

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen and Unitec Manufacturing Corporation ("Unitec"), a Connecticut corporation, as of December 29, 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. Unitec is a company that manufactures, distributes and/or sells sandblasters in the State of California that contain, or whose customary use and application are likely to produce dust which contains, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds) (the "Listed Chemicals");

C. The products that contain, or whose customary use and application are likely to produce dust which contains, 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 Unitec for use in California since at least August 4, 1996; and

D. On August 4, 2000, Michael DiPirro served Unitec and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Unitec and such public enforcers with notice that Unitec 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. On October 19, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Unitec Manufacturing Corporation in the Alameda County Superior Court, naming Unitec 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 (or produced by customary use and application of) certain Unitec products; and

F. Nothing in this Agreement shall be construed as an admission by Unitec 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 Unitec 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 Unitec under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND UNITEC AGREE AS FOLLOWS:

1. Product Warnings. Beginning immediately, Unitec shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Unitec 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. Unitec agrees that as of January 30, 2001, 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 statement:

For all sandblasting products that are likely to expose users to lead (or lead compounds), crystalline silica, arsenic, and/or chromium (hexavalent compounds) or any combination of chemicals listed by the State of California as known to cause cancer as well as birth defects (or other reproductive harm), such Products shall bear the following warning statement:

WARNING: Some dust created by power sanding, sawing, grinding, drilling, and other construction activities contains chemicals known [to the State of California] to cause cancer, birth defects or other reproductive harm. Some examples of these chemicals are:

- **lead from lead-based paints,**
- **crystalline silica from bricks and cement and other masonry products, and**
- **arsenic and chromium from chemically-treated lumber.**

Your risk from these exposures varies, depending on how often you do this type of work. To reduce your exposure to these chemicals: work in a well ventilated area, and work with approved safety equipment, such as those dust masks that are specially designed to filter out microscopic particles.;

[Note: Text in brackets is optional.]

or

WARNING: Some dust created by power sanding, sawing, grinding, drilling, and other construction activities contains chemicals known to the State of California to cause cancer, 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 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), Unitec shall pay a civil penalty of \$1,200. The payment of \$1,200 shall be paid within seven (7) calendar days after the Effective Date of this Agreement. 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.

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. Unitec 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.

Unitec shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Unitec's attention, litigating and negotiating a settlement in the public interest. Unitec shall pay the total sum of \$7,300 for investigation fees, attorneys' fees and litigation costs in two installments. Unitec agrees to pay the first installment of \$3,650 within seven (7) calendar days of the Effective Date of the Agreement. Unitec agrees to pay the second installment of \$3,650 on or before March 28, 2001. Payment should be made payable to the "Chanler Law Group".

4. Michael DiPirro's Release Of Unitec. 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 Unitec and its retailers, distributors, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Unitec's alleged failure to warn about exposure to the "Listed Chemicals" contained in (or produced by) any of the Products.

5. Unitec's Release Of Michael DiPirro. Unitec, 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 Unitec.

6. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Unitec 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.

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

8. Product Characterization. Unitec acknowledges that each of the Products listed in Exhibit A contains (or in the customary use or application of the Products is likely to expose users to) lead (or lead compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds), substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Unitec 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), Unitec 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 Unitec Exposure Data, DiPirro shall provide Unitec 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 Unitec written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Unitec's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Unitec 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 Unitec of his intent to challenge the Exposure Data, DiPirro and Unitec shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Unitec's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Unitec 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.

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 Unitec shall be mailed to:

Matthew J. Keating, Esq.
Maffei, Maffei & Keating
Hudson Valley Bank Building
35 East Grassy Sprain Road
Yonkers, NY 10710
(914) 961-1515


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. DiPirro represents, however, that his 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: 1/1/01


Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Unitec Manufacturing Corporation
DEFENDANT

All correspondence to Unitec shall be mailed to:

Matthew J. Keating, Esq.
Maffei, Maffei & Keating
Hudson Valley Bank Building
35 East Grassy Sprain Road
Yonkers, NY 10710
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AGREED TO:

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DATE: _____

DATE: 1/16/01

Michael DiPirro
PLAINTIFF

 Pres.
Unitec Manufacturing Corporation
DEFENDANT

Exhibit A

EXHIBIT A

1. Sandblasters