

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Release") is entered into between Michael DiPirro, a California citizen acting on behalf of the People of the State of California, and Cal Oak Products, Inc. a California corporation (hereinafter "Cal Oak"), as of July 22, 2000 (the "Effective Date").

### WHEREAS:

A. Michael DiPirro ("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;

B. Cal Oak distributes and/or sells in the State of California the ColorFill product, a laminate and prefinished wood floor repairer (hereafter the "Product") that contains toluene, a chemical listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 *et seq.*).

C. Cal Oak represents that it does not manufacture the Product, but rather purchases the Product from another party not herein named.

D. By notice dated May 6, 1999, DiPirro first served Cal Oak and all of the requisite public enforcement agencies a document entitled "60-Day Notice" which provided Cal Oak and such public agencies with notice that Cal Oak was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that the Product that it distributes in California contains a Proposition 65-listed chemical;

E. Cal Oak represents that shortly after receiving the 60 Day Notice from DiPirro, Cal Oak voluntarily and without admission of liability, began placing warning language that stated "WARNING: This product contains a chemical known to the State of California to cause reproductive toxicity" on each Product unit available for sale in California. DiPirro states that this language is not compliant with Health & Safety Code Section 25249.6 *et seq.*

F. On October 19, 1999, DiPirro filed a complaint entitled Michael DiPirro v. Cal Oak Lumber Co., (No. H209929-9 ) in the Alameda County Superior Court, naming Cal Oak as a defendant and alleging violations of Business & Professions Code §17200 *et seq.* and Health & Safety Code §25249 *et seq.* on behalf of individuals in California who may have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Cal Oak products, or

whose customary use and application may have produced fumes or gases which contain such chemicals. On November 19, 1999, Cal Oak filed its answer to the complaint.

G. Cal Oak denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code §§17200 *et seq.*, and maintains that all Products manufactured and/or distributed by Cal Oak in California are in compliance with all laws. Nothing in this Release shall constitute or be construed as an admission by Cal Oak of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Cal Oak of any fact, finding, conclusion, issue of law or violation of law.

**NOW THEREFORE**, in consideration of the promises, covenants and agreements herein contained and for other consideration, the sufficiency and adequacy of which is hereby confirmed by the parties who intend to be legally bound hereby, it is agreed as follows:

1. **Product Labeling.** Beginning immediately, Cal Oak shall initiate efforts to revise the current product or packaging labels for the Product consistent with this Release ("Revised Labels"). For purposes of this Release, "Listed Chemicals" means chemicals that are currently or may, in the future, be listed pursuant to Proposition 65. Cal Oak shall use reasonable efforts to ensure that all Product inventory intended for distribution or sale in California is packaged or sold using Revised Labels as soon as commercially reasonable; however, Cal Oak agrees that as of October 20, 2000 (the "Revised Label Compliance Date") Cal Oak shall not knowingly distribute or sell (or cause to be distributed or sold on its behalf), any Product inventory for sale or use in the State of California unless each such Product is accompanied by a Revised Label on or affixed to the Product as follows:

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

**(California Health & Safety Code Section 25249.5 et seq.)"**

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 reasonably understood by an ordinary individual under customary conditions of purchase or use. For purposes of this Release, "Revised Label" does not include an MSDS form that otherwise

meets the requirements of Paragraph 2. The labeling revisions may be made in the form of an adhesive sticker, stamp or permanent changes to the outside packaging of the product package.

2. **Deemed Compliance.** Any New Products (as defined in this Paragraph 2) manufactured, distributed and/or sold by Cal Oak after the Revised Label Compliance Date shall be deemed to comply with the provisions of this Agreement and the requirements of Proposition 65 with respect to product warnings if they are accompanied by Revised Labels as required in Paragraph 1 of this Agreement. For purposes of this Agreement, "New Products" shall include any Products that are substantially similar to the Product which contain, or whose customary use or application may produce fumes or gases that contain, a Listed Chemical which causes reproductive toxicity and which were not manufactured, distributed and/or sold by Cal Oak into California on or before the Effective Date.

3. **Civil Penalty.** Cal Oak shall, pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$2,000 to DiPirro within ten (10) calendar days of the Effective Date. Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California. This payment shall be made payable to the "Chanler Law Group in Trust for Michael DiPirro" and shall be held in escrow by DiPirro's counsel until the Court has approved this settlement and issued the Order as set forth in Paragraph 11. It is specifically understood and agreed that DiPirro shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this paragraph. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 11, the payment made pursuant to this paragraph shall be returned to Cal Oak, with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

4. **Reimbursement of Fees and Costs.** The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Cal Oak then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties reached an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure Section 1021.5.

Cal Oak shall reimburse DiPirro the sum of \$10,000 for his investigation, expert, attorney's and paraprofessional fees and costs incurred as a result of investigating, bringing this

matter to Cal Oak's attention, litigating and negotiating a settlement in the public interest. Cal Oak shall pay to DiPirro the sum of \$2,000 within ten (10) calendar days of the Effective Date. This \$2,000 amount shall be made payable to the "Chanler Law Group" and held in escrow by DiPirro's counsel until the Court has approved this settlement and issued an order as set forth in Paragraph 10. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 10, the amounts paid by Cal Oak in accordance with this paragraph shall be returned to Cal Oak with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

Of the remaining \$8,000, Cal Oak shall pay \$4,000 to DiPirro no later than September 30, 2000, which is seventy (70) days after the Effective Date of the Agreement and the final \$4,000, no later than November 29, 2000, which is one hundred thirty (130) days after the Effective Date of the Agreement. These amounts shall be made payable to the "Chanler Law Group." In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 10, these amounts shall not be due and owing by Cal Oak.

5. **DiPirro's Release of Cal Oak** In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Paragraphs 3 and 4, DiPirro, by this Release, on behalf of himself, his agents, representatives, attorneys, and/or assignees, and the People of the State of California on whose behalf this action was brought, hereby waives all rights to institute and participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, damages, fines, penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees and other costs) of any nature whatsoever, whether known or unknown, fixed or contingent, (collectively, "Claims") against Cal Oak and its parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, shareholders, partners, agents, and employees (collectively, "Cal Oak Releasees"). This waiver and release shall pertain to Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to Cal Oak's alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in, or which may be produced in the fumes or gases resulting from the customary use and application of the Product. It is specifically understood and agreed that Cal Oak's compliance with the terms of this Release resolves all issues and liability, now and in the future, concerning the Cal Oak Releasees' past compliance with the requirements of Proposition 65 or Business and Professions Code §§17200 *et seq.*, arising from Cal Oak's alleged failure to comply with Proposition 65 in

connection with the Product occurring on or before the Effective Date. This waiver and release shall not pertain to the Product manufacturers, including Unika Australia.

6. **DiPirro's Release of "Downstream Parties."** DiPirro, on behalf of himself, his agents, and/or assignees and the People of the State of California on whose behalf this action was brought, further waives all rights to institute any form of legal action and releases all Claims against each distributor, wholesaler, retailer, dealer, customer, owner, operator, lessor, lessee or user of the Product, or any of their respective parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, shareholders, partners, attorneys, representatives, agents, employees (collectively, "Downstream Parties"). This waiver and release shall pertain to Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may be produced in fumes or gases resulting from the customary use or application of, the Product. It is specifically understood and agreed that this Release resolves all issues and liability concerning the Downstream Parties' past compliance with the requirements of Proposition 65 or Business & Professions Code §§17200, *et seq.*, arising from Cal Oak's or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Product on or before the Effective Date. This waiver and release shall not pertain to the Product manufacturers, including Unika Australia.

7. **Cal Oak Release.** Cal Oak, by this Release, waives all rights to institute any form of legal action against DiPirro, and his attorneys or representatives, for all actions taken or statements made on or before the Effective Date by DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Professions Code §§17200, *et seq.* against Cal Oak.

8. **Product Characterization.** Cal Oak acknowledges that the Product contains, or in the customary use or application of the Product likely produces fumes or gases that contain one or more substances known to the State of California to cause birth defects (or other reproductive harm). In the event that Cal Oak obtains analytical, risk assessment or other data ("Exposure Data") that shows that an exposure to the Product will have "no observable effect," as such standard is applicable and as each is defined under Health & Safety Code §25249.10(c). Cal Oak shall provide DiPirro with 90 days prior written notice of its intent to limit or eliminate the warning provisions under this Release based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within thirty (30) days of receipt of Cal Oak's Exposure Data, DiPirro shall provide Cal Oak 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 Cal Oak written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Cal Oak's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Cal Oak shall be entitled to limit or eliminate the warning provisions required under this Release with respect to the Product. If DiPirro timely notifies Cal Oak of his intent to challenge the Exposure Data, DiPirro and Cal Oak 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 DiPirro of such notice of challenge, DiPirro and Cal Oak agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under California Code of Civil Procedure §664.6 and this Release. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If DiPirro does not challenge Cal Oak's notice or the Court determines that no warning is required for the Product, Cal Oak shall no longer be required to provide the warnings described in this Release for the Product.

9. **Cal Oak's Product Information.** Cal Oak understands that the Product sales (and other) information provided to counsel for DiPirro by Cal Oak was a material factor upon which DiPirro has relied to determine a fair and reasonable settlement as set forth in this Release. To the best of Cal Oak's knowledge, the information provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the information is materially inaccurate, all other parts of this Release notwithstanding, DiPirro shall have the right to rescind this Release and re-institute an enforcement action against Cal Oak, provided that all sums paid by Cal Oak pursuant to Paragraphs 3 and 4 are returned to Cal Oak, with interest thereon at a rate of six percent (6%) per annum, within five (5) days from the date on which DiPirro notifies Cal Oak of his intent to rescind this Release. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Cal Oak that he is rescinding this Release pursuant to this paragraph, provided that, in no event shall any statute of limitation be tolled beyond four (4) years from the date this action was filed.

10. **Stipulated Judgment and Order.** The parties shall file a Stipulated Judgment to be approved pursuant to California Code of Civil Procedure Section 664.6 by the Alameda County Superior Court in accordance with the terms of this Release. It is expressly understood and agreed by the parties hereto that the rights and obligations contained in this Release are expressly conditioned on the issuance by the Court of an Order approving the Stipulated

Judgment. If the Court fails to issue such Order within sixty (60) days of the Effective Date, this Release shall be deemed null and void as of the sixty-first (61st) day after the Effective Date.

11. **Severability.** In the event that any of the provisions of this Release are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected thereby.

12. **Attorneys' Fees.** In the event that a dispute arises with respect to any provision(s) of this Release, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

13. **Governing Law.** The terms of this Release shall be governed by the laws of 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 specifically, Cal Oak shall have no further obligations pursuant to this Release with respect to, and to the extent that, the Product is so affected.

14. **Notices.** All correspondence and notices required to be provided pursuant to this Release shall be in writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission confirmation) addressed as follows:

If to DiPirro: Chanler Law Group  
Magnolia Lane  
New Canaan, Connecticut 06840-3801  
(Fax) 203/801-5222

If to Cal Oak : Cal Oak Products  
Attn: Bruce Hall  
1000 Cal Oak Road  
Oroville, CA 95965  
(Fax) 530/534-0306

with a copy to: John E. Dittoe, Esq.  
Crosby, Heafey, Roach & May  
1999 Harrison Street  
P.O. Box 2084  
Oakland, CA 94604-2084  
(Fax) 510/273-8832

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

15. **No Admissions.** Nothing in this Release shall constitute or be construed as an admission by Cal Oak of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Release constitute or be construed as an admission by Cal Oak of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by Cal Oak. Cal Oak reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Cal Oak under this Release.

16. **Entire Agreement; Modification.** This Release, together with the exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Release may be modified only upon the written agreement of the parties. To the extent any such modification is made to this Release that also requires modification of the Stipulated Judgment provided for herein, the parties shall cooperate in modifying the Stipulated Judgment submitted to the Court.

17. **Counterparts & Facsimile Signatures.** This Release may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

18. **Compliance With Reporting Requirements.** The parties shall cooperate in complying with the reporting requirements set forth in Health & Safety Code §29249.7(f). If, as of the Effective Date, a form approved by the Attorney General's Office is available for use, such form shall be promptly completed and then sent to the California Attorney General's Office, along with this Release, by certified mail, return receipt requested. If a form approved by the Attorney General's office is not available as of the Effective Date, Cal Oak shall promptly send this Release to the California Attorney General's Office by certified mail, return receipt requested, along with a cover letter stating that: "The attached Release and Settlement Agreement is provided to you pursuant to Health & Safety Code §29249.7(f)." Exhibit A hereto contains a statement by counsel for Cal Oak that, consistent with this Paragraph 19, the Release is being submitted concurrently to the California Attorney General's Office with its presentation to the Alameda County Superior Court.

19. **Authorization.** The undersigned are authorized to execute this Release on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Release.



AGREED TO:

DATE: July \_\_\_\_, 2000

MICHAEL DIPIRRO

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AGREED TO:

DATE: July 31, 2000

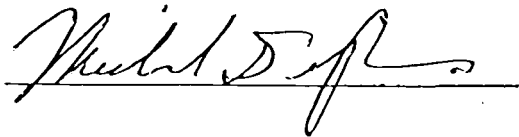
CAL OAK PRODUCTS, INC  
A California corporation

By: *Maria C. Layton*  
~~President Bruce Hall~~  
Chief Financial Officer  
Maria C. Layton

**AGREED TO:**

DATE: July 31, 2000

MICHAEL DIPIRRO



**AGREED TO:**

DATE: July \_\_, 2000

CAL OAK PRODUCTS, INC  
A California corporation

By: \_\_\_\_\_  
President Bruce Hall

**EXHIBIT A**

As counsel for Cal Oak Products, Inc. in the matter of Michael DiPirro v. Cal Oak Lumber Co., Alameda County Superior Court No. H-209929-9, the undersigned hereby represents that this Release and Settlement Agreement was sent to the California Attorney General's Office by certified mail, return receipt requested, on August 29 2000.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: August 29, 2000.

  
\_\_\_\_\_  
John E. Ditto  
CROSBY, HEAFEY, ROACH & MAY  
Professional Corporation  
Attorneys for Cal Oak Products, Inc.