

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, Hobby Shack, a California corporation, Hobby People, Inc. a California corporation and Global Hobby Distributors, Inc., a California corporation (collectively, "Hobby Shack"), as of January 26, 2001 (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;

B. Hobby Shack is a company that distributes and/or sells lead weights and other lead products, soldering products and other 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 lead (or lead compounds) and formaldehyde (the "Listed Chemicals");

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"). The Products have been manufactured, distributed and/or sold by Hobby Shack for use in California since at least March 16, 1996;

D. On March 16, 2000, Michael DiPirro first served Hobby Shack and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Hobby Shack and such public enforcers with notice that Hobby Shack was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it sells (lead weights and other lead balancing products) in California expose users to Proposition 65-listed chemicals;

E. On June 1, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Hobby Shack, Case No. 312574, in the San Francisco County Superior Court, naming Hobby Shack 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 (or produced by customary use and application of) certain Hobby Shack products;

F. On July 12, 2000, Michael DiPirro served Hobby Shack and other public enforcement agencies with two documents entitled "60-Day Notice of Violation" and "Supplemental 60-Day Notice of Violation" which provided Hobby Shack and such public enforcers with notice that Hobby Shack was allegedly in violation of Health &

Safety Code § 25249.6 for failing to warn purchasers that certain products it sells (soldering products, sailboat kits) in California expose users to Proposition 65-listed chemicals;

G. On November 11, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Hobby Shack, Inc., Hobby People, Global Hobby Distributors, et al., Case No. 316453, in the San Francisco County superior Court, naming Hobby Shack 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 (or produced by customary use and application of) certain Hobby Shack products; and

H. On November 24, 2000, Michael DiPirro served Hobby Shack and other public enforcement agencies with two documents entitled "Supplemental 60-Day Notice of Violation" and "Supplemental 60-Day Notice of Violation" which provided Hobby Shack and such public enforcers with notice that Hobby Shack was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it sells (adhesives, cleaners and racing fuels) in California expose users to Proposition 65-listed chemicals;

I. Hobby Shack denies the material factual and legal allegations contained in the 60-day notices and the Complaints referred to above filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code § 17200 et seq. Nothing in this Agreement shall be construed as an admission by Hobby Shack 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 Hobby Shack 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 Hobby Shack under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND HOBBY SHACK AGREE AS FOLLOWS:**

1. **Product Warnings.** Beginning immediately, Hobby Shack shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Hobby Shack 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 as soon as commercially reasonable. Hobby Shack agrees that as of May 31, 2001, 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 with the following statement:

For soldering products which contain (or produce fumes or gases that contain) lead (or lead compounds) and/or formaldehyde or 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, 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)."**

For soldering irons or kits without products which contain such 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 all Products containing lead (or lead compounds), such Products shall bear the following warning statement:

**"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)."**

For all Products containing toluene, such Products shall bear the following warning statement:

**"WARNING: This product contains toluene, a chemical known to the State of California to cause birth defects (or other reproductive harm)."**

or

**WARNING: This product contains a chemical known to the State of California to cause birth defects (or other reproductive harm)."**

For all Products containing nitromethane or trichloroethylene, such Products shall bear the following warning statement:

**"WARNING: This product contains [nitromethane or trichloroethylene], 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."**

The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statement, or designs as to render it likely to be read and understood by an ordinary individual. For the purposes of complying with this paragraph, the above warning may be communicated by the placement of adhesive stickers onto the current Product packaging.

Any New Products (as defined in this Section) manufactured, distributed and/or sold by Hobby Shack after the initiation of Revised Labels referred to in Section 1 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 required in Paragraph 1 of this Agreement. For purposes of this Agreement, "New Products" shall include any Products that are substantially similar to those identified herein and which were not manufactured, distributed and/or sold by Hobby Shack into California on or before the Effective Date.

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

Pursuant to Health & Safety Code § 25249.7(b), Hobby Shack shall pay a civil penalty in the total amount of \$10,000, payable as follows: (a) one payment in the amount of \$4,000 shall be paid on February 8, 2001; and (b) three payments in the amount of \$2,000 each shall be made on March 1, 2001, April 1, 2001 and May 1, 2001, respectively. 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.** Hobby Shack shall reimburse DiPirro for his fees and costs incurred as a result of investigating, bringing this matter to Hobby Shack's attention, litigating and negotiating a settlement in the public interest. Hobby Shack shall pay the total sum of \$ 45,000 for investigation fees, attorneys' fees and litigation costs, payable as follows: (a) one payment in the amount of \$6,000 shall be paid on February 8, 2001; and (b) three payments in the amount of \$3,000 each shall be made on March 1, 2001, April 1, 2001 and May 1, 2001, respectively. Thereafter, Hobby Shack will pay the remaining amount (\$30,000) in six equal monthly installments of \$5,000 each on June 1, 2001, July 1, 2001, August 1, 2001, September 1, 2001, October 1, 2001 and November 1, 2001.. All payments pursuant to this Section 3 shall be made payable to the "Chanler Law Group."

**4. Michael DiPirro's Release of Hobby Shack.**

a. Michael DiPirro, in consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 2 and 3 above, 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 as set forth in section (b) below, including, without limitation, all actions, causes of action, in law or in equity, all 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 the "Claims") against Hobby Shack, its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents representatives, and attorneys.

b. This waiver and release pertains to Claims arising under Proposition 65 and Business & Professions Code § 17200 et seq. related to the released parties' alleged failure to warn about exposures to products or chemicals listed pursuant to Proposition 65 before the Effective Date. It is specifically understood and agreed that Hobby Shack'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 and Business & Professions Code § 17200 et seq. arising from the released parties' alleged failure to comply with Proposition 65 occurring on or before the Effective Date.

**5. Waiver of the Provisions of the California Civil Code, Section 1542.** DiPirro, on behalf of himself, his agents, representatives, attorneys, successors and assigns, and *not* in his representative capacity on behalf of citizens of the State of California, hereby waives the provision of the California Civil Code, Section 1542, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which is known by him, must have materially affected his settlement with the debtor."

**6. Hobby Shack's Release of Michael DiPirro.** Hobby Shack, 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 by Michael DiPirro and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Professions Code § 17200 against Hobby Shack.

**7. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Hobby Shack 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.

**8. Hobby Shack Sales Data.** Hobby Shack understands that the sales data provided to counsel for DiPirro by Hobby Shack 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 Hobby Shack'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 Hobby Shack'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 Hobby Shack, provided that all sums paid by Hobby Shack pursuant to paragraphs 2 and 3 are returned to Hobby Shack within ten (10) days from the date on which DiPirro notifies Hobby Shack 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 Hobby Shack that he is rescinding this Agreement pursuant to this Paragraph. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with an action for rescission under this paragraph.

**9. Product Characterization.** Hobby Shack 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) substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Hobby Shack 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), Hobby Shack 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 Hobby Shack Exposure Data, DiPirro shall provide Hobby Shack 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 Hobby Shack written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Hobby Shack's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Hobby Shack 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 Hobby Shack of his intent to challenge the Exposure Data, DiPirro and Hobby Shack shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Hobby Shack's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Hobby Shack 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. Change in Law.** In the event that Proposition 65 is repealed or otherwise rendered inapplicable generally, or as to any or all of the Products specifically, whether by statutory, judicial or administrative action or decision, Hobby Shack shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, such action or decision renders such obligations unnecessary for continued compliance with Proposition 65.

**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. 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.

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

**14. 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 Hobby Shack shall be mailed to:

Benjamin A. Nix  
Alan G. Ross  
Payne & Fears LLP  
4 Park Plaza, Suite 1100  
Irvine, CA 92614  
(949) 851-1100

**15. 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. Hobby Shack represents, however, that its counsel will 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 San Francisco County Superior Court.

**16. Entire Agreement; Modification.** This Agreement, together with the exhibits hereto which are incorporated by reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted or assumed, and supersedes all prior agreements and understandings between the parties. This Agreement may be modified only upon the written agreement of the parties.

**17. 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.

**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: 2/02/00  
Michael DiPirro  
Michael DiPirro

**AGREED TO:**

DATE: \_\_\_\_\_  
\_\_\_\_\_  
Hobby Shack

DATE: \_\_\_\_\_  
\_\_\_\_\_  
Hobby People, Inc.

Benjamin A. Nix  
Alan G. Ross  
Payne & Fears LLP  
4 Park Plaza, Suite 1100  
Irvine, CA 92614  
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**AGREED TO:**

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

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

**AGREED TO:**

DATE: 2/8/01

Matt F. Felt  
Hobby Shack

DATE: 2/8/01

Matt F. Felt  
Hobby People, Inc.

DATE: 2/8/01  
Matt X John  
Global Hobby Distributors, Inc.

# Exhibit A

## **EXHIBIT A**

1. Lead weights and other lead products, and soldering products which contain chemicals listed pursuant to proposition 65 including lead (or lead compounds) and formaldehyde;
2. Soldering irons, solder kits, sailboat kits and other products that contain lead or solder (or lead compounds) and/or produce formaldehyde through reasonable or foreseeable use;
3. Contact cement and other adhesives, iron cleaners, racing fuels, trichloroethylene, toluene, and nitromethane.

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