

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Michael DiPirro, a California citizen, and Enco Manufacturing, Inc., a New York corporation and MSC Industrial Direct Co., Inc. a New York corporation (collectively “Enco”), as of April 25, 2000 (the Effective Date”). The parties agree to the following terms and conditions:

### WHEREAS:

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

B. Enco is a company 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, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 *et seq.*) including paradichlorobenzene, methylene chloride, nickel (and nickel compounds), carbon monoxide, lead (or lead compounds) and formaldehyde, (the “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 A (the “Products”). Some of the Products have been distributed and/or sold by Enco for use in California since at least October 22, 1995; and

D. On October 22, 1999, Michael DiPirro first served Enco and other public enforcement agencies with a document entitled “60-Day Notice of Violation” which provided Enco and such public enforcers with notice that Enco was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On November 19, 1999, Michael DiPirro served Enco and other public enforcement agencies with a document entitled “Supplemental 60-Day Notice of Violation” which provided Enco and such public enforcers with notice that Enco was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

F. On January 21, 2000, Michael DiPirro filed a complaint entitled *Michael DiPirro v. Enco Manufacturing, Inc., et al.* (Case No. 309386) in the San Francisco County Superior Court naming Enco 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 Enco products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals; and

G. On February 25, 2000, Michael DiPirro served Enco and other public enforcement agencies with a document entitled "Second Supplemental 60-Day Notice of Violation" which provided Enco and such public enforcers with notice that Enco was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

H. Enco denies the material factual and legal allegations contained in the 60-Day Notice of Violation, the Supplemental 60-Day Notice of Violation, the Second Supplemental 60-Day Notice of Violation, and the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code Section 17200, *et seq.* Nothing in this Agreement shall be construed as an admission by Enco 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 Enco 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 Enco under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND ENCO AGREE AS FOLLOWS:**

1. **Product Warning.** Beginning immediately, Enco shall initiate efforts to revise its current product or packaging labels for the Products sold by Enco consistent with this Agreement ("Revised Labels"). Enco shall further immediately initiate efforts to revise its current information accompanying Products shipped to consumers in California consistent with this Agreement ("Revised Insert Information"). Enco agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels or Revised Insert Information as soon as commercially reasonable. Enco agrees that no later than six months after the Effective Date of this Agreement (to the extent Enco is unable to comply within this period it shall have an equal amount of additional time in which to comply), it shall not distribute or sell (or cause to be distributed or sold on its behalf) any of the Products 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 or its packaging or accompanied by Revised Insert Information shipped with the Product, with the following statement:

For all Products containing paradichlorobenzene, such Products shall bear the following warning statement on the Product label or on the Revised Insert Information:

**"WARNING: This product contains paradichlorobenzene, a chemical known to the State of California to cause cancer.";**

or

**“WARNING: This product contains a chemical known to the State of California to cause cancer.”;**

For all Products containing methylene chloride and/or nickel (and nickel compounds), such Products shall bear the following warning statement on the Product label or on the Revised Insert Information:

**“WARNING: This product contains a chemical(s) known to the State of California to cause cancer.”;**

For soldering kits which contain (or produce fumes or gases that contain) any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm) such Products shall bear the following warning statement on the Product label or on the Revised Insert Information:

**“WARNING: This product contains, and when used for soldering and similar applications produces, chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).”;**

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. For the purpose of complying with this Paragraph, the above warning may be communicated by the placement of adhesive stickers onto the current Product packaging.

**1.1 Warning Labels For Products “In Commerce.”** The parties agree and acknowledge that an unknown volume of Products were introduced into the “stream of commerce” before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the Listed Chemicals in or from these “in commerce” Products, Enco shall, within thirty (30) days from the Effective Date, provide Interim Warning Materials to its customers whom Enco knows or has reason to believe currently distribute or sell Products in California. Such “Interim Warning Materials” shall include the following: (a) a reasonably sufficient number of warning stickers (considering the potential volume of Products that the recipient distributes or sells in California); (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgment form to be signed by the customer and returned to Enco.

**1.2 New Products.** Any products that are substantially similar to the Products, which 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 were not distributed and/or

sold by Enco on or before the Effective Date shall be defined as "New Products." Any such New Products distributed and/or sold by Enco after the Effective Date shall be deemed to comply with this Agreement if their Revised Labels or Revised Insert Information comply with the requirements of Paragraph 1.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).**

Pursuant to Health & Safety Code §25249.7(b), Enco shall pay a civil penalty of \$6,000 in two installments. The first payment of \$3,000 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The second payment of \$3,000 shall be made on or before April 30, 2001. However, the second payment shall be waived if Enco reformulates one or more of its Products so as to remove the Proposition 65-listed chemicals or begins to offer an alternative product (to one of the Products) which does not contain (or produce) any Proposition 65-listed chemicals by April 1, 2001. In order to obtain the waiver, written certification of the reformulation or alternative product must be provided by Enco to DiPirro by April 15, 2001. The penalty payments are to be 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.

**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. Enco then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

Enco shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Enco's attention, litigating and negotiating a settlement in the public interest. Enco shall pay the total sum of \$17,700 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group."

**4. Michael DiPirro's Release Of Enco.**

Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, on whose behalf this action was brought, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Enco and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200, *et seq.* based on Enco's failure to warn about exposure to the paradichlorobenzene, methylene chloride, nickel (and nickel compounds), carbon monoxide, lead (or lead compounds) and formaldehyde contained in (or produced by) any of the Products. It is specifically understood that Enco's

compliance with the terms of this Agreement resolves all issues, now and in the future, concerning the Enco Releasees' past compliance with the requirements of Proposition 65, Business and Professions Code Section 17200, *et seq.*, or any other claims arising from Enco's alleged failure to comply with Proposition 65 in connection with the Products occurring on or before the Effective Date.

**5. Enco's Release Of Michael DiPirro.** Enco, 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 on or before the Effective Date by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §17200, *et seq.* against Enco.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Enco shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco County 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.

**7. Enco Sales Data.** Enco understands that the sales data provided to counsel for DiPirro by Enco 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 Enco's knowledge, the sales data provided are true and accurate. In the event that DiPirro discovers, within two years after the Effective Date, facts which demonstrate to a reasonable degree of certainty that the sales data are materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Enco'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 Enco, provided that all sums paid by Enco pursuant to paragraphs 2 and 3 are returned to Enco within ten (10) days from the date on which DiPirro notifies Enco 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 Enco that he is rescinding this Agreement pursuant to this Paragraph.

**8. Product Characterization.** Enco acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products is likely to expose users to, paradichlorobenzene, methylene chloride, nickel (and nickel compounds), carbon monoxide, lead (or lead compounds) and/or formaldehyde, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Enco 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), Enco 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 Enco's Exposure Data, DiPirro shall provide Enco 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 Enco with written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Enco's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Enco 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 Enco of his intent to challenge the Exposure Data, DiPirro and Enco shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Enco's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Enco 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.

**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. Attorney's 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.

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

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

Hudson Bair, Esq.  
Kapsack & Bair, LLP  
1440 Broadway, Suite 610  
Oakland, CA 94612  
(510) 645-0027

or

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

All correspondence to Enco shall be mailed to:

Christopher G. Foster, Esq.  
Law Offices of Smiland & Khachigian  
601 West Fifth Street, 7th Floor  
Los Angeles, CA 90071-2004  
(213) 891-1010

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

**13. Entire Agreement, Modification Of The Agreement.** This Agreement, together with the exhibits 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 only 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.

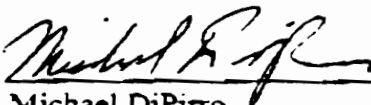
**14. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Enco represents, however, that their counsel will send a copy of this Agreement to the California Attorney General's Office concurrently with the presentation of the Stipulated Judgement to the San Francisco County Superior Court.

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

**16. 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: 4/28/00

  
Michael DiPirro  
PLAINTIFF

AGREED TO:

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

\_\_\_\_\_  
Enco Manufacturing, Inc.  
DEFENDANT

All correspondence to Enco shall be mailed to:

Christopher G. Foster, Esq.  
Law Offices of Smiland & Khachigian  
601 West Fifth Street, 7th Floor  
Los Angeles, CA 90071-2004  
(213) 891-1010

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

**13. Entire Agreement, Modification Of The Agreement.** This Agreement, together with the exhibits 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 only 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.

**14. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Enco represents, however, that their counsel will send a copy of this Agreement to the California Attorney General's Office concurrently with the presentation of the Stipulated Judgment to the San Francisco County Superior Court.

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

**16. 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.

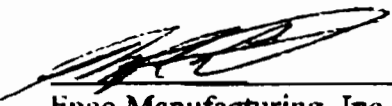
**AGREED TO:**

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

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

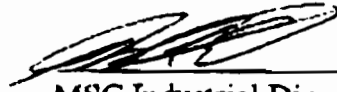
**AGREED TO:**

DATE: April 26, 2000

  
\_\_\_\_\_  
Enco Manufacturing, Inc.  
DEFENDANT



DATE: April 26, 2000

A handwritten signature in black ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

MSC Industrial Direct Co.  
DEFENDANT

# Exhibit A

## EXHIBIT "A"

1. Urinal Blocks and Other Deodorants
2. Anti-Spatter Products  
(such as Target Welder's Anti-Spatter)
3. Anti-Seize Compound Products  
(such as Target Sure Anti-Seize Compound)
4. Soldering Irons  
(such as Wall Lenk's Creative 5-in-1 Tool Kit)