

**SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Metalico-Granite City, Inc., an Illinois corporation, Santa Rosa Lead Products, <sup>me</sup> a California corporation and Metalico-Evans, Inc., a Georgia corporation, collectively ("Metalico"), as of October 6, 1999 (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 consumer and industrial products;

B. Metalico is a company that currently manufactures and distributes solders and other products containing lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm);

C. A list of the products containing lead and/or formaldehyde which are covered by this Agreement is provided in Exhibit A (the "Products"). Lead wool is explicitly not covered by this Agreement. This settlement further expressly covers Metalico's use of the trade name (and products bearing the trade name), "Dutch Boy." The Products have been manufactured, distributed and sold by Metalico for use in California since at least December 1997 (Granite City) and February 1998 (Santa Rosa); and

D. On February 22, 1999, Michael DiPirro first served Metalico and all of the requisite public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Metalico and such public enforcers with notice that Metalico was allegedly in violation of Health & Safety Code §25249.6 for failing to adequately warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

E. On May 20, 1999 and August 4, 1999, Michael DiPirro served Metalico and all of the requisite public enforcement agencies with documents entitled "Supplemental 60-Day Notice of Violation" and "60-Day Notice of Violation" which provided Metalico and such public enforcers with notice that Metalico was allegedly in violation of Health & Safety Code §25249.6 for failing to adequately warn purchasers that certain

products it sells in California expose users to Proposition 65-listed chemicals; and

F. On July 28, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Metalico-Granite City, Inc.; Metalico-Evans, Inc.; Santa Rosa Lead Products (No. H208536-8) in the Alameda County Superior Court, naming Metalico (Granite City, Santa Rosa and Evans) as defendants 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 chemicals listed pursuant to Proposition 65 chemicals contained in certain Metalico products.

G. Metalico at all times denied and denies the material factual and legal allegations contained in the 60-Day Notices, the Supplemental 60-Day Notice and the Complaint. Nothing in this Agreement shall be construed as an admission by Metalico 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 Metalico 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 Metalico under this Agreement, which constitutes a resolution on the merits of the claims brought by DiPirro.

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

1. **Product Warnings.** Metalico shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in section 1.1 below. Beginning on December 30, 1999, Metalico agrees that it will not knowingly ship (or cause to be shipped) any Products containing lead for sale in the State of California unless such Products comply with section 1.1 or 1.2 below, whichever provision is applicable:

1.1 For all Products containing lead (or produce fumes that contain formaldehyde) other than those identified on Exhibit B, such Products shall bear the following warning statement on the Product label or packaging:

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

The list of Products which require a warning affixed to the Product label or packaging is attached hereto as Exhibit C. The list of Products, for which a warning on the label (or other packaging) of each individual product is not commercially feasible, is attached hereto as Exhibit B.

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.

1.2 For those Products containing lead which are identified on Exhibit B, the Products shall contain warning language identical to the statement contained in section 1.1 above, on the outside and inside of each package containing one or more of the Products. In addition, on the inside of each package, Metalico shall provide clear instructions to its distributors and retailers to transfer Proposition 65 warnings to their downstream customers of the Products.

For those Products listed on Exhibit B, Metalico also agrees to send a certified letter to each of its customers before December 30, 1999 that instructs Metalico's distributors and retailers to transfer the appropriate toxic warnings to their customers. This letter may consist of the document that accompanies the transmission of Material Safety Data Sheets (MSDSs), so long as the letter is sent via certified mail and the instructions are set forth clearly and separately in their own paragraphs. This certified letter also shall be sent to all new customers (i.e., those companies that will become Metalico distributors after the Effective Date of this Agreement).

1.3 It is expressly agreed that Metalico does not have to comply with paragraph 1 for any Products packaged outside the State of California that Metalico can demonstrate will be used exclusively in settings regulated by the OSH Act.

1.4 Any new products manufactured, distributed and/or sold by Metalico after the applicable compliance date set forth in paragraph 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 the product warnings as set forth in paragraph 1. For purposes of this Agreement, "new products" shall include any Products that are substantially similar to those included in Exhibit A which contain lead and which were not manufactured, distributed and/or sold by Metalico in California on or before the applicable compliance dates set forth in paragraph 1.

2. **MSDS Revisions.** Metalico agrees to revise the "Health Hazard" section on each Material Safety Data Sheets ("MSDS") pertaining to each of the Products to include the applicable warning language set forth in section 1.1 of this Agreement. Metalico agrees to distribute the MSDSs incorporating the revised warning language in the normal course of business on or before December 30, 1999.

**3. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Metalico shall pay a civil penalty of \$15,000 in 4 equal payments. The payments are due on October 6, 1999; December 27, 1999; March 27, 2000; and June 27, 2000. The final payment (June 27, 2000) shall include interest due at a rate of 9% per annum for the final three guaranteed payments. It is expressly understood by the parties that the payments are to be received by the plaintiff (at the address identified in paragraph 11) on or before the due dates listed before. Any action to collect on the payments due or interest accrued shall be considered a "dispute arising with respect to the Agreement." (See paragraph 9.) If any of the quarterly payments are more than five (5) business days late, then the remaining payments shall be accelerated and become due immediately along with any accrued interest. However, the remaining payments shall only be accelerated if DiPirro provides written notice to Metalico that the payments are late at least two (2) business days prior to the end of the five-day grace period. Payment of the penalties and interest shall be made payable to the "Chanler Law Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by Michael DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California.

**4. Reimbursement Of Fees And Costs.** Metalico shall reimburse Michael 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 Metalico's attention, litigating and negotiating a settlement in the public interest. Metalico shall pay: \$9,000 for pre-notice investigation fees; \$1,335 for expert, investigation and litigation costs; and \$24,665 in attorneys' and post-notice investigation fees. Payment shall be made payable to the "Chanler Law Group" in 4 equal installments. The payments are due on October 6, 1999; December 27, 1999; March 27, 2000; and June 27, 2000. The final payment (June 27, 2000) shall include interest due at a rate of 9% per annum for the final three guaranteed payments. It is expressly understood by the parties that the payments are to be received by the plaintiff (at the address identified in paragraph 11) on or before the due date. Any action to collect on the payments due or interest accrued shall be considered a "dispute arising with respect to the Agreement." (See paragraph 9.) If any of the quarterly payments are more than five (5) business days late, then the remaining payments shall be accelerated and become due immediately along with any accrued interest. However, the remaining payments shall only be accelerated if DiPirro provides written notice to Metalico that the payments are late at least two (2) business days prior to the end of the five-day grace period.

5. **Michael DiPirro's Release Of Metalico.** Except with respect to the obligations and representations set forth in this Agreement, DiPirro (on his own behalf and on behalf of each of his partners, partnerships, employees, agents, representatives, attorneys, insurers, predecessors, successors, assignors and assignees, and all persons and entities acting through, under, or in concert with him or any of them) hereby irrevocably releases and forever discharges Metalico along with Metalico's distributors, retailers and customers which sell Metalico's Products and each of Metalico's predecessors, successors, subsidiaries, divisions, affiliated companies, parent companies, holding companies, stockholders, partners, partnerships, officers, directors, employees, agents, representatives, insurers, attorneys, assignors, and assignees, and all persons and entities acting or claiming by, through, under or in concert with it or any of them ("Metalico Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, liabilities, claims, demand, damages, losses, costs, or expenses (including attorneys' fees), of any nature whatsoever, whether known or unknown, fixed or contingent, which DiPirro has or may in the future have against the Metalico Releasees identified above arising out of the claims and demands asserted in this matter, whether under Proposition 65, or California Business and Professions Code §§17200 et seq. based on Metalico's alleged failure to warn California citizens pursuant to Proposition 65 about exposure to lead or formaldehyde from any of Metalico's Products which may have occurred on or before the Effective Date of this Agreement.

5.1 DiPirro (for himself, his attorneys, representatives, agents and affiliates), by this Agreement, waives all rights to institute an action against Metalico, its agents, officers, directors, employees, parent, subsidiary or affiliated companies, its distributors, retailers or customers which sell Metalico's Products, whether under Proposition 65, or Business & Professions Code §§17200, et seq., based on Metalico's alleged failure to warn consumers, pursuant to Proposition 65 about exposure to lead or formaldehyde from any of Metalico's Products which may have occurred on or before the Effective Date. The above releases (5 and 5.1) are expressly intended to release all of the Products that are manufactured or distributed by Metalico bearing the "Dutch Boy" label.

6. **Michael DiPirro's Release in his Individual Capacity.** DiPirro, on behalf of himself, his agents, representatives, attorneys, successors, assigns and not in his representative capacity on behalf of citizens of the State of California, hereby releases each Metalico Releasee for any and all actions which DiPirro may have against the Metalico Releasees in connection with the sale of any of the types of products listed in Exhibit A, other than the duties and obligations

referenced in this agreement.

7. **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 if known by him, must have materially affected his settlement with the debtor." DiPirro only waives CCP §1542 with respect to the general release that is provided on behalf of himself, his agents, representatives, attorneys, successors and assigns, as set forth in paragraph 6 above.

8. **Metalico's Release Of Michael DiPirro.** Metalico, 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 & Profession Code §17200 against Metalico.

9. **Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Metalico shall execute and file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda 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 and all settlement monies paid by Metalico pursuant to sections 3 and 4 of this Agreement shall be returned to Metalico within five (5) business days.

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 shall not be adversely affected.

11. **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.

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

**13. Notices.** All correspondence to Michael DiPirro shall be faxed and/or mailed to:

Clifford A. Chanler  
Chanler Law Group  
Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801  
(203) 966-9911  
(203) 801-5222 (fax)

All correspondence to Metalico shall be mailed to:

Mary Ellen Hogan, Esq.  
McDermott, Will & Emery  
2049 Century Park East, 34th Floor  
Los Angeles, CA 90067-3208  
(310) 277-4110  
(310) 277-4730 (fax)

and

David Gabor, Esq.  
McDermott, Will & Emery  
2049 Century Park East, 34th Floor  
Los Angeles, CA 90067-3208  
(310) 277-4110  
(310) 277-4730 (fax)

**14. 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.

**15. 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.

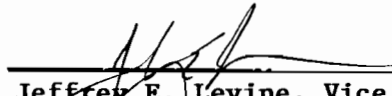
**AGREED TO:**

**AGREED TO:**

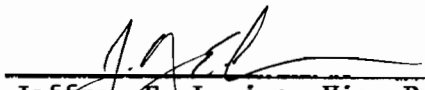
DATE: \_\_\_\_\_

DATE: October 6, 1999


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

  
\_\_\_\_\_  
Jeffrey E. Levine, Vice President  
Metalico Granite-City  
DEFENDANT

DATE: October 6, 1999

  
\_\_\_\_\_  
Jeffrey E. Levine, Vice President  
Santa Rosa Lead Products, Inc.  
DEFENDANT

DATE: October 6, 1999

  
\_\_\_\_\_  
Jeffrey E. Levine, Vice President  
Metalico-Evans  
DEFENDANT



AGREED TO:

DATE: 10/5/99

*Michael DiPirro*

Michael DiPirro  
PLAINTIFF

AGREED TO:

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

\_\_\_\_\_  
Metalico Granite-City  
DEFENDANT

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

\_\_\_\_\_  
Santa Rosa Lead Products, Inc.  
DEFENDANT

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

\_\_\_\_\_  
Metalico-Evans  
DEFENDANT

# **Exhibit A**

## EXHIBIT A

### *Product*

Solder Wires, Bars, Ingots, Pigs  
Anodes, Powder, Ribbon and Alloys

- Britannia (Alloy)
- Babbit (Alloy)
- Bulk
- Cast
- Solder
- Anodes
- Antimonial lead (Alloy)
- Powder solder
- Powder lead

### Lead Wires and Other Solids

- Extrusions (pipe, tubing, etc.)
- Shot (from Granite City/Santa Rosa facilities only)
- Lead brick
- Lead lining
- Coil

### Sheet Lead

### Lead Roofing Products

- Flashings

### Lead Comes

# **Exhibit B**

## EXHIBIT B

### *Product*

Solder Wires, Bars, Ingots, Pigs  
Anodes, Powder, Ribbon and Alloys

- Britannia
- Babbit
- Bulk lead
- Cast lead
- Solder (less than 5 lb. spools)  
TriBar Solder
- Anodes
- Antimonial lead (Alloy)

Lead Wires and Other Solids

- Extrusions (piping, tubing)
- Shot
- Lead Brick
- Lead lining
- coil

Sheet Lead (when sold in bulk)

Lead Roofing Products

- Flashings (when sold in bulk)

Lead Comes

# **Exhibit C**

## EXHIBIT C

### *Product*

- Powder solder
- Powder lead
- Solder (on spools that are 5 lbs. or over)
- Shot (from Granite City/Santa Rosa Facilities only)
- Sheet lead (when not sold in bulk)
- Flashings (when not sold in bulk)