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8 Attorneys for Plaintiff
MICHAEL DIPIRRO

9
10 SUPERIOR COURT OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
12 UNLIMITED CIVIL JURISDICTION
13

14 MICHAEL DIPIRRO,) No. 01-033214
15 Plaintiff,)
16 v.) SETTLEMENT AGREEMENT
17 SHERWIN-WILLIAMS CO., et al.,)
18 Defendants.)
19

20 This Settlement Agreement ("Agreement" or "Consent
21 Judgment") is entered into by and among Michael DiPirro
22 (hereinafter referred to as "DiPirro" or "Plaintiff") and The
23 Sherwin-Williams Company, an Ohio corporation, (hereinafter
24 referred to as "Sherwin-Williams")¹, as of December 7, 2001
25 (the "Effective Date"). The Parties agree to the following

26
27 ¹ DiPirro and Sherwin-Williams are sometimes referred to
collectively herein as "the Parties."

1 terms and conditions:

2 **WHEREAS:**

3 A. Michael DiPirro is an individual residing in
4 San Francisco, California, who seeks to promote awareness of
5 exposures to toxic chemicals and improve human health by
6 reducing or eliminating hazardous substances contained in
7 consumer and industrial products; and

8 B. Sherwin-Williams sells certain cutting oils,
9 among other products. Certain of such products contain
10 mineral oil (untreated and mildly treated oils), a substance
11 listed under Proposition 65 as a chemical known to the State
12 of California to cause cancer (hereinafter referred to as the
13 "Listed Chemical"); and

14 C. A list of the products covered by this
15 Agreement (hereinafter referred to as the "Products") is
16 provided in Exhibit A. The Products have been sold by
17 Sherwin-Williams in California since December 6, 1998 or
18 earlier; and

19 D. On September 21, 2001, Michael DiPirro served
20 Sherwin-Williams and other public enforcement agencies with a
21 document entitled "60-Day Notice of Violation" which alleged
22 that Sherwin-Williams had violated Health & Safety Code
23 §25249.6 by failing to provide warnings that certain Products
24 it sells in California expose users to the Listed Chemical;
25 and

26 E. On or about December 6, 2001, Michael DiPirro
27 filed a complaint entitled *Michael DiPirro v. Sherwin-Williams*

28 SETTLEMENT AGREEMENT

1 Co., et al. in the Alameda County Superior Court, naming
2 Sherwin-Williams as a defendant and alleging violations of
3 Health & Safety Code §25249.6 and Business & Professions Code
4 §17200, in the interest of the general public in California
5 who allegedly have been exposed to the Listed Chemical in the
6 Products; and

7 F. The Parties have agreed to enter into this
8 Consent Judgment, in an effort to avoid prolonged litigation
9 and to ensure that the purposes of Proposition 65, i.e., to
10 provide clear and reasonable warnings of exposure to chemicals
11 listed under Proposition 65 as known by the State of
12 California to cause cancer or reproductive toxicity, are
13 carried out.

14 G. By execution of this Consent Judgment, Sherwin-
15 Williams does not admit or agree that any violations of
16 Proposition 65 or the Business & Professions Code have
17 occurred in the sale of the Products. Nor shall any statement
18 or term of this Consent Judgment or this Consent Judgment
19 itself be construed as an admission by Sherwin-Williams of any
20 fact, issue of law or violation of law. Further, compliance
21 by Sherwin-Williams with this Consent Judgment or any of its
22 terms shall not constitute or be construed as an admission by
23 Sherwin-Williams of any fact, issue of law, or violation of
24 law. However, this paragraph shall not diminish or otherwise
25 affect the obligations, responsibilities, and duties of
26 Sherwin-Williams to comply with Proposition 65 in the
27 distribution of the Products for sale in California or with

1 any term of this Agreement.

2
3 **NOW THEREFORE, MICHAEL DIPIRRO AND SHERWIN-WILLIAMS AGREE AS**
4 **FOLLOWS:**

5 **1. Clear and Reasonable Warnings on Product**

6 **Labeling.** Notwithstanding any warning that Sherwin-Williams
7 has previously provided with respect to the Products, and as
8 long as any of the Products continues to contain mineral oil
9 (untreated and mildly treated oils), Sherwin-Williams agrees
10 to promptly begin the process of labeling its Products that
11 are intended for sale in the state of California to include
12 certain warning language specified below. In any event,
13 Sherwin-Williams agrees to include on the labeling of any such
14 Product manufactured after October 31, 2002, one of the
15 warning statements set forth in section 1.1 - 1.2 below, as
16 applicable:

17 **1.1** For all Products, the labeling shall bear
18 one of the following warning statements:

19 **WARNING: This product contains mineral oil, a**
20 **chemical known to the State of California**
to cause cancer.

21 or

22
23 **WARNING: This product contains a chemical known to**
the State of California to cause cancer.

24
25 **1.2** For any Product that also contains a
26 substance listed under Proposition 65 as a chemical known to
27 the State of California to cause reproductive toxicity, the

1 warning statement shall read, as follows:

2 **WARNING: This product contains chemicals known to**
3 **the State of California to cause cancer**
4 **and birth defects or other reproductive**
5 **harm.**

6 **1.3.** The warning statements that appear in
7 paragraphs 1.1 or 1.2 shall be placed on the labels of the
8 Products in a prominent manner. The parties have agreed on
9 the inclusion of warnings on the product labels as a means of
10 satisfying the requirements identified at Cal. Code Regs.,
11 tit. 22, Section 12601(b).

12 **2. Payments to Be Made Pursuant To Health & Safety**
13 **Code §25249.7(b).** Pursuant to Health & Safety Code
14 §25249.7(b), Sherwin-Williams shall pay \$200 (two hundred
15 dollars) within thirty (30) calendar days of the Effective
16 Date of this Agreement. Such sum shall be held by DiPirro's
17 counsel until the Alameda County Superior Court approves and
18 enters the Consent Judgment. Such payment is to be made
19 payable to "Chanler Law Group In Trust For Michael DiPirro".
20 If the Consent Judgment is not approved by the Court, DiPirro
21 will return all funds, with interest thereon at a rate of six
22 percent (6%) per annum, within ten (10) calendar days of
23 notice of the Court's decision. Such monies shall be
24 apportioned by DiPirro in accordance with Health & Safety Code
25 §25192, with 75% of these funds remitted to the State of
26 California's Department of Toxic Substances Control.

27 **3. Reimbursement Of Fees And Costs.** The parties
28 acknowledge that DiPirro offered to resolve the dispute

1 without reaching terms on the amount of fees and costs to be
2 reimbursed, thereby leaving this open issue to be resolved
3 after the material terms of the agreement had been reached,
4 and the matter settled. Sherwin-Williams then expressed a
5 desire to resolve the fee and cost issue concurrently with
6 other settlement terms, so the parties tried to (and did)
7 reach an accord on the compensation due to DiPirro and his
8 counsel under the private attorney general doctrine codified
9 at C.C.P. §1021.5.

10 Sherwin-Williams agrees to reimburse DiPirro and his
11 counsel in the amount of \$800 (eight hundred dollars) for fees
12 and costs and expenses incurred as a result of investigating,
13 litigating and negotiating a settlement in the public
14 interest. Such payment shall be made within thirty (30)
15 calendar days of the Effective Date of this Agreement. Such
16 sum shall be held by DiPirro's counsel until the Alameda
17 County Superior Court approves and enters the Consent
18 Judgment. DiPirro and his counsel agree that such payment
19 shall satisfy any and all claims by DiPirro or his counsel for
20 fees and costs or for any other form of reimbursement,
21 restitution or monetary compensation, including any claim
22 under Cal. Code Civ. Proc. §1021.5 or under Cal. Bus. & Prof.
23 Code §17200, et seq. If the Consent Judgment is not approved
24 by the Court, DiPirro will return all funds, with interest
25 thereon at a rate of six percent (6%) per annum, within ten
26 (10) calendar days of notice of the Court's decision. Payment
27 should be made payable to the "Chanler Law Group".

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1 **4. Michael DiPirro's Release Of Sherwin-Williams.**

2 Michael DiPirro, by this Agreement, in the interest of the
3 general public pursuant to Health & Safety Code § 25249.7, and
4 on behalf of himself and his attorneys, employees, successors,
5 assigns, predecessors, subrogees, principals, agents,
6 insurers, consultants, expert witnesses, investigators and any
7 and all others in his employ and/or acting on his behalf
8 (referred to collectively herein as "DiPirro Releasers")
9 hereby release and forever discharge Sherwin-Williams, its
10 successors, assigns, predecessors, stockholders, officers,
11 directors, subrogees, subsidiaries, trustees, corporate
12 parents, affiliates, board members, consultants, agents,
13 attorneys, joint ventures, customers (including all entities
14 in the chain of commerce from manufacturer to end user),
15 jobbers, distributors and employees as well as each of their
16 respective successors, assigns, predecessors, stockholders,
17 officers, directors, subrogees, subsidiaries, affiliates (as
18 such term is defined by the U.S. Securities Exchange
19 Commission), consultants, agents, attorneys and employees
20 (referred to collectively herein as "Sherwin-Williams
21 Releasees") from any and all claims, demands, actions, causes
22 of action, duties, debts, sums of money, suits, reckonings,
23 contracts, responsibilities, obligations, liabilities and
24 accounts of whatsoever kind, nature or description, direct or
25 indirect, at law or in equity, in contract or in tort or
26 otherwise arising out of or relating, directly or indirectly,
27 to the Products' compliance with Proposition 65 with respect

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1 to the Listed Chemical, or arising directly or indirectly out
2 of or related in any way to any facts or legal theories
3 involving the compliance of the Products with respect to
4 warnings needed for the Listed Chemical under Proposition 65,
5 or arising from or relating to any facts or legal theories
6 involving the compliance of the Listed Chemical in the
7 Products with Proposition 65 or provisions of the Business &
8 Professions Code relating to the Products as addressed in the
9 above-captioned matter; it being the specific intent and
10 purpose of the Parties hereto that this Agreement and release
11 shall extend to any and all of the aforesaid matters, whether
12 known or unknown, which exist or might be claimed to exist at
13 or prior to the dates of compliance with the terms herein as
14 they may relate directly or indirectly to compliance of the
15 Products with Proposition 65 for the Listed Chemical. Except
16 as provided herein, the DiPirro Releasers and each of them
17 expressly waive, release and relinquish any and all claims or
18 rights to assert that any such matter, cause or thing of any
19 kind or nature whatsoever has been, through oversight or error
20 or intentionally or unintentionally, omitted with respect to
21 the compliance of the Products with Proposition 65 or the
22 Business & Professions Code for the Listed Chemical.

23 **5. Sherwin-Williams' Release Of Michael DiPirro.**

24 Sherwin-Williams, by this Agreement, on its own behalf and
25 that of its attorneys, employees, successors, assigns,
26 predecessors, subrogees, principals, agents, consultants and
27 insurers, does hereby release and forever discharge Michael

1 DiPirro and his attorneys, employees, successors, assigns,
2 predecessors, subrogees, principals, agents, consultants and
3 insurers ("DiPirro Releasees") from any and all claims,
4 demands, actions, causes of action, duties, debts, sums of
5 money, suits, reckonings, contracts, controversies, promises,
6 damages, responsibilities, obligations, liabilities and
7 accounts of whatsoever kind, nature or description, direct or
8 indirect, at law or in equity, in contract or in tort, as they
9 arise or might arise from any actions or statements made by
10 Michael DiPirro, and his attorneys or representatives, in the
11 course of seeking enforcement of Proposition 65 or Business &
12 Profession Code §17200 against Sherwin-Williams.

13 **6. Court Approval.** If, for any reason, this
14 Consent Judgment is not approved by the Court within one
15 hundred and twenty (120) days of the Effective Date, this
16 Agreement shall be deemed null and void.

17 **7. Severability.** In the event that any of the
18 provisions of this Agreement are held by a court to be
19 unenforceable, the validity of the enforceable provisions
20 shall not be adversely affected.

21 **8. Attorney's Fees.** After the Effective Date of
22 this Agreement, in the event that a dispute arises between the
23 Parties with respect to any provision(s) of this Agreement,
24 the prevailing Party shall be entitled to recover costs and
25 reasonable attorneys' fees.

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

1 **10. Choice of Forum.** Jurisdiction and venue for
2 any claim or cause of action arising under or related to this
3 Agreement shall be properly and exclusively in the California
4 Superior Court for the County of Alameda and the Parties
5 hereby expressly waive any and all rights which they may have
6 or which may hereafter arise to contest the propriety of such
7 choice of jurisdiction and venue.

8 **11. Notices.** All correspondence to Michael DiPirro
9 shall be mailed to:

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

13 All correspondence to Sherwin-Williams shall be mailed to:

14 Stanley W. Landfair, Esq.
15 McKenna & Cuneo, LLP
16 Steuart Street Tower, 27th Floor
 One Market Street
 San Francisco, CA 94105
 (415) 267-4170

17 **12. Compliance With Reporting Requirements (Health**
18 **& Safety Code §25249.7(f)).** The Parties acknowledge that the
19 reporting provisions of Health & Safety Code § 25249.7(f)
20 apply to this Consent Judgment. Counsel for DiPirro shall
21 comply with that section by submitting the required reporting
22 form to, and serving a copy of this Consent Judgment on, the
23 California Attorney General's Office within two business days
24 after the parties execute this Consent Judgment. Following
25 the expiration of the Attorney General's thirty-day review
26 period, counsel for DiPirro shall submit the Consent Judgment
27

1 to the Court in accordance with the requirements of Health &
2 Safety Code § 25249.7(f) and its implementing regulations,
3 thereby allowing the Attorney General to serve any comments to
4 this Consent Judgment prior to the end of the thirty (30) day
5 period. In the event that any public enforcer (including the
6 California Attorney General's Office) objects to one or more
7 provisions of this Consent Judgment, Sherwin-Williams agrees
8 to use its best efforts to support the terms of the Agreement

9 13. **Counterparts and Facsimile.** This Agreement may
10 be executed in counterparts and facsimile, each of which shall
11 be deemed an original, and all of which, when taken together,
12 shall constitute one and the same document.

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

17
18
19 **AGREED TO:**

20 **DATE:** 12/7/01

21 
22 _____
23 Michael DiPardo
24 PLAINTIFF

AGREED TO:

20 **DATE:** _____

21 _____
22 The Sherwin-Williams Company
23 DEFENDANT

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28 **SETTLEMENT AGREEMENT**

1 to the Court in accordance with the requirements of Health &
 2 Safety Code § 25249.7(f) and its implementing regulations,
 3 thereby allowing the Attorney General to serve any comments to
 4 this Consent Judgment prior to the end of the thirty (30) day
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 6 California Attorney General's Office) objects to one or more
 7 provisions of this Consent Judgment, Sherwin-Williams agrees
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 14 to execute this Agreement on behalf of their respective
 15 parties and have read, understood and agree to all of the
 16 terms and conditions of this Agreement.

19 **AGREED TO:**

AGREED TO:

20 DATE: _____

DATE: _____

21
 22
 23 Michael DiPirro
 PLAINTIFF


 The Sherwin-Williams Company
 DEFENDANT

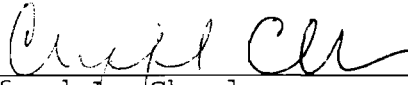
28 SETTLEMENT AGREEMENT

1 AGREED TO AS TO FORM:

AGREED TO AS TO FORM:

2 DATE: 12/6/01

DATE: _____

3
4 
5 Clifford A. Chanler
6 Attorneys for Plaintiff
MICHAEL DIPIRRO

Stanley W. Landfair
Attorneys for Defendant
THE SHERWIN-WILLIAMS COMPANY

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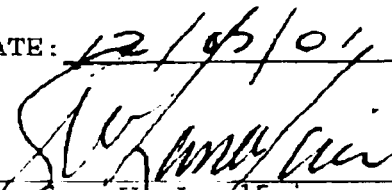
AGREED TO AS TO FORM:

AGREED TO AS TO FORM:

DATE: _____

DATE: 12/15/01

Clifford A. Chanler
Attorneys for Plaintiff
MICHAEL DIPIRRO


 Stanley W. Landfair
 Attorneys for Defendant
 THE SHERWIN-WILLIAMS COMPANY

SETTLEMENT AGREEMENT

EXHIBIT A

1.
Cutting Oils

CLERK'S CERTIFICATE OF MAILING

I am employed by the County of Alameda. I certify that I am over eighteen (18) years of age and not a party to this action.

This correspondence was mailed first class, prepaid postage, in a sealed envelope to the parties at the address(es) shown below.

The mailing and this certification occurred at the place and on the date shown below:

Derek R. Longstaff
Sheffer & Chanler LLP
160 Sansome Street, 2nd Floor
San Francisco, CA 94104-3706

Stanley W. Landfair, Esq.
Steuart Street Tower
One Market
San Francisco, CA 94105

Place of Mailing: Hayward, CA
Date of Mailing: 7/02/03

ARTHUR SIMS, Executive Officer/Clerk

By: *CC Farales*, Deputy Clerk
Cheryl C. Farales