

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 Jetline Engineering, Inc., a California corporation, as of January 20, 1999 (the "Effective Date").

WHEREAS:

A. Michael DiPirro ("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. Jetline Engineering, Inc. ("Jetline") manufactures, distributes and/or sells products in the State of California that contain, or whose customary use and application may produce fumes or gases which contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 *et seq.*).

C. The products that contain, or whose customary use and application may produce fumes or gases which contain, one or more of the chemicals listed pursuant to Proposition 65 and which are covered by this Agreement are set forth in Exhibit A (the "Products"), which is attached hereto and incorporated herein by this reference;

D. Some of the Products have been manufactured, distributed and/or sold by Jetline for use in California since October 15, 1994;

E. By notice dated October 15, 1998, DiPirro first served Jetline and all of the requisite public enforcement agencies a document entitled "60-Day Notice" which provided Jetline and such public agencies with notice that Jetline 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 certain Proposition 65-listed chemicals;

F. Jetline denies the material factual and legal allegations contained in the 60-day Notice issued by DiPirro for alleged violations of Proposition 65 and Business & Professions Code Sections 17200 *et seq.*, and maintains that all Products manufactured, distributed and/or sold by Jetline in California are in compliance with all laws. Nothing in this Agreement shall constitute or be construed as an admission by Jetline 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 Jetline 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 Jetline 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 Labeling.** Beginning immediately, Jetline shall initiate efforts 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, distributed and/or sold by Jetline in California after the Effective Date which now or in the future contain, or whose customary use and application may produce fumes or gases that 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. Jetline 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, Jetline agrees that as of April 20, 1999, it shall not distribute or sell (or cause to be distributed or sold on its behalf) any Covered Products for sale or use in the State of California unless each such Covered Product is accompanied by a Revised Label on or within the Covered Product package or affixed to Covered Products as follows:

For Covered Products which contain (or produce fumes, gases or dust that contain) a chemical listed by the State of California as known to cause birth defects (or other reproductive harm) and which also may be used in various welding, cutting, brazing, soldering or other related applications that, in some cases, produce fumes, gases or dust that contain a chemical listed by the State of California as known to cause cancer:

"WARNING: This product, when used in the welding process, produces chemicals known to the State of California to cause birth defects and, in some cases, cancer.

(California Health & Safety Code §25249.5 et seq.)"

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.

2. **Deemed Compliance.** Any New Products (as defined in this Paragraph 2) manufactured, distributed and/or sold by Jetline after January 20, 1999 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 included in Exhibit A which contain, or whose customary use or application may produce fumes, gases or dust that contain, a Listed Chemical and which were not manufactured, distributed and/or sold by Jetline in California on or before the Effective Date.

3. **Civil Penalty.** DiPirro acknowledges that Jetline has volunteered substantial information concerning the Covered Products and has voluntarily undertaken significant measures to identify those Covered Products which, pursuant to this Agreement shall hereafter be accompanied by Revised Labels prior to their sale in California. In recognition of: (1) Jetline's voluntary efforts with regard to the Covered Products; (2) minimal sales by Jetline of Covered Products in California; (3) the fact that the vast majority of Covered Products sold or distributed by Airgas are supplied to Jetline by manufacturers or suppliers which have settled disputes under Proposition 65 and Business & Professions Code §§17200 *et seq.* relating to the Covered Products such that the liability of Jetline for those Covered Products is subsumed and released in those settlements; and (4) other factors, DiPirro hereby agrees to waive the imposition of any civil penalties with regard to the Covered Products.

4. **Reimbursement of Fees and Costs.** Within ten (10) days of the Effective Date of the Agreement, Jetline shall pay to DiPirro the sum of \$3,000.00 (Three Thousand Dollars) for his investigation fees incurred prior to the filing of the 60-Day Notice, investigation and enforcement costs, and fees incurred in this matter.

5. **DiPirro's Release of Jetline.** In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Paragraph 4, DiPirro, 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, hereby 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, 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 Jetline and its 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 (collectively, "Jetline Releasees"), including, but not limited to, Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to Jetline's alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in, or which may be produced in the fumes, gases or dust resulting from the customary use and application of, any of the Covered Products listed on Exhibit A. It is specifically understood and agreed that Jetline's compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning the Jetline Releasees' past compliance with the requirements of Proposition 65, Business and Professions Code §§17200 *et seq.*, or any other Claims arising from Jetline'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, 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 (collectively, "Downstream Parties") including, but not limited to, Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may 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 Agreement resolves all issues and liability concerning the Downstream Parties' past compliance with the requirements of Proposition 65, Business & Professions Code §§17200 *et seq.*, or

any other Claims arising from Jetline'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. **Jetline Release.** Jetline, 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 *et seq.* against Jetline.

8. **Product Characterization.** Jetline acknowledges that each of the Covered Products listed in Exhibit A contains, or in the customary use or application of the Covered Products may produce fumes, gases or dust that contain one or more substances known to the State of California to cause cancer or birth defects (or other reproductive harm). In the event that Jetline 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), Jetline 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 Jetline's Exposure Data, DiPirro shall provide Jetline 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 Jetline written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Jetline's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Jetline 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 Jetline of his intent to challenge the Exposure Data, DiPirro and Jetline shall negotiate in good faith to attempt to reach a settlement.

9. **Jetline's Covered Product Information.** Jetline understands that the Covered Product information provided to counsel for DiPirro by Jetline was a material factor upon which DiPirro has relied to determine a fair and reasonable settlement as set forth in this Agreement. To the best of Jetline's knowledge, the information provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the information is materially inaccurate, all other parts of this Agreement notwithstanding, DiPirro shall have the right to rescind this Agreement and re-institute an enforcement action against Jetline, provided that all sums paid by Jetline pursuant to Paragraphs 5 and 6 are returned to Jetline within five (5) days from the date on which

DiPirro notifies Jetline 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 Jetline 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 this action was filed.

10. **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.

11. **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.

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

13. **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 or via overnight courier, addressed as follows:

If to DiPirro: Chanler Law Group
190 Riverside Drive, 10th Floor
New York, NY 10024

If to Jetline: Chief Executive Officer
Jetline Engineering, Inc.
15 Goodyear Street
Irvine, CA 92618

with a copy to: Craig S.J. Johns, Esq.
Crosby, Heafey, Roach & May
Four Embarcadero Center, 19th Floor
San Francisco, CA 94111

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

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

15. **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.

16. **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.

17. **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: 1/21/99

MICHAEL DIPIRRO

Michael DiPirro

AGREED TO:

DATE: _____

JETLINE ENGINEERING, INC.
a California corporation

By: _____

Its: _____

AGREED TO:

AGREED TO:

DATE: _____

DATE: JANUARY 22, 1998

MICHAEL DIPIRRO

JETLINE ENGINEERING, INC.
a California corporation

By:

Judy Russell
Its: *Sec. Treasurer*

EXHIBIT A

Arc Length Controls

Be-Co Equipment

Benchmaster Positioners & Accessories

Circumferential Weld Fixtures

Coil Splicers

Cold/Hot Wire Feeders

Longitudinal Seam Welders

Magnetic/Mechanized Oscillators

Seamtrackers & Motorized Slides

Side Beam Tracks, Carriages & Accessories

Tungsten Grinders & Cut-off Machines

Welding Chambers & Accessories

Wheel Welders