

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro ("DiPirro"), a California citizen acting on behalf of the People of the State of California, and Hobbico, Inc., an Illinois corporation (on behalf of itself and its divisions, including, but not limited to, Great Planes Model Distributors and Tower Hobbies) (hereafter collectively referred to as "Hobbico"), as of October 13, 2000 (the "Effective Date").

WHEREAS:

A. 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. Hobbico is a company that currently manufactures, distributes and/or sells in the State of California certain lead weight and lead balancing products, soldering irons and soldering kits identified in Exhibit A that contain, or whose customary use and application may produce fumes or gases which contain "Listed Chemicals". For purposes of this Agreement, "Listed Chemicals" means chemicals that are currently, or may in the future be, listed pursuant to Proposition 65 (Health & Safety Code §25249.5 et. seq.)

C. The products which contain, or whose customary use and application may produce fumes or gases which contain Listed Chemicals and which are covered by this Agreement are identified in Exhibit A (the "Products") which is attached hereto and incorporated by reference. Some of the Products have been manufactured, distributed and sold by Hobbico for use in California since at least May 1, 1996;

D. On May 1, 2000, DiPirro first served Hobbico and other public enforcement agencies with documents entitled "60-Day Notice of Violation" which provided Hobbico and such public enforcers with notice that the Tower Hobbies and Great Planes Model Distributors divisions of Hobbico were allegedly in violation of Health & Safety Code § 25249.6 for allegedly failing to warn purchasers that certain lead weight and other lead balancing products they sell in California potentially expose users to certain Proposition 65-listed chemicals;

E. On July 12, 2000, DiPirro first served Hobbico and other public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided Hobbico and such public enforcers with notice that the Tower Hobbies division of Hobbico was

allegedly in violation of Health & Safety Code § 25249.6 for allegedly failing to warn purchasers that certain soldering iron products it sells in California potentially expose users to certain Proposition 65-listed chemicals;

F. On July 13, 2000, DiPirro filed a complaint in the Alameda County Superior Court, entitled Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Action No. H-214432-0, naming Tower Hobbies, a division of Hobbico, 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 allegedly have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Tower Hobbies lead weights and other lead balancing products. On August 25, 2000, Hobbico filed and served its answer to that complaint.

G. On August 24, 2000, DiPirro filed a complaint in the Alameda County Superior Court, entitled Michael DiPirro v. Great Planes Model Distributors, a division of Hobbico, Inc., Action No. H-215182-5, naming Great Planes Model Distributors, a division of Hobbico, 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 allegedly have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Great Planes Model Distributors' lead weight products. On October 3, 2000, Hobbico filed and served its answer to that complaint.

H. On September 25, 2000, DiPirro filed a complaint in the Alameda County Superior Court, entitled Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Action No. H-215634-3, naming Tower Hobbies, a division of Hobbico, 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 allegedly have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Tower Hobbies' soldering iron products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals. On or about October 18, 2000, Hobbico filed and served its answer to that complaint.

I. Hobbico denies the material factual and legal allegations contained in the 60-Day Notices of Violation, Supplemental 60 Day Notice of Violation and the Complaints 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 Hobbico in California have been and are currently in compliance with all laws.

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, DiPirro and Hobbico agree as follows:

1. **Product Warnings.** Hobbico shall begin immediately to revise its current product or packaging labels for Covered Products consistent with this Agreement ("Revised Labels"). For purposes of this Agreement, "Covered Products" include all products listed on Exhibit A hereto, and any other substantially similar products which may be manufactured and/or distributed by Hobbico in California after the Effective Date which now or in the future contain Listed Chemicals or whose customary use and application may produce fumes or gases that contain Listed Chemicals. Hobbico shall use reasonable efforts to ensure that all Covered Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable; however, Hobbico agrees that as of January 1, 2001 (the Revised Label Compliance Date") Hobbico shall not knowingly ship to California for sale and distribution any Covered Product unless such Covered Product is accompanied by a Revised Label on or within the Covered Product package or affixed to the Covered Product in compliance with Sections 1.1 and 1.2 below:

1.1 For all soldering iron products, such Products shall bear the following warning statement:

“WARNING: This product, when used for soldering and similar applications, is likely to produce fumes or gases which contain chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).”

1.2 For all Products containing lead, such Products shall bear one of the following warning statements:

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”;

or

“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 a chemical known to cause cancer and birth defects (or other reproductive harm)”;

The warning statement shall be prominently placed upon the Product's label 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.

2. **Deemed Compliance.** Any New Products (as defined in this Paragraph) manufactured, distributed and/or sold by Hobbico 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 set forth in Paragraph 1 of this Agreement. For purposes of this Agreement, “New Products” shall include any Products that are substantially similar to those included in Exhibit A which contain a Listed Chemical and which were not manufactured, distributed and/or sold by Hobbico into California on or before the Effective Date.

3. **Payment Pursuant to Health & Safety Code § 25249.7(b)** Pursuant to Health & Safety Code §25249.7(b), Hobbico shall pay a penalty of \$20,000 to DiPirro in two installments. The first payment of \$4,000 shall be paid within five (5) calendar days after the Effective Date. The second payment of \$16,000 shall be paid on or before December 15, 2000. However, the second payment shall be waived if Hobbico, by December 1, 2000, significantly promotes the use of lead free solder with the sale of its soldering products sold in California by recommending the use of lead free solder in prominent places on Hobbico's various websites. The settlement amount 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. 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 in accordance with this paragraph. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 10, the payments made by Hobbico in accordance with this paragraph shall be returned to Hobbico 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. Hobbico 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.

Hobbico shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Hobbico's attention, litigating and negotiating a settlement in the public interest. Hobbico shall pay the total sum of \$27,000 for investigation fees, attorneys' fees and litigation costs within five (5) calendar days after the Effective Date of this Agreement. Payment should 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, the amounts paid by Hobbico in accordance with this paragraph shall be returned to Hobbico 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.

5. **DiPirro's Release of Hobbico** 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 Agreement, 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 or 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, obligations, damages, fines, penalties, losses, costs 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 Hobbico and its parent and affiliated companies, divisions (including, but not limited to Tower Hobbies and Great Planes Model Distributors), 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, "Hobbico Releasees"). This waiver and release shall pertain to Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, or any other statutory or common law theory based on Hobbico's alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in or which are likely to be produced in fumes or gases

resulting from the customary use or application of Covered Products listed in Exhibit A. It is specifically understood and agreed that Hobbico's compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning the Hobbico Releasees' past compliance with the requirements of Proposition 65 or Business and Professions Code §§17200 *et seq.*, arising from Hobbico's alleged failure to comply with Proposition 65 in connection with the Covered Products listed on Exhibit A occurring on or before the Effective Date.

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 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, 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.*, or any other statutory or common law theory based on the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in or which are likely to be produced in fumes or gases resulting from the customary use or application of Covered Products listed in Exhibit A. 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 Hobbico's or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Covered Products on or before the Effective Date.

7. **Hobbico's Release of DiPirro.** Hobbico, 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 Business & Professions Code §17200 against Hobbico.

8. **Product Characterization.** Hobbico acknowledges that each of the Covered Products listed in Exhibit A contains one or more substances known to the State of California to cause cancer or birth defects (or other reproductive harm). In the event that Hobbico obtains analytical, risk assessment or other data ("Exposure Data") that shows that an exposure to any or

all Covered 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), Hobbico shall provide DiPirro with 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 Hobbico's Exposure Data, DiPirro shall provide Hobbico 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 Hobbico written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Hobbico's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Hobbico shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Covered Product(s) to which the Exposure Data applies. If DiPirro timely notifies Hobbico of his intent to challenge the Exposure Data, DiPirro and Hobbico 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 Hobbico 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 Hobbico's notice or the Court determines that no warning is required for particular Covered Products, Hobbico shall no longer be required to provide the warnings described in this Release for those Covered Products.

9. **Hobbico's Covered Product Information.** Hobbico understands that the Covered Product sales data provided to counsel for DiPirro by Hobbico 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 Hobbico's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts within one (1) year of the Effective Date 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 Hobbico'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 Hobbico, provided that all sums paid by Hobbico pursuant to paragraphs 3 and 4 are returned to Hobbico within ten (10) days from the date on which DiPirro notifies Hobbico 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 Hobbico that

he is rescinding this Agreement pursuant to this Paragraph, provided that in no event shall any statute of limitation be tolled beyond four (4) years from the date DiPirro filed his first complaint against Hobbico on July 13, 2000.

10. **Stipulated Judgment.** The parties shall file a Stipulated Judgment in the matter of Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-214432-0, 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 Agreement. Upon the approval and entering of that Judgment, DiPirro, by and through his counsel, shall file dismissals in the other two actions that DiPirro filed against Hobbico (Michael DiPirro v. Great Planes Model Distributors, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-215182-5 and Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-215634-3). 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, for any reason, the Court fails to issue such Order within sixty (60) days of the Effective Date, this Agreement 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 Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

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. 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, Hobbico shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, those Covered Products are so affected.

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

If to DiPirro: Hudson Bair, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
(Fax) 510/645-4220

or

Clifford A. Chanler, Esq.
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, Connecticut 06840-3801
(Fax) 203/801-5222

If to Hobbico : Hobbico, Inc.
Attn: Judy Thurmon
P.O. Box 9021
Champagne, IL 61826-9021
(Fax) 217-398-0008

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 Agreement shall be construed as an admission by Hobbico 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 Hobbico 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 Hobbico under this Agreement.

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 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.

17. **Counterparts & 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.

18. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §29249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Hobbico agrees to send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court along with a cover letter stating: "The attached Release and Settlement Agreement is provided to you pursuant to Health & Safety Code §29249.7(f)." Exhibit B attached hereto contains a statement by counsel for Hobbico that, consistent with this Paragraph 18, the Agreement 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 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:

DATED: _____

Plaintiff Michael DiPirro

AGREED TO:

DATED: OCTOBER 19, 2000

Defendant Hobolco, Inc.

AGREED TO:

DATED: 10/19/00

Michael DiPirro
Plaintiff Michael DiPirro

AGREED TO:

DATED: _____

Defendant Hobbico, Inc.

Exhibit A

EXHIBIT A

1. Lead Weights and other lead balancing products
2. Soldering Irons
3. Soldering Kits

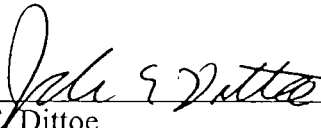
Exhibit B

EXHIBIT B

As counsel for Hobbico, Inc. in the matters of Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-214432-0, Michael DiPirro v. Great Planes Model Distributors, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-215182-5 and Michael DiPirro v. Tower Hobbies, a division of Hobbico, Inc., Alameda County Superior Court Action No. H-215634-3, 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 12/11, 2000.

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

Dated: 12/11, 2000.



John E. Dittoe
CROSBY, HEAFEY, ROACH & MAY
Attorneys for Hobbico, Inc.