

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Wall Lenk Corporation ("Wall Lenk"), a North Carolina corporation, as of August 28, 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. Wall Lenk is a company that manufactures, distributes and/or sells soldering 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.) including lead (or lead compounds) and formaldehyde (the "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 Wall Lenk for use in California since at least February 25, 1995; and

D. On February 25, 2000, Michael DiPirro first served Wall Lenk and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Wall Lenk and such public enforcers with notice that Wall Lenk 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 June 15, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Wall Lenk Corporation in the Alameda County Superior Court, naming Wall Lenk 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 contained in fumes or gases produced by the customary use and application of certain Wall Lenk products. Wall Lenk disputes the allegations of the complaint.

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

NOW THEREFORE, MICHAEL DIPIRRO AND WALL LENK AGREE AS FOLLOWS:

1. **Product Warnings.** Beginning immediately, Wall Lenk shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Wall Lenk 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. Wall Lenk agrees that within thirty (30) days of the Effective Date 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 soldering products which contain (or 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: This product when used for soldering and similar applications, produces chemicals 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.

In addition, Wall Lenk shall include along with its Products a recommendation that lead-free solder be used in all soldering applications. This recommendation shall be included within thirty (30) days of the Effective Date.

1.1 Warning Labels for Products "In Commerce". The parties agree and acknowledge that an unknown volume of Products were introduced into the "stream of commerce" before the Effective Date of this Agreement. 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, Wall Lenk shall, within thirty (30) days from the Effective Date, provide Interim Warning Materials to its customers whom Wall Lenk 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 Products that the recipient distributes or sells in California); (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgement form to be signed by the customer and returned to Wall Lenk.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Wall Lenk shall pay a civil penalty of \$24,000 in two installments. The first payment of \$6,000 shall be paid within ten (10) calendar days after the Effective Date of this Agreement. The second payment of \$18,000 shall be made on or before August 31, 2001. However, Wall Lenk has agreed to replace its lead solder with lead-free solder in its soldering kits immediately after the Effective Date of this Agreement. The second penalty shall be waived conditioned upon Wall Lenk making the replacement on or before July 31, 2001. Certification of the reformulation or introduction of the non-lead alternative must be provided to DiPirro by August 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. Wall Lenk 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.

Wall Lenk shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Wall Lenk's attention, litigating and negotiating a settlement in the public interest. Wall Lenk shall pay the total sum of \$34,000 for investigation fees, attorneys' fees and litigation costs. Wall Lenk agrees to pay \$34,000 within ten (10) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

4. Michael DiPirro's Release Of Wall Lenk. 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 Wall Lenk 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 Wall Lenk's failure to warn about exposure to the Listed Chemicals contained in (or produced by) any of the Products.

The Parties acknowledge that DiPirro has an enforcement action presently on file in the Alameda County Superior Court, Case No. H210769-7, against Wal-Mart Stores alleging violations of Proposition 65 arising from the sale of the Popular Mechanics Soldering Iron Kits. DiPirro agrees to dismiss this action against Wal-Mart with prejudice within five (5) days of the receipt of the payments specified in paragraphs 2 and 3 of the Agreement and receipt of an agreement acceptable to DiPirro that Wal-Mart will comply with Proposition 65 requirements for its Popular Mechanics Brand products.

5. Wall Lenk's Release Of Michael DiPirro. Wall Lenk, 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 Wall Lenk.

6. Waiver of the Provisions of the California Civil Code, Section 1542. DiPirro, on behalf of himself, his agents, representatives, attorneys, successors and assigns, and *not* in his representative capacity on behalf of citizens of the State of California, and Wall Lenk, hereby waive the provision of the California Civil Code, Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him, must have materially affected his settlement with the debtor."

7. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Wall Lenk 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.

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

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

10. 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.

11. 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.

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

13. **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 Wall Lenk shall be mailed to:

Richard Davis
President
Wall Lenk Corporation
P.O. Box 3349
Kinston, North Carolina 28502-3349

Gregory J. Patterson, Esq.
Musick, Peeler & Garrett LLP
One Wilshire Boulevard, Suite 2000
Los Angeles, CA 90017-3383
(213) 629-7859

14. **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. Wall Lenk 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.

15. **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.

16. **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:

9/1/00

DATE:



Michael DiPirro
PLAINTIFF

Wall Lenk Corporation
DEFENDANT

16. 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: 8/28/00

Michael DiPirro
PLAINTIFF



Wall Lenk Corporation
DEFENDANT

Exhibit A

EXHIBIT A

Soldering guns, irons, solder and other equipment used to process solder

Hobby and craft kits and other kits that contain solder and/or tools used to process solder