

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”), and Office Depot, Inc., and Swinton Avenue Trading Ltd., Inc. (“Defendants”), with DiPirro and Defendants individually referred to as a “Party” and collectively as the “Parties.” DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Defendants employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

DiPirro alleges that Defendants manufactures, imports, sells, or distributes for sale in the state of California, travel organizers containing lead without first providing the clear and reasonable exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Product Description

The product covered by this Settlement Agreement is *Wristlet Organizer (#345908)* (“Product”).

1.4 Notice of Violation

On or about December 26, 2014, DiPirro served Defendants and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that Defendants violated Proposition 65 by failing to warn its customers and consumers in California that the Product exposes users to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Defendants deny the material, factual, and legal allegations contained in the Notice and maintains that all of the products they have manufactured, sold, or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Defendants of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendants. This section shall not, however, diminish or otherwise affect Defendants' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date on which this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, Defendants shall only manufacture for sale, purchase for sale, or distribute for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing a maximum of 100 parts per million (ppm) lead content in any accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalties. In settlement of all the claims referred to in this Settlement Agreement, Defendants shall pay a total of \$1,500 in civil penalties in accordance with this Section, within five business days of the Effective Date and receipt of W-9s for the payees. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental

Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro. The penalty payment shall be delivered to the address listed in Section 3.2 below.

3.2 Payments Held in Trust. Payments shall be delivered to the Law Offices of David R. Bush, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, Ca 95403, and shall be in the form of three checks for the following amounts made payable to:

- (a) “Law Office of David R. Bush” in the amount of \$3,000 for payment to OEHHA. Law Office of David R. Bush agrees to forward such funds to OEHHA in a timely manner.
- (b) “Law Office of David R. Bush” in the amount of \$1,000 as payment to Michael DiPirro. David R. Bush agrees to forward such funds in a timely manner; and
- (c) “Law Offices of David R. Bush” in the amount of \$19,500, as payment for attorneys’ fees and costs pursuant to Section 4 below.

3.3 Issuance of 1099 Forms. Defendants shall provide DiPirro’s counsel with a separate 1099 forms for each of its payments under this Agreement to:

- (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- (b) “Michael DiPirro,” whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and
- (c) “Law Offices of David R. Bush,” for fees and costs reimbursed pursuant to Section 4.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendants then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Defendants shall pay \$19,500 for fees and costs incurred as a result of investigating, bringing this matter to Defendants' attention, and negotiating a settlement in the public interest. Defendants shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "David R. Bush, Attorney at Law" and shall deliver payment within five business days of the Effective Date and receipt of W-9s for the payee to the address listed in Section 3.3.1 above.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Release of Defendants

This Settlement Agreement is a full, final, and binding resolution between DiPirro and Defendants of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Defendants, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Defendants directly or indirectly distribute or sell the Products, including, without limitation, their downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), for unwarned exposures to lead from the Product manufactured, sold or distributed for sale in California by Defendants prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors,

and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Defendants and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to lead from Products manufactured, sold, or distributed for sale in California by Defendants prior to the Effective Date.

5.2 Defendants' Release of DiPirro

Defendants, on their own behalf and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waive any and all claims that they may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Product.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the state of California and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Defendants may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Product is so affected.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Defendants Office Depot, Inc., and Swinton Avenue Trading Ltd., Inc.:

Alicia Trinley
Senior Litigation Counsel
Office Depot, Inc.
6600 North Military Trail
Boca Raton, FL 33496-2434
Mail Code: C476 Legal Dept

with a copy to:

Jeffrey Margulies, Esq.
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071

For DiPirro:

Law Offices of David R. Bush
3270 Mendocino Avenue, Suite 2E
Santa Rosa, CA 95403

Any party may, from time to time, specify in writing to the other party a change of address to which all notices and other communications shall be sent.

10. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

11. **POST-EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. AUTHORIZATION

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 Settlement Agreement.

AGREED TO:

Date: 4/17/15

By: 
Michael DiPirro

AGREED TO:

OFFICE DEPOT, INC.
SWINTON AVENUE TRADING LTD., INC.

Date: _____

By: _____

12. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

13. **AUTHORIZATION**

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 Settlement Agreement.

AGREED TO:

Date: 4/17/15

By: 
Michael DiPirro

AGREED TO:

OFFICE DEPOT, INC.
SWINTON AVENUE TRADING LTD., INC.

Date: 4/23/15

By: 
HEATHER STERN