

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Laguna Clay Company ("Laguna"), a California corporation, as of November 30, 1999 (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 consumer and industrial products;

B. Laguna is a company that currently manufactures and distributes ceramic glazes and other products containing substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm);

C. A list of the products which contain lead, cobalt and/or crystalline silica (the "Listed Chemicals") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured, distributed and sold by Laguna for use in California since at least June 22, 1995; and

D. On June 22, 1999, Michael DiPirro first served Laguna and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Laguna and such public enforcers with notice that Laguna 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 September 3, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Laguna Clay Company, et. al. (No. H209107-3) in the Alameda County Superior Court, naming Laguna 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 chemicals listed pursuant to Proposition 65 contained in certain Laguna products.

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

NOW THEREFORE, MICHAEL DIPIRRO AND LAGUNA AGREE AS FOLLOWS:

1. Product Warnings. Laguna shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Beginning on February 29, 2000, Laguna agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemicals for sale in the State of California unless such Products comply with section 1.1 below, whichever provision is applicable:

1.1 For all Products containing lead, such Products shall bear the following warning statement on the Product label:

"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)";

1.2 For all Products containing cobalt or crystalline silica, such Products shall bear the following warning statement on the Product label:

"WARNING: This product contains cobalt, a chemical known to the State of California to cause cancer";

or

"WARNING: This product contains crystalline silica, a chemical known to the State of California to cause cancer";

or

"WARNING: This product contains a chemical known to the State of California to cause cancer";

The warning statement shall be prominent and displayed at the point of sale 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.

2. Payment Pursuant To Health & Safety Code

§25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Laguna shall pay a civil penalty of \$50,000 in two installments. The first payment of \$10,000 shall be paid within five (5) calendar days after approval by the court of Stipulated Judgment as set forth in ¶7 below. The second payment of \$40,000 shall be made on January 30, 2001. However, \$10,000 of the second payment shall be waived for each of the four glaze Products that Laguna reformulates to remove the lead from such products by December 31, 2000. Certification of the reformulation of Laguna's Products must be provided to DiPirro by January 15, 2001. If all four glaze products are reformulated to remove lead, then the entire \$40,000 second payment shall be waived. 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.

3. Reimbursement Of Fees And Costs.

The parties acknowledge that they cannot resolve the amount of fees and costs that DiPirro is entitled to for investigating, enforcing and settling this matter in the public interest. In order to allow the parties to settle their dispute, the parties agree to resolve this issue as an ancillary matter after the Effective Date of the Agreement.

The parties expressly agree to make reasonable efforts to negotiate DiPirro's claim to fees and cost 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, the parties agree to submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California. The parties expressly agree that DiPirro is entitled to his reasonable fees and costs in settling this matter in the public interest and for his effort in bringing this fee application, pursuant to CCP §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 five (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 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 two 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 Laguna to DiPirro within five (5) calendar days after the date of the Award."

4. Michael DiPirro's Release Of Laguna. 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 Laguna and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Laguna's failure to warn about exposure to the Listed Chemicals contained in any of the Products.

5. Waiver of the Provisions of the California Civil Code, Section 1542. DiPirro, on behalf of himself, his agents, representatives, attorneys, successors and assigns, and not in his representative capacity on behalf of citizens of the State of California, hereby waives the provision of the California Civil Code, Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him, must have materially affected his settlement with the debtor."

6. Laguna's Release Of Michael DiPirro. Laguna, 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 Laguna.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Laguna shall execute and file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda 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. 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.

9. 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.

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

11. 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
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to Laguna shall be mailed to:

Theodore E. Bacon
Bacon & Mills
800 Wilshire Blvd., Suite 950
Los Angeles, CA 90017
(213) 486-6500

13. 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.

14. 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: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 12/3/99



By Laguna Clay Company JON BROOKS,
DEFENDANT President

AGREED TO:

DATE: 12 ' 2 ' 95

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Laguna Clay Company
DEFENDANT

Exhibit A

EXHIBIT A

A. Glazes readily available to consumers

1. MS-901
2. MS-903
3. MS-905
4. MS-907

B. Materials Bearing Respirable Crystalline Silica

1. All Clays (including ball clays, fire clays, kaolin)
2. Ground Bisque (low temps)
3. Feldspars and Flourspar
4. Whiting (calcium carbonate)
5. Cornwall stone
6. Dolomite
7. Silica
8. Ground Brick
9. Kryolite
10. Kyanite
11. Pumice
12. Pyrolite
13. Pyrophelite
14. Petalite
15. Sand
16. Spodumeme
17. Talc
18. Wollastonite
19. Zircon compounds
20. Certain ceramic materials

C. Lead

1. Lead compounds
2. Lead bearing frits
3. Ceramic stains and pigments

D. Cobalt

1. Cobalt compounds
2. Cobalt bearing stains and pigments

E. All Formulated Clays and Glazes