

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Release") is entered into by and between Michael DiPirro ("DiPirro"), a California citizen acting on behalf of the People of the State of California, and The Herbert Stanley Company, an Illinois corporation ("Herbert Stanley"), as of August 4, 1999 (the "Effective Date").

WHEREAS:

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

B. Herbert Stanley is a company that has manufactured and distributed in the State of California a product known as the Weiman Tarnish Remover For Silver and Copper (previously known as the Weiman Silver Cleaner Instant Tarnish Remover Dip) (Universal Product Code No. 041598140204) (hereafter referred to as the "Product"), which has contained Thiourea, a chemical listed under Proposition 65 (California Health & Safety Code Section 25249.5, et seq.).

C. On April 29, 1999, DiPirro first served Herbert Stanley and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Herbert Stanley and such public agencies with notice that Herbert Stanley was allegedly in violation of Health & Safety Code Section 25249.6 for failing to warn purchasers that certain products it manufactures and/or distributes in California contain Proposition 65-listed chemicals;

D. On July 14, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Herbert Stanley Company (No. 304876) in the San Francisco Superior Court, naming Herbert Stanley as a defendant and alleging violations of Business & Professions Code Section 17200 and Health & Safety Code Section 25249.6 based on Herbert Stanley's alleged failure to provide the requisite warning for products containing Thiourea; and

E. Herbert Stanley denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint and maintains that all products manufactured and/or distributed by Herbert Stanley in California, including the Product, are in compliance with all laws. Nothing in this Release shall constitute or be construed as an admission by Herbert Stanley of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Release constitute or be construed as an admission by Herbert Stanley of any fact, finding, conclusion, issue of law, or violation of law.

NOW THEREFORE, in consideration of the promises, covenants and agreements herein contained and for other consideration, the sufficiency and adequacy of which is hereby confirmed by the parties who intend to be legally bound hereby, it is agreed as follows:

1. **Product Warnings.** Herbert Stanley agrees that as of August 15, 1999 (hereafter deemed the Revised Label Compliance date), Herbert Stanley will not knowingly ship (or cause to be shipped) to California for sale or distribution any Product unless it is accompanied by a Revised Label on or within the Product's package or affixed to the Product as follows:

2

"WARNING: This product contains thiourea, 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 reasonably understood by an ordinary individual.

2. **Deemed Compliance.** Any New Products (as defined in this Paragraph 2) manufactured, distributed and/or sold by Herbert Stanley after the Revised Label Compliance date shall be deemed to comply with the provisions of this Release and the requirements of Proposition 65 with respect to product warnings if they are accompanied by Revised Labels as required in Paragraph 1 of this Release. For purposes of this Release, "New Products" shall include Products that are substantially similar to the Product and which were not manufactured, distributed and/or sold by Herbert Stanley into California on or before the Effective Date.

3. **Payment Pursuant To Health & Safety Code Section 25249.7(b).** Pursuant to Health & Safety Code Section 25249.7(b), Herbert Stanley shall pay a civil penalty of \$4,000 to DiPirro within ten (10) calendar days after the Effective Date. 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. The payment shall be made payable to "Kapsack & Bair, LLP In Trust For Michael DiPirro" and shall be held in escrow by DiPirro's counsel until the Court has approved this settlement and issued the Order as set forth in Paragraph 9. It is specifically understood and agreed that DiPirro shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this paragraph. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 9, the payment made pursuant to this paragraph shall be returned to Herbert Stanley, with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

4. **Reimbursement Of Fees And Costs.** Within ten (10) calendar days of the Effective Date, Herbert Stanley shall pay to DiPirro the sum of \$9,000 for his investigation fees incurred before the filing of the 60-Day Notice, \$1,650 for investigation, expert and litigation costs, and \$11,700 for attorneys' and paraprofessional fees incurred after the filing of the 60-Day Notice. Such amounts (that total \$22,350) shall be made payable to "Kapsack & Bair, LLP" and held in escrow until the Court has approved this settlement and issued an Order as set forth in Paragraph 9. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 9, the payments made by Herbert Stanley pursuant to this paragraph shall be returned to Herbert Stanley, with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

5. **DiPirro's Release of Herbert Stanley.** DiPirro, by this agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the People 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, actions, causes of action, in law or in equity, liabilities, demands, obligations, losses, costs, expenses (including investigation fees, expert fees and attorneys' fees), fines and damages

of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims") against Herbert Stanley and its parent and affiliated companies, divisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, shareholders, agents and employees (collectively "Herbert Stanley Releasees"). This waiver and release shall specifically include Claims arising under Proposition 65 or the Business & Professions Code Section 17200, et seq. and related to Herbert Stanley's alleged failure to provide a clear and reasonable warning for Thiourea contained in the Product before the Effective Date. It is specifically understood and agreed that Herbert Stanley's compliance with the terms of this Release resolves all issues and liability, now and in the future, concerning the Herbert Stanley Releasees' past compliance with the requirements of Proposition 65, Business & Professions Code Section 17200, et seq., or any other Claims arising from Herbert Stanley's alleged failure to comply with Proposition 65 in connection with the Product before the Effective Date.

6. DiPirro's Release of "Downstream Parties." DiPirro, on behalf of himself, his agents, and/or assignees and the People of the State of California on whose behalf this action was brought, further waives all rights to institute any form of legal action and releases all Claims against each distributor, wholesaler, retailer, dealer, owner, customer, operator, lessor, lessee or user of the Product, (specifically including, but not limited to, Bed, Bath & Beyond), or any of their respective parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, shareholders, partners, attorneys, representatives, agents and employees (collectively, "Downstream Parties"). This waiver and release shall specifically include Claims arising under Proposition 65 or Business & Professions Code Section 17200, et seq., related to the Downstream Parties' alleged failure to provide a clear and reasonable warning for Thiourea contained in the Product before the Effective Date. It is specifically understood and agreed that this Agreement resolves all issues and liability concerning the Downstream Parties' past compliance with the requirements of Proposition 65, Business & Professions Code Section 17200, et seq., or any other Claims, directly or indirectly arising from Herbert Stanley's or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Product on or before the Effective Date.

7. Herbert Stanley's Release. By this Agreement, Herbert Stanley 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 Herbert Stanley.

8. Product Characterization. Herbert Stanley acknowledges that the Product contains (Thiourea), a substance known to the State of California to cause cancer. In the event that Herbert Stanley obtains analytical, risk assessment or other data ("Exposure Data") that shows that an exposure to the Product poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under California Health & Safety Code §25249.10(c), Herbert Stanley shall provide DiPirro with 90 days prior written notice of its intent to limit or eliminate the warning provisions under this Release based on the Exposure Data and shall provide DiPirro with all such supporting

Exposure Data. Within thirty (30) days of receipt of Herbert Stanley's Exposure Data, DiPirro shall provide Herbert Stanley 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 Herbert Stanley with written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Herbert Stanley's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Herbert Stanley shall be entitled to limit or eliminate the warning provisions required under this Release with respect to the Product. If DiPirro timely notifies Herbert Stanley of his intent to challenge the Exposure Data, DiPirro and Herbert Stanley shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by DiPirro of such notice of challenge, DiPirro and Herbert Stanley agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under California Code of Civil Procedure Section 664.6 and this Release. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If DiPirro does not challenge Herbert Stanley's notice or the Court determines that no warning is required for the Product, Herbert Stanley shall no longer be required to provide the warning described in this Release for the Product.

9. Stipulated Judgment. DiPirro and Herbert Stanley shall file a Stipulated Judgment to be approved pursuant to Code of Civil Procedure Section 664.6 by the San Francisco Superior Court in accordance with the terms of this Release. It is expressly understood and agreed by the parties hereto that the rights and obligations contained in this Release are expressly conditioned on the issuance by the Court of an Order approving the Stipulated Judgment. If the Court fails to issue such Order within sixty (60) days of the Effective Date, this Agreement shall be deemed null and void as of the sixty-first (61st) day after the Effective Date.

10. Herbert Stanley Sales Data. Herbert Stanley understands that the sales data provided to counsel for DiPirro by Herbert Stanley was a material factor upon which DiPirro has relied to determine the amount of penalties in this Release. To the best of Herbert Stanley'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 Release notwithstanding, DiPirro shall have the right to rescind this Release and re-institute an enforcement action against Herbert Stanley, provided that all sums paid by Herbert Stanley within ten (10) days from the date on which DiPirro notifies Herbert Stanley of his intent to rescind this Release. 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 Herbert Stanley that he is rescinding this Release 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.

11 Severability. In the event that any of the provisions of this Release are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

12. Attorneys' Fees. In the event that a dispute arises with respect to any provision(s) of this Release, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

13. Governing Law. the terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product specifically, Herbert Stanley shall have no further obligations pursuant to this Release with respect to, and to the extent that the Product is so affected.

12. Notices. All correspondence and notices required to be provided pursuant to this Release shall be in writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission confirmation) addressed as set forth below. All correspondence and notices to Michael DiPirro shall be mailed to:

Hudson T. Bair, Esq.
Kapsack & Bair, LLP
353 Sacramento Street, Suite 1800
San Francisco, CA 94111

All correspondence and notices to Herbert Stanley shall be mailed to:

Carl DeMasi
Executive Vice President
The Herbert Stanley Company
1100 Lakeside Drive
Gurnee, IL 60051
(Fax) 847/263-3700

with a copy to:

John E. Dittoe, Esq.
Crosby, Heafey, Roach & May
Professional Corporation
1999 Harrison Street
P.O. Box 2084
Oakland, CA 94604-2084
(Fax) 510/273-8832

Either party, from time to time, may specify a change of address or facsimile number to which all notices and other communications shall be sent.

13. Entire Agreement; Modification. This Release constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Release may be modified only upon the written agreement of the parties. To the extent any such modification is made to this Release that also requires modification of the Stipulated Judgment provided for herein, the parties shall cooperate in modifying the Stipulated Judgment submitted to the Court.

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 Release on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Release.

AGREED TO:

DATED: August 16, 1999



Michael DiPirro

AGREED TO:

DATED: August __, 1999

The Herbert Stanley Company

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

AGREED TO:

DATED: August __, 1999

Michael DiPirro

AGREED TO:

DATED: August 6, 1999



The Herbert Stanley Company