under Proposition 65 or the Business and Professions Code §§ 17200 et seq., that relate to or arise out of the actions and/or inactions of Duncan in allegedly, without providing a prior warning, exposing persons or individuals, causing persons or individuals to be exposed, or failing to warn any persons or individuals about exposures to chemicals listed under Proposition 65 from the use of the Products. The Plaintiff understands, acknowledges, and agrees that Duncan may use this Release to plead as a full and complete defense to any claim, demand, action, or other proceeding which may in the future be brought by him, on his own behalf, or on behalf of the People of the State of California, relating to Claims released in this Agreement.

4.1 To the fullest extent permissible by law, Plaintiff, on his own behalf and on behalf of the People of the State of California, hereby expressly waives and relinquishes any rights or benefits which any of them had, now has or may have in the future as to those matters specifically set forth in the Notice Letters and in the Actions.

5. **Duncan's Release Of Michael DiPirro.** Duncan, 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 et seq. against Duncan.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Duncan shall execute and file a stipulated judgment to be approved pursuant to California Code of Civil Procedure § 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. On or before December 13, 1999, Plaintiff will dismiss his November 18, 1999 complaint with prejudice and provide notice of such dismissal to Duncan.

7. **Binding Effect.** This Agreement shall inure to the benefit of, and shall be binding upon, the Parties and their agents, employees, officers, directors, attorneys, representatives, successors, heirs, shareholders, representatives, alter egos, parent companies, partners, joint ventures, affiliates, subsidiaries, divisions, legal predecessors, licensees, assigns and any trustee or other officer appointed in the event of bankruptcy.

8. **No Previous Assignment.** Plaintiff expressly represents and warrants that he has not previously assigned, transferred, hypothecated, or purported to assign or transfer, to any third party any Claim released herein.

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:

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
New Canaan, CT 06840-3801

All correspondence to Duncan shall be mailed to:

Malcolm C. Weiss, Esq.
Jeffer, Mangels, Butler & Marmaro, LLP
2121 Avenue of the Stars
Los Angeles, CA 90067-5010

and

Tom Hinds
Duncan Enterprises
5673 East Shields Avenue
Fresno, CA 93727

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.

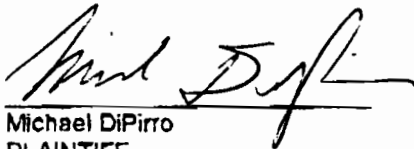
14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: 12/2/99

DATE: _____


Michael DiPirro
PLAINTIFF

Duncan Enterprises
DEFENDANT

Tom Hinds
Duncan Enterprises
5673 East Shields Avenue
Fresno, CA 93727

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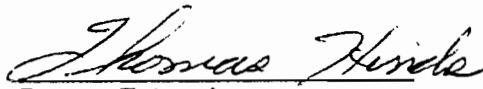
AGREED TO:

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DATE: _____

DATE: 12/2/99

Michael DiPirro
PLAINTIFF



Duncan Enterprises
DEFENDANT

Exhibit A

EXHIBIT A

Glazes