

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (this "Agreement") is entered into between Michael DiPirro, a California citizen, and American Hakko Products, Inc. (a California corporation), as of June 11, 1999, (the "Effective Date").

### **WHEREAS:**

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.

American Hakko Products, Inc. ("Hakko") distributes various products in the State of California that may be used in conjunction with or may contain chemicals listed under Proposition 65 ("Listed Chemicals").

The products that may contain, or are used with, one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products");

The Products have been distributed and sold by Hakko for use in California since July 22, 1994;

On September 15, 1998, Michael DiPirro first served Hakko and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Hakko and such public enforcers with notice that Hakko was allegedly in violation of Health & Safety Code Section 25249.6 for failing to warn purchasers that certain products it sells in California may expose users to Listed Chemicals.

On February 3, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Hakko Industries, Inc., et al. (No. 301013) in the San Francisco Superior Court, naming Hakko as defendant and alleging violations of Business & Professions Code Section 17200 and Health & Safety Code Section 25249.6 on behalf of individuals in California who may have been exposed to Listed Chemicals as a result of using certain Hakko products or because certain Hakko Products may have contained Listed Chemicals.

### **THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

**Product Labeling.** Beginning immediately, Hakko shall initiate revisions consistent with this Agreement to its current labels for the Products ("Revised Labels"). Hakko shall use reasonable efforts to ensure that all Products in its possession intended for shipment into California are packaged using Revised Labels as quickly as possible; however, Hakko agrees that as of January 1, 2000, it shall not ship (or cause to be shipped on its behalf) any of the Products for sale or use in the State of California

unless each such Product contains the appropriate warning statement on its label as follows:

For Products, such as solder irons and similar products:

**“WARNING: Normal use of this product could expose the user to solders containing lead which is known to the State of California to cause cancer and birth defects (or other reproductive harm) or to other Proposition 65 listed chemicals.”**

The warning statement shall be prominent and 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.

**MSDS Revisions.** Hakko agrees to revise its Material Safety Data Sheets (“MSDS”) pertaining to each of the Products listed on Exhibit “A” of this Agreement, and intended for shipment into California. Hakko shall ensure the MSDSs for each of the Products contains a warning that is consistent in wording with the on-label warning language required under the “Product Labeling” section of this agreement. Further, Hakko agrees that it will include the required warning in the “Health Hazard” section of the MSDS. Hakko agrees to start revising its MSDSs as soon as commercially reasonable. However, the new MSDSs will be distributed in the normal course of business no later than January 1, 2000.

**Civil Penalty.** Pursuant to Health & Safety Code Section 25249.7(b), Hakko shall pay a civil penalty of \$12,500 within twenty (20) calendar days of the Effective Date of this Agreement. Penalty monies shall be apportioned by Michael DiPirro in accordance with Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California. This payment shall be made payable to “Law Offices of David Bush, in trust for Michael DiPirro.”

**Reimbursement of Fees and Costs.** Within twenty (20) calendar days of the Effective Date, Hakko shall pay to Michael DiPirro \$9,000 (nine thousand) for his pre-notice investigation costs and experts, \$500 (five hundred) for his expert and litigation costs, and \$17,000 (seventeen thousand) for his attorneys’ fees incurred in this matter. Payment shall be made payable to “Law Offices of David Bush.”

**Michael DiPirro Release.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and acting in the public interest pursuant to Health and Safety Code § 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code § 17204, waives all rights to institute any form of legal action (and releases all claims) against Hakko, and its parent (the Hakko Corporation), distributors, retailers, customers, successors, assigns, and the like whether under Proposition 65 or Business & Profession Code Section 17200, et seq., or any other cause of action or claim related to Hakko’s lack of warnings about exposure to Listed Chemicals.

**Hakko Release.** Hakko, by this Agreement, waives all rights to institute any form of legal action against Michael 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 Section 17200 *et seq.* against Hakko.

**Warranties and Representations.** The parties make the following representations and warranties.

Hakko represents and warrants as follows:

Each of the Products listed in Exhibit "A" may contain, or its use may result in exposure to, one or more substances known to the State of California to cause cancer or birth defects or other reproductive toxicity, and Hakko has no knowledge that Hakko has any analytical, risk assessment, or other data indicating that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code Section 25249.10(c).

In the event that Hakko obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code Section 225249.10(c), Hakko shall provide Michael DiPirro with 90 days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on this information pursuant to this paragraph and shall provide Michael DiPirro with all such supporting data. Within thirty (30) days of receipt of Hakko's exposure data, Michael DiPirro shall provide Hakko with written notice of his desire to challenge the data (in the event that he chooses to make such a challenge), and Michael DiPirro and Hakko shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by Michael DiPirro of such notice of challenge, Michael DiPirro and Hakko agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. Section 664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If Michael DiPirro does not challenge Hakko's notice or the Court determines that no warning is required for a particular Product or Products, Hakko shall no longer be required to provide the warnings described in this Agreement for those Products.

**Future Decisional Law.** Should any Federal Court, Superior Court of the State of California or Appellate Court determine that a warning pursuant to Proposition 65 is not required for products that do not contain Listed Chemicals, even if use of such products

may result in exposure to Listed Chemicals, then Hakko shall no longer be required to provide the warnings described in this Agreement for such products.

**Sales Data.** Hakko understands that the sales data provided to counsel for Michael DiPirro by Hakko was a material factor upon which Michael DiPirro has relied to determine the amount of penalties and restitution in this Agreement. To the best of Hakko's knowledge, the sales data provided is true and accurate. Hakko acknowledges that, in the event Michael DiPirro finds that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, Michael DiPirro will have the right to rescind this Agreement and re-institute an enforcement action against Hakko. In such a case, all applicable statute of limitations shall be deemed tolled for the period between the date Michael DiPirro filed the instant action and the date Michael DiPirro notifies Hakko that it is rescinding this Agreement pursuant to this subpart. If Hakko believes that its sales data was materially accurate, and Michael DiPirro rescinds this Agreement as provided in this paragraph, Hakko shall have the right to bring an action against Michael DiPirro to enforce the terms of this Agreement and Hakko shall be entitled to attorneys' fees and costs if it prevails in such action.

**Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to CCP Section 664.6 by the San Francisco Superior Court in accordance with the terms of this agreement.

**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.

**Attorneys' Fees.** 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.

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

**Notices.** All correspondence to Michael DiPirro shall be mailed to:

David Bush, Esq.  
Law Offices of David Bush  
2214 Polk Street  
San Francisco, CA 94109

All correspondence to Hakko shall be mailed to:

Terry D. Garnett, Esq.  
Graham & James LLP  
801 So. Figueroa Street  
14<sup>th</sup> Floor  
Los Angeles, CA 90017-5554

**No Admissions.** Nothing in this Agreement shall constitute or be construed as an admission by Hakko 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 Hakko of any fact, finding, conclusion, issue of law, or violation of law. Hakko reserves all of its rights and defenses with regard to any future claim by any party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of Hakko under this Agreement.

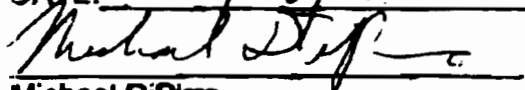
**Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**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:

DATE:

6/18/99



Michael DiPirro  
PLAINTIFF

AGREED TO:

DATE:

\_\_\_\_\_

Hitoshi Fujiwara,  
American Hakko Products, Inc.  
DEFENDANT

All correspondence to Hakko shall be mailed to:

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Graham & James LLP  
801 So. Figueroa Street  
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AGREED TO:

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

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

AGREED TO:

DATE: 6/17/99  
\_\_\_\_\_

  
Hitoshi Fujiwara,  
American Hakko Products, Inc.  
DEFENDANT