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13 Attorneys for Defendant
Sheldon's Hobbies (sued
14 herein as Sheldon's Hobby Shop)

15 SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA

16 MICHAEL DiPIRRO,

17 Plaintiff,

18 vs.

19 SHELDON'S HOBBY SHOP and
20 DOES 1 through 1000, et. Al.,

21 Defendants.

No. H-218975-6

CONSENT JUDGMENT

22 **1. INTRODUCTION:**

23 1.1 Michael DiPirro ("DiPirro") is an individual residing in
24 San Francisco, California, who seeks to promote awareness of exposures to toxic
25 chemicals and improve human health by reducing or eliminating hazardous
26 substances contained in consumer and industrial products.
27

1 1.2 For purposes of this Consent Judgment, the term "Sheldon's"
2 shall mean Sheldon's Hobbies (sued as Sheldon's Hobby Shop).

3 1.3 DiPirro alleges that Sheldon's has, since March 23, 1997,
4 distributed and sold in the State of California certain epoxy products containing
5 toluene; certain tape products containing lead (or lead compounds); and certain fuel
6 products containing nitromethane (hereafter referred to as the "Products") that
7 Plaintiff contends contain or whose customary use and application is likely to
8 produce fumes, gases or exhaust which contain chemicals listed pursuant to the
9 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
10 Code §§25249.5 *et seq.*, also known as Proposition 65 including, but not limited
11 to, toluene, lead (or lead compounds) and nitromethane (the "Listed Chemicals").

12 1.4 On January 12, 2001, DiPirro first served Sheldon's and other
13 public enforcement agencies with a document entitled "60-Day Notice of Violation"
14 which provided Sheldon's and such public enforcers with notice that Sheldon's was
15 allegedly in violation of Health & Safety Code §25249.6 for failing to warn that the
16 Products expose users to one or more of the Listed Chemicals.

17 1.5 On March 23, 2001, DiPirro filed a complaint entitled Michael
18 DiPirro v. Sheldon's Hobby Shop, et al. in the Alameda County Superior Court,
19 naming Sheldon's as a defendant and alleging violations of Business & Professions
20 Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in
21 California who allegedly have been exposed to one or more of the Listed Chemicals
22 contained in the Products. Sheldon's thereafter filed and served its answer to that
23 Complaint.

24 1.6 Sheldon's denies the material factual and legal allegations
25 contained in DiPirro's above mentioned 60-Day Notice of Violation and Complaint
26 and maintains that all products distributed or sold by Sheldon's in California
27 including, but not limited to, the Products, have been and are in compliance with all
28 laws.

1 1.7 Nothing in this Consent Judgment shall be construed as an
2 admission by Sheldon's of any fact, finding, issue of law, or violation of law, nor
3 shall compliance with this Consent Judgment constitute or be construed as an
4 admission by Sheldon's of any fact, finding, conclusion, issue of law or violation of
5 law. However, this paragraph shall not diminish or otherwise affect the obligations,
6 responsibilities and duties of Sheldon's under this Agreement.

7 1.8 For purposes of this Consent Judgment, the term "Effective
8 Date" shall mean November 8, 2001.

9
10 **2. PRODUCT WARNINGS**

11 2.1. Sheldon's shall not, after December 1, 2001, knowingly
12 distribute or sell in the state of California any Products that contain or whose
13 customary use and application produce fumes, gases or exhaust that contain the
14 Listed Chemicals unless such Products comply with the warning requirements set
15 forth in Sections 2.2 - 2.5 below.

16 2.2 Products which contain toluene shall bear the following warning:

17 **"WARNING: This product contains toluene, a chemical
18 known to the State of California to cause
19 birth defects (or other reproductive harm).";**

20 or

21 **"WARNING: This product contains a chemical known
22 to the State of California to cause birth
23 defects (or other reproductive harm)."**

24 2.3 Products which contain lead (or lead compounds) shall bear the
25 following warning:

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

 or

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

1 and birth defects (or other reproductive
2 harm)."

3 2.4 Products which contain nitromethane shall bear the following
4 warning:

5 "WARNING: This product contains nitromethane, a
6 chemical known to the State of California
7 to cause cancer.";

8 or

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

11 2.5 The warnings referenced in Sections 2.2-2.4 shall be
12 prominently placed on or near the Products at the point of sale with such
13 conspicuousness, as compared with other words, statements, designs or devices in
14 proximity of the location of the Products on the store shelf or on the label, by way
15 of adhesive sticker or otherwise printed on the label, as to render it likely to be read
16 and understood by an ordinary individual under customary conditions of purchase.

17 2.6 DiPirro alleges that the customary use or application of the
18 Products is likely to expose users to one or more of the Listed Chemicals. In the
19 event that Sheldon's obtains analytical, risk assessment or other data ("Exposure
20 Data") that shows an exposure to any or all of those Products poses "no significant
21 risk" or "no observable effect" as such standards are applicable and as are defined
22 under Health & Safety Code §25249.10(c) and Sheldon's seeks to limit or eliminate
23 any of the warning provisions required under this Consent Judgment, then
24 Sheldon's shall provide DiPirro with ninety (90) days prior written notice of its intent
25 to limit or eliminate the warning provisions under this Consent Judgment based on
26 the Exposure Data and shall provide DiPirro with all such supporting Exposure Data.
27 Within ninety (90) days of receipt of Sheldon's Exposure Data, DiPirro shall provide
28 Sheldon's 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

1 Sheldon's written notice of his intent to challenge the Exposure Data within ninety
2 (90) days of receipt of Sheldon's notice and the Exposure Data, DiPirro shall waive
3 all rights to challenge the Exposure Data, and Sheldon's shall be entitled to limit or
4 eliminate the warning provisions required under this Consent Judgment with respect
5 to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies
6 Sheldon's of his intent to challenge the Exposure Data, DiPirro and Sheldon's (a)
7 may stop its efforts to eliminate the warnings upon notice to DiPirro with no further
8 liability or obligations or (b) shall negotiate in good faith for a period not to exceed
9 thirty (30) days following receipt of Sheldon's notice to attempt to reach a
10 settlement of this issue. If a settlement is not reached, DiPirro and Sheldon's agree
11 to submit such challenge to the superior court for determination, pursuant to the
12 court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Consent
13 Judgment. The prevailing party shall be entitled to reasonable attorneys' fees and
14 costs associated with bringing a motion brought under this paragraph to the court
15 for determination. Should Sheldon's so request, DiPirro shall not unreasonably
16 withhold his consent to modifying or eliminating the warning program set forth in
17 Section 2.4 herein to make it consistent with the warning program applicable to
18 other nitromethane fuel products substantially similar to the nitromethane containing
19 Products.

20 21 **3. MONETARY PAYMENTS**

22 **3.1 Payment Pursuant To Health & Safety Code §25249.7(b).**

23 Pursuant to Health & Safety Code §25249.7(b), Sheldon's shall pay a civil penalty
24 of \$800. The payment of \$800 shall be paid within five (5) calendar days of the
25 Effective Date and shall be held in trust by DiPirro's counsel until the Alameda
26 County Superior Court approves and enters the Consent Judgment. The penalty
27 payment is to be made payable to "Chanler Law Group In Trust For Michael
28 DiPirro".

1 3.2 Any penalty monies received shall be apportioned by DiPirro in
2 accordance with Health & Safety Code §25192, with 75% of these funds remitted
3 to the State of California's Department of Toxic Substances Control. DiPirro shall
4 bear all responsibility for apportioning and paying to the State of California the
5 appropriate civil penalties paid in accordance with this paragraph. In the event this
6 Consent Judgment is not approved by the Court, DiPirro will return to Sheldon's all
7 funds, with interest thereon at a rate of six percent (6%) per annum, within five (5)
8 calendar days of receipt of notice of the Court's rejection of this proposed Consent
9 Judgment.

10 3.3 Sheldon's understands that the payment schedule as stated in
11 this Consent Judgment is a material factor upon which DiPirro has relied in entering
12 into this Consent Judgment. Sheldon's agrees that all payments will be made in a
13 timely manner in accordance with the payment due dates. Sheldon's will be given a
14 five (5) calendar day grace period from the date payment is due. Sheldon's agrees
15 to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is
16 received after the grace period ends. For purposes of this paragraph, each new day
17 (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

18 19 **4. REIMBURSEMENT OF FEES AND COSTS**

20 **4.1 Reimbursement Of Fees And Costs.** The parties acknowledge
21 that DiPirro offered to resolve the dispute without reaching terms on the amount of
22 fees and costs to be reimbursed, thereby leaving this open issue to be resolved after
23 the material terms of the agreement had been reached, and the matter settled.
24 Sheldon's then expressed a desire to resolve the fee and cost issue concurrently
25 with other settlement terms, so the parties tried to reach an accord on the
26 compensation due to DiPirro and his counsel under the private attorney general
27 doctrine codified at C.C.P. §1021.5.

28 **4.2** Sheldon's shall reimburse DiPirro and his counsel for his fees and

1 costs, incurred as a result of investigating, bringing this matter to Sheldon's
2 attention, litigating and negotiating a settlement in the public interest. Sheldon's
3 shall pay \$6,800 for all attorneys' fees, expert and investigation fees, and litigation
4 costs. Sheldon's agrees to pay the total sum of \$6,800 within five (5) calendar
5 days of the Effective Date. Such sum shall be held in trust by DiPirro's counsel
6 until the Alameda County Superior Court approves and enters the Consent
7 Judgment. If the Consent Judgment is not approved by the Court, DiPirro will
8 return to Sheldon's, all funds, with interest thereon at a rate of six percent (6%) per
9 annum, within ten (10) calendar days of notice of the Court's decision. Payment
10 should be made payable to the "Chanler Law Group".

11 **4.3** Sheldon's understands that the payment schedule as stated in
12 this Consent Judgment is a material factor upon which DiPirro and his counsel have
13 relied in entering into this Consent Judgment. Sheldon's agrees that all payments
14 will be made in a timely manner in accordance with the payment due dates.
15 Sheldon's will be given a five (5) calendar day grace period from the date payment
16 is due. Sheldon's agrees to pay Michael DiPirro and his counsel a \$250 per
17 calendar day fee for each day the payment is received after the grace period ends.
18 For purposes of this paragraph, each new day (requiring an additional \$250
19 payment) will begin at 5 p.m. (PST).

20 **4.4 Additional Contingent Fees and Costs.** In the event that the
21 California Attorney General's Office, pursuant to 11 CCR 3000 *et seq*, serves
22 objections to this Consent Judgment on either of the parties, such that it requires
23 DiPirro to incur additional legal fees or costs relating to this Consent Judgment,
24 Sheldon's shall reimburse DiPirro for reasonable fees and costs incurred by DiPirro
25 and his counsel in excess of \$1,500 from the date of receipt of the Attorney
26 General's objections. Such additional legal fees or costs relating to this Consent
27 Judgment include, but are not limited to: further editing and finalizing of the
28 Consent Judgment; corresponding with opposing counsel; retention of experts; and

1 presenting of the Consent Judgment (or any modifications thereof) to the Attorney
2 General for further comment.

3 DiPirro agrees to document all fees and costs incurred from the date of
4 receipt of the Attorney General's objections through the date of court approval of
5 the Consent Judgment. Prior to receiving such documentation, Sheldon's agrees to
6 enter into a letter agreement in which the parties agree that, by transmitting such
7 information, no privilege will be waived by DiPirro or his counsel.

8 Such additional reimbursement of legal fees and costs shall be due
9 within ten (10) calendar days after receipt by Sheldon's of both notice of Court
10 approval of the Consent Judgment and final billing statement from DiPirro.
11 Sheldon's has the right to object to such reimbursement. If Sheldon's does object,
12 it shall notify DiPirro's counsel in writing within five (5) calendar days of its receipt
13 of both the notice of the Court's approval of the Consent Judgment and DiPirro's
14 billing statement. The parties shall meet and confer in good faith to resolve the
15 dispute. If the dispute is not resolved within twenty-one (21) calendar days, either
16 party may submit the dispute to the Court, pursuant to the Court's continuing
17 jurisdiction to implement the terms of this Consent Judgment. The parties may also
18 agree to resolve the dispute through mediation, arbitration or other neutral third
19 party dispute resolution proceeding.

20 21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Michael DiPirro's Release Of Sheldon's.** In further consideration
23 of the promises and agreements herein contained, and for the payments to be made
24 pursuant to Sections 3 and 4, Michael DiPirro, on behalf of himself, his agents,
25 representatives, attorneys, and/or assignees, and in the interest of the general
26 public , hereby waives all rights to institute or participate in, directly or indirectly,
27 any form of legal action and releases all claims, including, without limitation, all
28 actions, causes of action, in law or in equity, suits, liabilities, demands, obligations,

1 damages, costs, fines, penalties, losses or expenses (including investigation fees,
2 expert fees and attorneys' fees and other costs, other than those stated herein) of
3 any nature whatsoever, whether known or unknown, fixed or contingent
4 (collectively, "Claims"), against Sheldon's and any of its parent companies,
5 divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns
6 of any of them), and its respective officers, directors, attorneys, representatives,
7 shareholders, partners, agents, and employees (collectively, "Sheldon's Releasees").
8 This waiver and release shall pertain only to Claims arising under Proposition 65 or
9 Business & Professions Code §17200 *et seq.*, related to the Sheldon's Releasees
10 alleged failure to warn about exposures on or before the Effective Date to the Listed
11 Chemicals contained in or produced by the customary use of any of the Products.
12 It is specifically understood and agreed that Sheldon's compliance with the terms of
13 this Release resolves all issues and liability, now and in the future, concerning the
14 Sheldon's Releasees' compliance with the requirements of Proposition 65 or
15 Business and Professions Code §17200 *et seq.*, as to the Products.

16
17 **5.2. DiPirro's Release of "Downstream Persons."** In further
18 consideration of the promises and agreements herein contained, and for the
19 payments to be made pursuant to Sections 3 and 4, DiPirro, on behalf of himself,
20 his agents, representatives, attorneys, and/or assignees, and in the interest of the
21 general public, further waives all rights to institute any form of legal action and
22 releases all Claims, as defined above, against each distributor, wholesaler,
23 auctioneer, retailer, dealer, customer, owner, operator, purchaser, lessor, lessee,
24 renter, or user of the Products, or any of their respective parent, divisions,
25 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of
26 them) and their respective officers, directors, shareholders, partners, attorneys,
27 representatives, agents, employees (collectively, "Downstream Persons"). This
28 waiver and release shall pertain only to Claims arising under Proposition 65 or

1 Business & Professions Code §17200 *et seq.*, related to the Downstream Persons'
2 alleged failure to warn about exposures on or before the Effective Date to the Listed
3 Chemicals contained in or produced by the customary use of any of the Products.
4 It is specifically understood and agreed that this Consent Judgment resolves all
5 issues and liability, now and in the future, concerning the Downstream Persons'
6 compliance with the requirements of Proposition 65 or Business & Professions Code
7 §17200, *et seq.*, as to the Products.

8
9 **5.3. Sheldon's Release of Michael DiPirro.** Sheldon's waives all
10 rights to institute any form of legal action against DiPirro, and his attorneys or
11 representatives, for all actions taken or statements made on or before the Effective
12 Date by DiPirro and his attorneys or representatives, in the course of seeking
13 enforcement of Proposition 65 or Business & Professions Code §17200, *et seq.*
14 against Sheldon's.

15
16 **6. SHELDON'S SALES DATA.** Sheldon's understands that the sales data
17 provided to counsel for DiPirro by Sheldon's was a material factor upon which
18 DiPirro has relied to determine the amount of payments made pursuant to Health &
19 Safety Code §25249.7(b) in this Agreement. To the best of Sheldon's knowledge,
20 the sales data provided is true and accurate. In the event that DiPirro discovers
21 facts which demonstrate to a reasonable degree of certainty that the sales data is
22 materially inaccurate, the parties shall meet in a good faith attempt to resolve the
23 matter within ten (10) days of Sheldon's receipt of notice from DiPirro of his intent
24 to challenge the accuracy of the sales data. If this good faith attempt fails to
25 resolve DiPirro's concerns, DiPirro shall have the right to vacate this Consent
26 Judgment and re-institute an enforcement action against Sheldon's, provided that
27 all sums paid by Sheldon's pursuant to Sections 3 and 4 are returned to Sheldon's
28 within ten (10) days from the date on which DiPirro notifies Sheldon's of his intent

1 to rescind this Agreement. In such case, all applicable statutes of limitation shall be
2 deemed tolled for the period between the date DiPirro filed the instant action and
3 the date DiPirro notifies Sheldon's that he is vacating this Consent Judgment
4 pursuant to this Paragraph, provided that in no event, shall any statute of limitations
5 be tolled beyond four (4) years from the date this action was filed.

6
7 **7. COURT APPROVAL.** If this Consent Judgment is not approved and entered by
8 the Court within 120 days of the Effective Date, it shall be deemed null and void as
9 of the one hundred twenty-first (121st) day after the Effective Date and cannot be
10 used in any proceeding.

11
12 **8. SEVERABILITY.** In the event that any of the provisions of this Consent
13 Judgment are held by a court to be unenforceable, the validity of the enforceable
14 provisions remaining shall not be adversely affected.

15
16 **9. ATTORNEY'S FEES.** In the event that a dispute arises with respect to any
17 provision(s) of this Consent Judgment (including, but not limited to, disputes arising
18 from the payments provisions in Sections 3 and 4), the prevailing party shall be
19 entitled to recover costs and reasonable attorneys' fees.

20
21 **10. GOVERNING LAW.** The terms of this Consent Judgment shall be governed
22 by the laws of the State of California. In the event that Proposition 65 is repealed or
23 is otherwise rendered inapplicable by reason of law generally, or as to the Products
24 specifically, Sheldon's shall have no further obligations pursuant to this Consent
25 Judgment with respect to, and to the extent that, those Products are so affected.

26 **11. NOTICES.** All correspondence and notices required to be provided pursuant
27 to this Consent Judgment shall be in writing and shall be personally delivered or
28 sent by first-class, registered, certified mail, overnight courier and/or via facsimile

1 transmission (with presentation of facsimile transmission confirmation) addressed as
2 follows:

3 If to Michael DiPirro: Jennifer Henry or David Bush
4 Bush & Henry
5 4400 Keller Ave., Suite 200
6 Oakland, CA 94605
7 (fax) (510) 577-0787

8 If to Sheldon's Hobbies: Ron Sheldon
9 Sheldon's Hobbies
10 2135 Old Oakland Road
11 San Jose, CA 95131
12 (fax) 408-943-0904

13 With a copy to: John E. Dittoe
14 Crosby, Heafey, Roach & May
15 1999 Harrison Street
16 P.O. Box 2084
17 Oakland, CA 94604-2084
18 (fax) (510) 273-8832

19 Either party, from time to time, may specify a change of address or facsimile
20 number to which all notices and other communications shall be sent.

21 **12. NO ADMISSIONS:** Nothing in this Consent Judgment shall constitute or be
22 construed as an admission by Sheldon's of any fact, finding, conclusion, issue of
23 law, or violation of law, nor shall compliance with this Consent Judgment constitute
24 or be construed as an admission by Sheldon's of any fact, finding, conclusion, issue
25 of issue of law, or violation of law, such being specifically denied by Sheldon's.
26 Sheldon's reserves all of its rights and defenses with regard to any claim by any
27 party under Proposition 65 or otherwise. However, this Paragraph shall not diminish
28 or otherwise affect Sheldon's obligations, responsibilities and duties under this
Consent Judgment.

29 **13. ENTIRE AGREEMENT; MODIFICATION:** This Consent Judgment constitutes
30 the entire agreement between the parties relating to the rights and obligations
31 herein granted and assumed, and supersedes all prior agreements and

1 understandings between the parties. This Consent Judgment may be modified only
2 upon the written agreement of the parties and upon entry of a modified or amended
3 Consent Judgment by the Court, or upon motion by any party as provided by law
4 and upon entry of an amended Consent Judgment by the court.

5
6 **14. COUNTERPARTS; FACSIMILE SIGNATURES:** This Consent Judgment may be
7 executed in counterparts and by facsimile, each of which shall be deemed an
8 original, and all of which, when taken together, shall constitute one and the same
9 document.

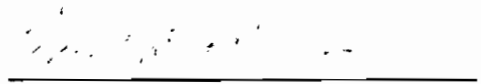
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11 **15. COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY CODE**
12 **§25249.7(f))**. The parties acknowledge that the reporting provisions of Health &
13 Safety Code §25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall
14 comply with that section by submitting the required reporting form to, and serving a
15 copy of this Consent Judgment on the California Attorney General's Office within
16 two business days after the parties execute this Consent Judgment. Following the
17 expiration of the Attorney General's thirty day review period, counsel for DiPirro
18 shall submit the Consent Judgment to the Court in accordance with the
19 requirements of Health & Safety Code Section 25249.7(f) and its implementing
20 regulations, unless the parties cannot agree that all of the Attorney General's
21 objections, if any, cannot be reasonably cured.

22
23 **16. AUTHORIZATION.** The undersigned are authorized to execute this Consent
24 Judgment on behalf of their respective parties and have read, understood and agree
25 to all of the terms and conditions of this Consent Judgment.

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AGREED TO:

DATE: 11/16/01



Plaintiff Michael DiPirro

APPROVED AS TO FORM:

DATE: Nov 30, 2001



David Bush
Attorneys for Plaintiff
Michael DiPirro

AGREED TO:

DATE: _____

Defendant Sheldon's Hobbies

APPROVED AS TO FORM:

DATE: _____

John E. Dittoe
Attorneys for Defendant Sheldon's
Hobbies (sued as Sheldon's Hobby
Shop)

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AGREED TO:

DATE: _____

Plaintiff Michael DiPirro

APPROVED AS TO FORM:

DATE: _____

David Bush
Attorneys for Plaintiff
Michael DiPirro

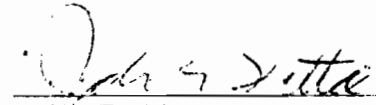
AGREED TO:

DATE: _____

Defendant Sheldon's Hobbies

APPROVED AS TO FORM:

DATE: 11/5/01



John E. Dittoe
Attorneys for Defendant Sheldon's
Hobbies (sued as Sheldon's Hobby
Shop)