

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Trinity Products, Inc., a New Jersey corporation ("Trinity"), as of August 24, 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 consumer and industrial products:

B. Trinity is a company that had distributed certain lead balancing products as set forth in Exhibit A that contain lead (or lead compounds), a substance known to the State of California to cause cancer and birth defects (or other reproductive harm):

C. A list of the products which contain lead (or lead compounds) (the "Listed Chemical") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products had been distributed and sold by Trinity for use in California since at least March 16, 1996, but have not been sold by Trinity since June 2000:

D. On March 16, 2000, Michael DiPirro first served Trinity and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Trinity and such public enforcers with notice that Trinity was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals:

E. Upon receiving the 60-Day Notice of Violation, Trinity immediately recalled all of the lead balancing products that were sold to dealers in the United States and re-labeled the Products with warnings in compliance with Health & Safety Code §25249.6:

F. On June 6, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Trinity Products, Inc., et al. in the San Francisco County Superior Court, naming Trinity 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 chemicals listed pursuant to Proposition 65 contained in certain Trinity products: and

G. Nothing in this Agreement shall be construed as an admission by Trinity 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 Trinity 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 Trinity under this Agreement.

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

**1. Product Warnings.** Trinity 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 October 15, 2000, Trinity agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemical for sale in the State of California unless such Products comply with section 1.1 below:

**1.1** For all Products containing lead, such Products shall bear the following warning statement:

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

or

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

The warning statement shall be prominently placed upon the Product's label with such conspicuousness, as compared with other words, statements, designs or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Trinity shall pay a civil penalty of \$2,000. The first payment of \$400 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The second payment of \$1,600 shall be made on or before July 30, 2001. However, the second payment shall be waived if Trinity, by July 1, 2001: (1) ceases to sell balancing tape that contains lead in California; (2) begins to offer balancing weights for sale in California that do not contain lead; or (3) reformulates the Products to eliminate the presence of lead for all California sales. In order to obtain the waiver, written certification of compliance with one or more of the above must be provided by Trinity to DiPirro by July 15, 2001. 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. Trinity 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.

Trinity shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Trinity's attention, litigating and negotiating a settlement in the public interest. Trinity shall pay the total sum of \$7,500 for investigation fees, attorneys' fees and litigation costs. Trinity agrees to pay \$7,500 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

**4. Michael DiPirro's Release Of Trinity.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, 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 Trinity and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 *et seq.* based on Trinity's alleged failure to warn about exposure to the Listed Chemical contained in any of the Products.

**5. Trinity's Release Of Michael DiPirro.** Trinity, 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 & Profession Code §17200 against Trinity.

**8. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Trinity shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco 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.

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

**10. Product Characterization.** Trinity acknowledges that each of the Products listed in Exhibit A contains lead, although no evidence has been presented that the lead contained in the Products poses a "significant risk" or "observable effect" as defined under Health & Safety Code §25249.10(c). Plaintiff alleges that the customary use or application of the Products is likely to expose users to lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm). In the event that Trinity 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 Trinity seeks to eliminate the warnings, then Trinity 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 Trinity Exposure Data, DiPirro shall provide Trinity 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 Trinity written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Trinity's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Trinity 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 Trinity of his intent to challenge the Exposure Data, DiPirro and Trinity (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 Trinity's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Trinity 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. Notwithstanding the foregoing, in the event that Trinity is no longer required to provide the warnings provided for herein under applicable law, regulation or court order, then Trinity may discontinue the warnings with no further liability or obligations to the extent that new law, regulation or court order provides.

**11. 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.

**12. Attorney's Fees.** In the event that a dispute arises with respect to the

enforcement of any of the provisions of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

**14. 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 Trinity shall be mailed to:

William Lee, Esq.  
Seyfarth Shaw  
101 California Street, Suite 2900  
San Francisco, CA 94111-2823  
(415) 397-8549

or

Eugene Jacobs, Esq.  
Seyfarth Shaw  
55 East Monroe Street  
Chicago, IL 60603-5803

**15. 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. Trinity 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 San Francisco County Superior Court.

California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the San Francisco County Superior Court.

**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.** 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: 8/25/00

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

\_\_\_\_\_  
Trinity Products, Inc.  
DEFENDANT

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**AGREED TO:**

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DATE: \_\_\_\_\_

DATE: 8-21-00

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

  
Trinity Products, Inc.  
DEFENDANT