

**SETTLEMENT AGREEMENT**

This Settlement Agreement (this "Agreement") is entered into between Michael DiPirro, a California citizen, and Newell Company (a Delaware corporation), as of March 31, 1999, (the "Effective Date").

**WHEREAS:**

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 consumer and industrial products;

Newell Company ("Newell") manufactures and distributes, and may continue to manufacture and distribute, various products in the State of California, including some products marketed under the names "Bernzomatic" and/or "Weller", that contain chemicals, or whose use inherently creates an exposure to chemicals, listed pursuant to Proposition 65 ("Listed Chemicals").

The products that expose users to one or more of the Listed Chemicals and which are covered by this Agreement are set forth in Exhibit A (the "Products");

The Products have been distributed and sold by Newell for use in California since September 15, 1994;

On September 15, 1998, Michael DiPirro first served Newell and all of the requisite public enforcement agencies with a document entitled "60-Day Notice", which provided Newell and such public enforcers with notice that Newell 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. On February 4, 1999, Michael DiPirro served a "Supplemental 60-Day Notice", which further defined Newell's alleged violations of the above-stated statutes, and on February 25, 1999, he served a "Revised Supplemental Notice". (Collectively, these notices are referred to herein as the "Notice Letters").

On December 9, 1998, Michael DiPirro filed a complaint entitled Michael DiPirro v. Bernzomatic, a subsidiary of Newell Company, et al. (No. 999778) in the San Francisco Superior Court, naming Newell as defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on

behalf of individuals in California who may have been exposed to chemicals listed pursuant to Proposition 65 contained in certain Newell products. Newell subsequently answered this complaint and denied all material allegations; it also asserted numerous affirmative defenses. To avoid the cost and expense of formal litigation of their respective positions, the parties agreed to engage in an informal discovery process, whereby they exchanged information concerning the Products and their sales in California. After assessing their respective positions, the parties engaged in arms length settlement discussions to attempt to resolve the claims raised in the complaint without further litigation.

THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Product Labeling. Beginning immediately, Newell shall initiate revisions consistent with this Agreement to its current labels for the Products ("Revised Labels"). Newell shall use reasonable efforts to ensure that all Products in its possession intended for shipment into California are packaged using Revised Labels as quickly as possible; however, Newell agrees that as of June 1, 1999, it shall not ship (or cause to be shipped on its behalf) any of the Products for sale or use in the State of California unless each such Product contains the appropriate warning statement on its consumer packaging (or for Products which are not sold in consumer packaging aside from their immediate container, their label) as follows:

For Products, such as welding rods, solder, flux, and similar products:

"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 all Products, the warning statement shall be in a type size and style that is legible and conspicuous to an ordinary individual.

MSDS Revisions. Newell agrees to revise its Material Safety Data Sheets ("MSDS") pertaining to each of the Products listed on Exhibit "A" of this Agreement, and intended for shipment into California. Newell shall ensure the MSDSs for each of the Products contains a warning that is consistent in wording with the on-label warning language required under the "Product Labeling" section of this agreement. Further, Newell agrees that it will include the required warning in the "Health Hazard" section of the MSDS. Newell agrees to start revising its MSDSs as soon as commercially reasonable. However, the new MSDSs will be distributed in the normal course of business no later than June 1, 1999.

Civil Penalty. Pursuant to Health & Safety Code §25249.7(b), Newell shall pay, within fifteen (15) days of the Effective Date of this Agreement, a civil penalty of \$15,300. Such monies shall be held in trust by counsel for DiPirro and will not be released until counsel for Newell is in receipt of an approved stipulated judgment incorporating the terms of this Agreement from the San Francisco Superior Court. Penalty monies shall be mailed to and apportioned by counsel to Michael DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California. Payment by Newell shall be made payable to "Law Offices of David Bush, in trust for Michael DiPirro". In the event the court rejects this settlement, the amount paid by Newell shall be returned within five (5) days of receipt of notice of the court's rejection.

Reimbursement of Fees and Costs. Within fifteen (15) days of the Effective Date of this Agreement, Newell shall pay to Michael DiPirro \$9,000 for his pre-notice investigation fees; \$1,350 for expert, investigation, and litigation costs; and \$29,350 for his attorneys', paraprofessional, and post-notice investigation fees (which includes an appropriate multiplier) incurred in this matter. Such monies shall be held in trust by counsel for DiPirro and will not be released until counsel for Newell is in receipt of an approved stipulated judgment incorporating the terms of this Agreement from the San Francisco Superior Court. Payment by Newell shall be made payable to "Law Offices of David Bush". In the event the court rejects this settlement, the amount paid by Newell shall be returned within five (5) days of receipt of notice of the court's rejection.

Michael DiPirro Release. Michael DiPirro, by this Agreement, on behalf of himself, his agents and assignees, and acting in the public interest pursuant to Health and Safety Code §25249.7(d) with respect to all matters identified in the Notice Letters and on behalf of the general public pursuant to Business and Professions Code §17204, waives all rights to institute any form of legal action (and releases all claims) against Newell, its distributors, retailers, customers, successors, assigns, and the like, whether under Proposition 65 or Business & Profession Code §§17200 et seq., related to Newell's failure to warn about exposure to Listed Chemicals contained in or associated with the use of, any of the Products.

Newell Release. Newell, 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 et seq. against Newell.

Warranties and Representations. The parties make the following representations and warranties:

Newell represents and warrants as follows:

Each of the Products listed in Exhibit "A" contains or is associated with use conditions resulting in exposure to one or more substances known to the State of California to cause cancer or birth defects or other reproductive toxicity, and that Newell has no knowledge that Newell has any analytical, risk assessment, or other data indicating that an exposure to any or all Products listed in 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 §25249.10(c).

In the event that Newell obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in 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 §25249.10(c), Newell may elect to provide Michael DiPirro with 90 days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on this information pursuant to this paragraph and, in such instance, shall provide Michael DiPirro with all such supporting data. Within thirty (30) days of receipt of Newell's exposure data, Michael DiPirro may elect to provide Newell with written notice of his desire to challenge the data (in the event that he chooses to make such a challenge), and, in this event, Michael DiPirro and Newell shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by Michael DiPirro of such notice of challenge, Michael DiPirro and Newell agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If Michael DiPirro does not challenge Newell's notice or the Court determines that no warning is required for a particular Product or Products, Newell shall no longer be required to provide the warnings described in this Agreement for those Products.

Sales Data. Newell understands that the sales data provided to counsel for Michael DiPirro by Newell was a material factor upon which Michael DiPirro has relied to determine the amount of penalties and restitution in this Agreement. To the best of Newell's knowledge, the sales data provided is true and accurate. Newell acknowledges that, in the event Michael DiPirro finds within the next twelve months that the sales data was materially inaccurate, all other parts of this Agreement notwithstanding,

Michael DiPirro will have the right to rescind this Agreement and re-institute an enforcement action against Newell. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between the date Michael DiPirro filed the instant action and the date Michael DiPirro notifies Newell that it is rescinding this Agreement pursuant to this subpart.

Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the San Francisco Superior Court in accordance with the terms of this agreement.

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.

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.

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

Notices. All correspondence to Michael DiPirro shall be mailed to:

David Bush  
Law Offices of David Bush  
2214 Polk Street  
San Francisco, CA 94109

All correspondence to Newell shall be mailed to:

Robert L. Falk, Esq.  
Morrison & Foerster  
425 Market Street  
San Francisco, CA 94105-2482

No Admissions. Nothing in this Agreement shall constitute or be construed as an admission by Newell 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 Newell of any fact, finding, conclusion, issue of law, or violation of law. Newell reserves all of its rights and defenses with regard to any future claim by any party under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of Newell under this Agreement.

Counterparts/Facsimiles. This Agreement may be executed in counterparts and/or by means of facsimile, each of which shall be deemed an original, and all of which, when taken together, shall

constitute one and the same document.

**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: 4/12/99

DATE: 4/6/99

Michael DiPirro

Matthew Skellat

Michael DiPirro  
PLAINTIFF

Newell Company  
DEFENDANT

# **EXHIBIT A**

## BernzOmatic Solder, Flux & Welding Rods

All solder, flux and welding, soldering and brazing rods supplied by BernzOmatic and sold under the BernzOmatic, Surefire, Ace Hardware, Master Mechanic, Do It Best, Champ and NAPA brands as individual Stock Keeping Units or as part of a torch kit.

Examples: (Not inclusive)

AL3 Aluminum Soldering Rods  
PC1 LB Phosphorous Copper Soldering Rods  
PC3 Phosphorous Copper Soldering Rods  
WB1 LB Premium Bronze Brazing Rods  
WB5 Premium Bronze Brazing Rods  
NS3 Nickel Silver Brazing Rods  
SWR10 Copper Coated Steel Welding Rods  
BWR5A Assorted Rod Package  
Dutch Boy Paste Flux in torch kits  
Kester Solder in torch kits