

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Gare, Inc., a Massachusetts corporation ("Gare"), as of April 13, 2001, (the "Effective Date"). The parties agree to the following terms and conditions:

Recitals

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

C. The products that contain one or more of the listed chemicals and which are covered by this Agreement and have been manufactured, distributed and/or sold by Gare for use in California are set forth in Exhibit A (the "Products"); and

D. On May 1, 2000, Michael DiPirro served Gare and all of the requisite public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided Gare and such public enforcers with notice that Gare was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals not included in the initial 60 Day Notice; and

E. Gare at all times denied and denies the material factual and legal allegations contained in the Supplemental 60-Day Notice and nothing in this Agreement shall be construed as an admission by Gare 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 Gare 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 Gare under this Agreement.

Agreement

NOW THEREFORE, MICHAEL DIPIRRO AND GARE AGREE AS FOLLOWS:

1.0. Product Warnings. Beginning immediately, Gare shall initiate efforts to revise its current product, packaging and/or labels for the Products to provide the warnings consistent with this Agreement ("Revised Labels"). For purposes of this Agreement the term "Covered Products" shall mean Products which contain Proposition 65 listed chemicals which are known to be present in an amount sufficient to require: (i) a health warning under the Labeling for Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. 1277, *et seq.*; (ii) listing on a Material Safety Data Sheet

for the product; or (iii) a health warning under Title 22 of the California Code of Regulations. Gare agrees to use reasonable efforts to ensure that all Covered Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable. Gare agrees that, within 15 days of the Effective Date, it shall not distribute or sell (or cause to be distributed or sold on its behalf) any of the Covered Products for sale or use in the State of California unless each such Covered Product is accompanied by a Revised Label on or affixed to the Covered Product or its packaging with one of the following statements:

For Covered Products containing toluene or cadmium:

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

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

or

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

For Covered Products containing cobalt:

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

or

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

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, but not necessarily any more prominent than other health effects information printed on the label. The type size requirements specified in 116 C.F.R. 1500.121 shall be deemed to satisfy the type size requirements of the preceding sentence.

1.1 Warning Labels for Covered Products "In Commerce". The parties agree and acknowledge that some Covered Products may have been packaged and or 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 from the Covered Products “in commerce” receive the warnings set forth herein, Gare will provide Interim Warning Materials to its distributors which Gare knows or has reason to believe may currently distribute or sell the Covered Products in California (the “California Distributors”). Such Interim Warning Materials shall include the following: (a) a total of 200 warning stickers to each distributor which bear the following language:

For Covered Products containing toluene or cadmium:

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

For Covered Products containing cobalt:

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

(b) a letter of instruction for the application of such warning stickers; and (c) delivery to the California Distributors by certified mail/return receipt requested. Gare agrees to use reasonable efforts to ensure that its California Distributors are supplied with Interim Warning Materials at least through the end of the calendar year as necessary.

2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Gare shall pay a civil penalty of \$1,000 within fifteen (15) days of the Effective Date of this Agreement.

3. **DiPirro's Release Of Gare.** DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California (in his representative capacity) waives all rights to institute any form of legal action (and releases all claims) against Gare and its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives, attorneys, and Gare's distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Profession Code §17200, related to Gare's alleged failure to warn California's citizens about exposure to cadmium, toluene and cobalt from any of the Covered Products.

4. **Gare's Release Of Michael DiPirro.** Gare, by this Agreement, waives all rights to institute any form of legal action against DiPirro, 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 Gare.

5. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health and Safety Code § 25249.7(f). If, as of the Effective Date, an approved form is available for use, such form shall be promptly completed and then DiPirro shall send the completed form to the California Attorney General's Office, along with a copy of this Agreement, by certified mail, return receipt requested. If, on the other hand, an approved form is not available for use, DiPirro shall promptly send a copy of this Agreement to the Attorney General's Office by certified mail, return receipt requested, along with a cover letter stating that: "The attached Agreement is provided to you pursuant to Health and Safety Code § 25249.7(f)." By signing below, counsel affirms that consistent with this paragraph, the Agreement is being submitted concurrently to the California Attorney General's Office with its presentation to the Superior Court.

6. **Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon, the parties hereto and their agents, employees, officers, directors, attorneys, representatives, successors, heirs, shareholders, representatives, affiliated entities, licensees, assigns and any trustee or other officer appointed in the event of bankruptcy.

7. **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 or cause of action released herein.

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. **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, Gare at its option, may cease providing such warnings on or with its Covered Products, to the extent provided by such change in law, rule, regulation, or final decision, of any legislative, judicial, or executive body.

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 Gare shall be mailed to:

Brian DeWitt, Esq.
Barnhorst Schreiner
550 West C Street, Suite 1350
San Diego, CA 92101-3509

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.

15. **Construction.** Each party to this Agreement warrants and represents that it has participated fully in the negotiation, preparation and drafting of this Agreement, and that the language used in the Agreement is a product of that participation. The rule that an ambiguity in language is to be construed against the author shall have no effect as to this Agreement.

16. **Entire Agreement.** This Agreement is the complete and exclusive statement of agreement of the parties as to matters covered by it. This Agreement replaces and supersedes all prior written or oral agreements or statements by and among the parties with respect to the matters covered by it. No representation, statement, condition or warranty not contained in this Agreement is binding on the parties.

17. **Additional Documents and Acts.** Each party will execute and deliver such additional documents and instruments, and perform such additional acts, that are reasonable and necessary to perform its obligations in this Agreement.

[Signatures on following page]

AGREED TO:

AGREED TO:

DATE: 4/12/01

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Garc, Inc.
DEFENDANT

Approved as to form:

DATE: 4/12/01

DATE: _____

Clifford A. Chanler
Clifford A. Chanler
Chanler Law Group
Counsel for Plaintiff

Brian W. DeWitt
Brian W. DeWitt
Barthorst Schreiner
Counsel for Defendant

APR 12 2001

AGREED TO:

AGREED TO:

DATE: _____

DATE: 4/10/01

Michael DiPirro
PLAINTIFF

David Calame
Gare, Inc.
DEFENDANT

Approved as to form:

DATE: _____

DATE: _____

Clifford A. Chanler
Chanler Law Group
Counsel for Plaintiff

Brian W. DeWitt
Barnhorst Schreiner
Counsel for Defendant

April 9, 2001 (9:54am)

EXHIBIT A

Glazes, Under-Glazes, Over-Glazes and Glass Colors
Ceramic Paints and Coatings