

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (“Agreement”) is entered into between Michael DiPirro, a California citizen acting on behalf of himself and the People of the State of California, and Marshall Industries, a California corporation. The effective date of this Agreement is May 6, 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. Marshall Industries (“Marshall”) 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 (“Listed Chemicals”). These products, which are described on Exhibit A hereto, are collectively referred to as “Covered Products” and are the subject of this Agreement;

C. Some of the Covered Products have been distributed and sold by Marshall for use in California since September 29, 1994;

D. By notice dated September 29, 1998, DiPirro first served Marshall and all of the requisite public enforcement agencies a document entitled “60-Day Notice” which provided Marshall and such public agencies with notice that Marshall was allegedly in violation of California Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it distributes or sells in California expose users to certain Proposition 65-listed chemicals;

E. On February 1, 1999, DiPirro filed a complaint entitled Michael DiPirro v. Marshall Industries, et al. (No. H 205535-2) in Alameda County Superior Court, naming Marshall as defendant and alleging violations of California Business & Professions Code §§ 17200 et seq. and California Health & Safety Code § 25249.6 on behalf of individuals in California who may have been exposed to certain Listed Chemicals in Covered Products allegedly distributed and/or sold by Marshall; and

F. Marshall 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 California Business & Professions Code §§ 17200 et seq. Nothing in this Agreement shall constitute or be construed as an admission by Marshall 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 Marshall 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 Marshall under this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other consideration, the sufficiency and adequacy of which is hereby confirmed by the parties, it is hereby agreed as follows:

1. **Covered Product Distribution.** Beginning immediately, Marshall shall initiate efforts subject to the terms and conditions of this Agreement to sell and distribute only Covered Products that are accompanied by a warning label that is “clear and reasonable” as contemplated under California Health & Safety Code § 25249.6 and regulations promulgated thereunder (hereafter, “Compliant Warning”). To the extent that manufacturers or suppliers of Covered Products sold or distributed by Marshall in California provide Compliant Warnings for Covered Products, Marshall shall exercise its best efforts to ensure that the warning labels or other warning materials are provided to the purchaser of the Covered Products in the normal course of business. Further, notwithstanding anything in this Agreement to the contrary, if, after November 28, 1999, Marshall receives written notice that a Marshall supplier is not providing Compliant Warnings for its Covered Products, then Marshall will notify the supplier in writing of that fact and ask the supplier to check and confirm its compliance with Proposition 65. If sixty (60) days elapse after Marshall’s notice to the supplier without Marshall’s receipt of confirmation of the supplier’s compliance with or detailed plans to comply with Proposition 65’s warning requirements within the next thirty (30) days, Marshall shall, at its sole option, either (1) stop distributing and/or selling Covered Products provided by that supplier or (2) undertake to provide Compliant Warnings for the supplier’s products in a manner to be mutually agreed upon by Marshall and the notifying party. If the notifying party is anyone other than DiPirro, Marshall agrees to provide DiPirro with a courtesy copy of the notice. For purposes of this Agreement, “Covered Products” means all soldering consumables, soldering tools and equipment and chemicals used in the soldering process which may be distributed or sold in California, 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 any chemicals that are currently or may, in the future, be listed pursuant to Proposition 65.

2. **MSDS Distribution.** Beginning immediately, and to the extent that manufacturers or suppliers of Covered Products provide to Marshall Material Safety Data Sheets (“MSDS”) pertaining to each of the Covered Products intended for distribution or sale into California, Marshall agrees to exercise reasonable efforts to ensure that the MSDSs are provided to the purchasers of the Covered Products in the normal course of business. If any purchaser of a Covered Product then-currently being distributed or sold into California by Marshall requests a MSDS for a Covered Product, Marshall shall, within five (5) business days of such request, provide such purchaser with a MSDS for that Covered Product. The parties recognize that not all Covered Products require MSDSs.

3. **Civil Penalty.** In light of the fact that the Covered Products sold or distributed by Marshall are supplied to Marshall by manufacturers or suppliers, virtually all of whom have settled disputes under Proposition 65 relating to the Covered Products such that the liability of Marshall is subsumed and released in those settlements, Marshall shall not pay any penalties pursuant to California Health & Safety Code § 25249.7(b).

4. **Reimbursement of Fees and Costs.** Within ten (10) days of the Effective Date of the Agreement, Marshall shall pay to DiPirro the following amounts: (1) \$9,000 for his investigation fees incurred prior to the filing of the 60-Day Notice; (2) \$1,370 for investigation, expert and litigation costs; and (3) \$16,800 for attorneys' and paraprofessional fees incurred in this matter. Such amounts shall be held in escrow by DiPirro's counsel until the Court has approved this settlement and issued an Order as set forth in Paragraph 9. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 9, the amounts paid by Marshall in accordance with this paragraph shall be returned to Marshall within five (5) days.

5. **DiPirro's Release of Marshall.** Michael 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 Marshall 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, "Marshall Releasees"), related to Marshall's alleged failure to warn, under Proposition 65, about exposures before the Effective Date to certain Listed Chemicals contained in, or which may be produced in fumes or gases resulting from the customary use or application of, any Covered Products. It is specifically understood that Marshall's compliance with the terms of this Agreement resolves all issues, now and in the future, concerning the Marshall Releasees' past or current compliance with the requirements of Proposition 65, California Business & Professions Code §§ 17200 *et seq.*, or any other Claims arising from Marshall's alleged failure to comply with Proposition 65 in connection with the Covered Products on or before the Effective Date. It is specifically understood and agreed that nothing contained in this Paragraph 5 shall be deemed or construed to extend the release set forth herein to any manufacturer, supplier or other "upstream party" of Covered Products distributed or sold by Marshall.

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 direct purchaser of the Covered Products from Marshall (collectively, "Downstream Parties") related to the 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 fumes or gases resulting from the customary use or application of Covered Products. It is specifically understood and agreed that nothing contained in this Paragraph 6 shall be deemed or construed to extend the release set forth herein to any manufacturer, supplier or other “upstream party” of Covered Products distributed or sold by Marshall.

7. **Marshall Release.** Marshall, 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 California Business & Professions Code §§ 17200 et seq. against Marshall.

8. **Cooperative Discovery Agreement.** To minimize the burden and expense that would otherwise fall upon both parties, and to avoid needless litigation, DiPirro and Marshall agree to work in good faith to informally address any request by DiPirro for information that DiPirro needs for the prosecution of a Proposition 65 action against a Marshall supplier that would otherwise be discoverable, provided the request is reasonable and pertains to the Covered Products. The parties agree that Marshall shall have thirty (30) days to respond to any written request from DiPirro for information. If Marshall has made a good faith effort to collect the requested information but needs more time, the parties agree that Marshall shall have an additional thirty (30) days to respond. The parties further agree to work in good faith to informally resolve any discovery disputes that may arise between them. Additionally, if Marshall believes that any requested information is confidential, competitively sensitive, trade secret or proprietary information, Marshall may produce such information under the terms of an appropriate confidentiality stipulation and protective order to be negotiated in good faith between the parties.

9. **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 ninety (90) days of the Effective Date, this Agreement shall be deemed null and void as the ninety-first (91st) day after the Effective Date.

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.

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
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801

If to Marshall: Mr. Henry W. Chin
Vice President and CFO
Marshall Industries
9320 Telstar Avenue
El Monte, CA 91731

with a copy to: Steven L. Smith, Esq.
O'Melveny & Myers LLP
Embarcadero Center West
275 Battery Street
San Francisco, CA 94111-3305

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 Marshall 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 Marshall of any fact, finding, conclusion, issue of law, or violation of law. Marshall reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of Marshall under this Agreement.

15. **Entire Agreement Modification of Agreement.** 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 on or 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.

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:

AGREED TO:

DATE:

5/5/99

DATE:

MAY 12, 1999

MICHAEL DI PIRRO

MARSHALL INDUSTRIES



Michael Di Pirro

By:



Henry W. Chin
Vice President
Chief Financial Officer

Exhibit A

EXHIBIT A

Soldering Consumables (*e.g.*, solder paste, solder bar, solder wire, solder preforms)

Soldering Tools And Equipment (*e.g.*, soldering irons, soldering pots, soldering tips, soldering stations, reflow ovens, benchtop wavesolders, desoldering wick, desoldering pumps, desoldering stations, tip tanners)

Chemicals Used In The Soldering Process (*e.g.*, adhesives, cleaners, degreasers, fluxes)