

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into this 3rd day of February, 2000 (“the effective date”) between **Michael DiPirro**, a California citizen acting on behalf of the People of the State of California, and Midwest Model Aircraft Company, an Illinois Corporation, d/b/a **K & S Engineering**.

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. K & S Engineering (“K & S”) distributes equipment used by consumers (such as, soldering irons) to distributors in the State of California, that contains, or whose use and application may produce fumes or gases which contain, chemicals 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 soldering irons (the “Products”);

D. By notice dated September 27, 1999, DiPirro first served K & S and all of the requisite public enforcement agencies a document entitled “60-Day Notice” which provided K & S and such public agencies with notice that K & S was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it distributes to distributors in California may expose users to certain Proposition 65-listed chemicals;

E. On December 16, 1999, DiPirro filed a complaint entitled *Michael DiPirro v. K & S Engineering* (Ca. No. H210184-0) in the Alameda County Superior Court, naming K & S as

defendant 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 certain chemicals listed pursuant to Proposition 65 contained in certain K & S products, or whose customary use and application may have produced fumes or gases which contain such chemicals; and

F. K & S denies the material factual and legal allegations contained in the 60-day Notice 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 by K & S to distributors in California are in compliance with all laws. Nothing in this Agreement shall constitute or be construed as an admission by K & S 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 K & S of any fact, finding, conclusion, issue of law or violation of law.

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.** Since at least October of 1999, K & S has affixed labels to the Products that are consistent with the labeling descriptions contained in this Agreement and shall immediately review the requirements for affixing of similar labels (“Revised Labels”) to any other substantially similar products which may be distributed by K & S to distributors in California (“Covered Products”) 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. K & S shall use reasonable efforts to ensure that all Covered Products in its possession intended for distribution to distributors in California who may sell to retailers or consumers in California are packaged using Revised Labels as soon as commercially reasonable; however, K & S agrees that, as of August 1, 2000, K & S shall not ship

to California for distribution to distributors who may sell to retailers or consumers in California any Covered Products unless each such Covered Product is accompanied by a Revised Label on or within the Covered Product package or affixed to Covered Products as set forth in this Paragraph 1. Revised Labels required pursuant to this Agreement shall be as follows:

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 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).”

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).”

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) distributed and/or sold by K & S 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 required in Paragraph 1 of this Agreement. For purposes of this Agreement, “New Products” shall include any products that are substantially similar to the Products which contain, or whose customary use or application may produce fumes or gases that contain, a Listed Chemical and which were not distributed by K & S to consumers in California on or before the Effective Date.

3. Civil Penalty. K & S shall, pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$2,200.00 to DiPirro within five (5) calendar days of the Effective Date. 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. This payment shall be made payable to the “Chanler Law Group, in Trust for Michael DiPirro” and held in escrow by DiPirro’s counsel until the Court has approved this settlement and issued the Order as set forth in Paragraph 10. 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. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 10, the payment made pursuant to this paragraph shall be returned to K & S, 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. Within ten (10) calendar days of the Effective Date of the Agreement, K & S shall pay to DiPirro the sum of \$4,600.00 for his investigation, expert and attorneys' and paraprofessional fees and costs incurred in this matter. Such amounts shall be made payable to "the Chanler Law Group in Trust" and held in escrow by DiPirro's counsel until the Court has approved this settlement and issued an Order as set forth in Paragraph 10, the amounts paid by K & S in accordance with this paragraph shall be returned to K & S, with interest thereon at a rate of six percent (6%) per annum, within ten (10) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

5. DiPirro's Release of K & S. 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, 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 K & S and its parent and affiliated companies, divisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, agents, and employees (collectively, "K & S Releasees"). This waiver and release shall specifically include, but not be limited to, Claims arising under Proposition 65 or Business & Professions Code §§ 17200 et seq., related to K & S's alleged failure to warn about exposures on or before the Effective Date to lead or formaldehyde 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. It is specifically understood and agreed that K & S' compliance with the terms of this Agreement resolves all claimed issues and liability, now and in the future, concerning K & S Releases' past compliance with the requirements of Proposition 65, Business and Professions Code §§ 17200 et seq., or any other Claims arising from K & S' alleged failure to comply with Proposition 65 in connection with the Covered Products 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, including 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"). This waiver and release shall specifically include, but not be limited to, Claims arising under Proposition 65 or Business & Professions Code §§ 17200 et seq., related to Downstream Parties' 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 or gases resulting from the customary use and application of, any of the Covered Products. 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 and Professions Code §§ 17200 et seq., or any other Claims arising from K & S' or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Covered Products occurring on or before the Effective Date.

7. K & S Release. K & S, 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 or Professions Code §§ 17200 et seq., against K & S.

8. Product Characterization. In the event that K & S 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), K & S shall provide DiPirro with forty-five (45) 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 forty-five (45) days of receipt of K & S’ Exposure Data, DiPirro shall provide K & S 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 K & S written notice of his intent to challenge the Exposure Data within forty-five (45) days of receipt of K & S’ notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and K & S shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Covered Products to which the Exposure Data applies. If DiPirro timely notifies K & S of his intent to challenge the Exposure Data, DiPirro and K & S shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within forty-five (45) days of mailing by DiPirro of such notice of challenge, DiPirro and K & S 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 K & S’ notice or the Court determines that no warning is required for particular Covered Products, K & S shall no longer be required to provide the warnings described in this Agreement for those Covered Products.

9. K & S’ Covered Product Information. K & S understands that the information concerning sales provided to counsel for DiPirro by K & S 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 K & 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, the parties shall make a good faith attempt to resolve the matter within thirty (30) days of K & S' receipt of notice from DiPirro of his intent to challenge the accuracy of the information.

10. Stipulated Judgment and Order. The parties 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. If 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 remaining shall not be adversely affected thereby.

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, K & S shall have no further obligations pursuant to this Settlement 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: Chanler Law Group
Magnolia Lane
New Canaan, CT 06840
(Fax) 203 801 5222

If to K & S: K & S ENGINEERING
6917 West 59th Street
Chicago, Illinois 60638

with a copy to: BURKE COSTANZA & CUPPY LLP
8585 Broadway, Ste. 600
Merrillville, IN 46410
Attn: Paula E. Neff, Esq.

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 constitute or be construed as an admission by K & S 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 K & S of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by K & S. K & S 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 K & S under this Agreement.

16. **Entire Agreement; Modification.** This Agreement, together with 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 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.

For: MICHAEL DIPIRRO

For: K & S ENGINEERING

Michael DiPirro, Individually

By: *Antoinette L. Kuberska*
Its President

Date

02-03-00
Date

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For: MICHAEL DIPIRRO

Michael DiPirro
Michael DiPirro, Individually
2/14/00
Date

For: K & S ENGINEERING

By: *Antoinette L. Kuberski*
Its President
02-23-00
Date