

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Sunstate Equipment Co., LLC, a Delaware limited liability corporation ("Sunstate"), as of December 15, 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. Sunstate is a company that currently rents and/or sells welding machines, power sources and other welding equipment (collectively, the "Products") in the State of California that contain, or whose customary use and application may produce fumes or gases that contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including, without limitation, nickel and nickel compounds, chromium (hexavalent compounds) and carbon monoxide (the "Listed Chemicals");
- C. The Products have been rented and/or sold by Sunstate for use in California since at least August 4, 1996;
- D. On August 4, 2000, Michael DiPirro first served Sunstate and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Sunstate and such public enforcers with notice that Sunstate was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells, rents or otherwise offers for use in California expose users to Proposition 65-listed chemicals;
- E. On or about October 19, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Sunstate Equipment Co. et al. in the Alameda County Superior Court, Case No. H216059-3 (the "Action") naming Sunstate 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 the "Listed Chemicals" contained in or produced by certain Sunstate products;
- F. Nothing in this Agreement shall be construed as an admission by Sunstate 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 Sunstate 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 Sunstate under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND SUNSTATE AGREE AS FOLLOWS:

1. **Product Warnings.** Sunstate shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Beginning on March 15, 2001, Sunstate agrees that it will not knowingly rent or sell (or cause to be rented or sold) any Products that contain, or produce fumes or gases that contain, the Listed Chemicals in the State of California unless such Products comply with section 1.1 below:

1.1 For all Products that contain, or produce fumes or gases that contain, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, such Products shall bear or be accompanied by the following warning statement:

-WARNING: This product contains or produces nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)";

or

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

1.2 For all Products that contain, or produce fumes or gases that contain, only one of the Listed Chemicals, or any combination of the Listed Chemicals, such Products shall bear or be accompanied by the following warning statement in lieu of the warning statement required under section 1.1, above:

"WARNING: This product contains or produces one or more chemicals known to the State of California to cause cancer and/or birth defects (or other reproductive harm)";

The warning statement shall be either: (1) prominently placed upon the Product with such conspicuousness, as compared with other words, statements, designs or devices on the Product as to render it likely to be read by an ordinary individual under customary conditions of purchase or use; or (2) prominently placed upon any form or agreement regarding the rental or sale of the Product with such conspicuousness, as compared with other words, statements, designs or devices on the form or agreement as to render it likely to be read by an ordinary individual under customary conditions of rental or purchase.

2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Sunstate shall pay a civil penalty of \$4,000.00. This payment shall be paid within two (2) business days after Sunstate receives notice of the Court's approval of the stipulated judgment to be filed pursuant to this Agreement. In the event the Court fails to approve the stipulated judgment, but neither party voids the Agreement, the

payment shall be paid within two (2) business days after the period in which to void the Agreement expires. The penalty payment is 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. Sunstate shall have no duty or liability of any kind with respect to the distribution of this payment.

3. **Reimbursement of Fees and Costs.** Sunstate shall pay DiPirro \$14,870.00 as reimbursement for DiPirro's costs of suit, including attorneys' fees and other expenses, incurred in this Action. This payment is to be made payable to "Chanler Law Group," and shall be paid within two (2) business days after Sunstate receives notice of the Court's approval of the stipulated judgment to be filed pursuant to this Agreement. In the event the Court fails to approve the stipulated judgment, but neither party voids the Agreement, the payment shall be paid within two (2) business days after the period in which to void the Agreement expires. Sunstate shall have no duty or liability of any kind with respect to the distribution of this payment.

4. **Michael DiPirro's Release Of Sunstate.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, on whose behalf the Action was brought, waives all rights 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 Sunstate and its directors, officers, employees, affiliates, successors, customers, and assigns, whether under Proposition 65, or the Business & Profession Code §17200 *et seq.*, or any other statute, regulation, or law, based on Sunstate's alleged failure to warn about exposure to the Listed Chemicals contained in or produced by any of the Products.

5. **Sunstate's Release Of Michael DiPirro.** Sunstate, 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 as of the Effective Date of this Agreement by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200 against Sunstate.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Sunstate 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 voidable by any party hereto upon written notice to the other parties, which notice shall be delivered to the other parties within 15 calendar days of service of an adverse decision by the Court declining to approve the stipulated judgment.

7. **Sunstate Sales Data.** Sunstate understands that the rental and/or sales data provided to counsel for DiPirro by Sunstate 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 Sunstate's knowledge, the rental and/or sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the rental and/or sales data is materially inaccurate, the parties shall meet

In a good faith attempt to resolve the matter within ten (10) days of Sunstate's receipt of notice from DiPirro of his intent to challenge the accuracy of the rental and/or sales data. If this good faith attempt fails to resolve the matter, DiPirro may bring an action to rescind the Agreement and re-institute an enforcement action against Sunstate, provided that all sums paid by Sunstate pursuant to paragraphs 2 and 3 are returned to Sunstate within ten (10) days from the date on which DiPirro notifies Sunstate 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 Sunstate that he is rescinding this Agreement pursuant to this Paragraph.

8. **Product Characterization.** Sunstate acknowledges that each of the Products may contain, or in the customary use or application of the Products may produce fumes or gases that contain, nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, and Plaintiff alleges that the customary use or application of the Products is likely to expose users to nickel (and nickel compounds), chromium (hexavalent compounds) and carbon monoxide, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Sunstate 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), and Sunstate seeks to eliminate the warnings, then Sunstate 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 Sunstate Exposure Data, DiPirro shall provide Sunstate 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 Sunstate written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Sunstate's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Sunstate shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Products to which the Exposure Data applies. If DiPirro timely notifies Sunstate of his intent to challenge the Exposure Data, Sunstate may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations, or DiPirro and Sunstate shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of DiPirro's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Sunstate 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.

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. The parties agree to replace any such void or unenforceable provision with a valid and enforceable provision which will achieve, to the extent possible, the parties' intent under this Agreement.

10. **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.

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, Esq.
Law Offices of Jennifer Henry
9000 Crow Canyon Road, Suite S, PMB 399
Danville, CA 94506-1175
(925) 830-2860

or

Clifford A. Chanler, Esq.
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801.
(203) 966-9911

All correspondence to Sunstate shall be mailed to:

Sean M. Sherlock, Esq.
Snell & Wilmer LL.P.
1920 Main Street, Suite 1200
Irvine, CA 92614-7060
(949)253-2700

13. **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. Sunstate represents, however, that its 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 Judgment to the Alameda County Superior Court.

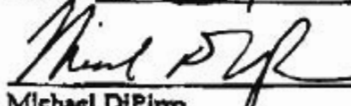
14. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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:

12/15/00


Michael DiPiro
PLAINTIFF

AGREED TO:

DATE: _____

Sunstate Equipment Co.
DEFENDANT

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: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 12/15/00



Sunstate Equipment Co.
DEFENDANT