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8 Attorneys for Plaintiff
MICHAEL DIPIRRO
9

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
13 UNLIMITED CIVIL JURISDICTION
14

15
16 MICHAEL DIPIRRO, an individual) No. 01-024684
17 Plaintiff,) SETTLEMENT AGREEMENT
18 v.)
19 PLASPLUGS INC.; and DOES 1)
through 1000,)
20 Defendants.)
21 _____)

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23
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25 SETTLEMENT AGREEMENT

1 This Settlement Agreement ("Agreement" or
2 "Settlement Agreement") is entered into by and between
3 Michael DiPirro, a California citizen, and Plasplugs Inc., a
4 New York corporation ("Plasplugs"), as of December 20, 2001
5 (the "Effective Date"). The parties agree to the following
6 terms and conditions:
7

8 **WHEREAS:**

9 A. Michael DiPirro is an individual residing in
10 San Francisco, California, who seeks to promote awareness of
11 exposures to toxic chemicals and improve human health by
12 reducing or eliminating hazardous substances produced by
13 consumer and industrial products;

14 B. Plasplugs is a company that currently
15 manufactures, distributes and sells in the State of
16 California certain power tools and diamond cutting wheels
17 whose customary use and application is likely to produce
18 fumes, gases or dust which contain chemicals listed pursuant
19 to Proposition 65 (California Health & Safety Code §25249.5
20 et seq.) including lead (or lead compounds), crystalline
21 silica, arsenic and chromium (hexavalent compounds) (the
22 "Listed Chemicals");

23 C. The products whose customary use and
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1 application are likely to produce fumes, gases or dust which
2 contain one or more of the "Listed Chemicals" and which are
3 covered by this Agreement are set forth in Exhibit A (the
4 "Products"). The Products have been distributed and/or sold
5 by Plasplugs for use in California since at least July 6,
6 1998;

7 D. On July 13, 2001, Michael DiPirro first served
8 Plasplugs and other public enforcement agencies with a
9 document entitled "60-Day Notice of Violation" which provided
10 Plasplugs and such public enforcers with notice that
11 Plasplugs was in violation of Health & Safety Code §25249.6
12 for allegedly failing to warn purchasers that certain
13 products it sells or otherwise offers for use in California
14 expose users to the Listed Chemicals; and

15 E. On September 24, 2001, Michael DiPirro filed a
16 complaint entitled Michael DiPirro v. Plasplugs Inc., et al.
17 in the Alameda County Superior Court, naming Plasplugs as a
18 defendant and alleging violations of Business & Professions
19 Code §17200 and Health & Safety Code §25249.6 in the interest
20 of the general public in California who allegedly have been
21 exposed to the "Listed Chemicals" produced by certain
22 products that Plasplugs sells.

23 F. Nothing in this Agreement shall be construed
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1 as an admission by Plasplugs of any fact, finding, issue of
2 law, or violation of law, nor shall compliance with this
3 Agreement constitute or be construed as an admission by
4 Plasplugs of any fact, finding, conclusion, issue of law, or
5 violation of law. However, this paragraph shall not diminish
6 or otherwise affect the obligations, responsibilities, and
7 duties of Plasplugs under this Agreement.

8
9 **NOW THEREFORE, MICHAEL DIPIRRO AND PLASPLUGS AGREE AS**

10 **FOLLOWS:**

11 1. **Product Warnings.** Beginning on March 15,
12 2002, Plasplugs agrees that it will not knowingly ship (or
13 cause to be shipped) any Products that produce fumes, gases
14 or dust that contain the Listed Chemicals in the State of
15 California unless such Products comply with section 1.1
16 below:

17 1.1 For all power tools that are likely to
18 expose users to lead (or lead compounds), crystalline silica,
19 arsenic, and/or chromium (hexavalent compounds) or any
20 combination of chemicals listed by the State of California as
21 known to cause cancer as well as birth defects (or other
22 reproductive harm), such Products shall bear the following
23 warning statement in the instruction manual, pursuant to
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1 Exhibit B, or on the label or packaging:

2 **"WARNING: Some dust created by power sanding,**
3 **sawing, grinding, drilling, and**
4 **other construction activities**
5 **contains chemicals known to the**
6 **State of California to cause cancer,**
7 **birth defects or other reproductive**
8 **harm.";**

9 The warning statement shall be prominently
10 placed in the Product's instruction manual pursuant to
11 Exhibit B or upon the Product's label or packaging with such
12 conspicuousness, as compared with other words, statements,
13 designs or devices on the label as to render it likely to be
14 read and understood by an ordinary individual under customary
15 conditions of purchase or use.

16 **2. Payment Pursuant To Health & Safety Code**

17 **\$25249.7(b).** Pursuant to Health & Safety Code §25249.7(b),
18 Plasplugs shall pay a civil penalty of \$4,500 (four thousand
19 five hundred dollars). The payment of \$4,500 shall be paid
20 within ten (10) calendar days after the Effective Date of
21 this Agreement and shall be held in trust by DiPirro's
22 counsel until the Alameda County Superior Court approves and
23 enters the Settlement Agreement. The penalty payment is to
24 be made payable to "Chanler Law Group In Trust For Michael
25 DiPirro". If the Settlement Agreement is not approved by the
26 Court, DiPirro will return all funds, with interest thereon

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1 at a rate of six percent (6%) per annum, within ten (10)
2 calendar days of notice of the Court's decision. Penalty
3 monies shall be apportioned by DiPirro's Counsel in
4 accordance with Health & Safety Code §25192, with 75% of
5 these funds remitted to the State of California's Department
6 of Toxic Substances Control.

7 Plasplugs understands that the payment schedule as
8 stated in this Settlement Agreement is a material factor upon
9 which DiPirro has relied in entering into this Settlement
10 Agreement. Plasplugs agrees that all payments will be made
11 in a timely manner in accordance with the payment due dates.
12 Plasplugs will be given a five (5) calendar day grace period
13 from the date payment is due. Plasplugs agrees to pay
14 Michael DiPirro a \$250 per calendar day fee for each day the
15 payment is not received after the grace period ends. For
16 purposes of this paragraph, each new day (requiring an
17 additional \$250 payment) will begin at 5 p.m. (PST).

18 **3. Reimbursement Of Fees And Costs.** The parties
19 acknowledge that DiPirro offered to resolve the dispute
20 without reaching terms on the amount of fees and costs to be
21 reimbursed, thereby leaving this open issue to be resolved
22 after the material terms of the agreement had been reached,
23 and the matter settled. Plasplugs then expressed a desire to
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1 resolve the fee and cost issue concurrently with other
2 settlement terms, so the parties tried to (and did) reach an
3 accord on the compensation due to DiPirro and his counsel
4 under the private attorney general doctrine codified at
5 C.C.P. §1021.5.

6 Plasplugs shall reimburse DiPirro and his counsel
7 for his fees and costs incurred as a result of investigating,
8 bringing the matter to Plasplugs' attention, litigating and
9 negotiating a settlement in the public interest. Plasplugs
10 shall pay the total sum of \$13,750 (thirteen thousand seven
11 hundred fifty dollars), except as provided for in Paragraph
12 3.1 below, for investigation fees, attorneys' fees and
13 litigation costs. Plasplugs agrees to pay \$13,750, except as
14 provided for in Paragraph 3.1 below, within ten (10) calendar
15 days of the Effective Date of the Agreement. Such sum shall
16 be held in trust by DiPirro's counsel until the Alameda
17 County Superior Court approves and enters the Settlement
18 Agreement. If the Settlement Agreement is not approved by
19 the Court, DiPirro will return all funds, with interest
20 thereon at a rate of six percent (6%) per annum, within ten
21 (10) calendar days of notice of the Court's decision.
22 Payment should be made payable to the "Chanler Law Group".

23 Plasplugs understands that the payment schedule as
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1 stated in this Settlement Agreement is a material factor upon
2 which DiPirro and his counsel have relied in entering into
3 this Settlement Agreement. Plasplugs agrees that all
4 payments will be made in a timely manner in accordance with
5 the payment due dates. Plasplugs will be given a five (5)
6 calendar day grace period from the date payment is due.
7 Plasplugs agrees to pay Michael DiPirro and his counsel a
8 \$250 per calendar day fee for each day the payment is not
9 received after the grace period ends. For purposes of this
10 paragraph, each new day (requiring an additional \$250
11 payment) will begin at 5 p.m. (PST).

12 **3.1 Additional Fees and Costs in Seeking Judicial**
13 **Approval.** The parties acknowledge that, pursuant to Health &
14 Safety Code § 25249.7, a noticed motion may be required to
15 obtain judicial approval of this Agreement. Accordingly, if
16 one is required, the parties have agreed to file a *Joint*
17 *Motion to Approve the Agreement* shortly after the California
18 Attorney General's Office thirty-day review period has
19 expired. (See, paragraph 15 below).

20 Pursuant to CCP § 1021.5, Plasplugs agrees to
21 reimburse DiPirro and his counsel for their reasonable fees
22 and costs incurred in seeking judicial approval of this
23 Agreement. Such additional fees or costs relating to
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1 achieving settlement approval for this Agreement include, but
2 are not limited to: drafting and filing a brief in support of
3 such a Motion to Approve Settlement; any appearance made
4 before the Court related to such approval; any further
5 editing and finalizing of the Agreement to respond to any
6 concerns expressed by any public enforcer or the Court;
7 corresponding or otherwise communicating with opposing
8 counsel on this subject; any retention of one or more experts
9 if scientific issues become a focal point during the approval
10 process; and presenting of the Agreement (or any
11 modifications thereof) to the California Attorney General's
12 Office for further comment.

13 DiPirro and his counsel expressly agree that
14 Plasplugs' liability for payment due under this paragraph
15 shall not exceed \$9,000. In the event that any public
16 enforcer (including the California Attorney General's Office)
17 objects or otherwise comments to one or more provisions of
18 this Agreement, Plasplugs agrees to use its best efforts to
19 support each of the terms of the Agreement, as well as to
20 seek judicial approval of this Agreement.

21 Plasplugs' payment of DiPirro's legal fees and
22 costs under this paragraph shall be due within ten (10)
23 calendar days after receipt of both notice of the Court's
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1 approval of the Agreement and a billing statement from
2 DiPirro ("Additional Fee Claim"). Payment of the Additional
3 Fee Claim shall be made payable to the "Chanler Law Group."
4 Plasplugs has the right to object to DiPirro's reimbursement
5 request and may submit the resolution of this issue to the
6 American Arbitration Association (AAA) in Northern California
7 to determine the reasonableness of the additional fees and
8 costs sought, provided that an arbitration claim has been
9 filed with AAA and served on DiPirro within ten (10) calendar
10 days following DiPirro's service of the Additional Fee Claim
11 on Plasplugs. If an arbitration notice is not filed with AAA
12 in a timely manner, DiPirro may file a motion, pursuant to
13 CCP §1021.5, with the Court seeking the fees and costs
14 incurred as set forth in this paragraph.

15 **4. Michael DiPirro's Release Of Plasplugs.**

16 Michael DiPirro, by this Agreement, on behalf of himself, his
17 agents, representatives, attorneys, assigns and in the
18 interest of the general public, waives all rights to
19 institute or participate in, directly or indirectly, any form
20 of legal action, and releases all claims, liabilities,
21 obligations, losses, costs, expenses, fines and damages,
22 against Plasplugs and its directors, officers, employees,
23 successors and assigns, whether under Proposition 65 or the
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1 Business & Profession Code §17200 et seq. based on Plasplugs'
2 alleged failure to warn about exposure to the Listed
3 Chemicals produced by any of the Products.

4 **5. Plasplugs' Release Of Michael DiPirro.**

5 Plasplugs, by this Agreement, waives all rights to institute
6 any form of legal action against Michael DiPirro and his
7 attorneys or representatives, for all actions or statements
8 made by Michael DiPirro, and his attorneys or
9 representatives, in the course of seeking enforcement of
10 Proposition 65 or Business & Profession Code §17200 against
11 Plasplugs.

12 **6. Court Approval.** If, for any reason, this
13 Settlement Agreement is not approved by the Court, this
14 Agreement shall be deemed null and void.

15 **7. Intent of Parties That This Agreement Have**
16 **Preclusive Effect.** DiPirro and Plasplugs agree that this
17 Agreement is intended to resolve and preclude any and all
18 claims that were or could have been brought in the case filed
19 by DiPirro against Plasplugs in Alameda County Superior
20 Court, or otherwise brought by any person or entity under
21 Proposition 65, Business and Professions Code Sections 17200
22 et seq., or any other statute or common law rule that
23 involves, relates to or arises out of the alleged failure to
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1 warn about exposure to chemicals contained in or produced by
2 any of the Products. The parties agree that DiPirro is
3 entering into this Settlement Agreement in the interest of
4 the general public as authorized by Proposition 65 and any
5 other applicable law, and that this Agreement and the
6 judgment entered pursuant hereto accordingly are intended to,
7 and shall, have full preclusive effect against any other
8 person or entity with respect to such claims, whether
9 purporting to act in his, her or its own interests or in the
10 public interest. The parties further agree that this
11 Agreement is appropriate and adequate to protect the public
12 from any of the acts alleged, or that could have been
13 alleged, in the complaint filed by DiPirro against Plasplugs.

14 **8. Non-Admission.** This Agreement is entered into
15 in compromise of disputed claims. Neither the execution of
16 this Agreement and the releases provided for herein, nor the
17 payment of any consideration hereunder, nor any other act or
18 agreement in furtherance of this Agreement, shall be
19 construed in any way as an admission of wrongdoing or
20 liability on the part of any party hereto or any party
21 released hereby. Plasplugs completely denies any such
22 liability or wrongdoing, and intends by this Agreement only
23 to avoid further and prolonged litigation.

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1 **9. Plasplugs Sales Data.** Plasplugs understands
2 that the sales data provided to counsel for DiPirro by
3 Plasplugs was a material factor upon which DiPirro has relied
4 to determine the amount of payments made pursuant to Health &
5 Safety Code §25249.7(b) in this Agreement. To the best of
6 Plasplugs' knowledge, the sales data provided is true and
7 accurate. In the event that DiPirro discovers facts that
8 demonstrate to a reasonable degree of certainty that the
9 sales data is materially inaccurate, the parties shall meet
10 in a good faith attempt to resolve the matter within ten (10)
11 days of Plasplugs' receipt of notice from DiPirro of his
12 intent to challenge the accuracy of the sales data. If this
13 good faith attempt fails to resolve DiPirro's concerns,
14 DiPirro shall have the right to rescind the Agreement and re-
15 institute an enforcement action against Plasplugs, provided
16 that all sums paid by Plasplugs pursuant to paragraphs 2 and
17 3 are returned to Plasplugs within ten (10) days from the
18 date on which DiPirro notifies Plasplugs of his intent to
19 rescind this Agreement. In such case, all applicable
20 statutes of limitation shall be deemed tolled for the period
21 between the date DiPirro filed the instant action and the
22 date DiPirro notifies Plasplugs that he is rescinding this
23 Agreement pursuant to this Paragraph.

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1 **10. Product Characterization.** Plasplugs

2 acknowledges that DiPirro alleges that each of the Products,
3 through their customary use or application, are likely to
4 produce fumes, gases or dust that contain lead (or lead
5 compounds), crystalline silica, arsenic and/or chromium
6 (hexavalent compounds), substances known to the State of
7 California to cause cancer and/or birth defects (or other
8 reproductive harm). In the event that Plasplugs obtains
9 analytical, risk assessment or other data ("Exposure Data")
10 that shows an exposure to any or all of the Listed Chemicals
11 poses "no significant risk" or will have "no observable
12 effect," as each such standard is applicable and as each is
13 defined under Health & Safety Code §25249.10(c) and Plasplugs
14 seeks to eliminate the warnings, then Plasplugs shall provide
15 DiPirro with ninety (90) days prior written notice of its
16 intent to limit or eliminate the warning provisions under
17 this Agreement based on the Exposure Data and shall provide
18 DiPirro with all such supporting Exposure Data. Within
19 ninety (90) days of receipt of Plasplugs Exposure Data,
20 DiPirro shall provide Plasplugs with written notice of his
21 intent to challenge the Exposure Data (in the event that he
22 chooses to make such a challenge). If DiPirro fails to
23 provide Plasplugs written notice of his intent to challenge

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25 **SETTLEMENT AGREEMENT**

1 the Exposure Data within ninety (90) days of receipt of
2 Plasplugs' notice and the Exposure Data, DiPirro shall waive
3 all rights to challenge the Exposure Data, and Plasplugs
4 shall be entitled to limit or eliminate the warning
5 provisions required under this Agreement with respect to
6 those Product(s) to which the Exposure Data applies. If
7 DiPirro timely notifies Plasplugs of his intent to challenge
8 the Exposure Data, DiPirro and Plasplugs (a) may stop its
9 efforts to eliminate the warnings upon notice to DiPirro with
10 no further liability or obligations or (b) shall negotiate in
11 good faith for a period not to exceed thirty (30) days
12 following receipt of Plasplugs' notice to attempt to reach a
13 settlement of this issue. If a settlement is not reached,
14 DiPirro and Plasplugs agree to submit such challenge to the
15 superior court for determination, pursuant to the court's
16 continuing jurisdiction of this matter under C.C.P. §664.6
17 and this agreement. The prevailing party shall be entitled
18 to reasonable attorneys' fees and costs associated with
19 bringing or defending a motion brought under this paragraph
20 to the court for determination.

21 **11. Severability.** In the event that any of the
22 provisions of this Agreement are held by a court to be
23 unenforceable, the validity of the enforceable provisions

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25 **SETTLEMENT AGREEMENT**

1 shall not be adversely affected.

2 **12. Attorney's Fees.** In the event that a dispute
3 arises with respect to any provision(s) of this Agreement
4 (including, but not limited to, disputes arising from the
5 late payments provisions in paragraphs 2 and 3), the
6 prevailing party shall be entitled to recover costs and
7 reasonable attorneys' fees.

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

10 **14. Notices.** All correspondence to Michael
11 DiPirro shall be mailed to:

12 Jennifer Henry, Esq. or David Bush, Esq.
13 Bush & Henry
14 4400 Keller Ave., Suite 200
 Oakland, CA 94605
 (510) 577-0747

15 All correspondence to Plasplugs shall be
16 mailed to:

17 Betty-Jane Kirwan, Esq.
18 Laurie M. Stone, Esq.
19 Latham & Watkins
 633 West Fifth Street, Suite 4000
 Los Angeles, CA 90071-2007
 (213) 485-1234

20 with a copy to:

21 Bradley Mitchell, Esq.
22 Smith, Stratton, Wise, Heher & Brennan
23 600 College Road East
 Princeton, New Jersey 08540
 (609) 924-6000

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25 SETTLEMENT AGREEMENT

1 **15. Compliance With Reporting Requirements.** The
2 parties acknowledge that the reporting provisions of Health &
3 Safety Code § 25249.7(f) apply to this Settlement Agreement.
4 Counsel for DiPirro shall comply with that section by
5 submitting the required reporting form to, and serving a copy
6 of this Settlement Agreement on, the California Attorney
7 General's Office within two business days after the parties
8 execute this Settlement Agreement. Following the expiration
9 of the Attorney General's thirty-day review period, counsel
10 for DiPirro shall submit the Settlement Agreement to the
11 Court in accordance with the requirements of Health & Safety
12 Code § 25249.7(f) and its implementing regulations, thereby
13 allowing the Attorney General to serve any comments to this
14 Settlement Agreement prior to the end of the thirty (30) day
15 period.

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


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

1 AGREED TO:

AGREED TO:

2 DATE: 1/8/02

DATE: _____

3
4 
5 Michael DiPirro
6 PLAINTIFF

Plasp. Plug Inc.
DEFENDANT

7
8 APPROVED AS TO FORM:

APPROVED AS TO FORM:

9 DATE: _____

DATE: _____

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12 David Bush
13 Attorneys for Plaintiff
MICHAEL DIPIRRO

Laurie M Stone
Attorney for Defendant
PLASPLUG INC.

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25 SETTLEMENT AGREEMENT

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AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

APPROVED AS TO FORM:

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

AGREED TO:

DATE: 12/27/01

Janis Keegan
Plasplugs Inc
DEFENDANT *Janis Keegan*
SR. V.P.

APPROVED AS TO FORM:

DATE: 12/28/01

Laurie M. Stone
Laurie M. Stone
Attorneys for Defendant
PLASPLUGS INC.

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AGREED TO:

AGREED TO:

DATE: _____

DATE: _____

Michael DiPirro
PLAINTIFF


Plasplugs Inc.
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: Jan 9, 2002

DATE: _____



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Laurie M. Stone
Attorneys for Defendant
PLASPLUGS INC.

SETTLEMENT AGREEMENT

EXHIBIT A

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Powermaster Diamond Wheel Wet Saw

Table Diamond Wheel Wet Saw

Portable Diamond Wheel Wet Saw

Compact Diamond Wheel Wet Saw

Mini Diamond Wheel Wet Saw

Ultra Sharp power sharpeners

4 in One Power Sharpener

Home Sharpening Kit

Drill Sharpener

EXHIBIT B

1
2 1. Warnings in manuals. A Defendant required to
3 provide a warning for power grinders or drill products under
4 subparagraph 1 may provide that warning in the owner's manual
5 for that Product if all of the following conditions are met:

6 a. the warning shall be located in one of the
7 following places in the owner's manual: the outside of the
8 front cover, the inside of the front cover, the first page
9 other than the cover, or the outside of the back cover. The
10 warning shall have the exact content as the warning under
11 subparagraph 1, except that, at the option of the Defendant,
12 the bracketed language may be omitted. The warning shall be
13 printed in a font no smaller than the font used for other
14 safety warnings in the manual. The format shown in
15 subparagraph 1 is illustrative only, provided that the
16 warning meets the other requirements of this section.

17 Alternatively, the warning may be included in a safety
18 warning section consistent with specifications UL 745-1 or UL
19 45, issued by Underwriters Laboratories Inc, as amended. The
20 warning may either be printed in the manual or contained in a
21 durable label or sticker affixed to the manual. If the
22 graphic is used, and the manual is printed in a single color
23 of ink on paper, then the warning need not contain the yellow

1 color.

2 b. the Product contains a durable label or
3 sticker directing the operator's attention to the owner's
4 manual;

5 c. the owner's manual is intended by the
6 Defendant to be provided with the original packaging of the
7 Product to the initial consumer/purchaser;

8 d. at least one other safety warning appears in
9 the owner's manual; and

10 e. all or a substantial portion of operation
11 instructions, if any, are contained in the owner's manual.