

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Plaskolite, Inc. an Ohio corporation ("Plaskolite"), as of December 11, 2000 (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. Plaskolite is a company that currently distributes and sells certain cement products as set forth in Exhibit A that contain one or more chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.), including methylene chloride (the "Listed Chemical(s)");

C. A list of the products which contain one or more of the "Listed Chemical(s)" and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been distributed and sold by Plaskolite for use in California since at least August 18, 1996; and

D. On August 18, 2000, Michael DiPirro first served Plaskolite and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Plaskolite and such public enforcers with notice that Plaskolite was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemical(s); and

E. On November 9, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Plaskolite, Inc., et al. in the Alameda County Superior Court, naming Plaskolite and HomeBase, Inc. 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 the "Listed Chemical(s)" contained in certain Plaskolite products.

F. Nothing in this Agreement shall be construed as an admission by Plaskolite 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 Plaskolite 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 Plaskolite under this Agreement.

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

**1. Product Warnings.** Plaskolite shall begin to initiate revisions to its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Beginning on February 15, 2001, Plaskolite agrees that it will not knowingly ship (or cause to be shipped) any Products containing the Listed Chemical(s) for sale in the State of California unless such Products comply with section 1.1 below:

**1.1** For all Products containing methylene chloride, such Products shall bear the following warning statement:

**"WARNING: This product contains methylene chloride, a chemical known to the State of California to cause cancer";**

or

**"WARNING: This product contains a chemical known to the State of California to cause cancer";**

The warning statement shall be prominently placed upon the Product's label with such conspicuousness, as compared with other words, statements, designs or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety-Code §25249.7(b), Plaskolite shall pay a civil penalty of \$3,000. The payment of \$3,000 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The penalty payment is to be made payable to "Chanler Law Group In Trust For Michael DiPirro". 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.

**3. Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Plaskolite then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

Plaskolite shall reimburse DiPirro for his fees and costs, incurred as a result of investigating, bringing this matter to Plaskolite's attention, litigating and negotiating a settlement in the public interest. Plaskolite shall pay the total sum of \$12,000 for investigation fees, attorneys' fees and litigation costs. Plaskolite agrees to pay \$12,000 within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

**4. Michael DiPirro's Release Of Plaskolite.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Plaskolite and its manufacturers (including, but not limited to, Craftics, Inc.), distributors, retailers (including, but not limited to, Home Base, Inc.), customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Plaskolite's alleged failure to warn about exposure to the Listed Chemical(s) contained in any of the Products.

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

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Plaskolite shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §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.

**7. Plaskolite Sales Data.** Plaskolite understands that the sales data provided to counsel for DiPirro by Plaskolite was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Plaskolite's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Plaskolite's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Plaskolite, provided that all sums paid by Plaskolite pursuant to paragraphs 2 and 3 are returned to Plaskolite within ten (10) days from the date on which DiPirro notifies Plaskolite of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Plaskolite that he is rescinding this Agreement pursuant to this Paragraph.

**8. Product Characterization.** Plaskolite acknowledges that each of the Products listed in Exhibit A contains methylene chloride and Plaintiff alleges that the customary use or application of the Products is likely to expose users to methylene chloride, a substance known to the State of California to cause cancer. In the event that Plaskolite obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products will have "no observable effect," as such standard is applicable and as each is defined under Health & Safety Code §25249.10(c) and Plaskolite seeks to eliminate the warnings, then Plaskolite shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Plaskolite Exposure Data, DiPirro shall provide Plaskolite 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 Plaskolite written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Plaskolite's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Plaskolite shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Plaskolite of his intent to challenge the Exposure Data, DiPirro and Plaskolite (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Plaskolite's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Plaskolite agree to submit such challenge to the superior 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 bringing a motion brought under this paragraph to the court for determination.

**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. 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.

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

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

Jennifer Henry, Esq.  
Law Offices of Jennifer Henry  
9000 Crow Canyon Road, Suite S, PMB 399  
Danville, CA 94506-1175  
(925) 830-2860

or

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

All correspondence to Plaskolite shall be mailed to:

Joseph C. Blasko, Esq.  
Vorys, Sater, Seymour and Pease LLP  
52 East Gay Street  
PO Box 1008  
Columbus, OH 43216  
(614) 464-6400

and

Matthew Gutman  
Plaskolite, Inc.  
1770 Joyce Ave.  
PO Box 1497  
Columbus, OH 43211  
(614) 297-7233

**13. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Plaskolite represents, however, that its counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

**14. Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, 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:**

DATE:

12/13/00

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

PLAINTIFF

**AGREED TO:**

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

\_\_\_\_\_  
Plaskolite, Inc.  
DEFENDANT

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:**

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

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

**AGREED TO:**

DATE: 12/14/2000

Richard J. Larkin,  
Plaskolite, Inc. VP-FINANCE  
DEFENDANT

# Exhibit A



## **EXHIBIT A**

Plaskolite Solvent Cement