

1 Hudson Bair, State Bar No. 172593
KAPSACK & BAIR, LLP
2 1440 Broadway, Suite 610
Oakland, CA 94612
3 Tel: (510) 645-0027

DEC 17 2003

4 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
5 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
6 Tel: (203) 966-9911

7 Attorneys for Plaintiff
MICHAEL DIPIRRO

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA

11
12 MICHAEL DIPIRRO,) No. H215530-4
13 Plaintiff,)
14 v.)
15 PNS STORES, INC. dba MAC) CONSENT JUDGMENT
16 FRUGAL'S; and DOES 1 through)
17 1000,)
Defendants.)
18 _____)
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20 This Consent Judgment is entered into by and between
21 Michael DiPirro, a California citizen, and PNS Stores, Inc.,
22 an Ohio corporation, as of October 3, 2000 (the "Effective
23 Date"). The parties agree to the following terms and
24 conditions, as outlined in the following Settlement Agreement:

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SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro ("Plaintiff" or "DiPirro"), a California citizen and PNS Stores, Inc. ("PNS"), an Ohio corporation, as of October 3, 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. PNS is a company that allegedly distributes and/or sells grinders, drills and soldering products in the State of California that Plaintiff contends 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), crystalline silica, arsenic, chromium (hexavalent compounds) and/or formaldehyde (the "Listed Chemicals");

C. The products that allegedly contain, or whose customary use and application are likely to produce fumes or gases which contain, one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products"). Plaintiff contends the Products have been manufactured, distributed and/or sold by PNS for use in California since at least February 22, 1996;

D. On February 22, 2000, Michael DiPirro served PNS and other public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided PNS and such public enforcers with notice that PNS was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells (solder and soldering irons) in California expose users to Proposition 65-listed chemicals;

E. On May 10, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. PNS Stores, Inc., dba Mac Frugal's in the San Francisco County Superior Court, naming PNS 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 PNS products (which complaint was dismissed without prejudice on July 21, 2000);

F. On July 12, 2000, Michael DiPirro served PNS and other public enforcement agencies with a document entitled "Second Supplemental 60-Day Notice of Violation" which provided PNS and such public enforcers with notice that PNS was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells (solder and soldering irons) in California expose users to Proposition 65-listed chemicals;

G. On August 18, 2000, Michael DiPirro served PNS and other public enforcement agencies with a document entitled "Third Supplemental 60-Day Notice of Violation" which provided PNS and such public enforcers with notice that PNS was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells (drills and grinders) in California expose users to Proposition 65-listed chemicals;

H. On September 15, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. PNS Stores, Inc., dba Mac Frugal's in the Alameda County Superior Court, naming PNS 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 PNS products;

I. PNS has not responded to Plaintiff's complaint, but if it had done so, PNS would have expressly denied, and hereby does so expressly deny, selling Products which violate Proposition 65 or any other California statute, regulation, or rule. Nonetheless, solely to avoid further costs of litigation, PNS has chosen to enter into this Settlement Agreement; and

J. Nothing in this Agreement shall be construed as an admission by PNS 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 PNS 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 PNS under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND PNS AGREE AS FOLLOWS:

1. **Product Warnings.** PNS agrees that as of November 1, 2000, they shall not sell (or cause to be sold on their behalf) any of the Products for sale or use in the State of California unless such Products bear the following warning statement on the Product label or on a placard located where the Product is being displayed for sale:

"WARNING: Normal use of this product is likely to expose the user to a chemical known to the State of California to

cause cancer and birth defects or other reproductive harm”;

The warning statement shall be prominently placed upon the Product's label with such conspicuousness, as compared with other words, statements, designs or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

2. Payment Pursuant To Health & Safety Code §25249.7(b).

Pursuant to Health & Safety Code §25249.7(b), PNS shall pay a civil penalty of \$2,000. The payment of \$2,000 shall be paid within fifteen (15) calendar days after the Effective Date of this Agreement or within five (5) calendar days after approval of this settlement by the court and entry of judgment thereon, whichever date is later. 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.

3. 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. PNS 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.

In compromise and settlement of this portion of DiPirro's claim, PNS shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to PNS' attention, litigating and negotiating a settlement. PNS shall pay the total sum of \$23,000 for investigation fees, attorneys' fees and litigation costs. PNS agrees to pay \$23,000 within fifteen (15) calendar days after the Effective Date of this Agreement or within five (5) calendar days after approval of this settlement by the court and entry of judgment thereon, whichever date is later. Payment should be made payable to the " Chanler Law Group".

4. Michael DiPirro's Release Of PNS. 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 PNS 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 PNS' alleged failure to warn about exposure to the lead (or lead compounds), crystalline silica, arsenic, chromium (hexavalent compounds),

formaldehyde or any other Listed Chemical contained in (or produced by) any of the Products.

5. PNS' Release Of Michael DiPirro. PNS, 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 PNS, relating to the Products.

6. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and PNS shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §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.

7. Product Characterization. Plaintiff contends 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), crystalline silica, arsenic, chromium (hexavalent 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 PNS 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), PNS 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 PNS Exposure Data, DiPirro shall provide PNS 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 PNS written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of PNS' notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and PNS 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 PNS of his intent to challenge the Exposure Data, DiPirro and PNS shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of PNS' notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and PNS 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. Notwithstanding the foregoing, in the event that PNS is no longer required to

provide the warnings provided for herein under applicable law, regulation or court order (excluding therefrom any requirement under the term of this Agreement and any order or judgment incorporating this Agreement), then PNS may discontinue the warnings with no further liability or obligations to the extent that new law, regulation or court order provides.

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

All correspondence to PNS shall be mailed to:

Michael E. Delehunt, Esq.
Crosby, Heafey, Roach & May
Two Embarcadero Center, 20th Floor
San Francisco, CA 94111
(415) 543-8700

and

Michael Schlonsky
Consolidated Stores
Legal Department 10051
300 Phillipi Road
P.O. Box 28572
Columbus, Ohio 43228-0512

12. **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. Plaintiff represents, however, that his 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 Alameda County Superior Court.

13. **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.

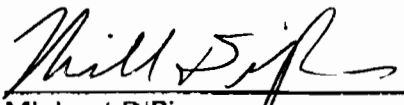
14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: 10/5/00

DATE: _____



Michael DiPirro
PLAINTIFF

PNS Stores, Inc.
DEFENDANT

Michael Schionsky
Consolidated Stores
Legal Department 10051
300 Phillipi Road
P.O. Box 28672
Columbus, Ohio 43228-0512

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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:

AGREED TO:

DATE: _____

DATE: 10/13/00


Michael DiPirro
PLAINTIFF

Michael A. Schionsky
PNS Stores, Inc
DEFENDANT

APPROVED AS TO FORM:

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Dated: 10/14, 2000

by: 
 Clifford A. Chanler
 Attorneys for Plaintiff
 MICHAEL DIPIRRO

Dated: 10/12, 2000

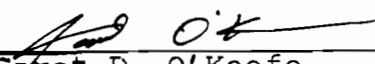
by: 
 Garet D. O'Keefe
 Attorneys for Defendant
 PNS STORES, INC. dba
 MAC FRUGAL'S

EXHIBIT A

Tool and Supply of New England, Inc.'s Hobby House General Electrical Rosin Core Soldering Wire

Hobby House 30 Watt Soldering Iron – Pistol Grip

Tri-Star's Pro Source 4-1/2" angle grinder, Item # EAG412UL

Tri-Star's Pro Source 18v Cordless Variable Speed Reversible 3/8" drill, Item # 182CD

Exhibit A

IT IS SO ORDERED, ADJUDGED AND DECREED.

DATE: DEC 13 2000

Justice Barbara J. Miller

Judge of the Superior Court