

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Tech Spray, Inc., a Texas corporation ("Tech Spray"), as of April 12, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

### **WHEREAS:**

- A. DiPirro is an individual residing in 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. Tech Spray is a company that manufactures conformal coatings which are alleged to contain (or to have previously contained) toluene, a substance known to the State of California to cause birth defects or other reproductive harm. Tech Spray also manufactures solder products which contain (or produce fumes that contain) lead or lead compounds, and formaldehyde. Additionally, Tech Spray has manufactured certain products which contain methylene chloride, a chemical known to the State of California to cause cancer;
- C. A list of the products covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured, distributed or sold by Tech Spray for use in California since 1988; and
- D. On September 29, 1998, DiPirro first served Tech Spray and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided such public enforcers with notice that the companies were allegedly in violation of Health & Safety Code section 25249.6 for failing to warn purchasers that certain products it sells in California, when used in a reasonable and foreseeable manner, exposes users to Proposition 65-listed chemicals; and
- E. On March 12, 1999, DiPirro served Tech Spray and all of the requisite public enforcement agencies with a document entitled "Supplemental 60-Day Notice" which provided such public enforcers with notice that the company was allegedly in violation of Health & Safety Code section 25249.6 for failing to warn purchasers that certain products it sells in California when used in a reasonable and foreseeable manner, exposes users to Proposition 65-listed chemicals; and
- F. On March 19, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Tech Spray, Inc. (No. 302101) in the San Francisco Superior Court, naming Tech Spray as defendant and alleging violations of Business & Professions Code section 17200 and Health & Safety Code section 25249.6 on behalf of individuals in California who allegedly have been exposed without adequate warnings to Proposition 65 chemicals from the use of Tech Spray's products.

G. Tech Spray at all times has denied 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 Tech Spray 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 Tech Spray 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 Tech Spray under this Agreement.

**NOW THEREFORE, DiPIRRO AND TECH SPRAY AGREE, AS FOLLOWS:**

1. **Product Warnings.** Tech Spray shall begin to revise its health hazard warnings for its Product to provide the language set forth in the sections 1.1 and 1.2 below. Beginning on July 1, 1999, Tech Spray agrees that it will not knowingly ship to California (or cause to be shipped to California) any Product unless said Product complies with sections 1.1 and 1.2 below:

1.1 All Conformal and Protective Coating Products listed on Exhibit A which contain toluene shall bear the following warning statement on the Product or Product label:

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

or

**“WARNING: Use of this product will expose you to a chemical known to the State of California to cause 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.

1.2 All Solder Products listed on Exhibit A which contain (or produce fumes that contain) lead and formaldehyde shall bear the following warning statement on the Product or Product label:

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

or

**“WARNING: Use of this product will expose you to a chemical 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.

- 1.3 All Products that are discontinued or reformulated to remove Proposition 65 chemicals shall be exempt from carrying the Product warnings identified in section 1.1 and 1.2 above.

**2. Interim Warnings.** Within the next thirty days following the Effective Date of this agreement, Tech Spray agrees to alert each of its California customers of their duty to transfer the requisite toxic warnings to downstream users of the Products. Tech Spray agrees that, if requested by any California customer, it will send a sufficient number of warning labels or stickers that contain the language set forth in section 1.1 and 1.2 above, so that the customers can affix the warning to the Products already in the stream of commerce.

**3. Payment Pursuant To Health & Safety Code Section 25249.7(b).** Pursuant to Health & Safety Code section 25249.7(b), Tech Spray shall pay a civil penalty of \$16,000 in two installments. The first payment of \$4,000 shall be paid within twenty-six (26) calendar days after the Effective Date of the Agreement. The second payment of \$12,000 shall be made on May 1, 2000. Such second payment shall be waived if Tech Spray certifies to DiPirro that at least six of the products listed on Exhibit A have been reformulated to eliminate the presence of toluene or have not been sold during the next twelve months in California. Such certification must be received by DiPirro no later than April 15, 2000 for the waiver to be given. All penalty monies shall be made payable to "Kapsack & Bair, LLP In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code section 25192, with 75% of these funds remitted to the State of California Department of Toxic Substances.

**4. Reimbursement Of Fees And Costs.** Within twenty-six (26) calendar days of the Effective Date of the Agreement, Tech Spray shall reimburse DiPirro for his investigation, expert and attorneys' fees and costs incurred as a result of investigating, bringing this matter to Tech Spray's attention, litigating and negotiating a settlement in the public interest. Tech Spray shall pay: \$13,500 for pre-notice investigation fees; \$1,699 for expert, investigation and litigation costs; and \$9,800 in attorneys' and post-notice investigation fees. Payment should be made payable to "Kapsack & Bair, LLP".

**5. DiPirro's Release.** 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 and participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Tech Spray and its distributors, retailers, customers, directors, officers, employees, affiliates, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et. seq. based on Tech Spray's failure to warn about

exposure to Proposition 65-listed chemicals from the normal and foreseeable use of the Products.

**6. Tech Spray's Release.** Tech Spray, by this Agreement, waive all rights to institute any form of legal action against DiPirro and his attorneys or representatives, for all actions or statements made by DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code section 17200 against Tech Spray.

**7. Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Tech Spray shall execute and file a stipulated judgment to be approved pursuant to CCP Sec. 664.6 by the San Francisco Superior Court in accordance with the terms of this Agreement.

**8. Tech Spray Sales Data.** Tech Spray understands that the sales data provided to counsel for DiPirro by Tech Spray was a material factor upon which DiPirro has relied to determine the amount of penalties in this Agreement. To the best of Tech Spray's knowledge, the sales data provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data 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 Tech Spray, provided that all sums paid by Tech Spray pursuant to Paragraphs 3 and 4 are returned to Tech Spray within ten (10) days from the date on which DiPirro notifies Tech Spray 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 Tech Spray 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.

**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:

Hudson T. Bair, Esq.  
Kapsack & Bair, LLP  
353 Sacramento Street, Suite, 1800  
San Francisco, CA 94111

All correspondence to Tech Spray shall be mailed to:

Larry E Lulofs, Esq.  
Morton, Lulofs & Wood, LLP  
180 Grand Avenue, Ste. 1500  
Oakland, CA 94612-3741

**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.

**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: 4/13/99

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

  
Michael DiPirro

\_\_\_\_\_  
Tech Spray, Inc.

All correspondence to Tech Spray shall be mailed to:

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Morton, Lulofs & Wood, LLP  
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AGREED TO:

AGREED TO:

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

DATE: 04/28/99 \_\_\_\_\_

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

  
Tech Spray, Inc.



## **EXHIBIT A**

### **Conformal and Protective Coating Products**

**Fine-L-Kote AR (Acrylic Conformal Coating) #2103**

**Fine-L-Kote SR (Silicone Conformal Coating) #2102**

**Fine-L-Kote AR (Acrylic Conformal Coating) #2105**

**Instant Acrylon #1612-165**

**Fine-L-Kote UR (Urethane Conformal Coating)**

**Flux Strippers S, #1614-165, #1644-245**

**Fine-L-Kote Remover #1714**

**Fine-L-Kote HT (High Temperature Silicone Coating) #2106**

### **Solder Products**

**Solder Wire**