

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro, on the one hand, (“DiPirro”) and Mettler-Toledo International, Inc. (“Mettler”), on the other hand, with DiPirro and Mettler individually referred to as a “Party” and collectively as the “Parties.” Mettler and its subsidiary, Ohaus Corporation (“Ohaus”) are collectively referred to as the “Noticed 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. Mettler 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 the Notice Parties manufacture, import, sell, or distribute for sale, in the State of California laboratory instrument accessories containing Diisononyl Phthalate (“DINP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause cancer (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are laboratory instrument accessories containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by the Noticed Parties, including, but not limited to *Ohaus 106-00 Vinyl Dust Cover for Harvard Trip Balances* and *Vinyl Silver Dust Cover 80780005* (“Products”).

1.4 Notice of Violation

On or about April 21, 2022, DiPirro issued Mettler, Ohaus and certain requisite public enforcement agencies with a “60-Day Notice of Violation,” a document that informed the recipients of DiPirro’s allegation that Ohaus violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. On or about May 31, 2022, DiPirro served the Noticed Parties and certain requisite public enforcement agencies with an “Amended 60-Day Notice of Violation,” a document that informed the recipients of DiPirro’s allegation that the Noticed Parties violated Proposition 65 by failing to warn its customers, consumers, and persons who may use the Products occupationally in California that the Products expose users to the Listed Chemical (collectively, “Notice”). 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

The Noticed Parties deny the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by the Noticed Parties 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 the Noticed Parties of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Parties. This section shall not, however, diminish or otherwise affect the Noticed Parties’ 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 counsel for the Parties exchange a fully executed copy of the Settlement Agreement.


2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Reformulation of Products. As of the Effective Date, and continuing thereafter, Products that the Noticed Parties manufactures or imports for sale in California shall either: (a) be Reformulated Products pursuant to § 2.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirement set forth in §§ 2.3 and 2.4 shall not apply to any Reformulated Product.


2.2 Reformulation Standard. “Reformulated Products” shall mean Products that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DINP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. The Parties agree that Reformulated Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirement.

2.3 Clear and Reasonable Warning. For all Products that are not Reformulated Products, which are manufactured after the Effective Date, Mettler shall provide a clear and reasonable exposure warnings as set forth in this §§ 2.3 and 2.4. There shall be no obligation for Mettler to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date. The warning shall consist of either the Warning or Alternative Warning described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including diisononyl phthalate (DINP), which are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** Mettler may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

 **WARNING:** Cancer - www.P65Warnings.ca.gov.

2.4 A Warning or Alternative Warning provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, providing that the warning is displayed 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 under customary conditions of purchase or use. The warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

If Mettler sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which Products are displayed and/or described; (b) on the same page as the price for the Products; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Products, if the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

2.5 Compliance with Warning Regulations. The Parties agree that the Noticed Parties shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with warning requirements adopted

by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date, as those regulations may be amended from time to time.

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

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Noticed Parties shall make a civil penalty payment of \$1000.00 in accordance with this section, within five days of the Effective Date. 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 OEHHA and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.2 below. The penalty payment shall be remitted in accordance with the procedure set out in Section 3.2.

3.2 Payments. All payments shall be made within five days of the Effective Date to the office of Jeremy Fietz, Attorney at Law, 1510 Fourth Street, Santa Rosa CA 95404, and shall be in the form of three checks for the following amounts made payable to:

- (a) "Jeremy Fietz, Attorney at Law" in the amount of \$750.00 for payment of civil penalty to OEHHA. Counsel for DiPirro agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant's option, it can choose to deliver a certified or cashier's check made payable to "Office of Environmental Health Hazard Assessment."
- (b) "Jeremy Fietz, Attorney at Law " in the amount of \$250.00, as payment of civil penalty to Michael DiPirro. Counsel for DiPirro agree to forward such funds in a timely manner. Alternatively, at Defendant's option, it can choose to deliver a certified or cashier's check made payable to "Michael DiPirro."
- (c) "Jeremy Fietz, Attorney at Law " in the amount of \$20,000.00 as payment for attorneys' fees and costs pursuant to Section 4 below.

For any payment that is returned for any reason, including insufficient funds, a payment must be made by Mettler in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any payment that is not actually received by the due date will also be subject to a 10% late fee.

3.3 Issuance of 1099 Forms. The Noticed Parties shall provide DiPirro's counsel with a separate 1099 form 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) "Jeremy Fietz, Attorney at Law" 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. The Noticed Parties 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. The Noticed Parties shall together pay a total of \$20,000.00 for fees and costs incurred as a result of investigating, bringing this matter to the Noticed Parties' attention, and negotiating a settlement in the public interest. The Noticed Parties shall issue a separate 1099 for fees and costs, shall make the check payable

to “Jeremy Fietz, Attorney at Law” and shall made within ten days of the Effective Date to the address listed in Section 3.2 above.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro’s Release of Mettler

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Parties 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 either of the Noticed Parties, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products (“Releasees”), including its downstream distributors and retailers including Fotronic Corporation, for unwarned exposures to the Listed Chemical from the Products manufactured for sale in California s 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 the Noticed Parties 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 the Listed Chemical from Products Manufactured for sale in California by the Noticed Parties prior to the Effective Date.

5.2 Noticed Parties Release of DiPirro

Each Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it 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 Products.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. The Parties acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4 Deemed Compliance with Proposition 65. The Parties agree that compliance by the Noticed Parties with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DINP from use of the Products.

5.5. Public Benefit. It is Parties' understanding that the commitments they have agreed to herein, and actions to be taken by the Noticed Parties under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the Noticed Parties failure to provide a warning concerning exposure to DINP prior to use of the Products under Proposition 65, such private party action would not confer a significant benefit on the general public as to those Products

addressed in this Settlement Agreement, provided that the Noticed Parties are in material compliance with this Settlement Agreement.

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 Products, then the Noticed Parties 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 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

8. 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 Mettler:

Will Wagner, Esq.
Arnold & Porter
Three Embarcadero Center, 10th Fl
San Francisco, CA 94111

For DiPirro:

Jeremy Fietz, Attorney at Law
1510 Fourth Street
Santa Rosa CA 95404,

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.

9. 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.

10. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

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

12. 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.

13. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.


AGREED TO:

AGREED TO:

Date: June 16, 2022

Date: July 7, 2022

By: 
Michael DiPirro

By: 
Mettler-Toledo Int'l, Inc.
Print Name: Jean-Yves Cever
Title: General Manager