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8 Attorneys for Plaintiff
9 MICHAEL DIPIRRO

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURISDICTION

14 MICHAEL DIPIRRO,) No. 407083
15)
16 Plaintiff,)
17)
18 v.) SETTLEMENT AGREEMENT
19)
20 VELLEMAN COMPONENTS N.V.;)
21 VELLEMAN, INC.; and DOES 1)
22 through 150,)
23)
24 Defendants.)
25 _____)

26
27 This Settlement Agreement ("Agreement" or "Consent
28 Judgment") is entered into by and between Michael DiPirro
("DiPirro"), Velleman Components N.V., and Velleman, Inc.
("Velleman") as of May 28, 2002 (the "Effective Date").

WHEREAS:

A. Michael DiPirro is an individual residing in

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1 San Francisco, California, who seeks to promote awareness of
2 exposures to toxic chemicals and improve human health by
3 reducing or eliminating hazardous substances contained in
4 consumer products;

5 B. Velleman is a company that currently
6 distributes certain solder products that contains lead (or
7 lead compounds), a substance known to the State of California
8 to cause cancer and birth defects (or other reproductive
9 harm);

10 C. The products which contains lead (or lead
11 compounds) (the "Listed Chemicals") and which are covered by
12 this Agreement is provided in Exhibit A (the "Products").

13 D. On November 20, 2001, Michael DiPirro first
14 served Velleman, and other public enforcement agencies with a
15 document entitled "60-Day Notice of Violation" which provided
16 Velleman and such public enforcers with notice that Velleman
17 was in violation of Health & Safety Code §25249.6 for
18 allegedly failing to warn purchasers that certain products
19 they allegedly sell in California expose users to the Listed
20 Chemicals; and

21 E. On April 24, 2002, Michael DiPirro filed a
22 complaint entitled Michael DiPirro v. Velleman Components
23 N.V., et al. in the San Francisco County Superior Court,
24 naming Velleman as defendants and alleging violations of
25 Business & Professions Code §17200 and Health & Safety Code

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1 \$25249.6 in the interest of the general public in California
2 who allegedly have been exposed to the Listed Chemical
3 contained in certain products that Velleman manufactures and
4 distributes.

5 F. Nothing in this Agreement shall be construed as
6 an admission by Velleman of any fact, finding, issue of law,
7 or violation of law, nor shall compliance with this Agreement
8 constitute or be construed as an admission by Velleman of any
9 fact, finding, conclusion, issue of law, or violation of law.
10 Velleman specifically deny any violation of Business &
11 Professions Code §17200 and/or Health & Safety Code §25249.6,
12 and enter into this Agreement to, among other things, avoid
13 the costs of litigation. This paragraph shall not diminish or
14 otherwise affect the obligations, responsibilities, and duties
15 of Velleman under this Agreement.

16
17 **NOW THEREFORE, MICHAEL DIPIRRO, AGREE AS FOLLOWS:**

18 1. **Scope of Agreement.** This Agreement is a full,
19 final, and binding resolution between (a) DiPirro, acting in
20 the interest of the general public pursuant to Health & Safety
21 Code §25249.7(d) and Business & Professions Code §§17204 and
22 17504, and (b) Defendants and their successors and assigns, of
23 any violation of Proposition 65 or the Unfair Competition Law
24 (Business & Professions Code §17200, et seq.) for the alleged
25 failure to provide clear and reasonable warnings of exposure
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1 to lead contained in the Products. Compliance with the terms
2 of this Agreement resolves any issue, now or in the future,
3 concerning compliance by Velleman, or their successors or
4 assigns with the requirements of Proposition 65 or the Unfair
5 Competition Law (Business & Professions Code §17200, et seq.)
6 with respect to the Products.

7 **2. Product Warnings.** As of the Effective Date of
8 this Agreement, Velleman shall begin to take steps to its
9 manufacture and distribution of the Products to provide the
10 language set forth in section 2.1 below. Beginning on May 31,
11 2002, Velleman agree that they will not knowingly ship, or
12 cause to be shipped, the Products containing the Listed
13 Chemical in the State of California unless the Products
14 complies with section 2.1 below:

15 **2.1** If the Products contain lead (or lead
16 compounds), such Products shall bear the following warning
17 statement:

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

21 or

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

25 This warning statement shall be prominently placed on the
26

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1 Products or Products' packaging with such conspicuousness, as
2 compared with other words, statements, or designs on the
3 product label, as to render it likely to be read and
4 understood by an ordinary individual under customary
5 conditions of purchase.

6 **3. Payment Pursuant To Health & Safety Code**

7 **§25249.7(b).** In light of the factors enumerated in Health &
8 Safety Code §25249.7(b), Velleman agrees to pay a civil
9 penalty of \$18,000 in two installments. The first payment of
10 \$4,000 shall be due within five (5) calendar days of the
11 Effective Date. The second payment of \$14,000 shall be due on
12 June 30, 2003; however, this payment shall be waived if
13 Velleman certifies in writing by June 15, 2003, to DiPirro,
14 that it has not shipped any of the Products into California
15 since January 1, 2003 unless the solder used in the Products
16 is lead-free. The penalty payments are to be made payable to
17 "Sheffer & Chanler In Trust For Michael DiPirro". If the
18 Consent Judgment is not approved by the Court, DiPirro will
19 return all funds, with interest thereon at the prevailing
20 federal funds rate (currently set at 1.75%), within ten (10)
21 calendar days of notice of the Court's decision. Penalty
22 monies shall be apportioned by DiPirro in accordance with
23 Health & Safety Code §25192, with 75% of these funds remitted
24 to the State of California's Department of Toxic Substances
25 Control.

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1 **4. Reimbursement Of Fees And Costs.** The parties
2 acknowledge that, once the injunctive relief provisions and
3 other monetary terms had been resolved, DiPirro and his
4 counsel offered to resolve the issue of reimbursement of
5 attorneys' fees and costs through a noticed motion pursuant to
6 C.C.P. §1021.5. Defendants then expressed a desire to resolve
7 the fee and cost issue shortly after the other settlement
8 terms had been finalized. The parties then attempted to (and
9 did) reach an accord on the compensation due to DiPirro and
10 his counsel under the private attorney general doctrine
11 codified at C.C.P. §1021.5 for all work performed through the
12 Effective Date of the Agreement.

13 Pursuant to C.C.P. §1021.5, Velleman agrees to
14 reimburse DiPirro and his counsel for their reasonable
15 attorneys' fees and costs incurred as a result of
16 investigating, litigating and negotiating a settlement in the
17 public interest in the amount of \$4,000.00. Velleman agrees
18 to pay the total sum of \$4,000.00 within ten (10) calendar
19 days of the Effective Date. Payment should be made payable to
20 "Sheffer & Chanler". If the Consent Judgment is not approved
21 by the Court, DiPirro will return all funds, with interest
22 thereon at the prevailing federal funds rate (currently set at
23 1.75%), within ten (10) calendar days of notice of the Court's
24 final decision.

25 **4.1 Additional Fees and Costs in Seeking Judicial**
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1 **Approval.** The parties acknowledge that, pursuant to recent
2 interpretations of Health & Safety Code §25249.7, a noticed
3 motion is required to obtain judicial approval of this
4 Agreement. Accordingly, the parties agree to use their best
5 efforts to file a *Joint Motion to Approve the Agreement* within
6 a reasonable period of time after execution of this Agreement.
7 Pursuant to C.C.P. §1021.5, Velleman agrees to reimburse
8 DiPirro and his counsel for their reasonable fees and costs
9 incurred in seeking judicial approval of this Agreement.

10 DiPirro and his counsel expressly agree that
11 Velleman's liability for payment due under this paragraph for
12 work performed in the trial court shall not exceed \$4,000.

13 In the event that any third party, including any
14 public enforcer, objects or otherwise comments to one or more
15 provisions of this Agreement, Velleman agrees to use its best
16 efforts to support each of the terms of the Agreement, as well
17 as to seek judicial approval of this Agreement.

18 Velleman's payment of DiPirro's legal fees and costs
19 under this subparagraph shall be due within ten (10) calendar
20 days after receipt of a detailed billing statement from
21 DiPirro ("Additional Fee Claim"). Payment of the Additional
22 Fee Claim shall be made payable to the "Sheffer & Chanler."
23 Velleman has the right to object to DiPirro's reimbursement
24 request and may submit the resolution of this issue to the
25 American Arbitration Association (AAA) in Northern California

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1 to determine the reasonableness of the additional fees and
2 costs sought, provided that an arbitration claim has been
3 filed with AAA and served on DiPirro within ten (10) calendar
4 days following DiPirro's service of the Additional Fee Claim
5 on Velleman. If an arbitration notice is not filed with AAA
6 in a timely manner, Velleman's right to arbitrate this matter
7 is waived. DiPirro may then file a motion, pursuant to C.C.P.
8 §1021.5, with the Court seeking his (and his attorneys') fees
9 and costs incurred as set forth in this paragraph.

10 **5. Michael DiPirro's Release Of Velleman.** Michael
11 DiPirro, by this Agreement, on behalf of himself, his agents,
12 representatives, attorneys, assigns and in the interest of the
13 general public, waives all rights to institute or participate
14 in, directly or indirectly, any form of legal action, and
15 releases all claims, liabilities, obligations, losses, costs,
16 expenses, fines and damages, against Velleman and their
17 directors, officers, employees, successors and assigns,
18 whether under Proposition 65, the Business & Profession Code
19 §17200 et seq., or any other statute, ordinance, regulation,
20 law, or legal decision, based on Velleman's alleged failure to
21 warn about exposure to the Listed Chemical contained in the
22 Product. It is expressly understood by the parties that this
23 release of Velleman does not release any retailer, distributor
24 or other seller of Products nor does it waive or otherwise bar
25 any potential action or claim of liability against any

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1 retailer, distributor or other seller of Products for their
2 sale of Products.

3 **6. Velleman's Release Of Michael DiPirro.**

4 Velleman, by this Agreement, waive all rights to institute any
5 form of legal action against Michael DiPirro or his attorneys
6 or representatives for all actions or statements made by
7 Michael DiPirro and his attorneys or representatives in the
8 course of seeking enforcement of Proposition 65 or Business &
9 Profession Code §17200 against Velleman in this lawsuit.

10 **7. Court Approval.** If, for any reason, this

11 Consent Judgment is not ultimately approved by the Court, this
12 Agreement shall be deemed null and void.

13 **8. Velleman Sales Data.** Velleman understands that

14 the sales data provided to counsel for DiPirro by Velleman was
15 a material factor upon which DiPirro has relied to determine
16 the amount of payments made pursuant to Health & Safety Code
17 §25249.7(b) in this Agreement. To the best of Velleman's
18 knowledge, their respective sales data provided is true and
19 accurate. In the event that DiPirro discovers facts which
20 demonstrate to a reasonable degree of certainty that the sales
21 data is materially inaccurate, the parties shall meet in a
22 good faith attempt to resolve the matter within ten (10) days
23 of Velleman's receipt of notice from DiPirro of his intent to
24 challenge the accuracy of the sales data. If this good faith
25 attempt fails to resolve DiPirro's concerns, DiPirro shall

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1 have the right to rescind the Agreement as to the Defendant
2 whose data he intends to challenge and re-institute an
3 enforcement action against that Defendant, provided that all
4 sums paid by that Defendant pursuant to paragraphs 3 and 4 are
5 returned to that Defendant within ten (10) days from the date
6 on which DiPirro notifies that Defendant of his intent to
7 rescind this Agreement as to that Defendant. In such case,
8 all applicable statutes of limitation shall be deemed tolled
9 for the period between the date DiPirro filed the instant
10 action and the date DiPirro notifies the Defendant that he is
11 rescinding this Agreement as to that Defendant pursuant to
12 this Paragraph.

13 **9. Severability.** In the event that any of the
14 provisions of this Agreement are ultimately held by a court to
15 be unenforceable, the validity of the enforceable provisions
16 shall not be adversely affected.

17 **10. Attorney's Fees.** Unless otherwise noted, in
18 the event that a dispute arises with respect to any
19 provision(s) of this Agreement (including, but not limited to,
20 disputes arising from the payments to be made under this
21 Agreement), the prevailing party shall be entitled to recover
22 costs and reasonable attorneys' fees. This provision shall
23 not apply to paragraph 4.1 which is governed by the principles
24 set forth under CCP § 1021.5.

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

2 12. **Notices.** All correspondence to Michael DiPirro
3 shall be mailed to:

4 Gregory M. Sheffer
5 Sheffer & Chanler
6 4400 Keller Ave., Suite 200
Oakland, CA 94605
(510) 577-0747

7 All correspondence to Velleman, Inc. and
8 Velleman N.V. shall be mailed to:

9 Stephen L. Walker
10 Wheless & Walker
11 1400 Preston Road, Suite 200
Plano, TX 75093
(972) 867-0663

12 13. **Compliance With Reporting Requirements (Health**
13 **& Safety Code §25249.7(f)).** The parties acknowledge that the
14 reporting provisions of Health & Safety Code § 25249.7(f)
15 apply to this Consent Judgment. Counsel for DiPirro shall
16 comply with that section by submitting the required reporting
17 form to, and serving a copy of this Consent Judgment on, the
18 California Attorney General's Office when noticing the Motion
19 to Approve hearing. Counsel for DiPirro shall submit the
20 Consent Judgment to the Court in accordance with the
21 requirements of Health & Safety Code § 25249.7(f) and its
22 implementing regulations, thereby allowing the Attorney
23 General to serve any comments to this Consent Judgment as
24 provided by law.

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

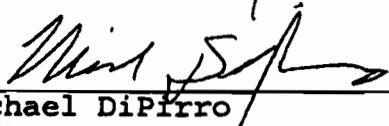
4 15. Authorization. The undersigned are authorized
5 to execute this Agreement on behalf of their respective
6 parties and have read, understood and agree to all of the
7 terms and conditions of this Agreement.

8 **AGREED TO:**

AGREED TO:

9 DATE: 5/28/02

DATE: _____

10
11 
12 Michael DiPirro
PLAINTIFF

Velleman, Inc.
DEFENDANT

Velleman Components, N.V.
DEFENDANT

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15
16
17 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

18 DATE: _____

DATE: _____

19
20
21 Clifford A. Chanler
Attorneys for Plaintiff
22 MICHAEL DIPIRRO

Stephen L. Walker
Attorneys for Defendants
23 VELLEMAN, INC.
VELLEMAN COMPONENTS, N.V.

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27 **SETTLEMENT AGREEMENT**

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8 **AGREED TO:** **AGREED TO:**
9 **DATE:** _____ **DATE:** _____

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Michael DiPirro
PLAINTIFF

Velleman, Inc.
DEFENDANT

Velleman Components, N.V.
DEFENDANT

APPROVED AS TO FORM:
DATE: 5/29/02

APPROVED AS TO FORM:
DATE: _____

Cliff Chanler

Clifford A. Chanler
Attorneys for Plaintiff
MICHAEL DIPIRRO

Stephen L. Walker
Attorneys for Defendants
VELLEMAN, INC.
VELLEMAN COMPONENTS, N.V.

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 9 DATE: _____

AGREED TO:
 DATE: 5/29/02

11 Michael DiPirro
 12 PLAINTIFF

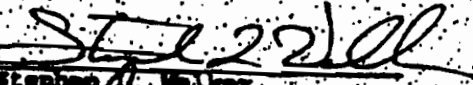

 13 Velleman, Inc.
 14 DEFENDANT


 15 Velleman Components, N.V.
 16 DEFENDANT

17 APPROVED AS TO FORM:
 18 DATE: _____

APPROVED AS TO FORM:
 DATE: 5/29/02

21 Clifford A. Chanley
 22 Attorneys for Plaintiff
 23 MICHAEL DIPIRRO


 24 Stephen A. Walker
 25 Attorneys for Defendants
 26 VELLEMAN, INC.
 27 VELLEMAN COMPONENTS, N.V.

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EXHIBIT A

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Solder and Soldering Kits/Sets

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