

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Triton Industries, Inc. dba Esico-Triton ("Esico-Triton"), as of May 28, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. DiPirro is an individual residing in California who seeks to promote awareness of exposures of toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products;

B. Esico-Triton is a company that manufactures and distributes solder pots, soldering irons and soldering tips. DiPirro alleges that this equipment, when used in a reasonable and foreseeable manner, exposes users to lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm). Esico-Triton disputes this allegation.

C. A list of the products covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured, distributed or sold by Esico-Triton for use in California since at least September 15, 1998;

D. On September 15, 1998, DiPirro first served Esico-Triton and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided such public enforcers with notice that the companies were allegedly in violation of Health & Safety Code section 25249.6 for failing to warn purchasers that certain products it sells in California, when used in a reasonable and foreseeable manner, exposes users to Proposition 65-listed chemicals;

E. On February 1, 1999, DiPirro filed a complaint entitled Michael DiPirro v. Esico-Triton, Case No. H205536-1, in the Alameda Superior Court, naming Esico-Triton as a defendant and alleging violations of Business & Professions Code section 17200 and Health & Safety Code section 25249.6 on behalf of individuals in California who allegedly have been exposed without adequate warnings to lead from the use of Esico-Triton's products;

F. Esico-Triton at all times has denied 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 Esico-Triton of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Esico-Triton 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 Esico-Triton under this Agreement.

G. The Parties now wish to settle the dispute.

NOW THEREFORE, DIPIRRO AND ESICO-TRITON AGREE AS FOLLOWS:

1. Product Warnings. Esico-Triton has already revised its label for soldering tips to provide a warning which states:

“California Proposition 65: This product, in normal use, is likely to expose the user to lead, a chemical known in the State of California to cause cancer, birth defects, and other reproductive harm.”

Esico-Triton acknowledges that DiPirro’s position is that the warning does not fully comply with Proposition 65 warning requirements.

Esico-Triton agrees that it will not knowingly ship (or cause to be shipped) any Product into California unless said Product complies with section 1.1 below:

1.1 Esico-Triton Products shall bear the following warning statement on the product or product label within 180 days of the Effective Date of this Agreement:

“WARNING: Normal use of this Product is likely to expose the user to lead, a chemical known in the State of California to cause cancer and birth defects (or other reproductive harm), or exposure to other Proposition 65 chemicals.”

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.

2. Interim Warnings. Within the next thirty days following the Effective Date of this Agreement, Esico-Triton agrees to alert each of its California customers in writing of their duty to transfer the requisite toxic warnings to downstream users of the Products. A copy of this notice is attached as Exhibit B. Esico-Triton agrees that it will send a sufficient number of warning slips or labels that contain the language set forth in section 1.1 above, so that the customers can provide the warning with Products already in the stream of commerce.

3. Payment Pursuant to Health & Safety Code Section 25249.7(b). Pursuant to Health & Safety Code section 25249.7(b), Esico-Triton shall pay a civil penalty of \$2,000.00. The payment shall be paid within ten (10) calendar days after the Effective Date of the Agreement and 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 section 25192, with 75% of these funds remitted to the State of California Department of Toxic Substances.

4. Reimbursement Of Fees and Costs. Within ten (10) calendar days of the Effective Date of the Agreement, Esico-Triton shall reimburse DiPirro for his investigation, expert and attorneys' fees and costs incurred as a result of investigating, bringing this matter to Esico-Triton's attention, litigating and negotiating a settlement in the public interest. Esico-Triton shall pay: \$9,000.00 for pre-notice investigation fees; \$100.00 for expert, investigation and litigation costs; and \$100.00 in attorneys' and post-notice investigation fees. Payment should be made payable to "Chanler Law Group."

5. DiPirro's Release. DiPirro, by this agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute and participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Esico-Triton and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Professions Code section 17200 et seq. based on Esico-Triton's failure to warn about exposure to lead from the normal and foreseeable use of the Products.

6. Esico-Triton's Release. Esico-Triton, 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 & Professions Code section 17200 against Esico-Triton.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, DiPirro and Esico-Triton shall execute and file a stipulated judgment to be approved pursuant to C.C.P. section 664.6 by the Alameda Superior Court in accordance with the terms of this Agreement. Approval of the judgment is a material term of this Agreement. If the stipulated judgment is not approved and entered, this Agreement is null and void and DiPirro shall return all monies paid to it by Esico-Triton as settlement, including any reimbursement of attorneys fees and costs.

8. Esico-Triton Sales Data. Esico-Triton understands that the sales data provided to counsel for DiPirro by Esico-Triton was a material factor upon which DiPirro has relied to determine the amount of penalties in this Agreement. To the best of Esico-Triton's knowledge, the sales data provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, DiPirro shall have the right to rescind this Agreement and re-institute an enforcement action against Esico-Triton within ten (10) days from the date on which DiPirro notifies Esico-Triton of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Esico-Triton that he is rescinding this Agreement pursuant to this Paragraph, provided that, in no event shall any statute of limitation be tolled beyond four (4) years from the date this action was filed.

9. Change In Law. In the event that any law, rule, regulation, or final decision of any legislative, judicial or executive body with jurisdiction becomes effective or is entered which renders the warning provisions described under Section 1.1 unnecessary to comply with applicable laws, Esico-Triton, at its option, cease providing such warnings on or with its Products, to the extent provided by such change in law, rule, regulation, or final decision, of any legislative, judicial, or executive body.

10. 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 effected.

11. Attorney's 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.

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

13. 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 Esico-Triton shall be mailed to:

Jack L. Spangler
President
ESICO-TRITON
Triton Industries, Inc.
112 West Elm Street
Deep River, CT 06417-0247

With a copy to:

Gregory J. Patterson, Esq.
PROSKAUER ROSE LLP
2049 Century Park East
32nd Floor
Los Angeles, California 90067

14. **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.

15. **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: 5/28/99


Michael DiPirro

AGREED TO:

DATE: _____

Triton Industries, Inc. dba Esico-Triton

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AGREED TO:

AGREED TO:

DATE: _____

DATE: 6-7-99

Michael DiPiro

Manish M. Oberoi
Triton Industries, Inc. dba Esico Triton

Exhibit A

ENDORSED
FILED
ALAMEDA COUNTY

JUN 14 1999

RONALD G. OVERHOLT, Exec. Off./Clerk

By *M. Rosales*

1 Gregory J. Patterson, State Bar No. 136665
2 PROSKAUER ROSE LLP
3 2049 Century Park East
4 Suite 3200
5 Los Angeles, California 90067-3206
6 Telephone: 310-557-2900
7 Facsimile: 310-557-2193

8 Attorneys for Defendant TRITON INDUSTRIES, INC., dba ESICO-TRITON

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA

11 MICHAEL DIPIRRO,

12 Plaintiff,

13 v.

14 ESICO-TRITON; and DOES 1 through 1000,

15 Defendants.

) Case No.: H205536-1

) STIPULATION FOR ENTRY
) OF JUDGMENT

16
17 IT IS HEREBY STIPULATED, by and between Plaintiff Michael Dipirro and Defendant
18 Triton Industries, Inc. dba Esico-Triton, through their respective representatives, that judgment
19 in the above-entitled action be entered in accordance with the Settlement Agreement between the
20 parties, which is attached hereto as Exhibit A.

21 DATED: June 2nd 1999

CHANLER LAW GROUP

22 By *Cliff Chanler*

23 Clifford A. Chanler

24 Attorneys for Plaintiff, MICHAEL DIPIRRO

25 DATED: June 7th 1999

PROSKAUER ROSE LLP

26 By *Gregory J. Patterson*

27 Gregory J. Patterson

28 Attorneys for Defendant TRITON INDUSTRIES,
INC., dba ESICO-TRITON

Exhibit A

EXHIBIT A

Solder Pots, Soldering Irons and Other Soldering Equipment Used To Process Solder Containing Lead.

Soldering Tips and Resistant Soldering Tools.

Exhibit B

EXHIBIT B

IMPORTANT NOTICE

This letter is to advise you that Esico-Triton has begun to provide warnings with its products to ensure compliance with California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"). This warning is intended to provide a clear and reasonable warning that an operator using certain Esico-Triton products in their normal manner is likely to be exposed to lead or to other chemicals known to the State of California to cause cancer and/or birth defects (or other reproductive harm).

Although Esico-Triton has begun the process of labeling or otherwise providing a warning with its products, you may have already in your possession certain products that were manufactured and distributed before the new labeling was implemented. Included with this letter are stickers which should be placed on Esico-Triton products which are already in the stream of commerce.

Please contact Esico-Triton, if you require additional stickers or Warning and Instruction Slips.