

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Michael DiPirro, a California citizen, and Yardbirds Electric and Plumbing Supply (“Yardbirds”), a California corporation, as of January 24, 2001 (the “Effective Date”). Michael DiPirro and Yardbirds are collectively referred to herein as the “Parties” to this Agreement.

RECITALS

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. Yardbirds is a company engaged in retail sales of electrical, plumbing, hardware, gardening and building supplies, and has previously sold “meter bars” or “tinkers,” as listed on Exhibit A (the “Products”), which contain lead (or lead compounds), a substance known to the State of California to cause cancer and birth defects (or other reproductive harm);

C. On July 12, 2000, Michael DiPirro first served Yardbirds and public enforcement agencies with a document entitled “60-Day Notice of Violation” which provided Yardbirds and such public enforcers with notice that Yardbirds was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that the Products it sells in California expose users to lead (or lead compounds), a Proposition 65-listed chemical;

D. Upon receiving said “60-Day Notice of Violation,” Yardbirds directed its retail stores to immediately discontinue sales of the Products and return all existing inventory. Yardbirds has not resumed, and does not intend to resume, sales of the Products unless they are reformulated by the manufacturers to eliminate lead and lead compounds.

E. On September 21, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Yardbirds Electric and Plumbing Supply, et al., No. H215623-7, in the Alameda County Superior Court, naming Yardbirds 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 lead or lead compounds from “meter bars/tinkers;” and

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

AGREEMENT

NOW, THEREFORE, MICHAEL DIPIRRO AND YARDBIRDS AGREE THAT THE FOREGOING RECITALS ARE TRUE AND CORRECT, AND FURTHER AGREE AS FOLLOWS:

1. Product Warnings. In the event Yardbirds decides to resume sales of the Products, Yardbirds agrees, prior to such sales, to implement the language set forth in the section 1.1 below. Beginning on January 24, 2001, Yardbirds agrees that it will not knowingly sell any Products in the State of California unless such Products comply with section 1.1 below:

1.1 Unless reformulated to comply with Proposition 65, as provided in section 10 below, the Products shall bear the following warning statement:

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”

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 or the store shelf or 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), Yardbirds shall pay a civil penalty of \$11,200. The first payment of \$2,200 shall be paid within ten (10) days after the Effective Date of this Agreement. The second payment of \$9,000 shall be made on or before December 1, 2001. However, the second payment shall be waived if Yardbirds has not resumed sales of the Products as of November 1, 2001. In order to obtain the waiver, written certification that sales of such Products have not been resumed must be provided by Yardbirds to DiPirro by November 15, 2001. The penalty payment(s) 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. Yardbirds 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.

Yardbirds shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Yardbirds’ attention, litigating and negotiating a settlement in the public interest. Yardbirds shall pay the total sum of \$16,000.00 for investigation fees, attorneys’ fees and litigation costs (the “Fees and Costs Payment”). Yardbirds agrees to make the Fees and Costs Payment within ten (10) days after the Effective Date of the Agreement. Payment should be made payable to the “Chanler Law Group.”

4. Michael DiPirro's Release of Yardbirds. 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 Yardbirds and its customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or Business & Professions Code § 17200 et seq., based on Yardbirds' failure to warn of exposure to lead or lead compounds contained in the Products.

5. Yardbirds' Release of Michael DiPirro. Yardbirds, 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 & Professions Code § 17200 et seq., against Yardbirds.

6. No Admission. The Parties are entering into this Agreement, and will execute and file a Stipulated Judgment as provided below, for the purpose of avoiding the time, expense and uncertainty of litigation. Nothing in this Agreement shall be construed as, and the Parties expressly do not intend to imply, any admission as to any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by any Party 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 the Parties under this Agreement.

7. Discovery. The Parties agree that this Agreement resolves all claims in this Action relating to the Products identified in Exhibit A, and that all discovery is deemed withdrawn as to such products. This Agreement does not address claims relating to "Sturdy Vine Nails" plant supports in this Action, which will remain the subject of pending discovery propounded to Yardbirds unless otherwise resolved.

8. Stipulated Judgment. The Parties acknowledge that a related action is pending in Alameda Superior Court entitled Michael DiPirro v. California Plastic Products, et al., No. H215621 (the "CPP Action"), alleging, *inter alia*, violations of Business and Professions Code §§ 17200 and Health and Safety Code § 25249.6 for alleged failure to warn of exposure to lead or lead compounds from "Sturdy Vine Nails" plant supports. The Parties further acknowledge that "Sturdy Vine Nails" plant supports supplied by California Plastic Products to Yardbirds constitute the remaining product at issue in this Action. The Parties agree that, within thirty (30) days after the later of the Effective Date of this Agreement or a settlement in the CPP Action, Michael DiPirro and Yardbirds shall execute and file a stipulated judgment in this Action to be approved pursuant to C.C.P. § 664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement and in the form attached as Exhibit B.

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

10. Product Characterization. Yardbirds acknowledges that it has been informed that the Products listed in Exhibit A contain lead, and that Plaintiff alleges that the customary use or application of the Products is likely to expose users to lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm). In the event that Yardbirds obtains analytical, risk assessment, manufacturer's certification or other data ("Compliance Data") that shows either Product has been reformulated to eliminate lead and lead compounds or that either Product otherwise 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), and Yardbirds decides to resume sales of the Products without the warnings required under Paragraph 1.1 herein, then Yardbirds 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 Compliance Data and shall provide DiPirro with all such supporting Compliance Data. Within ninety (90) days of receipt of Yardbirds Compliance Data, DiPirro shall provide Yardbirds with written notice of his intent to challenge the Compliance Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Yardbirds written notice of his intent to challenge the Compliance Data within ninety (90) days of receipt of Yardbirds' notice and the Compliance Data, DiPirro shall waive all rights to challenge the Compliance Data, and Yardbirds shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Compliance Data applies. If DiPirro timely notifies Yardbirds of his intent to challenge the Compliance Data, DiPirro and Yardbirds (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 Yardbirds' notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Yardbirds 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.

11. Modification of Law. In the event the applicable warning requirements under Proposition 65 are subsequently amended or changed by statute, regulation, case law or court order so as to materially affect the warning obligations imposed on Yardbirds pursuant to paragraph 1.1 above, Yardbirds shall modify the warnings provided herein to the extent provided by the new law, regulation, case law or court order.

12. 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.

13. Attorney's Fees. In the event of an action to enforce the provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

15. 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 94596-1175
(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 Yardbirds shall be mailed to:

R. Christopher Locke, Esq.
Farella Braun & Martel LLP
Russ Building, 30th Floor
235 Montgomery Street
San Francisco, CA 94104
(415) 954-4400

16. 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. Yardbirds 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.

17. 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.

18. 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:

1/25/01

MICHAEL DIPIRRO

By: *Michael DiPirro*
Michael DiPirro

AGREED TO:

YARDBIRDS ELECTRIC AND PLUMBING
SUPPLY, INC.

By: _____
Gordon Griffin
Controller

AGREED TO:

MICHAEL DIPIRRO

By: _____
Michael DiPirro

AGREED TO:

YARDBIRDS ELECTRIC AND PLUMBING
SUPPLY, INC.

By:  _____
Gordon Griffin
Controller

EXHIBIT A

Lead Bars (meter bars/tinkers)