

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Wen Products, Inc. ("Wen"), an Illinois corporation, as of February 6, 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 (or produced by) consumer and industrial products:

B. Wen is a company that manufactures, distributes and/or sells soldering products in the State of California that contain, or whose customary use and application are likely to produce fumes or gases which contain, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead and formaldehyde (the "Listed Chemicals");

C. The products that contain, or whose customary use and application are likely to produce 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 Wen for use in California since at least November 24, 1995; and

D. On November 24, 1999, Michael DiPirro first served Wen and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Wen and such public enforcers with notice that Wen 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 February 10, 2000, Michael DiPirro filed a complaint entitled Michael DiPirro v. Wen Products, Inc. in the San Francisco County Superior Court, naming Wen 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 Wen products, or whose customary use and application are likely to have produced fumes or gases which contain such chemicals.

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

NOW THEREFORE, MICHAEL DIPIRRO AND WEN AGREE AS FOLLOWS:

1. Product Warnings. Beginning immediately, Wen shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Wen 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. Wen agrees that as of March 15, 2000, it shall not distribute or sell (or cause to be distributed or sold on its behalf) 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:

1.1 For soldering kits which contain (or 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: This product contains, and when used for soldering and similar applications produces, 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.

1.2 Warning Labels for Products "In Commerce". The parties agree and acknowledge that an unknown volume of Products were introduced into the "stream of commerce" before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the Listed chemicals in or from these "in commerce" Products, Wen shall, within thirty (30) days from the Effective Date, provide Interim Warning Materials to its customers whom Wen knows or has reason to believe currently distribute or sell Products in California. Such "Interim Warning Materials" shall include the following: (a) a reasonably sufficient number of warning stickers (considering the potential volume of Products that the recipient distributes or sells in California); (b) a letter of instruction for the application of such warning stickers; and (c) a Notice and Acknowledgement form to be signed by the customer and returned to Wen. If, however, Wen can demonstrate that it has already begun shipping, within the thirty (30) day period referenced above in this paragraph, the soldering kit into California with the required warning set forth in Paragraph 1.1 above, then it shall not have to comply with this paragraph given the relatively small volume of California

sales of the Products.

2. Payment Pursuant To Health & Safety Code 25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Wen shall pay a civil penalty of \$12,000 in two installments. The first payment of \$2,000 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The second payment of \$10,000 shall be made on or before February 25, 2001. However, the second payment shall be waived if Wen reformulates its soldering kits so as to replace the leaded solder with lead-free solder or otherwise eliminates leaded solder for sale in California by January 31, 2001. In order to obtain the waiver, Wen must provide written certification of the solder reformulation to DiPirro by February 10, 2001. The penalty payments are 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. Wen 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.

It was agreed to by the parties that Wen shall reimburse DiPirro and his counsel for the fees and costs incurred as a result of investigating, litigating and negotiating this settlement in the public interest. Wen agrees to pay \$7,775 for fees and costs in three installments, as follows: the first payment of \$2,775 is due within five (5) days of the Effective Date of the Agreement; the second and third payments of \$2,500 each are due on March 15, 2000 and April 15, 2000, respectively. Payment should be made payable to the "Chanler Law Group".

4. Michael DiPirro's Release Of Wen. 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 Wen 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 Wen's failure to warn about exposure to the lead and formaldehyde contained in (or produced by) any of the Products.

5. Wen's Release Of Michael DiPirro. Wen, 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 Wen.

6. Stipulated Judgment. Concurrently with the execution of this Agreement, Michael DiPirro and Wen shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco 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. Wen Sales Data. Wen understands that the sales data provided to counsel for DiPirro by Wen 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 Wen 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 Wen 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 Wen, provided that all sums paid by Wen pursuant to paragraphs 2 and 3 are returned to Wen within ten (10) days from the date on which DiPirro notifies Wen 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 Wen that he is rescinding this Agreement pursuant to this Paragraph.

8. Product Characterization. Wen acknowledges that each of the Products listed in Exhibit A contains, or in the customary use or application of the Products is likely to expose, users to lead and formaldehyde, a substance known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Wen obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all 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), Wen 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 Wen Exposure Data, DiPirro shall provide Wen 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 Wen written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Wen notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Wen 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 Wen of his intent to challenge the Exposure Data, DiPirro and Wen shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Wen notice to attempt to reach a settlement of this issue. If a settlement is

not reached, DiPirro and Wen 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:

Hudson Bair, Esq.
Kapsack & Bair, LLP
1440 Broadway, Suite 610
Oakland, CA 94612
(510) 645-0027

or

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

All correspondence to Wen shall be mailed to:

Bonnie Proctor, CFO
Wen Products, Inc.
1088 Thorndale Avenue
Bensenville, IL 60106-1142
(630) 787-0900

13. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

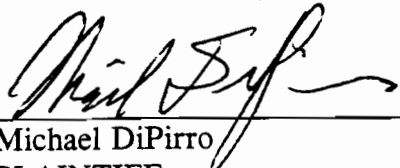
As of the Effective Date, the California Attorney General's reporting forms are not available. DiPirro represents, however, that he will send a copy of this Agreement to the California Attorney General's Office before or concurrently with the presentation of the Stipulated Judgement to the San Francisco 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: 2/21/00



Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: _____

Wen Products, Inc.
DEFENDANT

AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: Feb 21, 2000

James DiPirro, CEO
Wen Products, Inc.
DEFENDANT

Exhibit A

EXHIBIT A

1. Soldering Kit
2. Soldering Iron