

SETTLEMENT AGREEMENT

This Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into by and between Michael DiPirro and Poolmaster Inc., a California corporation ("Poolmaster"), as of December 14, 2001 (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. Poolmaster is a company that currently manufactures, distributes and sells certain vinyl repair kits as set forth in Exhibit A that contain toluene, a substance known to the State of California to cause birth defects (or other reproductive harm);

C. A list of the products which contain toluene (the "Listed Chemical") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been distributed and sold by Poolmaster in California to, among others, the Home Depot since October 15, 1998;

D. On August 3, 2001, Michael DiPirro first served Poolmaster and other public enforcement agencies with documents entitled "60-Day Notice of Violation" which provided Poolmaster, the Home Depot and such public enforcers with notice that DiPirro alleged that Poolmaster and the Home Depot were in violation of Health &

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Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to the Listed Chemical;

E. Poolmaster promptly contacted DiPirro through his attorneys and asserted that it was not in violation of Health & Safety Code §25249.6 because its products did not “expose” consumers to toluene at a level which requires a warning, and setting forth the basis for its conclusions;

F. On October 15, 2001, Michael DiPirro filed a complaint entitled Michael DiPirro v. Poolmaster Inc., et al. in the Alameda County Superior Court, naming Poolmaster and the Home Depot as defendants and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general public in California who allegedly have been exposed to the Listed Chemical contained in certain products that Poolmaster manufactures, distributes and sells; and

G. Poolmaster vigorously denies the allegations of DiPirro’s 60-day notice and his complaint and specifically that its products are in violation of Health & Safety §25249.6. Nothing in this Agreement shall be construed as an admission by Poolmaster 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 Poolmaster 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 DiPirro or Poolmaster under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND POOLMASTER AGREE
AS FOLLOWS:**

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1. Reformulation or Product Warnings. Poolmaster shall immediately reformulate the Products which it sells in California to remove toluene as an ingredient. Beginning as of the Effective Date of this agreement, Poolmaster shall not ship any of the Products containing toluene to any customers for sale in California.

1.1 In the event that Poolmaster wishes to resume sales of the vinyl repair kits containing toluene in California, it shall first provide one of the following warning statements with such Products:

"WARNING: This product contains toluene, a chemical known to the State of California 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).";

The warning statement shall be prominently placed on the Products with such conspicuousness, as compared with other words, statements, designs or devices on the label, by way of adhesive sticker or otherwise printed on the label, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Poolmaster shall pay a civil penalty of \$13,000 in one installment. The first payment of \$13,000 shall be paid on or before August 31, 2002. However, this payment shall be waived if Poolmaster reformulates its Products to remove toluene, by August 1, 2002. Certification of the

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reformulation must be provided to DiPirro by August 15, 2002. 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 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. Poolmaster 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.

Poolmaster shall reimburse DiPirro and his counsel for his fees and costs, incurred as a result of investigating, bringing this matter to Poolmaster's attention, litigating and negotiating a settlement. Poolmaster shall pay \$11,000, for all attorneys' fees, expert and investigation fees, and litigation costs. Poolmaster agrees to pay the total sum of \$11,000, within five (5) calendar days of the Effective Date. Payment should be made payable to the "Chanler Law Group".

Poolmaster understands that the payment schedule as stated in this Agreement is a material factor upon which DiPirro has relied in entering into this Agreement. Poolmaster agrees that all payments will be made in a timely manner in accordance with the payment due dates. Poolmaster will be given a five (5) calendar day

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grace period from the date payment is due. Poolmaster agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is not received after the grace period ends. For purposes of this paragraph, each new day (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

4. Michael DiPirro's Release Of Poolmaster, The Home Depot and All Other Retailers of the Products. Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the interest of the general public, waives all rights of the People of the State of California 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 Poolmaster and the Home Depot and Poolmaster's distributors, retailers, customers, directors, officers, employees, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq., or any other statute or the common law based on Poolmaster's, The Home Depot's or any other retailers' alleged failure to warn about exposure to the Listed Chemical contained in any of the Products.

5. Poolmaster's Release Of Michael DiPirro. Poolmaster, by this Agreement, waives all rights to institute any form of legal action against Michael DiPirro and his attorneys or representatives, for all past 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 Poolmaster up to and including, but not after, the Effective Date.

6. Dismissal of Action. In consideration of the covenants contained in this Agreement, DiPirro agrees to dismiss this action with prejudice against all named defendants within five (5) business days of the Effective Date.

7. Poolmaster Sales Data. Poolmaster understands that the sales data provided to counsel for DiPirro by Poolmaster was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Poolmaster's knowledge, the sales data provided is true and accurate. In the event that 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 Poolmaster's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Poolmaster, provided that all sums paid by Poolmaster pursuant to paragraph 2 shall be returned to Poolmaster within ten (10) days from the date on which DiPirro notifies Poolmaster of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Poolmaster that he is rescinding this Agreement pursuant to this Paragraph.

8. Product Characterization. Poolmaster acknowledges that each of the Products listed in Exhibit A contains toluene and that despite the information Poolmaster has already provided to DiPirro, Plaintiff alleges that the customary use or application of the Products is likely to expose users to toluene, a substance known to the

State of California to cause birth defects (or other reproductive harm) in an amount which requires a warning. In the event that Poolmaster obtains additional analytical, risk assessment or other data ("Exposure Data") that further shows an exposure to any or all Products will have "no observable effect," as such standard is applicable and as is defined under Health & Safety Code §25249.10(c) and Poolmaster seeks to eliminate the warnings, then Poolmaster 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 Poolmaster Exposure Data, DiPirro shall provide Poolmaster 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 Poolmaster written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Poolmaster's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Poolmaster 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 Poolmaster of his intent to challenge the Exposure Data, DiPirro and Poolmaster (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Poolmaster's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Poolmaster agree to submit such challenge to the superior court for determination, pursuant to this Agreement. The prevailing party shall

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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 (including, but not limited to, disputes arising from the late payments provisions in paragraph 2), 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:

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

All correspondence to Poolmaster shall be mailed to:

Norman C. Hile
Orrick, Herrington & Sutcliff, LLP
400 Capitol Mall, Suite 3000
Sacramento, CA 95814-4497
(916) 447-9200

13. Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)). The parties acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this Agreement. Counsel for DiPirro shall comply

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with that section by submitting the required reporting form to, and serving a copy of this Agreement on, the California Attorney General's Office within two business days after the parties execute this Agreement.

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: 12/17/01



Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Poolmaster Inc.
DEFENDANT

APPROVED AS TO FORM:

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

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APPROVED AS TO FORM:

DATE: _____

Norman C. Hile
Attorneys for Defendant
POOLMASTER INC.

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AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Poolmaster Inc.
DEFENDANT

APPROVED AS TO FORM:

DATE: Dec 17, 2001

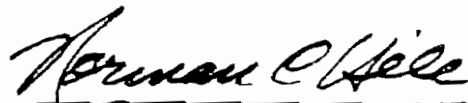


David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

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APPROVED AS TO FORM:

DATE: 12/18/01



Norman C. Hile
Attorneys for Defendant
POOLMASTER INC.

EXHIBIT A

1. Vinyl Swimming Pool Patch Kit