

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen ("DiPirro"), and Nobara, Inc. and Shu Uemura Cosmetics, Inc., Japanese corporations d/b/a Shu Uemura Beauty Boutique (collectively "Shu Uemura"), as of January 14, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. Michael 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 exposures to hazardous substances that are contained in consumer and industrial products; and

B. Shu Uemura is a company that until November, 1999 manufactured and distributed nail enamel products containing toluene and formaldehyde which are sold in retail stores and used by consumers and others; and

C. On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.8; and

D. On January 1, 1988, formaldehyde was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

E. On August 31, 1999, DiPirro served Shu Uemura with a document entitled "60-Day Notice of Violation" which alleged that as of August 31, 1995, Shu Uemura had, 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

F. On November 10, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Shu Uemura Cosmetics, Inc., et al., (Case No. 307815) in the San Francisco Superior Court, naming Shu Uemura and Sephora USA, LLC ("Sephora") as defendants 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 Shu Uemura products; and

G. A list of the nail enamel products containing toluene and producing fumes which contain formaldehyde which Shu Uemura has manufactured, bottled (or had bottled on its behalf) for retail sale in California since August 31, 1995 is provided in attachment A (the "Products"); and

H. Nothing in this Agreement shall be construed as an admission by Shu Uemura 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 Shu Uemura of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Shu Uemura under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND SHU UEMURA AGREE AS FOLLOWS:

1. **Product Warnings.** If Shu Uemura fails to comply with the reformulation and stock replacement commitments set forth in paragraphs 2 and 3, Shu Uemura agrees to comply with Health & Safety Code §25249.6 for each Product that is shipped for sale in California after March 1, 2000, by providing a warning that is prominent and displayed with such conspicuousness, as compared with other words, statement, or designs as to render it likely to be read and understood by an ordinary individual. The warning should be calculated to warn individuals at the point of purchase as well as individuals who may be exposed to fumes from the use of the Products at beauty, hair or nail salons. The warning shall bear the statement:

1.1 For all products containing toluene, such products shall bear the following warning statement on the product label:

"WARNING: Use of this product will expose you to toluene, a chemical known to cause birth defects or other reproductive harm."

or

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

1.2 For all products containing toluene and formaldehyde, such products shall bear the following warning statement on the product label:

"WARNING: Use of this product will expose you to toluene and formaldehyde, chemicals known to cause cancer and birth defects (or other-reproductive harm)."

or

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

If the warning is going to be placed in hair, beauty or nail salons, the warning shall be provided in a language(s) spoken by a significant portion of the persons likely to be exposed, so as to render the message clear.

2. **Product Reformulation.** Effective as of November 1, 1999, Shu Uemura has reformulated the Products, and the Products no longer contain toluene or formaldehyde. After July 1, 2000, Shu Uemura agrees not to ship for sale in California any Products which contain toluene or formaldehyde.

3. **Stock Replacement.** As part of the introduction of its reformulated nail enamel products, Shu Uemura is in the process of replacing the old stock of the Products shipped to California retail outlets prior to reformulation. Shu Uemura will use its best efforts to replace the old stock by March 1, 2000. It is Shu Uemura's intent that after that date, only reformulated Products will be available for sale in California.

4. **Failure to Reformulate.** In the event of violation of the reformulation commitment set forth in paragraph 2, Shu Uemura shall pay a civil penalty of \$35,000 to the "Chanler Law Group In Trust for Michael DiPirro" within thirty (30) days after written notice is given by DiPirro to Shu Uemura of the alleged violation. The payment 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.

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.

Shu Uemura 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 C.C.P. § 1021.5.

Shu Uemura shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Shu Uemura's attention, litigating and negotiating a settlement in the public interest. Shu Uemura shall pay \$26,840.40 for investigation fees, attorneys' fees and litigation costs. Shu Uemura agrees to pay \$26,840.40 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

6. Release of Shu Uemura.

(a) With the exception of the obligations expressly provided for in this Agreement, DiPirro, on behalf of himself and on behalf of the People of the State of California and their respective current and former employees, agents, representatives, attorneys, decedents, heirs, estates, predecessors, successors, and assigns (the "DiPirro Releasers"), forever waives, releases and discharges Shu Uemura and its respective current and former shareholders, officers, directors, employees, agents, representatives, attorneys, decedents, heirs, estates, predecessors, successors, assigns and parent, subsidiary, affiliated and related corporations and distributors, customers or any third party which sold, used or purchased the Products (specifically including, but not limited to, Sephora) (collectively, the "Shu Uemura Releasees"), of and from any and all losses, liabilities, claims, expenses, demands and causes of action of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, fixed and contingent, whether direct or by way of indemnity, contribution or otherwise, which the DiPirro Releasers, or any of them, had, has, or may have against the Shu Uemura Releasees, or any of them, arising out of or based on exposure to or alleged failure to warn about exposure to toluene and formaldehyde in the Products.

(b) DiPirro, in his individual not representative capacity, has been fully advised by his counsel of the contents of Section 1542 of the California Civil Code, which reads as follows:

"Section 1542. (General Release - Claims Extinguished.) 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 if known by him must have materially affected his settlement with the debtor."

DiPirro, in his individual not representative capacity, waives this section and the benefits thereof and any comparable provision of the statutory or common law of the State of California as to any claims against Shu Uemura and the Shu Uemura Releasees.

7. **Shu Uemura's Release Of Michael DiPirro.** Shu Uemura, by this Agreement, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in this action to enforce Proposition 65 or Business & Profession Code §§17200, et seq. against Shu Uemura.

8. **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. Within five (5) days after the reporting forms are made available, DiPirro shall provide Shu Uemura a completed reporting form for Shu Uemura's review and approval. Within five (5) days after Shu Uemura has approved the reporting form, DiPirro shall send the reporting form to the California Attorney General's office by certified mail, return receipt requested and file with the San Francisco Superior Court the stipulated judgment set forth in paragraph 9 along with an affidavit verifying that the reporting form has been accurately completed and submitted to the California Attorney General.

9. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro, Shu Uemura and Sephora shall execute a stipulated judgment to be approved pursuant to CCP §664.6 by the San Francisco Superior Court in accordance with the terms of this Agreement. The stipulated judgment shall be filed with the San Francisco Superior Court in accordance with Paragraph 8. If, for any reason, the stipulated judgment is not

approved by the Court, this Agreement shall be deemed null and void.

10. **No Right to Appeal.** Neither party has the right to appeal from this Agreement and the Stipulated Judgment identified in paragraph 8.

11. **De-Listing of Toluene and Formaldehyde.** In the event that toluene and formaldehyde are removed from the list of chemicals identified in recitals C & D hereto, paragraphs 1, 2, 3, and 4 of this Agreement are null and void.

12. **Product Characterization.** Shu Uemura acknowledges that each of the Products listed in Exhibit A contained, or in the customary use or application of the Products is likely to produce fumes, gases or dust that contain one or more substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Shu Uemura 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), Shu Uemura 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 Shu Uemura's Exposure Data, DiPirro shall provide Shu Uemura 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 Shu Uemura written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Shu Uemura's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Shu Uemura 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 Shu Uemura of his intent to challenge the Exposure Data, DiPirro and Shu Uemura shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Shu Uemura's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Shu Uemura 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.

13. **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.

14. **Attorneys' Fees In The Event Of A Dispute.** 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.

15. **Shu Uemura Sales Data.** Shu Uemura understands that the sales data provided to counsel for DiPirro by Shu Uemura was a material factor upon which DiPirro has relied to determine the amount of payments in this Agreement. To the best of Shu Uemura'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, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Shu Uemura's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data.

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

17. **Notices.** All correspondence to DiPirro shall be mailed to:

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

All correspondence to Shu Uemura shall be mailed to:

Ross Lipman
Hughes Hubbard & Reed LLP
One Battery Park Plaza
New York, NY 10004-1482

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

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

AGREED TO:

AGREED TO:

DATE:

1/13/00

DATE: _____

Michael DiPirro

Michael DiPirro
PLAINTIFF

Nobara, Inc.

DATE: _____

Shu Uemura Cosmetics, Inc.
DEPENDANT

DATE: _____

Shu Uemura Beauty Boutique
DEPENDANT

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

AGREED TO:

AGREED TO:

DATE: _____

DATE: 1/24/00

Michael DiPirro
PLAINTIFF

Nobara, Inc.

DATE: 1/24/00

Shu Uemura Cosmetics, Inc.
DEFENDANT

DATE: 1/24/00

Shu Uemura Beauty Boutique
DEFENDANT

Exhibit A

EXHIBIT A

Shu Uemura Nail Enamel Nos.

001, 010, 020, 022, 030, 775, 910, 921, 923,
925, 953, 970, 983, 988, 000, P007, P009,
P092, 003, 091, 960, 995, 056, 069, 198, 797,
P004, P006, P073, P084, P087, M005, M032,
M060, M070, M090, P089, P290

Shu Uemura New Nail Enamel Nos.

PA000, C009, ME055, ME083, G131, C173, IR216,
PA255, G285, P319, P326, C347, C377, C399,
C435, C476, P588, PA625, P634, G641, C642,
P665, P688, P697, P727, P729, PA745, G761,
ME763, P773, ME793, IR654, ME884, C934, C953,
C975