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Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,)	No. 01-032049
)	
Plaintiff,)	
)	
v.)	SETTLEMENT AGREEMENT
)	
WALT DISNEY COMPANY; and DOES 1)	
through 1000,)	
)	
Defendants.)	
_____)	

This Settlement Agreement ("Agreement") is entered into
by and between Michael DiPirro and The Disney Store, Inc., a
California corporation ("TDS"), as of May 6, 2002 (the
"Effective Date"). The parties agree to the following terms
and conditions:

SETTLEMENT AGREEMENT

1 **WHEREAS:**

2 A. Michael DiPirro is an individual residing in
3 San Francisco, California, who seeks to promote awareness of
4 exposures to toxic chemicals and improve human health by
5 reducing or eliminating hazardous substances contained in
6 consumer products;

7 B. TDS is a company that has sold certain glass
8 and metal framed products as set forth in Exhibit A (the
9 "Products") that contain lead (or lead compounds) (the "Listed
10 Chemical") in California subsequent to November 27, 1998;

11 C. On or about September 21, 2001, Michael DiPirro
12 served The Walt Disney Company ("TWDC"), TDS and other public
13 enforcement agencies with a document entitled "60-Day Notice
14 of Violation" which provided TWDC, TDS and such public
15 enforcers with notice that TWDC and TDS were allegedly in
16 violation of Health & Safety Code §25249.6 for failing to warn
17 purchasers that certain products they sell in California
18 expose users to the Listed Chemical ("the Notice");

19 D. On November 27, 2001, Michael DiPirro filed a
20 complaint entitled Michael DiPirro v. Walt Disney Company, et
21 al. in the Alameda County Superior Court, naming TWDC as a
22 defendant and alleging violations of Business & Professions
23 Code §17200 and Health & Safety Code §25249.6 in the interest
24 of the general public in California who allegedly have been
25 exposed to the Listed Chemical contained in certain glass and
26 metal framed products manufactured, distributed and sold by
27 the defendants in the case (the "Action"); and

28 SETTLEMENT AGREEMENT

1 E. TWDC, who is not in the business of
2 manufacturing, distributing or selling products, was
3 voluntarily dismissed from the case without prejudice and TDS
4 was named as a Doe defendant on or about May 6, 2002.

5 **NOW THEREFORE, MICHAEL DIPIRRO AND TDS AGREE AS FOLLOWS:**

6 **1. Product Toxic Warnings (Injunctive Relief).**

7 After receiving the Notice from DiPirro, TDS asserts that it
8 stopped selling the Products in its stores in the State of
9 California. In the event TDS decides to sell such Products in
10 its stores in the State of California in the future, TDS
11 agrees that it will not knowingly sell, or cause to be sold,
12 any Products containing the Listed Chemical in the State of
13 California unless such Products bear the following warning
14 statement:

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

18 This warning statement shall be prominently placed such
19 that the warning is in compliance with California Health &
20 Safety Code §25249.6 and its implementing regulations.

21 **2. Health & Safety Code Payment.** In light of the
22 factors enumerated in Health & Safety Code §25249.7(b), TDS
23 agrees to pay or cause to be paid to "Sheffer & Chanler In
24 Trust for Michael DiPirro", the amount of \$2,500 (two thousand
25 five hundred dollars) (the "Settlement Payment") within five
26 (5) calendar days of the Effective Date. If the Consent
27 Judgment is not ultimately approved by the Court, DiPirro will

1 return the amount of the Settlement Payment, with interest
2 thereon at the rate of 3.50%, within ten (10) calendar days of
3 notice of the final decision. The Settlement Payment shall be
4 apportioned by DiPirro in accordance with Health & Safety Code
5 §25192, with 75% of the Settlement Payment being remitted to
6 the State of California's Department of Toxic Substances
7 Control.

8 **3. Reimbursement Of Fees And Costs.** Under the
9 private attorney general doctrine codified at C.C.P. §1021.5,
10 TDS shall reimburse DiPirro and his counsel for his fees and
11 costs, incurred as a result of investigating, bringing this
12 matter to TDS's attention, litigating and negotiating a
13 settlement in the public interest. TDS shall pay \$18,500,
14 except as provided for in paragraph 3.1 below, for all
15 attorneys' fees, expert and investigation fees, and litigation
16 costs. TDS agrees to pay the total sum of \$18,500, except as
17 provided for in paragraph 3.1 below, within ten (10) calendar
18 days of the Effective Date. Payment should be made payable to
19 the "Sheffer & Chanler".

20 **3.1 Additional Fees and Costs in Seeking**
21 **Judicial Approval.** The parties acknowledge that, pursuant to
22 recent interpretations of Health & Safety Code §25249.7, a
23 noticed motion is required to obtain judicial approval of this
24 Agreement. Accordingly, the parties agree to use their best
25 efforts to file a *Joint Motion to Approve the Agreement* within
26 a reasonable period of time after execution of this Agreement.

27 Pursuant to C.C.P. §1021.5, TDS agrees to reimburse DiPirro

1 and his counsel for their reasonable fees and costs incurred
2 in seeking judicial approval of this Agreement.

3 **3.2** DiPirro and his counsel expressly agree
4 that TDS's liability for payment due under this paragraph for
5 work performed in the trial court shall not exceed \$4,500 if
6 no opposition to the motion (nor objection to the terms of the
7 agreement) is filed or otherwise transmitted by any third
8 party.

9 **3.3** In the event that any third party,
10 including any public enforcer, objects or otherwise comments
11 to one or more provisions of this Agreement, TDS agrees to use
12 its best efforts to support each of the terms of the
13 Agreement, as well as to seek judicial approval of this
14 Agreement.

15 **3.4** In the event that such an objection or
16 opposition is transmitted or filed by any third party, TDS
17 agrees to reimburse DiPirro for his reasonable attorneys' fees
18 and costs in an amount not to exceed \$1,000 (above the caps
19 provided in paragraphs 3.2 and 3.4, above).

20 **3.5** In the event that defending this Agreement
21 from such objection or opposition from any third party
22 requires a declaration from an expert, then TDS agrees to
23 reimburse DiPirro for such expert's reasonable fees and costs
24 in an amount not to exceed \$1,000 (above the caps provided in
25 paragraphs 3.2 and 3.4, above).

26 **3.6** TDS's payment of DiPirro's legal fees and
27 costs under this subparagraph shall be due within ten (10)

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1 calendar days after receipt of a billing statement from
2 DiPirro ("Additional Fee Claim"). Payment of the Additional
3 Fee Claim shall be made payable to the "Sheffer & Chanler."
4 TDS has the right to object to DiPirro's reimbursement request
5 and may submit the resolution of this issue to the American
6 Arbitration Association (AAA) in Northern California to
7 determine the reasonableness of the additional fees and costs
8 sought, provided that an arbitration claim has been filed with
9 AAA and served on DiPirro within ten (10) calendar days
10 following DiPirro's service of the Additional Fee Claim on
11 TDS. If an arbitration notice is not filed with AAA in a
12 timely manner, TDS's right to arbitrate this matter is waived.

13 DiPirro may then file a motion, pursuant to C.C.P. §1021.5,
14 with the Court seeking his (and his attorneys') fees and costs
15 incurred as set forth in this paragraph.

16 **4. Dismissal of TWDC.** DiPirro agrees to have his
17 counsel execute and deliver to counsel for TDS, a filed
18 stamped Request for Dismissal of TWDC without prejudice.

19 **5. Denial of Liability.** Nothing in this Agreement
20 shall be construed as an admission by TDS or any other person
21 or entity of any fact, finding, issue of law, liability, or
22 violation of law and such liability or violation of law is
23 expressly denied. Further, compliance with this Agreement
24 shall not constitute or be construed as an admission by TDS or
25 any other person or entity of any fact, finding, conclusion,
26 issue of law, liability or violation of law. However, this
27 paragraph shall not diminish or otherwise affect the

1 obligations, responsibilities, and duties of TDS under this
2 Agreement.

3 **6. Release Of TWDC and TDS.** As a material
4 inducement to TDS to enter into this Agreement, Michael
5 DiPirro, by this Agreement, on behalf of himself, his agents,
6 representatives, attorneys, assigns and in the interest of the
7 general public ("Claimants"), waive all rights to institute or
8 participate in, directly or indirectly, any form of legal
9 action, and hereby irrevocably and unconditionally release,
10 acquit and forever discharge TWDC and TDS and each of their
11 parent companies, owners, members, stockholders, predecessors,
12 successors, agents, directors, officers, employees,
13 representatives, attorneys, divisions, subsidiaries,
14 distributors and customers (and agents, directors, officers,
15 employees, representatives and attorneys of such parent
16 companies, divisions, subsidiaries, distributors and
17 customers) and all persons acting by, through, under or in
18 concert with any of them (collectively "Releasees"), or any of
19 them, from any and all charges, complaints, claims,
20 liabilities, obligations, promises, agreements, controversies,
21 damages, actions, causes of action, suits, rights, demands,
22 costs, losses, debts and expenses (including attorneys' fees
23 and costs actually incurred), claims which were asserted or
24 could have been asserted in the Action, including the
25 California Safe Drinking Water and Toxic Enforcement Act of
26 1986, and California Business & Professions Code ("Claim" or
27 "Claims"), that they now have or have ever had, against each

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1 or any of the Releasees, based on the Releasee's alleged past
2 failure to warn about exposure to the Listed Chemical
3 contained in any of the Products.

4 **7. TDS' and TWDC's Release Of Michael DiPirro.**

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

11 **8. Court Approval.** If, for any reason, the

12 Consent Judgment is not ultimately approved by the Court, this
13 Agreement shall be deemed null and void, except for DiPirro's
14 return of the amount of the Settlement Payment, including
15 interest.

16 **9. Disney Sales Data.** TDS understands that the

17 sales data provided to counsel for DiPirro by TDS was a
18 material factor upon which DiPirro has relied to determine the
19 amount of the Settlement Payment in this Agreement. To the
20 best of TDS' knowledge, the sales data provided is materially
21 true and accurate.

22 **10. Severability.** In the event that any of the

23 provisions of this Agreement are ultimately held by a court to
24 be unenforceable, the validity of the enforceable provisions
25 shall not be adversely affected.

26 **11. Attorney's Fees.** Unless otherwise noted, in

27 the event that a dispute arises with respect to any
28

1 provision(s) of this Agreement (including, but not limited to,
2 disputes arising from the payments to be made under this
3 Agreement), the prevailing party shall be entitled to recover
4 costs and reasonable attorneys' fees. This provision shall
5 not apply to the outstanding issue of the recovery of fees and
6 costs to DiPirro and his counsel as set forth in paragraph 3,
7 which is governed by the principles of C.C.P. §1021.5.

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

10 **13. Notices.** All correspondence to Michael DiPirro
11 shall be mailed to:

12 Clifford A. Chanler
13 Sheffer & Chanler
14 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

15 Gregory M. Sheffer
16 Sheffer & Chanler
17 4400 Keller Avenue, Suite 200
Oakland, CA 94605
(510) 577-0747

18 All correspondence to TDS shall be mailed to:

19 Bruce Carter, Esq.
20 The Walt Disney Company
21 500 South Buena Vista St.
Burbank, CA 91521-0695
(818) 560-1644

22 Manuel Grace, Esq.
23 The Walt Disney Company
24 500 South Buena Vista St.
Burbank, CA 91521-6376
(818) 560-8957

25 **14. Compliance With Reporting Requirements (Health**
26 **& Safety Code §25249.7(f)).** The parties acknowledge that the
27 reporting provisions of Health & Safety Code § 25249.7(f)
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SETTLEMENT AGREEMENT

1 apply to the Consent Judgment. Counsel for DiPirro shall
2 comply with that section by submitting the required reporting
3 form to, and serving a copy of the Consent Judgment on, the
4 California Attorney General's Office when noticing the Motion
5 to Approve hearing. Counsel for DiPirro shall submit the
6 Consent Judgment to the Court in accordance with the
7 requirements of Health & Safety Code § 25249.7(f) and its
8 implementing regulations, thereby allowing the Attorney
9 General to serve any comments to this Consent Judgment as
10 provided by law. TDS agrees to cooperate in good faith to
11 jointly bring and file the Motion to Approve as envisioned by
12 this paragraph.

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

17 **16. Authorization.** The undersigned are authorized
18 to execute this Agreement on behalf of their respective
19 parties and have read, understood and agree to all of the
20 terms and conditions of this Agreement.
21
22
23
24
25
26
27
28

1 **AGREED TO:**

2 DATE:

5/06/02

3
4 *Michael DiPirro*
5 Michael DiPirro
6 PLAINTIFF
7

AGREED TO:

DATE:

BY:

TITLE:

The Disney Store, Inc.
DEFENDANT

8 **APPROVED AS TO FORM:**

9
10 DATE:

APPROVED AS TO FORM:

DATE:

11
12
13 Clifford A. Chanler
14 Attorney for Plaintiff
MICHAEL DIPIRRO

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28 Bruce Carter
Attorney for Defendant
THE DISNEY STORE, INC.

SETTLEMENT AGREEMENT

1 **AGREED TO:**

2 DATE: _____

3

4 _____

5 Michael DiPirro
6 PLAINTIFF

7

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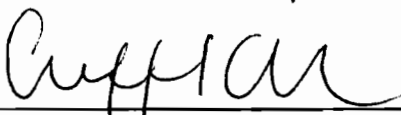
10 **APPROVED AS TO FORM:**

11

12 DATE: 5 / 6 / 02

13

14

15 
16 Clifford A. Chanler
17 Attorney for Plaintiff
18 MICHAEL DIPIRRO

19

20

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SETTLEMENT AGREEMENT

AGREED TO:

DATE: _____

BY: _____

TITLE: _____
The Disney Store, Inc.
DEFENDANT

APPROVED AS TO FORM:

DATE: _____

Bruce Carter
Attorney for Defendant
THE DISNEY STORE, INC.

1 **AGREED TO:**

2 DATE: _____

3
4 _____
5 Michael DiPirro
6 PLAINTIFF

7
8 **APPROVED AS TO FORM:**

9
10 DATE: _____

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12 _____
13 Clifford A. Chanler
14 Attorney for Plaintiff
15 MICHAEL DIPIRRO

AGREED TO:

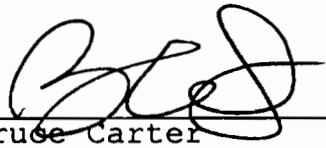
DATE: 5/7/02

BY: 
SECRETARY

TITLE: _____
The Disney Store, Inc.
DEFENDANT

APPROVED AS TO FORM:

DATE: 5/7/02


Bruce Carter
Attorney for Defendant
THE DISNEY STORE, INC.

26
27
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EXHIBIT A

Glassmaster's Walts 100th Celebration Stained Glass

Mickey Mouse Orange Pressed Flower Frame