

COPY

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Michael DiPirro, a California citizen, and Sears, Roebuck and Co. (“Sears”), a New York corporation, as of June 2, 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. Sears is a company that distributes and/or sells soldering products in the State of California that allegedly contain, or whose customary use and application are likely to produce fumes or gases which may contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.) including lead and formaldehyde (the “Listed Chemicals”);

C. The products that allegedly contain, or whose customary use and application are likely to produce fumes or gases which may contain, one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the “Products”). The products allegedly have been distributed and/or sold by Sears for use in California since at least July 6, 1995; and

D. On July 6, 1999, Michael DiPirro first served Sears and other public enforcement agencies with a document entitled “60-Day Notice of Violation” which provided Sears and such public enforcers with notice that Sears 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 20, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Sears Roebuck & Company in the Alameda County Superior Court, naming Sears 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 certain Sears soldering products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals (“the Litigation”).

F. Sears denies the material factual and legal allegations contained in the 60-day Notice, the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business and Professions Code Sections 17200 et seq., and maintains that all Products distributed and/or sold by Sears in California are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Sears 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 Sears 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 Sears under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND SEARS AGREE AS FOLLOWS:

1. Product Warnings. Beginning immediately, Sears shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Sears agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable. Sears agrees that as of September 30, 2000, it shall not distribute or sell (or cause to be distributed or sold on its behalf) any of the Products for sale or use in the State of California unless each such Product is accompanied by a Revised Label on or affixed to the Product or its packaging with the following warning statement:

"WARNING: This product contains, and when used for soldering and similar applications produces, chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)."

The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and reasonably understood by an ordinary individual under customary conditions of purchase or use. For the purposes of complying with this paragraph, the above warning may be communicated by the placement of adhesive stickers onto the current Product packaging.

2. Restitution and Penalty Payment.

2.1 Restitution. As payment pursuant to Business and Professions Code Section 17203, and as restitution to the People of the State of California, Sears shall pay to DiPirro \$7,500, which restitutionary payment shall

be allocated by DiPirro to a non-profit organization to underwrite the cost of research on the potential risks of cancer associated with exposures to lead. Such payment shall be paid to DiPirro within ten (10) calendar days of the Effective Date.

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

Pursuant to Health & Safety Code §25249.7(b), Sears shall pay a civil penalty of \$8,000. The payment of \$8,000 shall be paid within ten (10) calendar days after the Effective Date of this Agreement. 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 settlement had been reached, and the matter settled. Sears then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties then reached an accord relating to the amount due to DiPirro and his counsel under the private attorney general doctrine codified at Code of Civil Procedure §1021.5. Pursuant to that accord, Sears agrees to reimburse DiPirro for its investigative fees and costs, attorney's fees and costs, and any other costs incurred herein, the sum of \$19,230. Such payment shall be paid to DiPirro within ten (10) calendar days of the Effective Date.

4. Michael DiPirro's Release Of Sears. Except with respect to the obligations set forth in this Agreement, DiPirro, on his own behalf and on behalf of those who he represents, waives and releases any and all claims, demands, liens, causes of action and/or rights to institute any form of legal action (including but not limited to claims for damages, penalties, equitable relief and /or attorneys' fees ("Claims") against Sears, its parents, subsidiaries, affiliates, indemnitors and suppliers and any of their officers, directors, agents, employees, shareholders, insurers and attorneys with regard to their operation at any location with regard to the Products, including but not limited to such Claims that were or could have been asserted in the Litigation or that otherwise arise under Proposition 65, Business and Professions Code Sections 17200 et seq., or any other statute that relate to or arise out of Sears' alleged exposure of others, causing others to be exposed, or failure to warn about exposure, within the State of California to any chemical listed under Proposition 65.

5. Intent of Parties That Consent Judgment Have Preclusive Effect.

DiPirro and Sears agree that this Agreement is intended to resolve and preclude any and all Claims that were or could have been brought in the Litigation, or otherwise brought by any person or entity under Proposition 65, Business and Professions Code Sections 17200 et seq., or any other statute that involves, relates to or arises out of exposure to Listed Chemicals from the Products. DiPirro and Sears further agree that Sears is entering into this Agreement on behalf of its parents, subsidiaries, affiliates, indemnitors and suppliers and any of their officers, directors, agents, employees, shareholders, insurers and attorneys, and each location at which it operates in the State of California. DiPirro and Sears further agree that DiPirro is entering into this Agreement as the statutory representative of the People of the State of California as authorized by Proposition 65 and any other applicable law, and that this Agreement is accordingly intended to have, and shall have, full preclusive effect to the extent permitted by California law against any other person or entity with respect to such Claims, whether purporting to act in his, her or its own interests or in the public interest. DiPirro and Sears agree that this Agreement is adequate and appropriate to protect the public from any of the acts alleged, or that could have been alleged, in the Litigation against Sears, and that this Agreement is also intended to, and is appropriate and adequate to, provide restitution to the public as a result of such acts or any gains Sears may have obtained from such acts.

6. Sears' Release Of Michael DiPirro. Sears, 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 & Professions Code §17200 against Sears with regard to the Products.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Sears 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.

8. Sears Sales Data. Sears understands that the sales data provided to counsel for DiPirro by Sears 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 Sears 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 Sears 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 Sears, provided that all sums paid by Sears pursuant to paragraphs 2 and 3 are returned to Sears within ten (10) days from the date on which DiPirro notifies Sears 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 Sears that he is rescinding this Agreement pursuant to this Paragraph.

9. Product Characterization. In the event that Sears 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), Sears 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 Sears Exposure Data, DiPirro shall provide Sears 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 Sears written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Sears notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Sears 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 Sears of his intent to challenge the Exposure Data, DiPirro and Sears shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Sears notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Sears 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.

10. 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.

11. 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.

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

13. 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 Sears shall be mailed to:

Richard C. Jacobs, Esq.
Howard, Rice, Nemerovski, Canady,
Falk & Rabkin
A Professional Corporation
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4065
(415) 434-1600

14. 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. Sears represents, however, that their 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 Judgement to the Alameda County Superior Court.

15. Integrated Writing. This Agreement constitute the whole and only existing and binding agreement between the parties hereto on the subject matter hereof, superseding any prior understandings, whether written or oral. Other than the provisions expressly stated herein, there are no warranties, promises or representations of any kind, express or implied, upon which either

party has relied in entering into this Agreement, or as to the future relations or dealings of the parties.

16. 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.

17. Authorization. Each party has been advised and represented by counsel in connection with the negotiation and preparation of this Agreement, and each shall be deemed its author for purposes of construction of it. 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:

6/7/00

DATE: _____



Michael DiPirro
PLAINTIFF

Sears, Roebuck and Co.
DEFENDANT

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AGREED TO:

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DATE: _____

DATE: June 7, 2000

Michael DiPirro
PLAINTIFF

Victoria S. Bergel
Sears, Roebuck and Co.
DEFENDANT
*Associate
General
Counsel*

EXHIBIT A

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|----|-------------------|-------------------------------|
| 1. | Product No. 54042 | Solder Iron |
| 2. | Product No. 54285 | Torch Kit |
| 3. | Product No. 54284 | Torch |
| 4. | Product No. 54288 | Mini-Torch |
| 5. | Product No. 54044 | Soldering Gun |
| 6. | Product No. 80062 | Lead-free Solder (rosin core) |
| 7. | Product No. 80070 | Soldering Kit |
| 8. | Product No. 27320 | Soldering Gun Outfit |
| 9. | Product No. 80061 | Electrical Rosin Core Solder |