

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into between Michael DiPirro, a California citizen acting on behalf of himself and the People of the State of California, and Contact East, Inc. a Massachusetts corporation ("Contact East"). The effective date of this Agreement is February 2, 2000 (the "Effective Date").

WHEREAS:

A. Michael DiPirro ("DiPirro") is an individual residing in San Francisco, California 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. Contact East distributes and/or sells products in the State of California, which allegedly are used by consumers, and whose customary use and application allegedly produce fumes or gases which contain, or may otherwise bring a user of the products in contact with chemicals listed pursuant to Proposition 65 including lead ("Listed Chemicals"). The term "Covered Products" is defined in Paragraph 1, below.

C. The Covered Products have been distributed and sold by Contact East for use in California since September 29, 1994.

D. By notice dated August 31, 1999, DiPirro first served Contact East a document entitled "60 Day Notice" which provided Contact East and such public agencies with notice that Contact East was allegedly in violation of California Health & Safety Code § 25249.6 on behalf of individuals in California who may have been exposed to certain Listed Chemicals as result of normal use of Covered Products allegedly distributed and/or sold by Contact East.

E. DiPirro has initiated an action in the Superior Court of the State of California in and for the County of Alameda entitled Michael DiPirro v. Fry's Electronics, et al., No. H210268, naming Contact East as a defendant therein.

F. Contact East 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 California Business & Professions Code §§ 17200 et seq. Nothing in this Agreement shall constitute or be construed as an admission by Contact East 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 Contact East of any fact,

finding, conclusion, issue of law or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Contact East under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other consideration, the sufficiency and adequacy of which are hereby confirmed by the parties, it is hereby agreed as follows:

1. **Covered Product Distribution.** Beginning immediately, Contact East shall initiate efforts, subject to the terms and conditions of this Agreement to sell and distribute only Covered Products that are accompanied by a warning label that is "clear and reasonable" as contemplated under California Health & Safety Code § 25249.6 and regulations promulgated thereunder (hereafter, "Compliant Warning"). To the extent that manufacturers or suppliers of Covered Products sold or distributed by Contact East in California provide Compliant Warnings for Covered Products, Contact East shall exercise its best efforts in a manner consistent with customary practices to ensure that the warning labels or other warning materials are provided to the purchaser of the Covered Products in the normal course of business. Further, for all shipments of its Products (that are likely to expose users to lead) which are sent to California customers after March 31, 2000, Contact East will provide a warning message which complies with Proposition 65 as follows: "WARNING: This shipment includes products that may be used for soldering or similar applications. Normal use of these items in such process is likely to 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)". For purposes of this Agreement, "Covered Products" means all soldering consumables, soldering tools and equipment and chemicals used in the soldering process which may be distributed or sold in California, which now or in the future contain, or whose customary use and application may produce or otherwise expose the user to Listed Chemicals including lead. For purposes of this Agreement, "Listed Chemicals" means any chemicals that are currently or may, in the future, be listed pursuant to Proposition 65.

2. **Civil Penalty.** In light of the fact that a majority of the Covered Products sold or distributed by Contact East are supplied to Contact East by manufacturers or suppliers who have settled disputes under Proposition 65 relating to the Covered Products such that the liability of Contact East is subsumed and released in those settlements, Contact East shall pay up to \$12,000 in penalties pursuant to California Health & Safety Code §25249.7(b) in the following manner. The \$12,000 penalty is to be paid in two installments and made payable to "Chanler Law Group In Trust For Michael DiPirro". The first payment of \$3,000 is to be paid within ten (10) days of the Effective Date of the Agreement. The second payment of \$9,000 is to be paid on or before April 1, 2001. This second payment shall be waived if on or before March 1, 2001: (1) Contact East increases

the number of its health advisories entitled "*The contact east Advisor*" for lead and formaldehyde exposure that result from the normal and foreseeable use of certain soldering products that appear in its annual product catalogues from one to three (a copy of the "Advisor" is attached hereto as Exhibit A); and (2) Contact East will add to its website a button which would come up each time a user accesses a solder or soldering process product, such that the button will advise the user to "click here" for important health information related to the item and so clicking will refer the user to its fume extraction systems. Certification that the two commitments have been met must be provided in writing to DiPirro on or before March 15, 2001.

3. **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. Contact East 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 C.C.P. §1021.5. The parties resolved this issue prior to the execution of this agreement. Within ten (10) days of the Effective Date of the Agreement, Contact East shall pay to DiPirro and his attorneys the sum of \$6,500 for his investigation, expert and attorneys' and paraprofessional fees and expenses incurred in this matter. Said amount shall be made payable to the Chanler Law Group and be held in escrow by Clifford Chanler, Esq., DiPirro's counsel until the Court has approved this settlement and issued an Order as set forth in Paragraph 7. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 7, the amounts paid by Contact East in accordance with this paragraph shall be returned to Contact East within five (5) days.

4. **DiPirro's Release of Contact East.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California on whose behalf this action was brought, hereby waives all rights to institute 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, losses, costs or expenses (including attorneys' fees and other costs) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, "Claims") against Contact East and its parent and affiliated companies, divisions, subdivisions, subsidiaries, including, but not limited to, Zack Electronics, Inc. (and the predecessors, successors and assigns of any of them) and their respective past, present and future officers, directors, attorneys, shareholders, representatives, agents and employees (collectively, "Contact East Releasees"), related to Contact East's alleged failure to warn, under Proposition 65, about exposures before the Effective Date to certain Listed Chemicals (including lead) contained in, or which may be produced in fumes or gases resulting from the customary

use or application of, any Covered Products. It is specifically understood that Contact East's compliance with the terms of this Agreement resolves all issues, now and in the future, concerning the Contact East Releasees' past or current compliance with the requirements of Proposition 65, California Business & Professions Code §§ 17200 et seq., or any other Claims arising from Contact East's alleged failure to comply with Proposition 65 in connection with the Covered Products on or before the Effective Date. It is specifically understood and agreed that nothing contained in this Paragraph 4 shall be deemed or construed to extend the release set forth herein to any manufacturer, supplier or other "upstream party" of Covered Products distributed or sold by Contact East.

5. **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 direct purchaser of the Covered Products from Contact East (collectively, "Downstream Parties") related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in, or which may be produced in fumes or gases resulting from the customary use or application of Covered Products. It is specifically understood and agreed that nothing contained in this Paragraph 5 shall be deemed or construed to extend the release set forth herein to any manufacturer, supplier or other "upstream party" of Covered Products distributed or sold by Contact East.

6. **Contact East Release.** Contact East, by this Agreement, 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 California Business & Professions Code §§ 17200 et seq. against Contact East.

7. **Stipulated Judgment and Order.** The parties shall file a Stipulated Judgment to be approved pursuant to California Code of Civil Procedure § 664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement. It is expressly understood and agreed by the parties hereto that the rights and obligations contained in this Agreement 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 ninety (90) days of the Effective Date, this Agreement shall be deemed null and void as the ninety-first (91st) day after the Effective Date.

8. **Contact East Sales Data.** Contact East understands that the sales data provided to counsel for DiPirro by Contact East was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code

§25249.7(b) in this Agreement. To the best of Contact East's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Contact East's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Contact East, provided that all sums paid by Contact East pursuant to Paragraphs 2 and 3 are returned to Contact East within ten (10) days from the date on which DiPirro notifies Contact East of his intent to rescind this Agreement. 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 Contact East that he is rescinding this Agreement pursuant to this Paragraph.

9. **Product Characterization.** Contact East acknowledges that each of the Products listed in Exhibit B contains, or in the customary use or application of the Products is likely to expose the user to fumes, gases or dust that contain one or more substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Contact East obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products 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 25249.10(c), Contact East shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Contact East Exposure Data, DiPirro shall provide Contact East 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 Contact East written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Contact East notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Contact East shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Contact East of his intent to challenge the Exposure Data, DiPirro and Contact East shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Contact East notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Contact East agree to submit such challenge to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with bringing a motion brought under this paragraph to the court for determination.

10. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code Section 29249.7(f). If, as of the Effective Date, an approved form is available for use, such form shall be promptly completed and then sent to the California Attorney General's office, along with this Agreement, by certified mail, return receipt requested. If, on the other hand, an approved form is not available for use, Contact East's counsel shall promptly send this Agreement to the California Attorney General's office by certified mail, return receipt requested, along with a cover letter stating that: "the attached Agreement is provided to you pursuant to Health & Safety Code Section 25249.7(f)." Exhibit C contains a statement by counsel that, consistent with this paragraph, the Agreement is being submitted concurrently to the California Attorney General's office with its presentation to the Alameda Superior Court.

11. **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 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 Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

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

14. **Notices.** All correspondence and notices required to be provided pursuant to this Agreement shall be in writing and shall be personally delivered or sent by first-class, registered, certified mail or via overnight courier, addressed as follows:

If to DiPirro: Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801

If to Contact East: Mr. Steven Biggs
Vice President, Business Development
Contact East, Inc.
335 Willow Street
North Andover, MA 01845-5995

with a copy to: Jonathan Karis, Esq.
Hutchins, Wheeler & Dittmar
101 Federal Street
Boston, MA 02110

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

15. **No Admissions.** Nothing in this Agreement shall constitute or be construed as an admission by Contact East 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 Contact East of any fact, finding, conclusion, issue of law, or violation of law. Contact East 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 obligation, responsibilities, and duties of Contact East under this Agreement.

16. **Entire Agreement Modification of Agreement.** This Agreement, 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 Agreement may be modified on or upon the written agreement of the parties. To the extent any such modification is made to this Agreement 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.** 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.

18. **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: 2/7/00

MICHAEL DI PIRRO

Michael DiPirro
Michael DiPirro

AGREED TO:

DATE: February 2, 2000

CONTACT EAST, INC.

By: Steven W. Biggs
Title: STEVEN W. BIGGS
VICE - PRESIDENT