

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Pace, Incorporated, a Maryland corporation ("Pace"), as of November 4, 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. Pace is a company that manufactures, distributes and/or sells products in the State of California that contain, or whose customary use and application are alleged 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 are alleged to contain, or whose customary use and application are alleged to produce solder 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 (the "Products"). The Products have been manufactured, distributed and/or sold by Pace for use in California since at least March 12, 1995; and

D. On March 12, 1999, Michael DiPirro first served Pace and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided Pace and such public enforcers with notice that Pace 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 22, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Pace, Inc., et al. (No. 304376) in the San Francisco Superior Court, naming Pace 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 Pace products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals; and

F. Pace 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 Pace 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 Pace 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 Pace under this Agreement.

**NOW THEREFORE, MICHAEL DiPIRRO AND PACE AGREE AS FOLLOWS:**

1. **Product Warnings.** Beginning immediately, Pace shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Pace 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. Pace agrees that as of, November 30, 1999, it shall not distribute or sell 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: Normal use of this product is likely to expose the users to solder containing 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.

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

**2. Pace Obligations.**

2.1. **Payment Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health & Safety Code § 25249.7(b), Pace shall pay a civil penalty of \$2,000. The payment of \$2,000 shall be made within nine (9) calendar days after both parties have executed the Agreement.

**2.2. Promotion of Fume Extraction Equipment.** Pace agrees to promote conspicuously in its catalog the use of its fume extraction systems that would reduce exposure to fumes that are alleged to result from the use of Pace's products. This promotion shall include reference to the benefits of reducing employee exposure to substances alleged to be released in the soldering or desoldering process.

This promotion shall begin appearing in any such catalog distributed by Pace beginning six months after the Effective Date. Pace's compliance with this condition shall be considered fully satisfied by the mailing to Chanler Law Group of a copy of the catalog (or catalogs), including the fume-extraction promotion described above, accompanied by a certification by a responsible Pace official that the catalog transmitted is representative of all the soldering equipment catalogs which Pace has distributed, beginning six months after the Effective Date.

**2.3.** The penalty payment is 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 Pace within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**3. Reimbursement of Fees and Costs.** Within five (5) calendar days of the Effective Date of the Agreement, Pace 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 Pace's attention, litigating and negotiating a settlement in the public interest. Pace shall pay \$9,000 for pre-notice investigation fees and \$1,000 in costs and 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 Pace within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**4. DiPirro's Release of Pace.** In exchange for \$2,000 in payment pursuant to Paragraph 2 for penalties pursuant to Health & Safety Code § 25249. 6 and \$10,000 reimbursement for investigative fees and costs, expert fees, attorneys' fees and costs and all other costs to investigate, negotiate and settle this matter, 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 Pace and its parents, subsidiaries, affiliates, predecessors, successors, assigns of any of them, their officers, directors, employees, agents, representatives, attorneys, and Pace's

distributors, resellers, sales representatives, and retailers, whether under Proposition 65 or Business & Professions Code §§ 17200, related to Pace's alleged failure to warn about exposure to lead and formaldehyde which may have been contained in fumes or gases produced through the normal and foreseeable use of the Products.

5. **Pace's Release Of Michael DiPirro.** Pace, 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 Pace.

6. **Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Pace shall execute and 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. If, for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void.

7. **Pace Sales Information.** Pace understands that any sales information provided to counsel for DiPirro by Pace was a material factor upon which DiPirro has relied to determine the amount of payments in this Agreement. To the best of Pace's knowledge, the sales information provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales information is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Pace's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales information.

8. **Product Characterization.** In the event that Pace 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 §25249.10(c), Pace 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 Pace's Exposure Data, DiPirro shall provide Pace 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 Pace with written notice of his intent to challenge the Exposure Data within thirty (30) days of receipts of Pace's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Pace 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 Pace of his intent to challenge the Exposure Data, DiPirro and Pace 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 attorney's fees and costs associated with such a determination. If Pace does not challenge Pace's notice or the Court determines that no warning is required for particular products, Pace 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, Pace shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Products are so affected.

9. **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.

10. **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.

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

12. **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 Pace shall be mailed to:

Robert D. Wyatt, Esq.  
Eileen M. Nottoli, Esq.  
Beveridge & Diamond LLP  
One Sansome Street, Suite 3400  
San Francisco, CA 94101-4438

13. **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.

FROM :

FAX NO. :

May. 24 1999 05:09AM PS

14. 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: 11/15/99

DATE: 11-12-99

Michael DiPirro  
Michael DiPirro  
PLAINTIFF

Rose Boehm, Corp. Secretary  
Pace, Incorporated  
DEFENDANT

EXHIBIT A

Soldering and Desoldering Stations