

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Master Appliance Corporation, a Wisconsin corporation ("Master"), as of September 9, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

### **WHEREAS:**

A. Michael 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 (or produced by) consumer and industrial products;

B. Master is a company that manufactures, distributes and/or sells 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.) ("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 and also include substantially similar products which Master has distributed in the past, or may distribute in the future (the "Products"). The Products have been manufactured, distributed and/or sold by Master for use in California since at least March 12, 1995; and

D. On March 12, 1999, Michael DiPirro first served Master and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Master and such public enforcers with notice that Master was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On June 3, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Master Appliance Corporation, et al. (No. H207641-4) in the Alameda Superior Court, naming Master 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 certain Master products, or whose customary use and

application are likely to have produced fumes or gases which contain such chemicals; and

F. Master at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice and the Complaint. Nothing in this Agreement shall be construed as an admission by Master 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 Master 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 Master under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND MASTER AGREE AS FOLLOWS:**

1. **Product Warnings.** Beginning immediately, Master shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Master 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. Master agrees that as of November 9, 1999, 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 irons or similar heating devices which 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, 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 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. This paragraph is subject to the provisions of the attached Addendum ("Product Characterization").

2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Master shall pay a civil penalty of \$12,000 in two installments.

The first payment of \$3,000 shall be paid within ten (10) calendar days after the Effective Date of the Agreement. The second payment of \$9,000 shall be made on September 1, 2000. However, the second payment shall be waived if Master agrees to promote the use of lead-free solder that will reduce exposure to toxic fumes likely to result in the use of Master's products. This promotion shall consist of Master's use of lead free solder to begin to be included in its UT20K product on or before January 1, 2000. In addition, the marketing materials for this kit will promote the roll of solder as lead-free. Certification of the promotion of lead free solder in Master's marketing materials and inclusion in the kits must be provided to DiPirro by August 15, 2000. The penalty payments are to be made payable to "Chanler Law Group In Trust For Michael DiPirro" and shall be held in escrow by DiPirro's counsel until the Court has approved this settlement and issued the Order as set forth in Paragraph 6. 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. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to Master Appliance within ten (10) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**3. Reimbursement Of Fees And Costs.** Within ten (10) calendar days of the Effective Date of the Agreement, Master shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Master's attention, litigating and negotiating a settlement in the public interest. Master shall pay: \$9,000 for pre-notice investigation fees; \$850 for expert, investigation and litigation costs; and \$4,470 in attorneys' and post-notice investigation fees. 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 6, the payment made pursuant to this paragraph shall be returned to Master Appliance within ten (10) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**4. DiPirro's Release Of Master** DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California (in his representative capacity) waives all rights to institute any form of legal action (and releases all claims) against Master and its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives, attorneys, and Master's distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Profession Code §§17200, related to Master's failure to warn about exposure to listed chemicals which may have

been contained in fumes or gases produced through the normal and foreseeable use of the Products.

**5. Master's Release Of Michael DiPirro.** Master, by this Agreement, waives all rights to institute any form of legal action against 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 & Profession Code §§17200 against Master.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Master shall execute and file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda 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.

**7. 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.

**8. Attorneys' Fees In The Event Of A Dispute.** 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.

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

**10. Notices.** All correspondence to DiPirro shall be mailed to:

Clifford A. Chanler  
Chanler Law Group  
Magnolia Lane  
New Canaan, CT 06840-3801

All correspondence to Master shall be mailed to:

Stephen Ronk, Esq.  
Gordon & Rees, LLP  
Wells Fargo Center, North Tower  
333 South Grand Avenue, Suite 3580  
Los Angeles, CA 90071

**11. 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.

12. **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: 9/13/99

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

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

\_\_\_\_\_  
Master Appliance Corporation  
DEFENDANT

12. **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: \_\_\_\_\_

DATE: Scott Radwill 9/16/99

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

Scott Radwill 9/16/99  
Master Appliance Corporation  
DEFENDANT

# **Exhibit A**

HG-201A	Master Heat Gun, 200° - 300°F, 120V
HG-301A	Master Heat Gun, 300° - 500°F, 120V
HG-501A	Master Heat Gun, 500° - 750°F, 120V
HG-751B	Master Heat Gun, 750° - 1,000°F, 120V
HG-202A	Master Heat Gun, 200° - 300°F, 220V
HG-302A	Master Heat Gun, 300° - 500°F, 220V
HG-502A	Master Heat Gun, 500° - 750°F, 220V
HG-752A	Master Heat Gun, 750° - 1,000°F, 220V
VT-750C	Varitemp Heat Gun, 1,000°F Max, 120V
VT-752C	Varitemp Heat Gun, 1,000°F Max, 220V
PH-1100	Proheat Heat Gun, 570° & 1,050°F, 120V
PH-1200	Proheat Varitemp, 1,050°F Max, 120V
PH-1200-1	Proheat Varitemp Shrink System, 120V
PH-2100	Proheat Heat Gun, 570° & 1,050°F, 220V
PH-2200	Proheat Varitemp, 1,050°F Max, 220V
PH-2200-1	Proheat Varitemp Shrink System, 220V
EC-100	Ecoheat Heat Gun, 500° & 1,000°F, 120V
10008	Master-Mite Heat Gun, 120V
10011	Master-Mite Pinpoint System, 120V
10009	Master-Mite Heat Gun, 220V
AH-301	Masterflow Heat Blower, 300°F, 120V
AH-501	Masterflow Heat Blower, 500°F, 120V
AH-751	Masterflow Heat Blower, 750°F, 120V
AH-302	Masterflow Heat Blower, 300°F, 220V
AH-502	Masterflow Heat Blower, 500°F, 220V
AH-752	Masterflow Heat Blower, 750°F, 220V
MT-5	Microtorch, Pocket Sized, Carded
MT-5B	Microtorch, Pocket Sized, Boxed
MT-10	Microtorch, Palm Sized
MT-30	Microtorch, Palm Sized With Trigger
MT-50	Microtorch, Table Top With Plastic Tank
MT-75	Microtorch, Table Top With Metal Tank
GT-70	General Industrial Torch
UT-20	Econotorch, Carded
UT-20K	Econotorch Kit, Boxed
UT-40SI	Ultratorch, Economy Model, Carded
UT-40SIK	Ultratorch, Economy Model, Boxed
UT-50	Ultratorch, Mini Sized
UT-100	Ultratorch, Standard Size With Metal Case
UT-100SI	Ultratorch, Standard Size, Self-Igniting
UT-100SIK	Ultratorch, Std Size, Self-Igniting W/Metal Case
UT-200	Ultratorch, High Powered
UT-200SI	Ultratorch, High Powered, Self-igniting
UT-300SI	Ultratorch, Pistol Grip
51773	Ultratane Butane, 5-1/8 oz, 145 Gram
10448	Ultratane Butane, 15/16 oz, 26 Gram
RC-30	Butane Fuel Cell, Refillable, 2 Per Card
35276	Tip, Needle, 1mm Diameter (Standard)
35277	Tip, Needle, 2mm Diameter
35278	Tip, Needle, 3mm Diameter
35279	Tip, Chisel, 2mm Diameter
35280	Tip, Chisel, 3mm Diameter
35281	Tip, Chisel, 4mm Diameter
35282	Tip, Spade, 2mm Diameter
35283	Tip, Spade, 3mm Diameter
35284	Tip, Knife
35285	Tip, Flameless Heat
35286	Tip, Torch (Flame)
91-01-01	Tip, Chisel, 1mm Diameter
91-01-02	Tip, Chisel, 2.4mm Diameter (Standard)
91-01-03	Tip, Chisel, 2mm Diameter
91-01-04	Tip, Chisel, 5mm Diameter
91-01-50	Tip, Heat, 1.66mm Diameter
91-01-52	Tip, Heat, 4.7mm Diameter (Standard)
91-01-53	Tip, Hot Knife
71-01-01	Tip, Tapered Needle, 1mm Diameter
71-01-02	Tip, Chisel, 2.4mm (Standard)
71-01-03	Tip, Spade, 2mm Diameter
71-01-04	Tip, Spade, 3mm Diameter
71-01-50	Tip, Heat, 2.3mm O.D. / 1.5mm I.D.
71-01-52	Tip, Heat, 5.6mm O.D. / 4.71mm I.D.
20260	Tip Kit, 1 Each 70-01-01, 70-01-02, 70-01-05, 70-01-11
70-01-01	Tip, Tapered Needle, 1mm Diameter
70-01-02	Tip, Chisel, 3.3mm Diameter (Standard)
70-01-03	Tip, Spade, 2mm Diameter
70-01-04	Tip, Spade, 3mm Diameter



70-01-05	Tip, <b>Tapered Needle</b> , 0.5mm Diameter
70-01-06	Tip, <b>Micro Spade</b> , 2mm Diameter
70-01-07	Tip, <b>Square Tapered Pyramid</b> , 0.5mm Diameter
70-01-08	Tip, <b>Spade</b> , 35°, 2mm Diameter
70-01-09	Tip, <b>Spade</b> , 35°, 3mm Diameter
70-01-10	Tip, <b>Offset Tapered Needle</b> , 1mm Diameter
70-10-11	Tip, <b>Chisel</b> , High Powered, 8mm Diameter
70-01-12	Tip, <b>Round Head</b> , High Powered, 3mm Diameter
70-01-13	Tip, <b>Chisel</b> , High Powered, Long Tapered, 5mm Dia.
70-01-15	Tip, <b>Spade</b> , 45°, 7mm Diameter
70-01-16	Tip, <b>Hot Knife</b>
70-01-50	Tip, <b>Heat</b> , 2.5mm O.D. / 1.59mm I.D.
70-01-51	Tip, <b>Heat</b> , 4.25mm O.D. / 3.3mm I.D.
70-01-52	Tip, <b>Heat</b> , 5.7mm O.D. / 4.9mm I.D. (Standard)
70-01-53	Tip, <b>Heat</b> , 8.0mm O.D. / 7.4mm I.D.
72-01-01	Tip, <b>Tapered Needle</b> , 3mm Diameter
72-01-02	Tip, <b>Chisel</b> , 10mm Diameter (Standard)
72-01-03	Tip, <b>Spade</b> , 4mm Diameter
72-01-05	Tip, <b>Tapered Needle</b> , 1mm Diameter
72-01-06	Tip, <b>Micro Spade</b> , 4mm Diameter
72-01-07	Tip, <b>Tapered Pyramid</b> , 1.5mm Diameter
72-01-12	Tip, <b>Chisel</b> , 4mm Diameter
72-01-13	Tip, <b>Spade</b> , 45°, 12.5mm Diameter
72-01-51	Tip, <b>Heat</b> , 5.6mm O.D. / 3.6mm I.D.
72-01-52	Tip, <b>Heat</b> , 8.6mm O.D. / 6.6mm I.D. (Standard)
72-01-53	Tip, <b>Heat</b> , 11.5mm O.D. / 9.7mm I.D. (Standard)

## **Addendum**

**Product Characterization.** In the event that Master obtains analytical, risk assessment or other data ("Exposure Data") that shows that any exposure to any or all of the products listed on Exhibit A 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 §2624910(c), Master shall provide DiPirro within 90 days prior written notice of its intent to limit or eliminate the warning provisions under the Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within thirty (30) days of receipt of Master's Exposure Data, DiPirro shall provide Master 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 Master with written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Master's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Master shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those products listed on Exhibit A to which the Exposure Data applies.

If DiPirro timely notifies Master of his intent to challenge the Exposure Data, DiPirro and Master 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 Master does not challenge Master's notice or the Court determines that no warning is required for particular products, Master shall no longer be required to provide the warnings described in this Agreement for those Products.

In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, Master shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Products are so affected.