

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Stanley Fastening Systems, LP, a limited partnership formed under the laws of the State of Delaware ("Stanley"), as of November 9, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. Michael DiPirro is an individual residing in San Francisco 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. Stanley is a company that manufactures, distributes and/or sells products in the State of California that 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.) ("listed chemicals");

C. The products that 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"). The Products have been manufactured, distributed and/or sold by Stanley for use in California since at least May 6, 1995; and

D. On May 6, 1999, Michael DiPirro first served Stanley and all of the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Stanley and such public enforcers with notice that Stanley 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 July 16, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Stanley Fastening Systems, et al. (No. H208368-1) in the Alameda Superior Court, naming Stanley 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 Stanley products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals and Stanley filed an Answer to the Complaint; and

F. On September 9, 1999, Michael DiPirro served Stanley and all of the requisite public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided Stanley and such public enforcers with notice that Stanley 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;

G. Stanley at all times denied and denies the material factual and legal allegations contained in the 60-Day Notices, the Complaint and any Amended Complaint. Nothing in this Agreement shall be construed as an admission by Stanley 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 Stanley 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 Stanley under this Agreement.

NOW THEREFORE, MICHAEL DiPIRRO AND STANLEY AGREE AS FOLLOWS:

1. **Product Warnings.** Beginning immediately, Stanley shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Stanley 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. Stanley agrees that as of January 15, 2000, it shall not distribute or sell 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 statement:

For solder which contain any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm):

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm).";

For soldering irons and guns which produce fumes or gases that contain any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm):

"WARNING: Normal use of this product is likely to expose the user to solders containing lead which is 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 understood by an ordinary individual. 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.

1.1 **Warning Labels for Products "In Commerce".** The parties agree and acknowledge that Products were sold to retailers in the State of California before the Effective Date of this Agreement (hereinafter "In Commerce Products"). In an effort to reasonably ensure that persons who might use or be exposed to the listed chemicals in or from these In Commerce Products, Stanley shall, by January 15, 2000, provide Interim Warning Materials to its customers whom Stanley knows or has reason to believe currently distribute or sell Products in California. Such

"Interim Warning Materials" shall include the following: (a) a reasonably sufficient number of warning stickers (considering the potential volume of In Commerce Products that the recipient distributes or sells in California) and (b) a letter of instruction for the application of such warning stickers. Alternatively, Stanley may, in its discretion, contract with a third person or entity to place the warning stickers on such In Commerce Products by January 15, 2000.

2. **Payment Pursuant To Health & Safety Code § 25249.7(b).** Pursuant to Health & Safety Code § 25249.7(b), Stanley shall pay a civil penalty of \$12,000 in two equal installments. The first payment of \$6,000 shall be overnight mailed (next business day delivery) to the Chanler Law Group within three (3) calendar days after the Effective Date of the Agreement. The second payment of \$6,000 shall be made on November 1, 2000. However, the second payment shall be waived if Stanley ceases the sale of lead-containing solder into California before October 1, 2000. In order for the waiver to take effect Stanley shall provide DiPirro with certification of this commitment on or before October 15, 2000. 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.** Stanley shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Stanley's attention, litigating and negotiating a settlement in the public interest. Stanley shall pay: \$9,000 for pre-notice investigation fees; \$1,280 for expert, investigation and litigation costs; and \$8,720.00 in attorneys' and post-notice investigation fees. Payment should be made payable to the "Chanler Law Group" and shall be sent by overnight mail (next business day delivery) to the Chanler Law Group within three (3) calendar days of the Effective Date of the Agreement,

4. **DiPirro's Release Of Stanley** DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California (in his representative capacity) waives all rights to institute or continue any form of legal action, and releases all claims and rights against Stanley and its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives, attorneys, and Stanley's distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Profession Code §§ 17200, related to Stanley's alleged failure to warn about exposure to listed chemicals which may have been contained in fumes or gases produced through the normal and foreseeable use of the Products. Consistent with this Release, DiPirro shall dismiss, with prejudice, his Complaint for Injunctive Relief and Civil Penalties filed in Case No. H 209858-8 in the Superior Court of California in and for the County of Alameda.

5. **Stanley's Release Of Michael DiPirro.** Stanley, by this Agreement, waives all rights to institute any form of legal action against 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 Stanley.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Stanley shall execute and file a stipulated judgment to be approved pursuant to CCP § 664.6 by the Alameda 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 and DiPirro shall reimburse to Stanley all monies paid by Stanley pursuant to paragraphs 2 and 3 of this Agreement within five (5) calendar days after receiving from Stanley a written demand for reimbursement.

7. **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.

8. **Attorneys' Fees In The Event Of A Dispute.** 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.

9. **Stanley Sales Data.** Stanley understands that the sales data provided to counsel for DiPirro by Stanley was a material factor upon which DiPirro has relied to determine the amount of payments in this Agreement. To the best of Stanley's knowledge, the sales data provided is true and accurate. In the event 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 Stanley's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data.

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

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

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
New Canaan, CT 06840-3801

All correspondence to Stanley shall be mailed to:

Jeffrey F. Peck, Esq.
Thompson, Hine & Flory, LLP
312 Walnut Street, 14th Floor
Cincinnati, OH 45202-4029

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

11. **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: _____

Michael DiPino
PLAINTIFF

The Stanley Franchises, general partner
By Robt L. Weddell, V.P.
Stanley Fastening Systems, I.T.
DEFENDANT

13. **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: 11/16/99

DATE: _____



Michael DiPirro
PLAINTIFF

Stanley Fastening Systems, LP
DEFENDANT

Exhibit A

EXHIBIT A

Soldering Irons
Soldering Guns
Solder