

## **SETTLEMENT AND RELEASE AGREEMENT**

This Settlement and Release Agreement ("Agreement") is entered into between Michael DiPirro, a California citizen acting on behalf of the People of the State of California, and Qualitek International, Incorporated, an Illinois corporation, as of May 28, 1999 (the "Effective Date").

### **WHEREAS:**

**A.** Michael DiPirro ("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;

**B.** Qualitek International, Incorporated, (hereafter referred to as "Qualitek") manufactures and sells in the State of California certain products that contain, or whose customary use and application may produce fumes or gases which contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§25249.5 *et seq.*).

**C.** The products that contain, or whose customary use and application may produce fumes or gases which contain, one or more of the chemicals listed pursuant to Proposition 65 and which are covered by this Agreement are set forth in Exhibit A (the "Products"), which is attached hereto and incorporated herein by this reference. These Products include soldering paste, soldering wire, soldering bar, soldering spheres, delta tip tinner and flux;

**D.** Some of the Products have been manufactured and distributed by Qualitek for use in California since 1995;

**E.** By notice dated September 15, 1998, DiPirro first served Qualitek and all of the requisite public enforcement agencies a document entitled "60-Day Notice" which provided Qualitek and such public agencies with notice that Qualitek was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it manufactures and/or distributes in California expose users to certain Proposition 65-listed chemicals;

F. On December 17, 1998, DiPirro filed a complaint entitled *Michael DiPirro v. Qualitek International, Inc., et al.* (No. H204949-8) in the Alameda County Superior Court, naming Qualitek as defendant and alleging violations of Business & Professions Code §17200 *et seq.* and Health & Safety Code §25249 *et seq.* on behalf of individuals in California who may have been exposed to certain chemicals listed pursuant to Proposition 65 contained in certain Qualitek products, or whose customary use and application may have produced fumes or gases which contain such chemicals; and

G. Qualitek denies the material factual and legal allegations contained in the 60-day Notice and the Complaint filed by DiPirro for alleged violations of Proposition 65 and Business & Professions Code §§17200 *et seq.*, and maintains that all Products manufactured and/or distributed by Qualitek in California are in compliance with all laws. Nothing in this Agreement shall constitute or be construed as an admission by Qualitek of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Qualitek of any fact, finding, conclusion, issue of law or violation of law.

**NOW THEREFORE**, in consideration of the promises, covenants and agreements herein contained and for other consideration, the sufficiency and adequacy of which is hereby confirmed by the parties who intend to be legally bound hereby, it is agreed as follows:

1. **Product Labeling.** Beginning immediately, Qualitek shall initiate efforts to revise its current product or packaging labels for Covered Products consistent with this Agreement ("Revised Labels"). For purposes of this Agreement, "Covered Products" include all products listed on Exhibit A hereto, and any other substantially similar products which may be manufactured and/or distributed by Qualitek in California after the Effective Date which now or in the future contain, or whose customary use and application may produce fumes or gases that contain, Listed Chemicals. For purposes of this Agreement, "Listed Chemicals" means chemicals that are currently or may, in the future, be listed pursuant to Proposition 65. Qualitek shall use reasonable efforts to ensure that all Covered Products in its possession intended for distribution or sale in California are packaged or sold using Revised Labels as soon as commercially reasonable; however, Qualitek agrees that as of November 28, 1999 (the "Revised Label Compliance Date") Qualitek shall not ship to California for sale or distribution any Covered Products unless each such Covered Product is accompanied by a Revised Label on or within the Covered Product package or affixed to Covered Products as set forth in this Paragraph 1.

(a) Revised Labels required pursuant to this Agreement shall be as follows:

For solder paste, solder wire, solder spheres, delta tip tinner and other products which contain lead:

**“WARNING: This product contains lead, a chemical known to some states to cause cancer and birth defects or other reproductive harm.”**

For the solder wire, the Revised Labels shall appear on the spools and boxes.

For flux or similar consumable products that may produce fumes or gases that contain carbon monoxide:

**“WARNING: This product, when used for soldering and similar applications produces chemicals known to some states to cause birth defects or other reproductive harm.”**

For solder bars which contain lead:

**“WARNING: This product contains lead, a chemical known to some states to cause cancer and birth defects or other reproductive harm.”**

The solder bar warning set forth above shall appear on the outside and inside of each package containing one or more solder bars.

(b) Furthermore, by July 28, 1999, Qualitek also agrees to either: a) send a certified letter to each of its soldering specialist distributors that instructs such distributors to transfer the appropriate toxic warnings to their customers; or b) include a provision in Qualitek's distributor agreements in which the distributor covenants not to sell the solder bars without the required Proposition 65 warnings. Through November 28, 1999, Qualitek also agrees to include an insert in every package containing solder bars sold in California which informs Qualitek's customers of its duty to transfer the requisite Proposition 65 warnings to downstream users of the bars.

(c) All warning statements 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 reasonably understood by an ordinary individual under customary conditions of purchase or use.

(d) Furthermore, the parties agree and acknowledge that an unknown volume of Covered Products will be distributed and sold in California before the Revised Label Compliance Date, products which were introduced into the "stream of commerce" before the applicable Revised Label Compliance Date, and for which it would not be commercially feasible for Qualitek to comply with the terms of Paragraph 1 of this Agreement. Nevertheless, in an effort to reasonably ensure that persons who might use or be exposed to the "in commerce" products, Qualitek shall comply with the terms set forth in Paragraph 1(b) of this Agreement. It is agreed by the parties that Qualitek's compliance with the provisions of this paragraph shall be deemed to comply with Proposition 65 for purposes of those Covered Products introduced into the "stream of commerce" before the applicable Revised Label Compliance Date. Nothing contained in this paragraph or Agreement shall be construed to impose any affirmative obligation on the Covered Product sellers with respect to "in commerce" Products.

**2. MSDS Revision.** Beginning immediately, Qualitek shall initiate efforts to revise its Material Safety Data Sheets (MSDSs) pertaining to each of the Covered Products which are intended for distribution and sale into California. Qualitek shall ensure the MSDS for each of the Covered Products contain a warning in the "Health Hazard" or "Other Regulatory" sections of the MSDS that is consistent in wording with the on-label warning language required pursuant to Paragraph 1 of this Agreement ("Revised MSDS"). Qualitek shall distribute Revised MSDS in the normal course of business not later than November 28, 1999.

**3. Deemed Compliance.** Any New Products (as defined in this Paragraph 3) manufactured, distributed and/or sold by Qualitek after the Revised Label Compliance Date 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 Revised Labels as required in Paragraph 1 of this Agreement. For purposes of this Agreement, "New Products" shall include any Products that are substantially similar to those included in Exhibit A which contain, or whose customary use or application may produce fumes or gases that contain, a Listed Chemical and which were not manufactured, distributed and/or sold by Qualitek into California on or before the Effective Date.

**4. Civil Penalty.** Qualitek shall, pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$5,800 to DiPirro within twelve (12) calendar days of the Effective Date. 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. This payment shall be made payable to the "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 11. It is specifically understood and agreed that DiPirro shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this paragraph. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 11, the payment made pursuant to this paragraph shall be returned to Qualitek, with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**5. Reimbursement of Fees and Costs.** Within twelve (12) calendar days of the Effective Date of the Agreement, Qualitek shall pay to DiPirro the sum of \$9,000 for his investigation fees incurred prior to the filing of the 60-Day Notice, \$1,100 for investigation, expert and litigation costs, and \$14,000 for attorneys' and paraprofessional fees incurred in this matter. Such amounts (that total \$24,100) shall be made payable to the "Chanler Law Group" and held in escrow by DiPirro's counsel until the Court has approved this settlement and issued an Order as set forth in Paragraph 11. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 11, the amounts paid by Qualitek in accordance with this paragraph shall be returned to Qualitek, with interest thereon at a rate of six percent (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**6. DiPirro's Release of Qualitek.** In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Paragraphs 4 and 5, DiPirro, by this Agreement, on behalf of himself, his agents, and/or assignees, and the People of the State of California on whose behalf this action was brought, hereby waives all rights to institute any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, damages, losses, costs or expenses (including attorneys' fees and other costs) of any nature whatsoever, whether known or unknown, fixed or contingent, (collectively, "Claims") against Qualitek and its parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Qualitek Releasees"). This waiver and release shall specifically include Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to Qualitek's alleged failure to warn about exposures on or before the Effective Date to certain Listed Chemicals contained in, or which may be produced in the fumes or gases resulting from the customary use and application of, any of the Covered Products listed in Exhibit A. It is specifically

understood and agreed that Qualitek's compliance with the terms of this Agreement resolves all issues and liability, now and in the future, concerning the Qualitek Releasees' past compliance with the requirements of Proposition 65, Business and Professions Code §§17200 *et seq.*, or any other Claims arising from Qualitek's alleged failure to comply with Proposition 65 in connection with the Covered Products listed on Exhibit A occurring on or before the Effective Date.

7. **DiPirro's Release of "Downstream Parties."** DiPirro, on behalf of himself, his agents, and/or assignees and the People of the State of California on whose behalf this action was brought, further waives all rights to institute any form of legal action and releases all Claims against each distributor, wholesaler, retailer, dealer, owner, operator, lessor, lessee or user of the Covered Products, or any of their respective parent and affiliated companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them) and their respective officers, directors, attorneys, representatives, agents and employees (collectively, "Downstream Parties"). This waiver and release shall specifically include Claims arising under Proposition 65 or Business & Professions Code §§17200 *et seq.*, related to the Downstream Parties' alleged failure to warn about exposures on or before the Effective Date to Listed Chemicals contained in, or which may be produced in fumes or gases resulting from the customary use or application of, Covered Products listed in Exhibit A. It is specifically understood and agreed that this Agreement resolves all issues and liability concerning the Downstream Parties' past compliance with the requirements of Proposition 65, Business & Professions Code §§17200 *et seq.*, or any other Claims arising from Qualitek's or the Downstream Parties' alleged failure to comply with Proposition 65 in connection with the Covered Products on or before the Effective Date.

8. **Qualitek Release.** Qualitek, by this Agreement, waives all rights to institute any form of legal action against DiPirro, and his attorneys or representatives, for all actions taken or statements made on or before the Effective Date by DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Professions Code §§17200 *et seq.* against Qualitek.

9. **Product Characterization.** Qualitek acknowledges that each of the Covered Products listed in Exhibit A contains, or in the customary use or application of the Covered Products likely produces fumes or gases that contain one or more substances known to some states to cause cancer or birth defects or other reproductive harm. In the event that Qualitek obtains analytical, risk assessment or other data ("Exposure Data") that shows that an exposure to any or all Covered Products 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), Qualitek shall provide DiPirro with 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 thirty (30) days of receipt of Qualitek's Exposure Data, DiPirro shall provide Qualitek 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 Qualitek written notice of his intent to challenge the Exposure Data within thirty (30) days of receipt of Qualitek's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Qualitek shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Covered Product(s) to which the Exposure Data applies. If DiPirro timely notifies Qualitek of his intent to challenge the Exposure Data, DiPirro and Qualitek 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 DiPirro of such notice of challenge, DiPirro and Qualitek 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 DiPirro does not challenge Qualitek's notice or the Court determines that no warning is required for particular Covered Products, Qualitek shall no longer be required to provide the warnings described in this Agreement for those Covered Products.

**10. Qualitek's Covered Product Information.** Qualitek understands that the Covered Product sales (and other) information provided to counsel for DiPirro by Qualitek was a material factor upon which DiPirro has relied to determine a fair and reasonable settlement as set forth in this Agreement. To the best of Qualitek's knowledge, the information provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the information is materially inaccurate, all other parts of this Agreement notwithstanding, DiPirro shall have the right to rescind this Agreement and re-institute an enforcement action against Qualitek, provided that all sums paid by Qualitek pursuant to Paragraphs 3 and 4 are returned to Qualitek, with interest thereon at a rate of six percent (6%) per annum, within five (5) days from the date on which DiPirro notifies Qualitek 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 Qualitek that he is rescinding this Agreement pursuant to this paragraph, provided that, in no event shall any statute of limitation be tolled beyond four (4) years from the date this action was filed.

**11. Stipulated Judgment and Order.** The parties shall file a Stipulated Judgment to be approved pursuant to California Code of Civil Procedure Section 664.6 by the Alameda County Superior Court in accordance with the terms of this Agreement. It is expressly understood and agreed by the parties

hereto that the rights and obligations contained in this Agreement are expressly conditioned on the issuance by the Court of an Order approving the Stipulated Judgment. If the Court fails to issue such Order within sixty (60) days of the Effective Date, this Agreement shall be deemed null and void as of the sixty-first (61st) day after the Effective Date.

**12. 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 remaining shall not be adversely affected thereby.

**13. 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.

**14. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products specifically, Qualitek shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, those Covered Products are so affected.

**15. Notices.** All correspondence and notices required to be provided pursuant to this Agreement shall be in writing and shall be personally delivered or sent by first-class, registered, certified mail, overnight courier, and/or via facsimile transmission (with presentation of facsimile transmission confirmation) addressed as follows:

If to DiPirro:                    Chanler Law Group  
    Magnolia Lane  
    (Off 72 Huckleberry Hill)  
    New Canaan, Connecticut 06840-3801  
    (Fax) 203/801-5222

If to Qualitek:                    Qualitek International, Inc.  
    Attn: Emily Han  
    315 Fairbank Street  
    Addison, IL 60101  
    (Fax) 630/628-6543

with a copy to:                    John E. Dittoe, Esq.  
    Crosby, Heafey, Roach & May  
    1999 Harrison Street  
    P.O. Box 2084  
    Oakland, CA 94604-2084  
    (Fax) 510/273-8832



Either party, from time to time, may specify a change of address or facsimile number to which all notices and other communications shall be sent.

**16. No Admissions.** Nothing in this Agreement shall constitute or be construed as an admission by Qualitek of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Qualitek of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by Qualitek. Qualitek reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Qualitek under this Agreement.

**17. Entire Agreement; Modification.** This Agreement, together with the exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Agreement may be modified only upon the written agreement of the parties. To the extent any such modification is made to this Agreement that also requires modification of the Stipulated Judgment provided for herein, the parties shall cooperate in modifying the Stipulated Judgment submitted to the Court.

**18. 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.

**19. 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

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**AGREED TO:**

DATE: May \_\_, 1999

QUALITEK INTERNATIONAL, INC.,  
an Illinois corporation

By: \_\_\_\_\_  
Emily Han

Its: \_\_\_\_\_

**AGREED TO:**

DATE: 5/27/99

MICHAEL DIPIRRO

Michael Dipirro

**AGREED TO:**

DATE: May \_\_, 1999

QUALITEK INTERNATIONAL, INC.,  
an Illinois corporation

By: \_\_\_\_\_  
Emily Han

Its: \_\_\_\_\_

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AGREED TO:

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

MICHAEL DINGBO

\_\_\_\_\_

AGREED TO:

DATE: May 26 1999

QUALITEK INTERNATIONAL, INC.,  
an Hightek corporation

By: Emily Han  
Emily Han  
in: Chief Operating  
Officer.

## EXHIBIT A

### Solder Paste

- a. No-Clean Solder Paste
- b. Water-Soluble Solder Paste
- c. Solder Paste in Jars
- d. Solder Paste in Cartridges
- e. Solder Paste in Syringes
- f. Solder Paste in Flex Tubes

### Soldering Fluxes

- a. No-Clean Flux
- b. Water-Soluble Flux
- c. Lead-Tinning Flux
- d. Qualitek Rosin
- e. Paste Flux

### Wire Solder

- a. No-Clean
- b. Rosin Mildly Activated
- c. Super Activated Rosin
- d. Rosin Activated
- e. Water-Soluble
- f. No Core

### Solder Bar

### Miscellaneous Products

- a. Solder Spheres
- b. Delta Tip Tinner