

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement ("Agreement") is entered into between Michael DiPirro, a California citizen acting on behalf of the People of the State of California, and GC Thorsen, Inc. a.k.a. GC Electronics, as of July 12, 1999 (the "Effective Date").

WHEREAS:

A. Michael DiPirro ("DiPirro") is an individual residing in San Francisco who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer or industrial products.

B. GC Thorsen, Inc. a.k.a. GC Electronics ("GC Thorsen"), distributes and sells in the State of California, through distributors and retail stores certain products that contain, or whose customary use and application may produce fumes or gases which contain the following chemicals listed pursuant to the provisions of Proposition 65 ("Listed Chemicals"):

1. toluene
2. methylene chloride
3. lead or lead compounds
4. formaldehyde

C. The products covered by this Agreement ("Covered Products") includes all products listed on Exhibit A hereto, which is incorporated herein by this reference, and any other substantially similar products which may have been distributed and/or sold by GC Thorsen in California before the Effective Date, which contain, or whose customary use and application may produce fumes or gases that contain, Listed Chemicals. These Products include, but are not limited to certain chemical products including adhesives, coatings, specialty chemicals or other electronic accessory products which contain toluene or methylene chloride, solder, soldering wire and flux, as well as soldering guns, irons, torches and other similar equipment.

D. By notices dated September 29, 1998, February 22, 1999, and March 23, 1999 DiPirro first served GC Thorsen and all the requisite public enforcement agencies documents entitled "60-Day Notice of Violation" and "Supplemental 60-Day Notice of Violation," and "Second Supplemental 60-Day Notice of Violation," respectively, which provided GC Thorsen and such public agencies with notice that GC Thorsen was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it manufactures, distributes and/or sells in California expose users to the chemicals identified above.

E. On March 08, 1999, DiPirro filed a complaint entitled Michael DiPirro v. GC Electronics, Katy Industries, et al. (No.H206112-8) in the Alameda County Superior Court, naming GC Electronics and Katy Industries as Defendants and alleging violations of Business &

Professions Code §17200 *et seq.* and Health & Safety Code §25249.5 *et seq.* on behalf of individuals in California who may have been exposed to the chemicals listed above contained in certain of Defendants' products, or whose customary use and application may have produced fumes or gases which contain such chemicals.

F. GC Thorsen denies the material factual and legal allegations contained in the 60-day Notices, and the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code §17200 *et seq.* and maintains that all products distributed and/or sold by GC Thorsen in California are in compliance with all laws. Nothing in this Agreement shall constitute or be construed as an admission by GC Thorsen 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 GC Thorsen 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 GC Thorsen under this Agreement.

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 Warnings.** GC Thorsen shall begin to initiate revisions to its current product or packaging labels for the products listed on Exhibit A consistent with this Agreement ("Revised Labels"). GC Thorsen shall use reasonable efforts to ensure that all of the products listed on Exhibit A in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable; however, GC Thorsen agrees that as of sixty (60) days after the Effective Date of this agreement, GC Thorsen shall not ship to California for sale or distribution any of the products listed on Exhibit A unless each such is accompanied by a Revised Label on or within the product package or affixed to such products as set forth in this Paragraph.

For solder, flux and similar consumable products which contain, or produce fumes or gases that contain, a chemical listed by the State of California as known to cause cancer;

"WARNING: This product contains or produces a chemical known to the State of California to cause cancer."

For solder, flux and similar consumable products which contain, or produce fumes or gases which contain, any combination of chemicals listed by the State of California as known to cause both cancer and birth defects (or other reproductive harm.):

"WARNING: This product contains or produces a chemical known to the State of California to cause cancer"

and birth defects (or other reproductive harm).”

For soldering guns or similar heating devices which 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):

“WARNING: This product, 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).”

For kits that contain solder and soldering guns or similar heating devices 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):

“WARNING: This product contains, or 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).”

For any chemical product which contains toluene:

“WARNING: This product contains a chemical known to the State of California to cause birth defects or other reproductive harm.”

OR

“WARNING: This product contains toluene, a chemical known to the State of California to cause birth defects or other reproductive harm.”

For any chemical product which contains methylene chloride:

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

OR

“WARNING: This product contains methylene chloride, a chemical known to the State of California to cause cancer.”

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. Stickers containing the warning statements which are affixed to product packaging may be used to communicate said warnings.

2. **Civil Penalty.**

(a) GC Thorsen shall, pursuant to Health & Safety Code §25249.7(b), pay a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) to 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. 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. This sum shall be due and payable to "Chanler Law Group in Trust for Michael DiPirro" within five days after the date on which the court approves this Agreement as provided in Paragraph 6 below.

(b) A second penalty payment of Fifteen Thousand Dollars (\$15,000.00) shall be due and payable as above on or before July 01, 2000. Said second payment shall be waived and not be due from GC Thorsen, however, if GC Thorsen has by June 15, 2000 included among the products that it offers for sale in California, a non-leaded solder. If, after the Effective Date of this Agreement, GC Thorsen ceases to offer for sale in California a significant majority of the Covered Products, or that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products specifically, GC Thorsen shall no longer be obligated to offer for sale in California said non-leaded solder.

3. **Reimbursement of Fees and Costs.** GC Thorsen shall pay to DiPirro the sum of Fifty-Thousand Dollars (\$50,000) for his investigation fees incurred prior to the filing of the 60-Day Notices, investigation, expert and litigation costs, and attorneys' and paraprofessional fees incurred in this matter. This sum shall be due and payable to "Chanler Law Group" within five days after the date which the court approves this Agreement as provided in Paragraph 6 below.

4. **Release.**

(a) DiPirro, in consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Paragraphs 2 and 3, 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, 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, in 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 GC Thorsen, Inc., a.k.a. GC Electronics, Katy Industries, Inc. their parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives and attorneys.

(b) DiPirro, in consideration of the promises and agreements herein

contained, and for the payments to be made pursuant to Paragraphs 2 and 3, 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, further waives all rights to institute any form of legal action and releases all Claims against each distributor, wholesaler, retailer, dealer, owner, operator, lessor, lessee or user of the Covered Products, 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, attorneys, representatives, agents and employees. This provision includes, but is not limited to, those entities named in the Second Supplemental Notice dated March 23, 1999: Marshall Industries, Fry's Electronics, Newark Electronics and Allied Electronics.

(c) This waiver and release shall specifically include Claims arising under Proposition 65, Business & Professions Code § 17200 *et seq.*, and/or 17500, *et seq.* related to the alleged failure of the parties released pursuant to Paragraphs 5(a) and 5(b) herein to: (1) warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may be produced in the fumes or gases resulting from the customary use and application of, any of the Covered Products; and (2) identify any of the chemical ingredients of the products on the product labeling or packaging. It is specifically understood and agreed that GC Thorsen's compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning the released parties' past compliance with the requirements of Proposition 65, Business and Professions Code §§17200 *et seq.*, 17500, *et seq.* or any other Claims arising from the released parties' alleged failure to comply with Proposition 65 in connection with the Covered Products occurring on or before the Effective Date.

(d) GC Thorsen and Katy Industries, Inc., by this Agreement, waive 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, Business and Professions Code §§17200 *et seq.*, 17500, *et seq.* against GC Thorsen prior to the Effective Date of this Agreement.

5. **Product Characterization.** In the event that GC Thorsen obtains analytical, risk assessment or other data ("Exposure Data") that shows that any exposure to any or all of the products listed on 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 §26249.10(c), GC Thorsen shall provide DiPirro within 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 thirty (30) days of receipt of GC Thorsen' Exposure Data, DiPirro shall provide GC Thorsen 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 GC Thorsen with written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of GC Thorsen's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and GC Thorsen shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those products

listed on Exhibit A to which the Exposure Data applies.

If DiPirro timely notifies GC Thorsen of his intent to challenge the Exposure Data, DiPirro and GC Thorsen 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 Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If DiPirro does not challenge GC Thorsen's notice or the Court determines that no warning is required for particular Covered Products, GC Thorsen shall no longer be required to provide the warnings described in this Agreement for those Covered Products.

6. **Stipulated Judgment and Order.** GC Thorsen and DiPirro 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. DiPirro shall further dismiss with prejudice the lawsuit referred to in Paragraph "E" above as to all defendants other than GC Thorsen.

7. **Warranties and Representations.**

(a) **Sales Data:** GC Thorsen hereby acknowledges that any sales data provided to counsel for Michael DiPirro by GC Thorsen was a material factor in negotiating this agreement. To the best of GC Thorsen's knowledge, the sales data provided was true and accurate subject to any limitations inherent in its calculation method.

(b) **Interim Labeling of Chemical Products:** GC Thorsen hereby represents that with respect to any of the chemical products listed on Exhibit A which contain toluene or methylene chloride, some of these products may have had affixed to them certain temporary labels as distinguished from GC Thorsen's regular production labels. GC Thorsen has identified its customers to whom GC Thorsen shipped said products and sent to them certain letters and warning stickers. GC Thorsen further represents that as to the chemical products listed on Exhibit A which contain toluene or methylene chloride, GC Thorsen's use of said temporary labels has ceased and all such chemicals currently being produced have, and will continue to have after the Effective Date of this Agreement, affixed to them regular production labels.

8. **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. The parties, however, reserve the right to contest the enforceability of the entire agreement in the event that severance of any one or more clauses herein frustrates the fundamental purposes of the agreement or intent of the parties.

9. **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.

10. **Governing Law.** The terms of this Agreement 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 Covered Products specifically, GC Thorsen shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Covered Products are so affected.

11. **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, overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission confirmation) addressed as follows:

If to DiPirro:

Clifford A. Chanler, Esq.
CHANLER LAW GROUP
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(Fax) 203/801-5222

If to the Released Parties:

Stephen Ronk, Esq.
GORDON & REES LLP
333 South Grand Ave., 35th Floor
Los Angeles, CA 90071
(Fax) 213/680-4470

Richard G. Bernet, Esq.
KATY INDUSTRIES, INC.
6300 S. Syracuse Way, Suite 300
Englewood, Colorado 80111-6723
(Fax) 303/773-1837

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.

12. **No Admissions.** Nothing in this Agreement shall constitute or be construed as an admission by GC Thorsen 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 GC Thorsen of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by GC Thorsen. GC Thorsen 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 GC Thorsen under this Agreement.

13. **Entire Agreement; Modification.** 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 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. **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.

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:

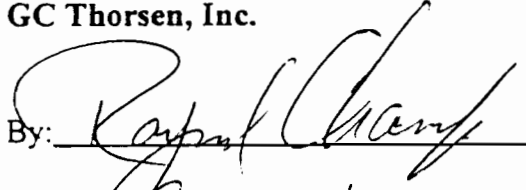
Date: _____

Michael DiPirro

AGREED TO:

Date: 7/9/95

GC Thorsen, Inc.

By: 

Its General Manager

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 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. 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.

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:

Date: 7/13/99

Michael DiPirro

Michael DiPirro

AGREED TO:

Date: 7/9/99

GC Thorsen, Inc.

By: Royal Chapp
Its General Manager