

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Central Purchasing, Dba Harbor Freight Tools ("Central"), a California corporation, as of March 10, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. Michael 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 (or produced by) consumer and industrial products;

B. Central is a company that distributes and/or sells products in the State of California that contain, or whose customary use and application are likely to produce fumes or gases which contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (and lead compounds), formaldehyde, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide (the "Listed Chemicals");

C. The products that contain, or whose customary use and application are likely to produce fumes or gases which contain, one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products"). Some of the Products have been distributed and/or sold by Central for use in California since at least December 10, 1995; however, Central asserts that at no time did it manufacture any of the Products; and

D. On December 10, 1999, Michael DiPirro first served Central and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Central and such public enforcers with notice that Central 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 March 8, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Central Purchasing, Inc., dba Harbor Freight Tools in the San Francisco County Superior Court, naming Central 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 Central products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals.

F. Nothing in this Agreement shall be construed as an admission by Central 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 Central 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 Central under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND CENTRAL AGREE AS FOLLOWS:

1. **Product Warnings.** Beginning immediately, Central shall initiate efforts to ensure that product or packaging labels for the Products are consistent with this Agreement ("Revised Labels"). Central specifically 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. Central agrees that as of July 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 with the following statement by either: 1) a Revised Label on or affixed to the Product or its packaging; or 2) a placard located where the Product is being displayed for sale:

For soldering products (such as solder and soldering guns), which contain (and produce fumes or gases that contain) any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm):

"WARNING: This product, when used for soldering and similar applications, produces chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).";

For welding machine products, which produce fumes or gases that contain any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm):

"WARNING: This product, when used for welding and similar applications, produces 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 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. For the purposes of complying with this Paragraph, the above warning may be communicated by the placement of adhesive stickers onto the current Product or its packaging or placard located where the Product is displayed for sale.

1.1 Warning Labels for Products "In 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, Central has (and will ensure that), within thirty (30) days from the Effective Date, provide Interim Warning Materials to its retail outlets whom Central knows or has reason to believe currently distribute or sell Products in California. Plaintiff acknowledges that he has received and reviewed the Interim Warning Materials and has approved the same.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Central has agreed to pay a civil penalty in the amount of \$23,750 in accordance with the condition set forth in this paragraph. Central agrees to pay the amount of \$9,500 by check made payable to "Chanler Law Group in Trust for Michael DiPirro" within ten (10) calendar days after the Effective Date of this Agreement. Central agrees to pay the amount of \$7,125 on July 1, 2001; however, DiPirro shall waive this payment if Central has sold only lead-free solder in fifty percent (50%) of its retail stores for twelve months between the Effective Date and June 10, 2001. Central's compliance with this condition for the waiver of the \$7,125 to be effective shall be considered fully satisfied if Central provides DiPirro with written certification (by an authorized representative of Central) of such compliance on or before June 15, 2001. Central agrees to pay the amount of \$7,125 on July 1, 2002; however, DiPirro shall waive this payment if Central has sold only lead-free solder in fifty percent (50%) of its retail stores for a period of twelve months commencing June 10, 2001 and ending June 9, 2002. Central's compliance with this condition for the waiver of the \$7,125 to be effective shall be considered fully satisfied if Central provides DiPirro with written certification (by an authorized representative of Central) of such compliance on or before June 15, 2002. 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. 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. Central 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.

It has been agreed that Central shall reimburse DiPirro and his counsel for the fees and costs incurred as a result of investigating, litigating and negotiating this settlement in the public interest, including, but not limited to, attorney's fees and costs, investigation fees and costs and expert fees and costs. Within ten (10) calendar days of the Effective Date of this Agreement, Central shall pay the sum of \$15,500 to the "Chanler Law Group" representing total payment due for all such fees and costs incurred.

4. Michael DiPirro's Release Of Central. Michael 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 or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Central and its distributors, retailers, customers, directors, officers, agents, attorneys, employees, affiliates, sister or related companies, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Central's failure to warn about exposure to the Listed Chemicals including lead (and lead compounds), formaldehyde, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide contained in (or produced by) any of the Products. It is specifically understood and agreed that nothing contained in this paragraph shall be deemed or construed to extend the release set forth herein to any manufacturer, supplier or other "upstream party" of Products distributed or sold by Central.

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

6. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Central shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco County 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, and all sums paid by Central pursuant to Paragraphs 2 and 3 shall be returned to Central within ten (10) days of the date that the Court disapproves of the Stipulated Judgment.

7. Central Sales Data. Central understands that the sales data provided to counsel for DiPirro by Central was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Central's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts and evidence 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 Central's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, the parties shall submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California. DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Central, provided that all sums paid by Central pursuant to paragraphs 2 and 3 are returned to Central within ten (10) days from the date on which DiPirro notifies Central 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 either the AAA arbitrators deem the contract rescinded or DiPirro notifies Central that he is rescinding this Agreement pursuant to this Paragraph.

8. Product Characterization. For purposes of this Agreement, Central acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products is likely to expose users to Proposition 65-listed chemicals (substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm)). In the event that Central obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c), Central shall provide DiPirro with sixty (60) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within sixty (60) days of receipt of Central Exposure Data, DiPirro shall provide Central with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Central written notice of his intent to challenge the Exposure Data within sixty (60) days of receipt of Central's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Central shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Central of his intent to challenge the Exposure Data, DiPirro and Central shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Central's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Central agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.

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 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 Michael DiPirro shall be mailed to:

Hudson Bair, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
(510) 645-0027

or

Clifford A. Chanler, Esq.
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to Central shall be mailed to:

Marc Friedman, Esq.
In-House Counsel
Central Purchasing, Inc.
Dba Harbor Freight Tools
3491 Mission Oaks Blvd.
Camarillo, CA 93011
(805) 388-1000

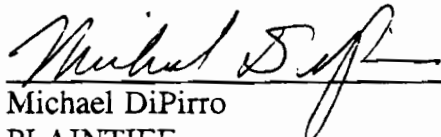
13. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Central represents, however, that it will send a copy of this Agreement to the California Attorney General's Office before or concurrently with the presentation of the Stipulated Judgement to the San Francisco Superior Court.

14. Counterparts and Facsimile. This Agreement may be executed in counterparts and facsimile, 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: 3/9/00



Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Central Purchasing, Inc.,
Dba Harbor Freight Tools
DEFENDANT


AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 3 - 10 - 00



Central Purchasing, Inc.,
Dba Harbor Freight Tools
DEFENDANT

Exhibit A

EXHIBIT A

1. Solder and Accessories
2. Soldering and Other Soldering Equipment and Accessories
3. Welding Machines, Welding Power Sources and Other Welding Equipment and Accessories