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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. 01-033218
	)	
Plaintiff,	)	
	)	
v.	)	SETTLEMENT AGREEMENT
	)	
WINFIELD BROOKS COMPANY, INC.;	)	
and DOES 1 through 1000,	)	
	)	
Defendants.	)	
_____	)	

This Settlement Agreement ("Agreement" or "Consent Judgment") is entered into by and between Michael DiPirro and Winfield Brooks Company, Inc., a Massachusetts corporation ("Winfield Brooks"), as of May 3, 2002 (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. Winfield Brooks is a company that currently manufactures, distributes and sells certain cutting and tapping fluids as set forth in Exhibit A that contain tetrachloroethylene (perchloroethylene), a substance known to the State of California to cause cancer;

C. A list of the products which contain tetrachloroethylene (perchloroethylene) (the "Listed Chemical") and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured, distributed and sold by Winfield Brooks in California since December 6, 1998; and

D. On September 21, 2001, Michael DiPirro first served Winfield Brooks and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Winfield Brooks and such public enforcers with notice that Winfield Brooks 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 the *Listed Chemical*; and

E. On December 6, 2001, Michael DiPirro filed a complaint entitled Michael DiPirro v. Winfield Brooks Company, Inc., et al. in the Alameda County Superior Court, naming Winfield Brooks as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general public in California who allegedly have been exposed to the Listed Chemical contained in certain products that Winfield Brooks manufactures, distributes and sells.

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

**NOW THEREFORE, MICHAEL DIPIRRO AND WINFIELD BROOKS AGREE AS FOLLOWS:**

**1. Product Warnings.** Winfield Brooks 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 May 15, 2002, Winfield Brooks 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 tetrachloroethylene (perchloroethylene), such Products shall bear the following warning statement:

**"WARNING: This product contains perchloroethylene, a chemical known to the State of California to cause cancer.";**

or

**"WARNING: This product contains a chemical known to the State of California to cause cancer.";**

The warning statement shall be prominently placed on or near the Products at the point of sale with such conspicuousness, as compared with other words, statements, designs or devices in proximity of the location of the Products on the store shelf or on the label, by way of adhesive sticker or otherwise printed on the label, as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Winfield Brooks shall pay a civil penalty of \$3,600 (thirty six hundred dollars). The payment of \$3,600 shall be paid within five (5) calendar days of the Effective Date and shall be held by DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent Judgment. The penalty payment is to be made payable to "Sheffer & Chanler In Trust For Michael DiPirro". If the Consent Judgment is not approved by the Court, DiPirro will return all funds, with interest thereon at the prevailing federal funds rate (currently set at 1.75%), within ten (10) calendar days of notice of the Court's final decision. 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 and his counsel 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. Winfield Brooks then expressed a desire to resolve the fee and cost issue once the other settlement terms were

resolved, 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.

Winfield Brooks shall reimburse DiPirro and his counsel for his fees and costs, incurred as a result of investigating, bringing this matter to Winfield Brooks' attention, litigating and negotiating a settlement in the public interest. Winfield Brooks shall pay \$15,500 (fifteen thousand five hundred dollars), except as provided for in paragraph 3.1 below, for all attorneys' fees, expert and investigation fees, and litigation costs. *Winfield Brooks agrees to pay the total sum of \$15,500, except as provided for in paragraph 3.1 below, within five (5) calendar days of the Effective Date. Such sum shall be held by DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return all funds, with interest thereon at the prevailing federal funds rate (currently set at 1.75%), within ten (10) calendar days of notice of the Court's final decision. Payment should be made payable to "Sheffer & Chanler".*

**3.1 Additional Fees and Costs in Seeking Judicial Approval.**

The parties acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the parties agree to use their best efforts to file a *Joint Motion to Approve the Agreement* within a reasonable period of time after execution of this Agreement. Pursuant to C.C.P. §1021.5, Winfield Brooks agrees to reimburse DiPirro and his counsel for *their reasonable fees and costs incurred in seeking judicial approval of this Agreement.*

**3.2** DiPirro and his counsel expressly agree that Winfield Brooks' liability for payment due under this paragraph for work performed in the trial court shall not exceed \$4,800 if no opposition to the motion (nor objection to the terms of the agreement) is filed or otherwise transmitted by any third party.

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

**3.4** In the event that such an objection or opposition is transmitted or filed by any third party, Winfield Brooks agrees to reimburse DiPirro for his reasonable attorneys' fees and costs in an amount not to exceed \$5,700 (above the caps provided in paragraphs 3.2 and 3.4, above).

**3.5** In the event that defending this Agreement from such objection or opposition from any third party requires a declaration from an expert, then Winfield Brooks agrees to reimburse DiPirro for such expert's reasonable fees and costs in an amount not to exceed \$4,600 (above the caps provided in paragraphs 3.2 and 3.4, above).

**3.6** In the event that DiPirro and his counsel incur fees in connection with work in the appellate courts as part of the process to obtain judicial approval of this Agreement, Winfield Brooks agrees to reimburse DiPirro for his reasonable fees and costs for such efforts without limitation.

**3.7** Winfield Brooks' payment of DiPirro's legal fees and costs under this subparagraph shall be due within ten (10) calendar days after receipt of a billing statement from DiPirro ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made payable to "Sheffer & Chanler." Winfield Brooks has the right to object to DiPirro's reimbursement request and may submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California to determine the reasonableness of the additional fees and costs sought, provided that an arbitration claim has been filed with AAA and served on DiPirro within ten (10) calendar days following DiPirro's service of the Additional Fee Claim on Winfield Brooks. If an arbitration notice is not filed with AAA in a timely manner, Winfield Brooks' right to arbitrate this matter is waived. DiPirro may then file a motion, pursuant to C.C.P. §1021.5, with the Court seeking his (and his attorneys') fees and costs incurred as set forth in this paragraph.

**4. Michael DiPirro's Release Of Winfield Brooks.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the interest of the general public, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and immediately, upon signing this Agreement and obtaining judicial approval thereon, releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Winfield Brooks and its distributors, customers, directors, officers, employees, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Winfield Brooks' alleged failure to warn about exposure to the Listed Chemical contained in any of the Products.

**5. Winfield Brooks' Release Of Michael DiPirro.** Winfield Brooks, 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 Winfield Brooks.

**6. Court Approval.** If, for any reason, this Consent Judgment is not ultimately approved by the Court, this Agreement shall be deemed null and void.

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

**8. Product Characterization.** Winfield Brooks acknowledges that each of the Products listed in Exhibit A contains tetrachloroethylene (perchloroethylene) and Plaintiff alleges that the customary use or application of the Products is likely to expose users to tetrachloroethylene (perchloroethylene), a substance known to the State of California to cause cancer. In the event that Winfield Brooks obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" as such standard is applicable and as is defined under Health & Safety Code §25249.10(c) and Winfield Brooks seeks to eliminate the warnings, then Winfield Brooks 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 Winfield Brooks Exposure Data, DiPirro shall provide Winfield Brooks 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 Winfield Brooks written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Winfield Brooks' notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Winfield Brooks 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 Winfield Brooks of his intent to challenge the Exposure Data, DiPirro and Winfield Brooks (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 Winfield Brooks' notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Winfield Brooks 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. If DiPirro is the prevailing party, he 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 (including, but not limited to, disputes arising from the payments provisions in paragraphs 2 and 3), the prevailing party shall be entitled to recover costs and reasonable attorneys' fees, including any action brought pursuant to paragraph 3.1 herein.

**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:

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

All correspondence to Winfield Brooks shall be mailed to:

James J. Webster, Esq.  
Quinn Emanuel  
865 South Figueroa Street  
10<sup>th</sup> Floor  
Los Angeles, CA 90017  
(213) 624-7707

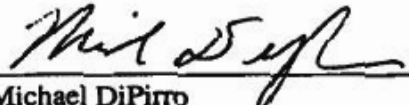
**13. Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)).** The parties acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney General's Office when noticing the Motion to Approve hearing. Counsel for DiPirro shall submit the Consent Judgment to the Court in accordance with the requirements of Health & Safety Code § 25249.7(f) and its implementing regulations, thereby allowing the *Attorney General to serve any comments to this Consent Judgment prior to the end of the review period.*

**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: 5/6/02

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

**AGREED TO:**

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

\_\_\_\_\_  
Winfield Brooks Company, Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Clifford A. Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
James J. Webster  
Attorneys for Defendant  
WINFIELD BROOKS COMPANY, INC.



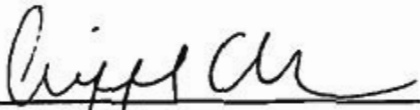
**AGREED TO:**

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

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

**APPROVED AS TO FORM:**

DATE: 5/06/02

  
\_\_\_\_\_  
Clifford A. Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

**AGREED TO:**

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

\_\_\_\_\_  
Winfield Brooks Company, Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
James J. Webster  
Attorneys for Defendant  
WINFIELD BROOKS COMPANY, INC.

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15/07/02 TUE 12:55 FAX

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AGREED TO:

DATE: 5/6/02

Michael DiPirro  
Michael DiPirro  
PLAINTIFF

AGREED TO:

DATE: 5/13/02

Winfield Brooks  
Winfield Brooks Company, Inc.  
DEFENDANT

APPROVED AS TO FORM:

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

Clifford A. Chanler  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: May 13, 2002

James F. Webster  
James F. Webster  
Attorneys for Defendant  
WINFIELD BROOKS COMPANY, INC.

**EXHIBIT A**

**Winbro AlumTap**