

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Do It Best Corp., an Indiana corporation ("DIB"), as of November __, 1999. The parties agree to the following terms and conditions:

WHEREAS:

A. 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 (or produced by) consumer and industrial products; and

B. DIB is a corporation headquartered in Fort Wayne, Indiana, that distributes and/or sells products in the State of California that contain, or whose customary use and application are likely to produce fumes or gases which contain, certain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 et seq.) ("listed chemicals"); and

C. The products that contain, or whose customary use and application are likely to produce fumes or gases which contain, one or more of the listed chemicals and which are covered by this Agreement are set forth in Exhibit 1 (the "Products"). The Products have been distributed and/or sold by DIB for use in California since at least May 6, 1995; and

D. On May 6, 1999, Michael DiPirro first served DIB and all of the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided DIB and such public enforcers with notice that DIB was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells and/or distributes in California expose users to certain Proposition 65-listed chemicals; and

E. On July 9, 1999, Michael DiPirro served DIB and all requisite public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided DIB and such public enforcers with notice that DIB was allegedly in violation of Health & Safety Code section 25249.6 for failing to warn purchasers that certain products it distributes and/or sells in California expose users to certain Proposition 65-listed chemicals; and

F. On July 16, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Do It Best Corp., et al., (Case No. H208366-3) in the Alameda Superior Court, naming DIB as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed to listed chemicals contained in certain DIB Products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals; and

G. On November 12, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Do It Best Corp., et al., (Case No. H210410-2) in the Alameda Superior Court, naming DIB as a defendant and alleging violations of Business & Professions Code section 17200 *et seq* and Health & Safety Code section 25249.6 on behalf of individuals in California who allegedly have been exposed to listed chemicals contained in certain DIB lead wool Products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals; and

H. DIB at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice, the Supplemental 60-Day Notice and the Complaints. Nothing in this Agreement shall be construed as an admission by DIB 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 DIB 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 DIB under this Agreement; and

I. DiPirro and DIB wish to compromise, settle and satisfy all claims, demands and disputes between them related to any of the Products sold, distributed or otherwise provided to consumers in the State of California prior to the Effective Date, as defined below, and to bind themselves to the covenants of this Agreement.

NOW THEREFORE, MICHAEL DiPIRRO AND DIB AGREE AS FOLLOWS:

1. **The “Effective Date” of This Settlement Agreement.** The “Effective Date” of this Settlement Agreement shall be the date upon which a Judgment Pursuant to Stipulation (“Stipulated Judgment”) pursuant to Cal. Code Civ. Proc., Section 664.6, is entered by the Superior Court for the County of Alameda, in each of the two following matters: Michael DiPirro v. Do It Best Corp., Case No. H208366-3; and, Michael DiPirro v. Do It Best Corp., Case No. H210410-2. Each of the two Stipulated Judgments shall contain the terms of this Settlement Agreement in the form required by the Superior Court.

2. **Product Warnings on DIB Brand Products (Exhibit 1.)** DIB agrees that, with respect to the lead solder Products listed in Exhibit 1, no later than February 1, 2000, and with respect to the lead wool Products listed in Exhibit 1, no later than May 1, 1999, DIB shall not manufacture and/or sell and/or distribute in the state of

California as a DIB branded Product any of the Products listed on Exhibit 1 unless each such Product is accompanied by a label on or affixed to the Product or its packaging with the following statement:

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.";

or

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm."

The warning statement shall be prominent and displayed at the point of sale 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. However, nothing in this paragraph 2, or in this Settlement Agreement in its totality, places any obligation on Do It Best Corp. to ensure, guaranty or otherwise require independent entities to whom it sells or distributes Products to comply with separate and independent obligations imposed on such independent entities under Proposition 65, the Business and Professions Code or any other warning duties required by applicable law.

3. Modifications to Product Warnings. In the event applicable California warning regulations are subsequently amended in a manner that requires a warning different than the warnings in paragraph 2 of this Settlement Agreement, DIB will comply with the new warning requirements and within 30 days of the change, shall notify DiPirro of the change.

4. Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), within five (5) business days of the Effective Date, or by December 15, 1999 whichever date is later, DIB, or its designee directly on behalf of DIB, shall pay, and DiPirro shall receive, a civil penalty of \$18,000 by check made payable to "Chanler Law Group In Trust For Michael DiPirro." 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's Department of Toxic Substances Control.

5. Reimbursement of Fees And Costs. Within five (5) business days of the Effective Date of the Agreement, or by December 15, 1999, whichever date is later, DIB shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to DIB's attention, litigating and negotiating a settlement in the

public interest in the total amount of \$19,650. DIB's Payment shall be made by check payable to the "Chanler Law Group."

6. DiPirro's Release of DIB. DiPirro, by this Agreement, on behalf of himself, and on behalf of each of his employees, agents, representatives, attorneys, insurers, predecessors, successors, assignors and/or assignees, and the People of the State of California (in his representative capacity) (the "DiPirro Releasors") hereby irrevocably releases and forever discharges DIB, independent sales representatives working on DIB's behalf, and all entities to whom DIB, and/or DIB's independent sales' representatives sold or distributed the products listed in Exhibit 1 in California (the "DIB Releasees") from January 1, 1995 through and including the Effective Date, of and from any and all actions, causes of actions, suits and liabilities, claims, civil penalties, restitution, fees, costs, demands and damages, at law or in equity, of any nature whatsoever, whether known or unknown, fixed or contingent, which the DiPirro Releasors have, or may have in the future, again the DIB Releasees arising out of the DIB Releasees' alleged violations of Proposition 65 and/or Business and Professions Code sections 17200 *et seq.* based on DIB's alleged failure to provide a clear and reasonable warning concerning exposures with respect to lead, lead compounds and formaldehyde with respect to the products listed in Exhibit 1 distributed, sold or otherwise provided to consumers in any and all counties of California on or before the Effective Date. **This release, and the term "DIB Releasees" expressly excludes The Oatey Company and shall not affect in any way the obligations undertaken by The Oatey Company in its settlement in Alameda Superior Court Case No. H208370-6 with DiPirro. This release expressly excludes a waiver and release of any entity from whom DIB may have acquired any of the Products or raw materials listed in Exhibit 1.**

7. DIB's Release Of Michael DiPirro. DIB, by this Agreement, waives all rights to institute any form of legal action against 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 §§17200 against DIB.

8. Stipulated Judgment. Concurrently with the execution of this Agreement, or as soon thereafter as is reasonably practicable, DiPirro and DIB shall execute and file a Stipulated Judgment to be approved pursuant to CCP §664.6 by the Alameda Superior Court in accordance with the terms of this Agreement. If, for any reason, the Stipulated Judgment is not approved by the Court, this Agreement shall be deemed null and void.

9. 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.

10. Attorneys' Fees In The Event Of A Dispute. 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.

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

12. Notices. All correspondence to DiPirro shall be mailed to:

Clifford A. Chanler
Chanler Law Group
Magnolia Lane
New Canaan, CT 06840-3801
(203)966-9911

All correspondence to DIB shall be mailed to:

John C. Mueller
Kathleen E. Bailey
Baker & Hostetler LLP
600 Wilshire Boulevard
Los Angeles, CA 90017-3212
(213)624-2400

13. 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.

14. Integration. The parties intend that this Agreement is the entire Agreement of the parties, and are not relying upon any representation or agreements not explicitly set forth herein.

15. **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:

AGREED TO:

DATE: 11/24/99

DATE: _____



Michael DiPino
PLAINTIFF

Thomas G. Burroughs
General Counsel
Do It Best Corp.
DEFENDANT

15. **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:

AGREED TO:

DATE: _____

DATE: 11/29/99

Michael DiPirro
PLAINTIFF

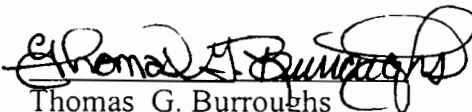

Thomas G. Burroughs
General Counsel
Do It Best Corp.
DEFENDANT

Exhibit A

EXHIBIT 1

Solder Products:

Do It Best Product No.	Oatey Product No.	Description.
313805	53049	Spool Solder, Solid Wire
325936	53034	Solder, Acid Core 1 ½ oz.
326070	53035	Solder, Rosin Core
326089	53041	Solder, Rosin Core; ½ oz.
328103	53033	Solder, Solid Wire; 1 ½ oz.
330298	53038	Solder, Acid Core
330412	53039	Solder, Rosin Core
330476	53037	Solder, Solid Wire
333543	53050	Solder, Acid Core
333552	53051	Solder, Rosin Core
333561	5352	Solder, Solid Wire
356340	53053	Solder, Solid Wire
356359	53055	Solder, Rosin Core
356377	53054	Solder, Acid Core

Lead Wool Products:

Do It Best Product No.	Description
414082 L40-001	Lead Wool, 5 lbs. box