

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 1, 2000, (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 are set forth in Exhibit A (the "Products"). The Products have been manufactured, distributed and/or sold by Gare for use in California; and

D. On September 9, 1999, Michael DiPirro first served Gare and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" 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; and

E. On November 18, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Gare, Inc., et al. (No. H210491-7) (the "Lawsuit") in the Alameda Superior Court, naming Gare 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 certain Gare products; and

F. On January 27, 2000, Gare filed an answer in the Lawsuit, denying all of the material allegations set forth in the complaint and raising various affirmative defenses; and

G. Gare at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint 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 or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Gare 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. Gare agrees that as of June 15, 2000, it shall not distribute or sell (or cause to be distributed or sold on its behalf) 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 one of the following statements:

"WARNING: This product contains lead, 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)"

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 "In Commerce". The parties agree and acknowledge that some Products were 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 or from the 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 currently distribute or sell the 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:

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

(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 \$12,600 in three separate payments. The first payment of \$5,000 shall be paid within fifteen (15) calendar days after the Effective Date of the Agreement. The second payment of \$4,000 shall be made on December 31, 2000. However, \$1,000 of the second payment shall be waived for each leaded glaze product that Gare reformulates so as to remove the lead from such product or cancels the sale of such product in California by November 1, 2000. The third payment of \$3,600 shall be made on December 31, 2001. However, \$1,200 of the third payment shall be waived for each leaded glaze product that Gare reformulates so as to remove the lead from such product or cancels the sale of such product in California by November 1, 2001. Such waivers are only effective to eliminate the penalty payments and are not intended to be the basis for any refund or any penalty amounts, fees or costs previously paid pursuant to this Agreement. If the product (or products) are reformulated or discontinued, Gare may not introduce any new replacement lead-containing products into California. Certification of the reformulation or discontinuation of Gare's Products must be provided to DiPirro by November 15, of the year in which such waiver is sought. 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. 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 Gare within ten (10) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

3. Reimbursement Of Fees And Costs. The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Gare, then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5. As of the Effective Date of this Agreement, however, the parties have not resolved the amount of fees and costs that DiPirro is entitled to for investigating, litigating or settling this matter in the public interest. In order to allow the parties to settle their dispute, the parties agree to resolve the fee and cost issue as an ancillary matter after the Effective Date of this Agreement. The parties expressly agree to make reasonable efforts to negotiate DiPirro's claim to fees and costs for a period not to exceed ten (10) calendar days following the Effective Date of the Agreement. If a resolution is not reached by then, DiPirro may either:

a. Submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California. As part of this alternative dispute

public interest and for his effort in bringing his fee application, pursuant to C.C.P. §1021.5. In an effort to reduce the expense of such proceedings, the parties agree that the arbitration hearing shall not take place for more than four (4) hours. The opening and opposition briefs shall not exceed ten (10) pages in length and any reply shall not exceed (5) pages in length. No sur-reply is allowed. The parties may submit only one declaration in support of their respective positions; no expert declarations may be submitted. The parties further agree that there shall be only one arbitrator whose decision shall be final and binding on both parties, and any such written statement supporting the award shall not exceed more than five pages in length. The parties agree to request that the arbitrator issue his or her award within seven (7) days following the hearing. Payment of the award shall be made by Gare, to DiPirro within five (5) calendar days after the date of the Award; or

b. Move the Superior Court for his reasonable investigation, attorney and expert fees and costs in investigating, litigating and settling this matter in the public interest and for bringing his fee application before the judiciary, pursuant to C.C.P. §1021.5.

4. 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' distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Profession Code §17200, related to Gare's failure to warn California's citizens about exposure to lead (including lead compounds) from any of the Products.

5. 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.

6. 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.

7. **Stipulated Judgment.** DiPirro and Gare shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §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.

8. **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.

9. **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.

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 affected.

11. **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.

12. **Gare Sales Data.** Gare understands that the sales data provided to counsel for DiPirro by Gare was a material factor upon which DiPirro has relied to determine the amount of payments in this Agreement. To the best of Gare's knowledge, the sales data provided is true and accurate. In the event DiPirro discovers facts within the next 90 days which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Gare's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data.

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

14. **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 Products, to the extent provided by such change in law, rule, regulation, or final decision, of any legislative, judicial, or executive body.

15. **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 & Goonan
550 West C Street, Suite 1350
San Diego, CA 92101-3509

16. **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.

17. **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.

18. **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.


19. **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.

20. **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.

[signature page follows]

AGREED TO:

DATE: 4/6/00



Michael DiPirro
PLAINTIFF

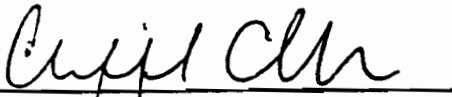
AGREED TO:

DATE: _____

Gare, Inc.
DEFENDANT

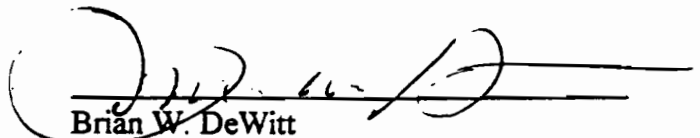
Approved as to form:

DATE: 4/3/00



Clifford A. Chanler
Chanler Law Group
Counsel for Plaintiff

DATE: 4/18/00



Brian W. DeWitt
Barnhorst, Schreiner & Goonan
Counsel for Defendant

March 31, 2000 (3:56pm)

AGREED TO:

AGREED TO:

DATE: _____

DATE: 4/11/00

Michael DiPirro
PLAINTIFF

David C. Paine
Gare, Inc. U.P. Marketing
DEFENDANT

Approved as to form:

DATE: _____

DATE: _____

Clifford A. Chanler
Chanler Law Group
Counsel for Plaintiff

Brian W. DeWitt
Barnhorst, Schreiner & Goonan
Counsel for Defendant

March 31, 2000 (3:56pm)

EXHIBIT A

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