

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen and Kmart Corporation ("Kmart"), as of December 20, 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. Kmart is a company that distributes and/or sells soldering 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 (or lead compounds) and/or formaldehyde (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 are set forth in Exhibit A (the "Products"). The Products have been distributed and/or sold by Kmart for use in California since at least April 1, 1998; and

D. On November 19, 1999, Michael DiPirro served Kmart and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Kmart and such public enforcers with notice that Kmart was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals;

E. On February 10, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. K-mart, et al. in the San Francisco County Superior Court, naming Kmart 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 (or produced by customary use and application of) certain Kmart products; and

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

NOW THEREFORE, MICHAEL DIPIRRO AND KMART AGREE AS FOLLOWS:

1. Product Warnings. Beginning immediately, Kmart shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Kmart 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 by January 30, 2001. Kmart agrees that as of January 30, 2001, 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 the following statement:

For all soldering kits which contain solder wire that use (or produce fumes or gases that contain) lead as an intended ingredient

WARNING: This product contains, and when used for soldering and similar applications produces fumes that contain, lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm). [Optional Statements: Wash hands after use. Use in well-ventilated area.]

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 packaging.

2. Additional Public Interest Commitments. Kmart agrees to each of the following:

2.1. Cessation of Offering for Sale in California. As of January 30, 2001, Kmart will pull all Tool Smart and Tool Source Soldering Kits that contain lead off of all of its shelves in its California stores;

2.2. Cessation of Sales in California. As of January 30, 2001, Kmart will not to sell or offer to sell soldering kits that contain lead in any of its stores in California; and

2.3. Kmart shall pay a liquidated penalty of \$100 for each soldering kit sold with lead after January 30, 2001. Such stipulated penalty shall be payable upon a showing by plaintiff that a violation has occurred. In the event that Kmart disputes such showing, plaintiff shall be entitled to make application to the superior court to enforce this provision. The liquidated penalties shall be apportioned 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. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Kmart shall pay a civil penalty of \$97,000 in two installments. The first payment of \$12,000 shall be paid by January 12, 2001. The second installment of \$85,000 shall be due on April 1, 2001. However, the second payment shall be waived if Kmart certifies that it has met the commitments outlined in paragraphs 2.1 and 2.2 above. Such certification must be provided to DiPirro in writing by March 15, 2001. The penalty payment is 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.

4. Restitution. As payment in restitution to the People of the State of California, Kmart shall also pay the sum of \$13,000 by January 12, 2001. Such payment shall be allocated by Michael DiPirro to a non-profit organization to underwrite the cost of research on exposure to lead from other consumer products. The payment or payments are to be made payable to "Chanler Law Group In Trust for Michael DiPirro."

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. Kmart 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.

Kmart shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Kmart' attention, litigating and negotiating a settlement in the public interest. Kmart shall pay the total sum of \$174,000 for investigation fees, attorneys' fees and litigation costs. Kmart agrees to pay \$174,000 by January 12, 2001. Payment should be made payable to the "Chanler Law Group".

5. Michael DiPirro's Release Of Kmart. 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 Kmart and its distributors, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Kmart' alleged failure to warn about exposure to the lead (or lead compounds) and/or formaldehyde contained in (or produced by) any soldering products.

6. Kmart' Release Of Michael DiPirro. Kmart, 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 Kmart.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Kmart 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.

8. Product Characterization. Kmart 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) lead (or lead compounds) and/or formaldehyde, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Kmart 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), Kmart shall provide DiPirro with ninety (90) 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 ninety (90) days of receipt of Kmart Exposure Data, DiPirro shall provide Kmart 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 Kmart written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Kmart' notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Kmart 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 Kmart of his intent to challenge the Exposure Data, DiPirro and Kmart shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Kmart' notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Kmart 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 Kmart shall be mailed to:

Michael J. Steel, Esq.
Pillsbury, Madison & Sutro, LLP
50 Fremont Street, 5th Floor
San Francisco, CA 94105
(415) 983-1000

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. Defendant represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the San Francisco County 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: 12/20/00

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 12/20/00

Michael Keel
Kmart Corporation
DEFENDANT

AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: Jan 02 2001

David P. Levine
Kmart Corporation
DEFENDANT

By David P. Levine, its
Divisional Vice President, DTI and Auto

EXHIBIT A

1. Tool Smart Soldering Gun Kits
2. Tool Source Soldering Gun Kits