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Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,)	No. 01-035169
)	
Plaintiff,)	CONSENT JUDGMENT
)	
v.)	
)	
DAS DISTRIBUTORS, INC.; and)	
DOES 1 through 1000,)	
)	
Defendants.)	
_____)	

This Consent Judgment is entered into by and between Plaintiff Michael DiPirro and Defendant DAS Distributors, Inc. (hereafter referred to as "DAS") as of March 5, 2003 (the "Effective Date").. The parties agree to the following:

1. INTRODUCTION

1.1 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.

1.2 Since December 30, 1998, DAS has manufactured, distributed and/or sold in the State of California certain power tools whose customary use and application are likely

1 to produce fumes, gases or dust which may contain lead (or lead compounds), crystalline
2 silica, arsenic and/or chromium (hexavalent compounds) (hereafter all such products,
3 which are identified more specifically in Exhibit A hereto, shall be collectively referred to
4 as the "Products"). Lead (or lead compounds), crystalline silica, arsenic and/or chromium
5 (hexavalent compounds) are chemicals, listed pursuant to the Safe Drinking Water and
6 Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*, (also
7 known as Proposition 65), to cause cancer, birth defects or other reproductive harm.
8 (hereafter, all such chemicals shall be collectively referred to as the "Listed Chemicals").
9

10 1.3 On October 5, 2001, Michael DiPirro first served DAS and other public
11 enforcement agencies with a document entitled "60-Day Notice of Violation" which
12 provided DAS and such public enforcers with notice that DAS was allegedly in violation of
13 Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells
14 in California expose users to one or more of the Listed Chemicals.

15 1.4 On December 20, 2001, Michael DiPirro filed a complaint entitled Michael
16 DiPirro v. DAS Distributors, Inc., et al. in the Alameda County Superior Court, naming
17 DAS as a defendant and alleging violations of Business & Professions Code §17200 and
18 Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have
19 been exposed to one or more of the Listed Chemicals produced by certain DAS products.
20

21 1.5 DAS denies the material factual and legal allegations contained in Michael
22 DiPirro's above mentioned 60-Day Notice of Violation and Complaint and maintains that
23 all products manufactured, distributed or sold by DAS in California including, but not
24 limited to, the Products, have been and are in compliance with all laws.

25 1.6 Nothing in this Consent Judgment shall be construed as an admission by
26 DAS of any fact, finding, issue of law or violation of law, nor shall compliance with this
27 Consent Judgment constitute or be construed as an admission by DAS of any fact, finding,
28

conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of DAS under this Agreement.

2. PRODUCT WARNINGS

2.0 DAS shall not have any Proposition 65 warning obligations for the Products that are: (1) distributed or shipped for sale outside the State of California; or (2) manufactured outside of the State of California, within the meaning of the June 6, 1997 U.S. Department of Labor, Occupational Safety and Health Administration, "Approval California State Standard on Hazard Communication Incorporating Proposition 65", 62 Federal Register 31159-31181 (i.e. occupational exposures) and not sold to consumers. DAS shall also have no Proposition 65 warning obligations for those products (accessories, building materials and hand tools) that Wahl Clipper manufactures, distributes or sells in California, if any, and for which the Consent Judgment in People v. Ace Hardware, et. al., San Francisco Superior Court No. 995893 (a copy of the face page of this case is attached as Exhibit B) has determined that no Proposition 65 warning is required.

2.1 DAS shall not, after the Effective Date, knowingly distribute or sell in the state of California any Products unless such Products comply with the warning requirements set forth in Sections 2.2, below.

2.2 All Products that are likely to expose users to lead (or lead compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds) shall bear the following warning:

"WARNING: Some dust created by power sanding, sawing, grinding, drilling, and other construction activities contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm.";

The warning statement referenced above shall be prominently placed upon the packaging of the Product, the Product itself, or within the instructions for the Products (and in the

1 same section as other warnings) with such conspicuousness, as compared with other
2 words, statements, designs or devices on the label as to render it likely to be read by an
3 ordinary individual under customary conditions of purchase or use. If the warning
4 statement is not placed on the Product itself, the warning on packaging of the Product shall
5 be removable and contain instructions for the consumer to remove the warning from the
6 packaging and reattach it to the Product.

7 **3. MONETARY PAYMENTS**

8
9 3.1 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to
10 Health & Safety Code §25249.7(b), DAS shall pay a civil penalty of \$1,500.00. This payment
11 shall be paid within ten (10) calendar days of the Effective Date and shall be held in trust
12 by DiPirro's counsel until the Alameda County Superior Court approves and enters the
13 Consent Judgment. The penalty payment is to be made payable to "Sheffer & Chanler LLP
14 In Trust For Michael DiPirro". If the Consent Judgment is not approved by the Court,
15 DiPirro will return all funds, with interest thereon at a rate of one and three quarters
16 percent (1.75%) per annum, within ten (10) calendar days of notice of the Court's decision.
17 Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code
18 §25192, with 75% of these funds remitted to the State of California's Department of Toxic
19 Substances Control.

20
21 DAS understands that the payment schedule as stated in this Consent Judgment is a
22 material factor upon which DiPirro has relied in entering into this Consent Judgment. DAS
23 agrees that all payments will be made in a timely manner in accordance with the payment
24 due dates. DAS will be given a five (5) calendar day grace period from the date payment is
25 due. DAS agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the
26 payment is received after the grace period ends. For purposes of this paragraph, each new
27 day (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

1 **3.2 Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro
2 and his counsel offered to resolve this dispute without reaching terms on the amount of
3 fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after
4 the material terms of the agreement had been settled. DAS then expressed a desire to
5 resolve the fee and cost issue shortly after the other settlement terms had been finalized.
6 The parties then attempted to (and did) reach an accord on the compensation due to
7 DiPirro and his counsel under the private attorney general doctrine codified at CCP
8 §1021.5 for all work performed through the Effective Date of the Agreement.
9

10 Under the private attorney general doctrine codified at CCP §1021.5, DAS shall
11 reimburse DiPirro and his counsel for his fees and costs, incurred as a result of
12 investigating, bringing this matter to DAS's attention, litigating and negotiating a
13 settlement in the public interest. DAS shall pay DiPirro and his counsel \$12,500.00, except
14 as provided for in paragraph 3.3 to 3.7 below, for all attorneys' fees, expert and
15 investigation fees and litigation costs, within ten (10) days of the Effective Date. Payment
16 should be made payable to "Sheffer & Chanler LLP". If the Consent Judgment is not
17 approved by the Court, DiPirro and Sheffer & Chanler LLP will return all funds, with
18 interest thereon at the rate of 1.75% per annum, simple interest, within five (5) calendar
19 days of effective written notice of the Court's decision.
20

21 **3.3 Additional Fees And Costs In Seeking Judicial Approval.** The parties
22 acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a
23 noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the
24 parties agree to use their best efforts to file a Joint Motion to Approve Proposition 65
25 Settlement Agreement within a reasonable period of time after execution of this
26 Agreement. Best efforts shall mean that DAS shall return an initial draft of the Motion To
27 Approve within ten (10) days of receiving a motion template from plaintiff. Best efforts
28

1 shall also mean that DAS agrees to return any modifications or comments on subsequent
2 drafts received from plaintiff within five (5) days of their receipt.

3 Pursuant to CCP §1021.5, DAS agrees to reimburse DiPirro and his counsel for their
4 reasonable fees and costs incurred in seeking judicial approval of this Agreement, to the
5 extent described in paragraphs 3.4 through 3.8.

6 3.4 If no opposition to the Motion to Approve (or objection to the terms of the
7 agreement) is filed or otherwise transmitted by any third party, DAS agrees to reimburse
8 DiPirro under Section 3.1, for additional reasonable fees and costs in an amount not to
9 exceed \$1,500.00.
10

11 3.5 In the event that any third party, including any public enforcer, objects or
12 otherwise comments to one or more provisions of this Agreement, DAS agrees to use its
13 best efforts to support each of the terms of the Agreement, as well as to seek judicial
14 approval of this Agreement.

15 3.6 In the event that such an objection or opposition is transmitted or filed by
16 any third party, DAS agrees to use its best efforts to seek judicial approval of the agreement
17 and to reimburse DiPirro under Section 3.2, in addition to any reasonable fees and costs
18 due under Section 3.4, for his additional reasonable attorneys' fees and costs incurred in
19 securing approval of this Consent Judgment in an amount not to exceed \$1,000.00.
20

21 3.7 DAS's payment of DiPirro's legal fees and costs pursuant to sections 3.3-3.7
22 shall be due within ten (10) calendar days after receipt of a billing statement from DiPirro
23 ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made payable to
24 the "Sheffer & Chanler LLP". DAS has the right to object to DiPirro's reimbursement
25 request and may submit the resolution of this issue to the American Arbitration
26 Association (AAA) in Northern California to determine the reasonableness of the
27 additional fees and costs sought. Any arbitration claim on this issue of reimbursement for
28

1 the Additional Fee Claim must be filed with AAA and served on DiPirro within ten (10)
2 calendar days following DiPirro's service of the Additional Fee Claim on DAS. If an
3 arbitration notice is not filed with AAA in a timely manner, DAS's right to arbitrate this
4 matter is waived. DiPirro may then file a motion, pursuant to CCP §1021.5, with the Court
5 for recovery of his (and his attorneys') fees and costs incurred as set forth in this
6 paragraph.

7 **4. RELEASE OF ALL CLAIMS**

8
9 4.1 Michael DiPirro's Release of DAS. In further consideration of the promises
10 and agreements herein contained, and for the payments to be made pursuant to Section 3,
11 Michael DiPirro, on behalf of himself, his agents, representatives, attorneys, and/or
12 assignees, and in the interest of the general public on whose behalf this action was brought,
13 hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases all claims, including, without limitation, all actions, causes of
15 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
16 penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees
17 and other costs, other than those stated herein) of any nature whatsoever, whether known
18 or unknown, fixed or contingent (collectively, "Claims"), against DAS and any of its parent
19 companies, divisions, subdivisions, subsidiaries (and the predecessors, successors and
20 assigns of any of them), and its respective officers, directors, attorneys, representatives,
21 shareholders, partners, agents, and employees (collectively, "DAS Releasees"). This waiver
22 and release shall pertain only to Claims arising under Proposition 65 or Business &
23 Professions Code §17200 *et seq.*, related to the DAS Releasees' alleged failure to warn about
24 exposures on or before the Effective Date to the Listed Chemicals produced by any of the
25 Products. It is specifically understood and agreed that DAS's compliance with the terms of
26 this Release resolves all issues and liability, now and in the future, concerning the DAS
27

1 Releasees' past and present compliance with the requirements of Proposition 65 or
2 Business and Professions Code §17200 *et seq.*, as to the Products.

3 **4.2 DiPirro's Release of "Downstream Persons."** In further consideration of
4 the promises and agreements herein contained, and for the payments to be made pursuant
5 to Section 3, Michael DiPirro, on behalf of himself, his agents, representatives, attorneys,
6 and/or assignees, and in the interest of the general public on whose behalf this action was
7 brought, further waives all rights to institute any form of legal action and releases all
8 Claims, as defined above, against each distributor, wholesaler, auctioneer, retailer, dealer,
9 customer, owner, operator, purchaser, lessor, lessee, renter, or user of the Products, or any
10 of their respective parent companies, divisions, subdivisions, subsidiaries (and the
11 predecessors, successors and assigns of any of them) and their respective officers, directors,
12 shareholders, partners, attorneys, representatives, agents, employees (collectively,
13 "Downstream Persons"). This waiver and release shall pertain only to Claims arising under
14 Proposition 65 or Business & Professions Code §17200 *et seq.*, related to the Downstream
15 Persons' alleged failure to warn about exposures on or before the Effective Date to the
16 Listed Chemicals produced by any of the Products. It is specifically understood and
17 agreed that this Consent Judgment resolves all issues and liability, now and in the future,
18 concerning the Downstream Persons' compliance with the requirements of Proposition 65
19 or Business & Professions Code §17200, *et seq.*, as to the Products.
20

21 **4.3 DAS's Release of Michael DiPirro** DAS waives all rights to institute any
22 form of legal action against Michael DiPirro, and his attorneys or representatives, for all
23 actions taken or statements made, on or before the court approval of this Consent
24 Judgment, by Michael DiPirro and his attorneys or representatives, in the course of seeking
25 enforcement of Proposition 65 or Business & Professions Code §17200, *et seq.* against DAS.
26

27 **5. COURT APPROVAL.** If this Consent Judgment is not approved and entered by
28

1 the Court within ninety (90) days of the Effective Date, it shall be deemed null and void as
2 of the ninety-first (91) day after the Effective Date and cannot be used in any proceeding.

3 6. **SEVERABILITY.** In the event that any of the provisions of this consent Judgment
4 are held by a court to be unenforceable, the validity of the enforceable provision remaining
5 shall not be adversely affected.

6 7. **ATTORNEY'S FEES.** In the event that a dispute arises with respect to any
7 provision(s) of the Consent Judgment (including, but not limited to, disputes arising from
8 the late payments provisions in Sections 3.1 and 3.2), the prevailing party shall be entitled
9 to recover costs and reasonable attorneys' fees.

10 8. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the
11 laws of the State of California. In the event that Proposition 65 is repealed or is otherwise
12 rendered inapplicable by reason of law generally, or as to the Products specifically, DAS
13 shall have no further obligations pursuant to this Consent Judgment with respect to, and to
14 the extent that, those Products are so affected.

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

19
20 If to DiPirro: Gregory M. Sheffer, Esq.
21 Sheffer & Chanler LLP
22 160 Sansome Street, Second Floor
San Francisco, CA 94104

23 If to DAS: Cameron Kirk, Jr., Esq.
24 Lanahan & Reilly LLP
25 3558 Round Barn Blvd., Suite 300
Santa Rosa, CA 95403

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

28 **CONSENT JUDGMENT**

1 10. **NO ADMISSIONS.** Nothing in this Consent Judgment shall constitute or be
2 construed as an admission by DAS of any fact, finding, conclusion, issue of law, or
3 violation of law, nor shall compliance with this Consent Judgment constitute or be
4 construed as an admission by DAS of any fact, finding, conclusion, issue of issue of law, or
5 violation of law, such being specifically denied by DAS. DAS reserves all of its rights and
6 defenses with regard to any claim by any party under Proposition 65 or otherwise.
7 However, this Paragraph shall not diminish or otherwise affect DAS's obligations,
8 responsibilities and duties under this Consent Judgment.
9

10 11. **ENTIRE AGREEMENT; MODIFICATION.** This Consent Judgment constitutes
11 the entire agreement between the parties relating to the rights and obligations herein
12 granted and assumed, and supersedes all prior agreements and understandings between
13 the parties. This Consent Judgment may be modified only upon the written agreement of
14 the parties or upon motion to the court.

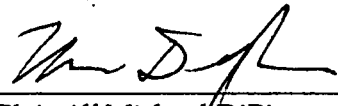
15 12. **COUNTERPARTS; FAXSIMILE SIGNATURES.** This Consent Judgment may be
16 executed in counterparts and by facsimile, each of which shall be deemed an original, and
17 all of which, when taken together, shall constitute one and the same document.

18 13. **COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY**
19 **CODE §25249.7(f)).** The parties agree to comply with the reporting form requirements
20 referenced in Health & Safety Code §25249.7(f). DiPirro represents that his counsel will use
21 best efforts to send a copy of this Agreement to the California Attorney General's Office on
22 or near the Effective Date. Pursuant to the new regulations promulgated under Health &
23 Safety Code §25249.7(f), DiPirro shall present this Consent Judgment to the Alameda
24 County Superior Court for its approval, with copy to the Attorney General, and allow for
25 the requisite review and comment period by the Attorney General before any hearing on
26 the Motion to Approve.
27

1 14. AUTHORIZATION. The undersigned are authorized to execute this Consent
2 Judgment on behalf of their respective parties and have read, understood and agree to all
3 of the terms and conditions of this Consent Judgment.
4

5 AGREED TO:

6 Date: 3/10/03
7

8 
9 Plaintiff Michael DiPirro


AGREED TO:

Date: _____

Defendant DAS Distributors, Inc.

10
11 AGREED AS TO FORM:

12 Date: 3/14/03
13

14 
15 Gregory M. Sheffer
16 Sheffer & Charler LLP
17 Attorneys for Plaintiff
Michael DiPirro

AGREED AS TO FORM:

Date: _____

Cameron Kirk, Jr.
Lanahan & Reilley LLP
Attorneys for Defendant
DAS Distributors, Inc.

1 14. AUTHORIZATION. The undersigned are authorized to execute this Consent
2 Judgment on behalf of their respective parties and have read, understood and agree to all
3 of the terms and conditions of this Consent Judgment.
4

5 AGREED TO:

6 Date: _____
7

8
9 _____
10 Plaintiff Michael DiPirro

AGREED TO:

Date: MARCH 7, 2003

11
12 _____
13 Defendant DAS Distributors, Inc.
14

11 AGREED AS TO FORM:

12 Date: _____
13

14
15 _____
16 Gregory M. Sheffer
17 Sheffer & Chanler LLP
18 Attorneys for Plaintiff
19 Michael DiPirro

AGREED AS TO FORM:

Date: 3/10/03

20
21 _____
22 Cameron Kirk, Jr.
23 Lanahan & Reilly LLP
24 Attorneys for Defendant
25 DAS Distributors, Inc.
26
27
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