

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Release") is entered into between Michael DiPirro, a California citizen acting on behalf of the People of the State of California, and Horizon Hobby, Inc., a Delaware corporation (hereinafter "Horizon"), as of October 12, 2000 (the "Effective Date").

WHEREAS:

A. Michael DiPirro ("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 consumer and industrial products;

B. Horizon manufactured or distributed in the State of California certain products that contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 *et seq.*).

C. The products that contain one or more of the chemicals listed pursuant to Proposition 65 and which are covered by this Agreement are set forth in Exhibit A (the "Products"), which is attached hereto and incorporated herein by this reference.

D. By notice dated March 16, 2000 DiPirro first served Horizon and all of the requisite public enforcement agencies a document entitled "60-Day Notice" which provided Horizon and such public agencies with notice that Horizon was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that the Products exposed users to certain Proposition 65-listed chemicals;

E. On June 1, 2000, DiPirro filed a complaint entitled Michael DiPirro v. Horizon Hobby Distributors, Inc. (No. 312571) in the Superior Court in and for the City and County of San Francisco, naming Horizon as a defendant and alleging violations of Business & Professions Code §17200 *et seq.* and Health & Safety Code §25249 *et seq.* on behalf of individuals in California who may have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Horizon products. Thereafter, Horizon filed its answer to the complaint.

F. Horizon denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code §§17200 *et seq.*, and maintains that all Products manufactured and/or distributed by Horizon in California are in compliance with all laws.

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. **Future Sales of Lead Weights or Lead balancing Products.** Horizon agrees that any "weights" or lead balancing products that it distributes or sells into California in the future will either be lead free or will contain the labeling set forth in Paragraph 2.

2. **Product Labeling.** If Horizon distributes or sells into California any lead weights or other lead balancing products in the future, Horizon shall revise the product or packaging labels for the Covered Products consistent with this Release ("Revised Labels"). For purposes of this Release, "Covered Products" includes all products listed on Exhibit A hereto, and any other substantially similar products which may be manufactured and/or distributed by Horizon in California after the Effective Date which now or in the future contain Listed Chemicals. For purposes of this Release, "Listed Chemicals" means chemicals that are currently or may, in the future, be listed pursuant to Proposition 65. Horizon shall 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; however, Horizon agrees that as of January 1, 2001 (the "Revised Label Compliance Date") Horizon shall not knowingly ship (or cause to be shipped) to California for sale or distribution any Covered Products unless each such Covered Product is accompanied by a Revised Label on or within the Covered Product package or affixed to Covered Products as set forth below or an equivalent warning that complies with Section 12601 of Title 22 of the California Code of Regulations:

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

(California Health & Safety Code Section 25249.5 et seq.)"

or

"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).

or

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

or

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. Wash your hands after touching this product.

or

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Do not place your hands in your mouth after handling the product. Wash your hands after touching this product.

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 under customary conditions of purchase or use. For purposes of this Release, “Revised Label” does not include an MSDS form that otherwise meets the requirements of Paragraph 2. The labeling revisions may be made in the form of an adhesive sticker, stamp or permanent changes to the outside packaging of the product package.

3. **Deemed Compliance.** Any New Products (as defined in this Paragraph 3) manufactured, distributed and/or sold by Horizon 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 set forth in Paragraph 2 of this Release. For purposes of this Release, “New Products” shall include any Products that are substantially similar to those included in Exhibit A which contain a Listed Chemical and which were not manufactured, distributed and/or sold by Horizon into California on or before the Effective Date.

4. **Civil Penalty.** In recognition of Horizon's cooperation and voluntary efforts with regard to the Covered Products and the minimal sales of the Covered Products in the State of California, DiPirro hereby agrees to waive the imposition of any civil penalties with regard to the Covered Products.

5. **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. Horizon then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties reached an accord on the compensation due to DiPirro and his counsel under the private attorney-general doctrine codified at California Code of Civil Procedure Section 1021.5.

Horizon shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Horizon's attention, litigating and negotiating a settlement in the public interest. Horizon shall within ten (10) calendar days of the Effective Date of the Release, pay to DiPirro the sum of \$3,800 for his investigation, expert, attorneys' and paraprofessional fees and costs incurred in this matter. The \$3,800 amount shall be made payable to the "Chanler Law Group" and held in escrow by DiPirro's counsel until the Court has approved this settlement and issued an Order as set forth in Paragraph 11. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 11, the amounts paid by Horizon in accordance with this paragraph shall be returned to Horizon 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.

6. **DiPirro's Release of Horizon** In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Paragraph 5, DiPirro, by this Release, on behalf of himself, his agents, representatives, attorneys, and/or assignees, and the People of the State of California on whose behalf this action was brought, hereby waives all rights to institute and participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, damages, fines, penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees and other costs) of any nature whatsoever, whether known or unknown, fixed or contingent, (collectively, "Claims") against Horizon and its parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, shareholders, partners, agents, and employees (collectively, "Horizon Releasees"). This waiver and release shall pertain to Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to Horizon's alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in any of the Covered Products listed in Exhibit A. It is specifically understood and agreed that Horizon's compliance with the terms of

this Release resolves all issues and liability, now and in the future, concerning the Horizon Releasees' past compliance with the requirements of Proposition 65 or Business and Professions Code §§17200 *et seq.*, arising from Horizon's alleged failure to comply with Proposition 65 in connection with the Covered Products listed on Exhibit A occurring on or before the Effective Date.

7. **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, customer, owner, operator, lessor, lessee or user of the Covered Products, 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, employees (collectively, "Downstream Parties"). This waiver and release shall pertain to Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which are likely to be produced in fumes or gases resulting from the customary use or application of, Covered Products listed in Exhibit A. It is specifically understood and agreed that this Release resolves all issues and liability concerning the Downstream Parties' past compliance with the requirements of Proposition 65 or Business & Professions Code §§17200, *et seq.*, arising from Horizon's or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Covered Products on or before the Effective Date.

8. **Horizon Release.** Horizon, by this Release, waives all rights to institute any form of legal action against DiPirro, and his attorneys or representatives, for all actions taken or statements made on or before the Effective Date by DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Professions Code §§17200, *et seq.* against Horizon.

9. **Product Characterization.** Horizon acknowledges that each of the Covered Products listed in Exhibit A contains one or more substances known to the State of California to cause cancer or birth defects (or other reproductive harm). In the event that Horizon obtains analytical, risk assessment or other data ("Exposure Data") that shows that an exposure to any or all Covered 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), Horizon shall provide DiPirro with 90 days prior written notice of its intent to limit or eliminate the

Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Horizon written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Horizon's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Horizon shall be entitled to limit or eliminate the warning provisions required under this Release with respect to those Covered Product(s) to which the Exposure Data applies. If DiPirro timely notifies Horizon of his intent to challenge the Exposure Data, DiPirro and Horizon 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 Horizon 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 §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 Horizon's notice or the Court determines that no warning is required for particular Covered Products, Horizon shall no longer be required to provide the warnings described in this Release for those Covered Products.

10. Horizon's Covered Product Information. Horizon understands that the Covered Product sales (and other) information provided to counsel for DiPirro by Horizon was a material factor upon which DiPirro has relied to determine a fair and reasonable settlement as set forth in this Release. To the best of Horizon's knowledge, the information provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the information 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 Horizon, provided that all sums paid by Horizon pursuant to Paragraph 5 are returned to Horizon, with interest thereon at a rate of six percent (6%) per annum, within five (5) days from the date on which DiPirro notifies Horizon 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 Horizon 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. Stipulated Judgment and Order. The parties shall file a Stipulated Judgment to be approved pursuant to California 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 Release shall be deemed null and void as of the sixty-first (61st) day after the Effective Date.

12. **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 remaining shall not be adversely affected thereby.

13. **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.

14. **Governing Law.** The terms of this Release 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 Covered Products specifically, Horizon shall have no further obligations pursuant to this Release with respect to, and to the extent that, those Covered Products are so affected.

15. **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 follows:

If to DiPirro: Chanler Law Group
 Magnolia Lane
 New Canaan, Connecticut 06840-3801
 (Fax) 203/801-5222

If to Horizon : Horizon Hobby Distributors, Inc.
 Attn: Rich Wittington, Branch Manager
 3230 A Riverside Avenue
 Paso Robles, CA 93446
 (Fax) 805-239-7828

with a copy to: John E. Dittoe, Esq.
 Crosby, Heafey, Roach & May
 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.

16. **No Admissions.** Nothing in this Release shall constitute or be construed as an admission by Horizon 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 Horizon of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by

Horizon. Horizon reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Horizon under this Release.

17. **Entire Agreement; Modification.** This Release, together with the exhibits hereto which are specifically incorporated herein by this reference, 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.

18. **Counterparts & Facsimile Signatures.** This Release may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

19. **Compliance With Reporting Requirements.** The parties shall cooperate in complying with the reporting requirements set forth in Health & Safety Code §29249.7(f). If, as of the Effective Date, a form approved by the Attorney General's Office is available for use, such form shall be promptly completed and then sent to the California Attorney General's Office, along with this Release, by certified mail, return receipt requested. If a form approved by the Attorney General's office is not available as of the Effective Date, Horizon shall promptly send this Release to the California Attorney General's Office by certified mail, return receipt requested, along with a cover letter stating that: "The attached Release and Settlement Agreement is provided to you pursuant to Health & Safety Code §29249.7(f)." Exhibit B attached hereto contains a statement by counsel for Horizon that, consistent with this Paragraph 19, the Release is being submitted concurrently to the California Attorney General's Office with its presentation to the San Francisco County Superior Court.

20. **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:

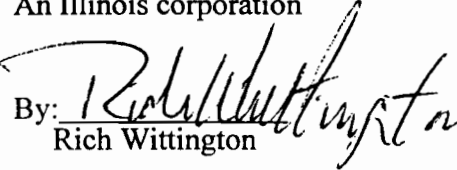
DATE: October ____, 2000

MICHAEL DIPIRRO

AGREED TO:

DATE: October 12, 2000

HORIZON HOBBY DISTRIBUTORS, INC
An Illinois corporation

By: 
Rich Wittington

AGREED TO:

DATE: October 13, 2000

MICHAEL DIPIRRO

Michael DiPirro

AGREED TO:

DATE: October __, 2000

HORIZON HOBBY DISTRIBUTORS, INC
An Illinois corporation

By: _____
Rich Wittington

Exhibit A

EXHIBIT A – HORIZON HOBBY DISTRIBUTORS, INC.

Lead weights

Lead balancing products, that include, among others, lead tape squares and lead dot strips

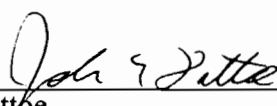
Exhibit B

EXHIBIT B

As counsel for Horizon Hobby Distributors, Inc. in the matter of Michael DiPirro v. Horizon Hobby Distributors, Inc. San Francisco Superior Court No. 312571, the undersigned hereby represents that this Release and Settlement Agreement was sent to the California Attorney General's Office by certified mail, return receipt requested, on October 26, 2000.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 26, 2000.



John E. Dittoe
CROSBY, HEAFEY, ROACH & MAY
Attorneys for Horizon Hobby Distributors, Inc.