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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA
13

14
15 MICHAEL DIPIRRO, an individual) No. H221265-2
16 Plaintiff,) CONSENT JUDGMENT
17 v.)
18 BALDOR ELECTRIC COMPANY; and)
19 DOES 1 through 1000,)
20 Defendants.)
_____)

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23 This Consent Judgment ("Agreement" or "Consent Judgment")
24 is entered into by and between Michael DiPirro, a California
25 citizen, and Baldor Electric Company, a Missouri corporation
26 ("Baldor"), as of the date that this Consent Judgment is fully
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1 executed (the "Effective Date"). The parties agree to the
2 following terms and conditions:

3
4 **WHEREAS:**

5 A. Michael DiPirro states that he is an individual
6 residing in San Francisco, California, who seeks to promote
7 awareness of exposures to toxic chemicals and improve human
8 health by reducing or eliminating hazardous substances
9 contained in or produced by consumer and industrial products;

10 B. DiPirro alleges that Baldor is a company that
11 currently manufactures certain power grinders that are sold in
12 the State of California whose customary use and application is
13 likely to produce fumes, gases or dust which contain chemicals
14 listed pursuant to Proposition 65 (California Health & Safety
15 Code §25249.5 et seq.) including lead (or lead compounds),
16 crystalline silica, arsenic, and chromium (hexavalent
17 compounds), (the "Listed Chemicals");

18 C. The products that are covered by this
19 Agreement, and which DiPirro alleges are likely to produce
20 fumes, gases, or dust that contain one or more of the Listed
21 Chemicals during customary use, are set forth in Exhibit A
22 (the "Products"). The Products have been manufactured by
23 Baldor and used in California since at least July 3, 1998; and

24 D. On April 23, 2001, Michael DiPirro first served
25 Baldor and other public enforcement agencies with a document
26 entitled "60-Day Notice of Violation" which provided Baldor
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1 and such public enforcers with notice that Baldor was
2 allegedly in violation of Health & Safety Code §25249.6 for
3 allegedly failing to warn purchasers that certain products
4 sold or otherwise offered for use in California expose users
5 to the Listed Chemicals; and

6 E. On July 3, 2001, Michael DiPirro filed a
7 complaint entitled Michael DiPirro v. Baldor Electric Company,
8 et al. in the Alameda County Superior Court, naming Baldor as
9 a defendant and alleging violations of Business & Professions
10 Code §17200 and Health & Safety Code §25249.6 in the interest
11 of the general public, who allegedly have been exposed to the
12 "Listed Chemicals" produced by certain Baldor products.

13 F. Nothing in this Agreement shall be construed as
14 an admission by Baldor of any fact, finding, issue of law, or
15 violation of law, nor shall compliance with this Agreement
16 constitute or be construed as an admission by Baldor of any
17 fact, finding, conclusion, issue of law, or violation of law.
18 However, this paragraph shall not diminish or otherwise affect
19 the obligations, responsibilities, and duties of Baldor under
20 this Agreement.

21
22 **NOW THEREFORE, MICHAEL DIPIRRO AND BALDOR AGREE AS FOLLOWS:**

23 1. **Product Warnings.** Baldor shall begin to
24 initiate revisions to its health hazard warnings for its
25 Products to provide the language set forth in the section 1.1
26 below. Beginning six months after the Effective Date, Baldor
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1 | agrees that it will not knowingly manufacture and ship or
2 | cause to be shipped into California any Products identified in
3 | Exhibit A unless such Products comply with section 1.1 below:

4 | **1.1** For all power tools that are listed in
5 | Exhibit A and are likely to expose users to the Listed
6 | Chemicals, such Products shall bear the following warning
7 | statement:

8 | **"WARNING: Some dust created by power sanding,
9 | sawing, grinding, drilling, and other
10 | activities contains chemicals known
11 | to the State of California to cause
12 | cancer, birth defects or other
13 | reproductive harm.";**

12 | The warning statement may be placed on the power
13 | tool, on packaging material in which the power tool is sold,
14 | an insert accompanying the product, or in an owner's manual
15 | accompanying the product pursuant to the requirements set
16 | forth in Exhibit B. If the warning is placed on the power
17 | tool or on packaging material, the warning shall be printed in
18 | a font no smaller than the font used for other safety
19 | warnings, if it accompanies other safety warnings, or
20 | prominently placed with such conspicuousness, as compared with
21 | other words, statements, designs or devices in the location
22 | where the warning is placed as to render it likely to be read
23 | and understood by an ordinary individual under customary
24 | conditions of purchase or use.

25 | When applied to power tools, this warning is deemed
26 | to cover not only the use of the power tools themselves, but

1 also all accessories that are intended to be used in
2 association with the power tools, whether or not sold with the
3 power tools.

4 This warning requirement applies only to power tools
5 sold directly to individual non-business consumers. It does
6 not apply to any products that are sold to manufacturers to be
7 incorporated into other products, or to any power tools sold
8 for use in OSHA-covered workplaces.

9 **2. Payment Pursuant To Health & Safety Code**

10 **§25249.7(b)**. Pursuant to Health & Safety Code §25249.7(b),
11 Baldor shall pay a civil penalty of \$1,250 (twelve hundred and
12 fifty dollars). The payment of \$1,250 shall be paid within
13 fourteen (14) calendar days after the Effective Date of this
14 Agreement and shall be held in trust by DiPirro's counsel
15 until the Alameda County Superior Court approves and enters
16 the Consent Judgment. The penalty payment is to be made
17 payable to "Chanler Law Group In Trust For Michael DiPirro".
18 If the Consent Judgment is not approved by the Court, DiPirro
19 will return all funds, with interest thereon at a rate of six
20 percent (6%) per annum, within ten (10) calendar days of
21 notice of the Court's decision. Penalty monies shall be
22 apportioned by DiPirro in accordance with Health & Safety Code
23 §25192, with 75% of these funds remitted to the State of
24 California's Department of Toxic Substances Control.

25 Baldor understands that the payment schedule as
26 stated in this Consent Judgment is a material factor upon
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1 which DiPirro has relied in entering into this Consent
2 Judgment. Baldor agrees that all payments will be made in a
3 timely manner in accordance with the payment due dates.
4 Baldor will be given a five (5) calendar day grace period from
5 the date payment is due. Baldor agrees to pay Michael DiPirro
6 a \$250 per calendar day fee for each day the payment is not
7 received after the grace period ends. For purposes of this
8 paragraph, each new day (requiring an additional \$250 payment)
9 will begin at 5 p.m. (PST).

10 **3. Reimbursement Of Fees And Costs.** The parties
11 acknowledge that DiPirro offered to resolve the dispute
12 without reaching terms on the amount of fees and costs to be
13 reimbursed, thereby leaving this open issue to be resolved
14 after the material terms of the agreement had been reached,
15 and the matter settled. Baldor then expressed a desire to
16 resolve the fee and cost issue concurrently with other
17 settlement terms, so the parties tried to (and did) reach an
18 accord on the compensation due to DiPirro and his counsel
19 under the private attorney general doctrine codified at C.C.P.
20 §1021.5.

21 Baldor shall reimburse DiPirro and his counsel for
22 his fees and costs incurred as a result of investigating,
23 bringing the matter to Baldor's attention, litigating and
24 negotiating a public settlement, in the following amounts.
25 Baldor shall pay the total sum of \$20,250 (twenty thousand two
26 hundred and fifty dollars), except as provided for in
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1 paragraph 3.1 below, for investigation fees, attorneys' fees
2 and litigation costs. Baldor agrees to pay this sum, except
3 as provided for in paragraph 3.1 below, within fourteen (14)
4 calendar days of the Effective Date of the Agreement. Such
5 sum shall be held in trust by DiPirro's counsel until the
6 Alameda County Superior Court approves and enters the Consent
7 Judgment. If the Consent Judgment is not approved by the
8 Court, DiPirro will return all funds, with interest thereon at
9 a rate of six percent (6%) per annum, within ten (10) calendar
10 days of notice of the Court's decision. Payment should be
11 made payable to the "Chanler Law Group".

12 Baldor understands that the payment schedule as
13 stated in this Consent Judgment is a material factor upon
14 which DiPirro and his counsel have relied in entering into
15 this Consent Judgment. Baldor agrees that all payments will
16 be made in a timely manner in accordance with the payment due
17 dates. Baldor will be given a five (5) calendar day grace
18 period from the date payment is due. Baldor agrees to pay
19 Michael DiPirro and his counsel a \$250 per calendar day fee
20 for each day the payment is not received after the grace
21 period ends. For purposes of this paragraph, each new day
22 (requiring an additional \$250 payment) will begin at 5 p.m.
23 (PST).

24 **3.1 Additional Contingent Fees and Costs.** In
25 the event that the California Attorney General's office,
26 pursuant to 11 CCR 3000, et seq., serves objections to this
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1 Consent Judgment on either of the parties, such that it
2 requires plaintiff to incur additional legal fees or costs
3 relating to this Consent Judgment, Baldor shall reimburse
4 DiPirro for any fees and costs incurred by DiPirro and his
5 counsel in excess of \$1,500 from the date of receipt of the
6 Attorney General's objections. Such additional legal fees or
7 costs relating to this Consent Judgment include, but are not
8 limited to: further editing and finalizing of the Consent
9 Judgment; corresponding with opposing counsel; presenting of
10 the Consent Judgment (or any modifications thereof) to the
11 Attorney General for further comment; and any briefing and/or
12 appearance before the Court related to this Consent Judgment.

13 Plaintiff agrees to document all fees and costs
14 incurred from the date of receipt of the Attorney General's
15 objections through the date of court approval of the Consent
16 Judgment. Prior to receiving such documentation, Baldor
17 agrees to enter into a letter agreement in which the parties
18 agree that, by transmitting such information, no privilege
19 will be waived by DiPirro or his counsel.

20 Such additional reimbursement of legal fees and
21 costs shall be due within fourteen (14) calendar days after
22 receipt of both notice of Court approval of the Consent
23 Judgment and final billing statement from plaintiff. Baldor
24 has the right to object to such reimbursement and may submit
25 the resolution of this issue to the American Arbitration
26 Association (AAA) in Northern California to determine the

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1 reasonably of the additional fees and costs sought,
2 provided that such notice of objection or decision to
3 arbitrate is received by plaintiff by the end of the ten (10)
4 calendar days. If an arbitration notice is not filed with AAA
5 in a timely manner, DiPirro may file a motion with the Court
6 for fees and costs pursuant to this Consent Judgment
7 associated with any additional fees and costs incurred as set
8 forth in this paragraph. Provided, however, that in no case
9 shall the total payment by Baldor under this section 3.1
10 exceed \$3,000 over the initial \$1,500.

11 **4. Michael DiPirro's Release Of Baldor.** Michael
12 DiPirro, by this Agreement, on behalf of himself, his agents,
13 representatives, attorneys, assigns, and in the public
14 interest, waives all rights to institute or participate in,
15 directly or indirectly, any form of legal action, and releases
16 all claims, liabilities, obligations, losses, costs, expenses,
17 fines, penalties, fees, and damages, restitution, injunction,
18 and any other form of relief, whether legal or equitable,
19 against Baldor, its suppliers, distributors, resellers,
20 customers, purchasers, wholesalers, and retailers, and all
21 their directors, officers, employees, successorsagents,
22 parents, subsidiaries, successors, predecessors, and assigns,
23 whether under Proposition 65 or the Business & Profession Code
24 §17200 et seq. based on their alleged failure to warn about
25 exposure to the Listed Chemicals This Agreement is a full,
26 final, and binding resolution between DiPirro, on behalf of

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1 himself and in the interest of the general public, and Baldor,
2 of any violation of Proposition 65, Business and Professions
3 Code section 17200 et. seq., or any other statutory or common
4 law claim that could have been asserted in the complaint for
5 failure to provide clear and reasonable warnings of exposure
6 to the Listed Chemicals associated with the Products, or any
7 other claim based upon facts alleged in the Complaint, whether
8 based on actions committed by Baldor or by any entity to whom
9 it distributes or sells Products. Compliance with this
10 Agreement resolves any issue now, in the past, or in the
11 future related to whether any sale or use of the Products
12 complies with Proposition 65 or Business & Professions Code
13 section 17200.

14 In addition, DiPirro, on behalf of himself, his
15 attorneys, and his representatives, waives all rights to
16 institute any form of legal action against Baldor and its
17 attorneys or representatives, for all actions or statements
18 made by Baldor, and its attorneys or representatives, in the
19 course of responding to alleged violations of Proposition 65
20 or Business & Profession Code §17200 by Baldor. Provided,
21 however, that DiPirro shall remain free to institute any form
22 of legal action against Baldor to enforce the provisions of
23 this Consent Judgment.

24 On entry of this Consent Judgment, DiPirro will dismiss
25 the case filed against Bearing Engineering, Alameda County
26 Superior Court No. H221264-3, alleging violations related to
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1 the sale of Baldor grinders.

2 **5. Baldor's Release Of Michael DiPirro.** Baldor,
3 by this Agreement, waives all rights to institute any form of
4 legal action against Michael DiPirro and his attorneys or
5 representatives, for all actions or statements made by Michael
6 DiPirro, and his attorneys or representatives, in the course
7 of seeking enforcement of Proposition 65 or Business &
8 Profession Code §17200 against Baldor in this litigation.
9 Provided, however, that Baldor shall remain free to institute
10 any form of legal action against DiPirro to enforce the
11 provisions of this Consent Judgment.

12 **6. Court Approval.** If, for any reason, this
13 Consent Judgment is not approved by the Court, this Agreement
14 shall be deemed null and void.

15 **7. Baldor Sales Data.** Baldor understands that the
16 sales data provided to counsel for DiPirro by Baldor was a
17 material factor upon which DiPirro has relied to determine the
18 amount of payments made pursuant to Health & Safety Code
19 §25249.7(b) in this Agreement. To the best of Baldor's
20 knowledge, the sales data provided is true and accurate. In
21 the event that DiPirro discovers facts which demonstrate to a
22 reasonable degree of certainty that the sales data is
23 materially inaccurate, the parties shall meet in a good faith
24 attempt to resolve the matter within ten (10) days of Baldor's
25 receipt of notice from DiPirro of his intent to challenge the
26 accuracy of the sales data. If this good faith attempt fails

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1 to resolve DiPirro's concerns, DiPirro shall have the right to
2 rescind the Agreement and re-institute an enforcement action
3 against Baldor, provided that all sums paid by Baldor pursuant
4 to paragraphs 2 and 3 are returned to Baldor within ten (10)
5 days from the date on which DiPirro notifies Baldor of his
6 intent to rescind this Agreement. In such case, all
7 applicable statutes of limitation shall be deemed tolled for
8 the period between the date DiPirro filed the instant action
9 and the date DiPirro notifies Baldor that he is rescinding
10 this Agreement pursuant to this Paragraph.

11 DiPirro and his counsel will keep the Baldor sales data
12 they have received confidential, and strictly comply with the
13 confidentiality agreement confirmed by the letter from
14 Lawrence Bazel dated September 10, 2001. These
15 confidentiality provisions shall survive any termination of
16 this Agreement.

17 **8. Product Characterization.** Baldor acknowledges
18 that DiPirro alleges that each of the Products, through their
19 customary use or application, are likely to produce fumes,
20 gases or dust that contain lead (or lead compounds),
21 crystalline silica, arsenic and/or chromium (hexavalent
22 compounds), substances known to the State of California to
23 cause cancer and/or birth defects (or other reproductive
24 harm). In the event that Baldor obtains analytical, risk
25 assessment or other data ("Exposure Data") that shows an
26 exposure to any or all of the Listed Chemicals poses "no
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1 significant risk" or will have "no observable effect," as each
2 such standard is applicable and as each is defined under
3 Health & Safety Code §25249.10(c) and Baldor seeks to
4 eliminate the warnings, then Baldor shall provide DiPirro with
5 ninety (90) days prior written notice of its intent to limit
6 or eliminate the warning provisions under this Agreement based
7 on the Exposure Data and shall provide DiPirro with all such
8 supporting Exposure Data. Within ninety (90) days of receipt
9 of Baldor Exposure Data, DiPirro shall provide Baldor with
10 written notice of his intent to challenge the Exposure Data
11 (in the event that he chooses to make such a challenge). If
12 DiPirro fails to provide Baldor written notice of his intent
13 to challenge the Exposure Data within ninety (90) days of
14 receipt of Baldor's notice and the Exposure Data, DiPirro
15 shall waive all rights to challenge the Exposure Data, and
16 Baldor shall be entitled to limit or eliminate the warning
17 provisions required under this Agreement with respect to those
18 Product(s) to which the Exposure Data applies. If DiPirro
19 timely notifies Baldor of his intent to challenge the Exposure
20 Data, DiPirro and Baldor (a) may stop its efforts to eliminate
21 the warnings upon notice to DiPirro with no further liability
22 or obligations or (b) shall negotiate in good faith for a
23 period not to exceed thirty (30) days following receipt of
24 Baldor's notice to attempt to reach a settlement of this
25 issue. If a settlement is not reached, DiPirro and Baldor
26 agree to submit such challenge to the superior court for

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1 determination, pursuant to the court's continuing jurisdiction
2 of this matter under C.C.P. §664.6 and this agreement. The
3 prevailing party shall be entitled to reasonable attorneys'
4 fees and costs associated with bringing or defending a motion
5 brought under this paragraph to the court for determination.
6 Provided, however, that Baldor shall be entitled to limit or
7 eliminate the warnings required by this Agreement if as a
8 result of any changes in the statute, case law, or
9 regulations, the warning provisions imposed by this Agreement
10 are no longer required by Proposition 65, with DiPirro's
11 approval, which shall not be unreasonably withheld.

12 **9. Severability.** In the event that any of the
13 provisions of this Agreement are held by a court to be
14 unenforceable, the validity of the enforceable provisions
15 shall not be adversely affected.

16 **10. Attorney's Fees.** In the event that a dispute
17 arises with respect to any provision(s) of this Agreement
18 (including, but not limited to, disputes arising from the late
19 payments provisions in paragraphs 2 and 3), the prevailing
20 party shall be entitled to recover costs and reasonable
21 attorneys' fees, including any action brought pursuant to
22 paragraph 3.1 herein.

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

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

1 Jennifer Henry or David Bush
2 Bush & Henry
3 4400 Keller Ave., Suite 200
4 Oakland, CA 94605
5 (510) 577-0747

6 All correspondence to Baldor shall be mailed to:

7 Lawrence S. Bazel, Esq.
8 Stoel Rives LLP
9 111 Sutter Street, Suite 700
10 San Francisco, CA 94104
11 (415) 617-8900

12 **13. Compliance With Reporting Requirements.** The
13 parties acknowledge that the reporting provisions of Health &
14 Safety Code § 25249.7(f) apply to this Consent Judgment.
15 Counsel for DiPirro shall comply with that section by
16 submitting the required reporting form to, and serving a copy
17 of this Consent Judgment on, the California Attorney General's
18 Office within two business days after the parties execute this
19 Consent Judgment. Following the expiration of the Attorney
20 General's thirty-day review period, counsel for DiPirro shall
21 submit the Consent Judgment to the Court in accordance with
22 the requirements of Health & Safety Code § 25249.7(f) and its
23 implementing regulations, thereby allowing the Attorney
24 General to serve any comments to this Consent Judgment prior
25 to the end of the thirty (30) day period.

26 **14. Counterparts and Facsimile.** This Agreement may
27 be executed in counterparts and facsimile, each of which shall
28 be deemed an original, and all of which, when taken together,
shall constitute one and the same document.

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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:

AGREED TO:

DATE: 12/17/01

DATE: _____


Michael DiPirro
PLAINTIFF

Baldor Electric Company
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Lawrence S. Bazel
Attorneys for Defendant
BALDOR ELECTRIC COMPANY

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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:

AGREED TO:

DATE: _____

DATE: _____

Michael DiPirro
PLAINTIFF

Baldor Electric Company
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Lawrence S. Bazel
Attorneys for Defendant
BALDOR ELECTRIC COMPANY

CONSENT JUDGMENT

1 to execute this Agreement on behalf of their respective
 2 parties and have read, understood and agree to all of the
 3 terms and conditions of this Agreement.

4 **AGREED TO:**

AGREED TO:

5 **DATE:** _____

DATE: Dec. 17, 2001

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 7
 8 Michael DiPirro
 9 **PLAINTIFF**

Ron Tucker
 Baldor Electric Company
 DEFENDANT

12 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

13 **DATE:** _____

DATE: 17 Dec 2001

14
 15
 16 David Bush
 17 **Attorneys for Plaintiff**
 18 **MICHAEL DIPIRRO**

L Bazel
 Lawrence S. Bazel
 Attorneys for Defendant
 BALDOR ELECTRIC COMPANY

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EXHIBIT B

1. Warnings in manuals. A Defendant required to provide a warning for power grinders or drill products under subparagraph 1 may provide that warning in the owner's manual for that Product if all of the following conditions are met:

a. the warning shall be located in one of the following places in the owner's manual: the outside of the front cover, the inside of the front cover, the first page other than the cover, or the outside of the back cover. The warning shall have the exact content as the warning under subparagraph 1, except that, at the option of the Defendant, the bracketed language may be omitted. The warning shall be printed in a font no smaller than the font used for other safety warnings in the manual. The format shown in subparagraph 1 is illustrative only, provided that the warning meets the other requirements of this section. Alternatively, the warning may be included in a safety warning section consistent with specifications UL 745-1 or UL 45, issued by Underwriters Laboratories Inc, as amended. The warning may either be printed in the manual or contained in a durable label or sticker affixed to the manual. If the graphic is used, and the manual is printed in a single color of ink on paper, then the warning need not contain the yellow color.

b. the Product contains a durable label or sticker directing the operator's attention to the owner's manual;

1 c. the owner's manual is intended by the Defendant
2 to be provided with the original packaging of the Product to
3 the initial consumer/purchaser;

4 d. at least one other safety warning appears in
5 the owner's manual; and

6 e. all or a substantial portion of operation
7 instructions, if any, are contained in the owner's manual.

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