

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

### 1. THE PARTIES

1.1 This Settlement Agreement and Mutual Release ("Settlement Agreement") is made and entered into as of May 23, 2007 by and between Macy's West, a division of Macy's Department Stores, Inc., successor in interest to Macy's West, Inc. ("Macy's") on the one hand, and Michael DiPirro ("DiPirro") on the other hand ("the Parties"), with reference to the following facts:

### 2. RECITALS

2.1 On December 10, 2001, DiPirro served a Notice of Violation on Macy's alleging that Macy's had violated Proposition 65 (Health & Safety Code § 25249.6), by exposing individuals to lead and/or lead compounds from "Cosmetic Kits . . . Eye Shadows, Blushers, Lipsticks, Lip Liners, Nail Polishes," without first providing clear and reasonable warning.

2.2 On May 2, 2002, DiPirro filed a Complaint against Macy's, *Michael DiPirro v. Macy's, et al.*, San Francisco Superior Court no. 407458, seeking civil penalties and injunctive relief over claimed violations of Proposition 65 identified in the December 10, 2001 notice, as well as alleged violation of the Unfair Competition Law ["UCL"], and false advertising for failing to disclose the presence of lead in the products. The Complaint was filed "in the public interest," and plaintiff alleged no injuries or damages as a result of the alleged exposures.

2.3 The Complaint was consolidated for all purposes with the Complaint entitled *DiPirro v. J.C. Penney Co.*, San Francisco Superior Court no. 407150. The consolidated action was bifurcated for trial of liability and, if necessary, remedies. Following a 72-day bench trial, the trial court found in favor of Macy's as to all of plaintiff's claims. The Statement of Decision on liability was filed on February 9, 2005, and judgment was entered in favor of Macy's on December 20, 2005.

2.4 Macy's filed its cost bill on January 20, 2006, seeking \$26,986.92 in costs pursuant to Code of Civil Procedure § 1032. Plaintiff filed a motion to tax or strike Macy's costs on February 9, 2006.

2.5 Plaintiff filed a Notice of Cross-Appeal of the Judgment in favor of Macy's on March 30, 2006.

2.6 Since March 30, 2006, DiPirro and Macy's have engaged in further discussions regarding settlement in this matter. The Parties now wish to resolve all claims and allegations in this matter, and to release their claims and causes of action as more fully described below.

2.7 NOW, THEREFORE, in consideration and reliance upon the terms set forth herein, the Parties agree as follows:

### 3. DEFINITIONS

3.1 "Claims" means any and all claims for injunctive relief, damages, penalties, restitution, attorney's fees, or other equitable or monetary remedies, without limitation, whether based on Proposition 65, the UCL, the False Advertising Law, or on any other statute or common law basis, that were or could have been brought by DiPirro regarding the presence of, or alleged failure to warn about exposure to, lead in Cosmetic Kits sold by Macy's.

3.2 "Cosmetic Kit" means any of the following cosmetics packaged and/or sold individually or together: (a) lipstick, (b) lip liner/lip pencil, (c) eye shadow, (d) mascara, (e) blush/facial powder, and (f) eye liner/eye pencil;

3.3 "Effective Date" means the date on which either (a) the court approves the settlement pursuant to Health & Safety Code § 25249.7(f), or (b) the Attorney General's office provides written concurrence that no such motion is required, pursuant to Section 5.1, whichever comes first.

3.4 "Judgment" means the judgment in the consolidated actions brought by DiPirro against Macy's and J.C. Penney Company, SF Super. Ct. nos. 407150 and 407458, entered December 20, 2005.

4. **NO ADMISSION OF LIABILITY**

4.1 It is expressly understood and agreed that this Settlement Agreement, and each of its provisions, is not an admission by any Party of any wrongdoing. The Parties are entering into this Settlement Agreement for the purpose of avoiding litigation and resolving disputed claims.

5. **COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7(F)**

5.1 DiPirro shall either file a motion for approval of the settlement under Health and Safety Code § 25249.7(f) or obtain written concurrence from the Attorney General's office that no such motion is required. Macy's shall have no responsibilities with regard to such motion, but shall execute any stipulation and undertake efforts reasonably necessary to: (a) effectuate any procedural requirements to having the settlement reviewed and/or, (b) to obtain the approval of the settlement by the trial court and/or Court of Appeal.

5.2 If the court denies any motion to approve this Settlement Agreement pursuant to Section 5.1, this Settlement Agreement shall be of no further force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

5.3 If the requirements of Section 5.1 are not met by September 1, 2007, this Settlement Agreement shall be voidable at Macy's option. If so voided, it shall be of no further force or effect, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

**6. PARTIAL REIMBURSEMENT OF COSTS**

6.1 Within 15 days after the Effective Date, Macy's shall pay to DiPirro and his counsel the sum of \$38,500 in partial offset of plaintiff's out-of-pocket costs. Such payment shall be apportioned and paid as follows:

1. \$21,175 payable to "Gregory Sheffer c/o The Sheffer Law Firm" and sent to Gregory Sheffer, c/o The Sheffer Law Firm, 160 Sansome Street, Second Floor, San Francisco, CA 94104; and
2. \$17,325 payable to "Clifford Chanler c/o Chanler Law Group" and sent to Clifford Chanler, c/o Chanler Law Group, 71 Elm Street, Suite 8, New Canaan, CT 06840.

6.2 The payment of costs shall not be construed as attorney's fees, penalties, or other monetary relief, including but not limited to damages or restitution, or any other recovery in favor of plaintiff, and shall not confer upon plaintiff any right or claim to which he would otherwise not be entitled as a result of the Judgment.

**7. DISMISSAL OF PROCEEDINGS IN TRIAL AND APPELLATE COURTS**

7.1 Within 15 days after the Effective Date, plaintiff shall file an abandonment of his cross-appeal against Macy's, and shall withdraw his motion to tax or strike costs in the trial court, with prejudice. For its part, Macy's shall withdraw its cost bill within fifteen (15) days of the Effective Date.

**8. NO MODIFICATION OF JUDGMENT**

8.1 Neither the terms nor the existence of this Settlement Agreement shall be construed in any way to modify, limit, amend, or alter the terms of the Judgment.

**9. RELEASES**

9.1 Except as to the obligations created by this Settlement Agreement, the Parties release each other as follows:

9.2 The parties intend that this Agreement is a full and final resolution of all claims and allegations that were or that could have been alleged by DiPirro against Macy's based on the allegations of the complaint and Notice of Violation, and in order that the parties may avoid continued litigation regarding such claims.

9.3 DiPirro and his attorneys and representatives release, waive, and forever discharge Macy's and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns, Parfums Christian Dior, Christian Dior Perfumes LLC, and Johnson Publishing, Inc. ("Releasees") from any Claims that were or could have been asserted against Macy's or Releasees based on the facts alleged in the Complaint or Notice of Violation, arising from or related to Cosmetics Kits sold by Macy's through the date of Judgment.

9.4 Macy's and Releasees, and their attorneys and representatives, release, waive, and forever discharge DiPirro and his attorneys for all of their costs and fees, as well as any actions or statements made by DiPirro or his attorneys in the course of this litigation.

9.5 Except as provided in Section 6.1, each party shall bear its own costs and attorney's fees in the trial and appellate courts, including any costs to which DiPirro claims to be entitled relating to the order dismissing Macy's cross-appeal.

**10. GENERAL PROVISIONS**

10.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby

merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification, waiver, or termination of this Settlement Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Settlement Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver. The failure to promptly exercise any remedy under this Settlement Agreement shall not be a waiver of such remedy or the ability to exercise that remedy at any later time.

10.2 The terms of this Settlement Agreement shall be governed by the laws of the State of California.

10.3 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code section 1654.

10.4 This Settlement Agreement may be executed in counterparts which together shall constitute one original Settlement Agreement. Execution and delivery of this Settlement Agreement by exchange of facsimile copies bearing the facsimile signature of a party hereto shall constitute a valid and binding execution and delivery of this Settlement Agreement by such party. Such facsimile copies shall constitute enforceable original documents.

10.5 The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

10.6 Titles or captions appearing at the commencement of the sections hereof are descriptive only and for convenience in reference. Should there be any conflict between any such title or caption, and the section or paragraph at the head of which it appears, the paragraph and not such title or caption shall control and govern in the construction of the Settlement Agreement.

10.7 Except as expressly stated, nothing contained in this Settlement Agreement is intended to confer upon any person or entity, other than the Parties hereto, any rights or remedies under or by reason of this Settlement Agreement. Subject to the foregoing sentence, this Settlement Agreement shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, legatees, executors, administrators, trustees, corporate parents and personal representatives of the Parties.

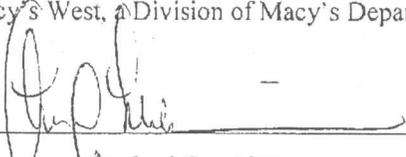
10.8 In the event any provision of this Settlement Agreement shall be held to be unenforceable, the remaining provisions shall be enforced in harmony with the purpose of this Settlement Agreement and the intent of the Parties at the time that they entered into this Settlement Agreement.

DATED:

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

DATED:

Macy's West, a Division of Macy's Department Stores, Inc.

  
\_\_\_\_\_  
By: MICHAEL WILKERSON  
Its: CFO

APPROVED AS TO FORM:

APPROVED AS TO FORM:

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

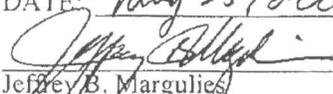
DATE: \_\_\_\_\_

\_\_\_\_\_  
Clifford Chanler  
Chanler Law Group  
Attorneys for Plaintiff Michael DiPirro

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Gregory Sheffer  
Sheffer Law Firm  
Attorney for Plaintiff Michael DiPirro

APPROVED AS TO FORM:

DATE: May 25, 2007

  
\_\_\_\_\_  
Jeffrey B. Margulies  
Fulbright & Jaworski L.L.P.  
Attorneys for Defendant  
Macy's West, a Division of Macy's  
Department Stores, Inc.

DATED: May 25, 2007

Michael DiPirro  
Michael DiPirro

DATED: May 25, 2007

Macy's West, a Division of Macy's Department Stores, Inc.

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

DATE: May 26, 2007

Cliff Chanler  
Clifford Chanler  
Chanler Law Group  
Attorneys for Plaintiff Michael DiPirro

APPROVED AS TO FORM:

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

Gregory Sheffer  
Gregory Sheffer  
Sheffer Law Firm  
Attorney for Plaintiff Michael DiPirro

APPROVED AS TO FORM:

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

Jeffrey B. Margulies  
Jeffrey B. Margulies  
Fulbright & Jaworski L.L.P.  
Attorneys for Defendant  
Macy's West, a Division of Macy's  
Department Stores, Inc.

DATED:

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

DATED:

Macy's West, a Division of Macy's Department Stores, Inc.

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

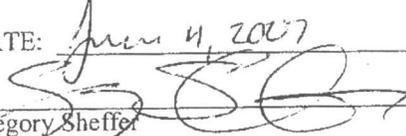
APPROVED AS TO FORM:

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

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Clifford Chanler  
Chanler Law Group  
Attorneys for Plaintiff Michael DiPirro

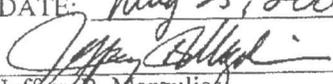
APPROVED AS TO FORM:

DATE: June 4, 2007

  
\_\_\_\_\_  
Gregory Sheffer  
Sheffer Law Firm  
Attorney for Plaintiff Michael DiPirro

APPROVED AS TO FORM:

DATE: May 25, 2007

  
\_\_\_\_\_  
Jeffrey B. Margulies  
Edbright & Jaworski L.L.P.  
Attorneys for Defendant  
Macy's West, a Division of Macy's  
Department Stores, Inc.