

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Fry's Electronics, Inc., a California corporation ("Fry's"), as of May 28, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

A. Michael DiPirro is an individual residing in San Francisco 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. Fry's Electronics, Inc. is a company that sells Alpha Metal's lead solder products in the State of California that contain lead, a chemical listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.) ("listed chemical").;

C. The Alpha Metal's products that contain lead and which are covered by this Agreement are set forth in Exhibit A (the "Products"). The Products have been sold by Fry's for use in California since at least February 26, 1995; and

D. On February 26, 1999, Michael DiPirro first served Fry's and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Fry's and such public enforcers with notice that Fry's was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain Alpha Metal's products it sells in California expose users to Proposition 65-listed chemicals; and

E. Fry's at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice. Nothing in this Agreement shall be construed as an admission by Fry's 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 Fry's of any fact, finding, conclusion, issue of law, or violation of law. This Agreement, its contents, each and every provision hereof and its existence shall not be admissible in any proceeding related to or alleging a violation of Proposition 65 or Business & Professions Code Section 17200 on the part of Fry's. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Fry's under this Agreement.

NOW THEREFORE, MICHAEL DiPIRRO AND FRY'S AGREE AS FOLLOWS:

1. Product Warnings. Fry's agrees that as of June 30, 1999, it shall not sell (or cause to be 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 with the following statement:

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

The warning statement shall be prominent and displayed at the point of sale 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.

2. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Fry's shall pay, within five (5) days of the Effective Date of the Agreement, a civil penalty of \$2,000. Payment of the penalties shall be made payable to the "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. Within five (5) days of the Effective Date of the Agreement, Fry's shall reimburse DiPirro for his fees and costs incurred as a result of investigating this matter and negotiating a settlement in the public interest. Fry's agrees to pay: \$9,000 for investigation fees; and \$3,750 in attorneys' fees. Such payment is to be made payable to the "Chanler Law Group".

4. DiPirro's Release Of Fry's. DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, waives all rights to institute any form of legal action (and releases all claims) against Fry's and its officers, directors, shareholders, employees and agents, whether under Proposition 65 or Business & Profession Code §§17200, related to Fry's failure to warn about exposure to lead contained in any of the Products.

5. Successors. This Agreement shall be binding on, and inure to the benefit of, the heirs, successors and assigns of the parties hereto.

6. Fry's Release Of Michael DiPirro. Fry's, by this Agreement, waives all rights to institute any form of legal action against 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 Fry's.

7. 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.

8. Attorneys' Fees In The Event Of A Dispute. 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.

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

10. No Admission. This Agreement, its contents, each and every provision hereof and its existence shall not be admissible in any proceeding related to or alleging a violation of Proposition 65 or Business & Professions Code Section 17200 on the part of Fry's.

11. Notices. All correspondence to DiPirro shall be mailed to:

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
(off 72 Huckleberry Hill)
New Canaan, CT 06840-3801

All correspondence to Fry's shall be mailed to:

David L. Frey, Esq.
Foley, McIntosh, Frey & Claytor
3675 Mt. Diablo Blvd., Suite 250
Lafayette, CA 94549

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. A telefaxed signature to any counterpart hereof shall have the same force and effect and be considered as an original signature.

13. 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: 5/28/99

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Fry's Electronics, Inc.
DEFENDANT


AGREED TO:

AGREED TO:

DATE: _____

DATE: 5-25-99

Michael DiPirro
PLAINTIFF



Fry's Electronics, Inc.
DEFENDANT

EXHIBIT A

Alpha Metals Solder Wire