

1 David Bush, State Bar No. 154511  
Jennifer Henry, State Bar No. 208221  
2 BUSH & HENRY  
ATTORNEYS AT LAW  
3 4400 Keller Avenue, Suite 200  
Oakland, CA 94605  
4 Tel: (510) 577-0747

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 22 2001

5 Clifford A. Chanler, State Bar No. 135534  
CHANLER LAW GROUP  
6 Magnolia Lane (off Huckleberry Hill)  
New Canaan, CT 06840-3801  
7 Tel: (203) 966-9911

CLERK OF THE SUPERIOR COURT  
By JENNIFER RODEK

8 Attorneys for Plaintiff  
MICHAEL DIPIRRO  
9

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

13 MICHAEL DIPIRRO, ) No. H218173-4  
14 Plaintiff, )  
15 v. )  
16 FLORIDA PNEUMATIC MANUFACTURING ) CONSENT JUDGMENT  
CORP.; and DOES 1 through 1000, )  
17 Defendants. )  
18 \_\_\_\_\_ )

19 This Consent Judgment is entered into by and between  
20 plaintiff Michael DiPirro, a California citizen, and defendant  
21 Florida Pneumatic Manufacturing Corporation, a Florida  
22 corporation ("Florida Pneumatic"), as of February 13, 2001  
23 (the "Effective Date"). The parties agree to the following  
24 terms and conditions, as outlined in the following Settlement  
25 Agreement:  
26

27 ///  
28 ///

# **Exhibit A**

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, Florida Pneumatic Manufacturing Corporation, a Florida corporation ("Florida Pneumatic"), as of February 13, 2001 (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. Florida Pneumatic is a company that manufactures, distributes and/or sells various power tools in the State of California. Mr. DiPirro alleges that some of these tools contain or their customary use and application are likely to produce dust which contains, chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds) (the "Listed Chemicals");

C. The products which are covered by this Agreement are set forth in Exhibit A (the "Products"). The Products have been manufactured, distributed and/or sold by Florida Pneumatic for use in California since at least March 1, 1997;

D. On November 24, 2000, Michael DiPirro served Florida Pneumatic and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Florida Pneumatic and such public enforcers with notice that Florida Pneumatic was allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals;

E. Concurrently with this Settlement Agreement and Stipulation for Entry of Judgment, Michael DiPirro is filing a complaint entitled Michael DiPirro v. Florida Pneumatic Manufacturing Corp., et al. in the Alameda County Superior Court, naming Florida Pneumatic as 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 (or produced by customary use and application of) certain Florida Pneumatic's products; and

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

**NOW THEREFORE, MICHAEL DIPIRRO AND FLORIDA PNEUMATIC AGREE AS FOLLOWS:**

**1. Product Warnings.** Beginning immediately, Florida Pneumatic shall initiate efforts to revise its current product or packaging labels for the Products consistent with this Agreement ("Revised Labels"). Florida Pneumatic 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. Florida Pneumatic agrees that as of April 1, 2001, 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:

For all power tools that are likely to expose users to lead (or lead compounds), crystalline silica, arsenic, and/or chromium (hexavalent compounds) or any combination of chemicals listed by the State of California as known to cause cancer as well as birth defects (or other reproductive harm), such Products shall bear the following warning statement<sup>1</sup>:

**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. Some examples of these chemicals are:**

- lead from lead-based paints,
- crystalline silica from bricks and cement and other masonry products, and
- arsenic and chromium from chemically-treated lumber.

**Your risk from these exposures varies, depending on how often you do this type of work. To reduce your exposure to these chemicals: work in a well ventilated area, and work with approved safety equipment, such as those dust masks that are specially designed to filter out microscopic particles.;**

---

<sup>1</sup> Such a warning may be placed in the owner's manual of the Products, instead of on the Products directly, pursuant to Exhibit B.

[Note: Text in brackets is optional.]

or

**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 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 under customary conditions of purchase or use.

**1.1 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. Florida Pneumatic shall, within thirty (30) days from the Effective Date, provide Interim Warning Materials to its customers whom Florida Pneumatic 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 Florida Pneumatic.

**2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health & Safety Code §25249.7(b), Florida Pneumatic shall pay a civil penalty of \$6,000.00 (six-thousand dollars). The payment of \$6,000.00 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The penalty payment is 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. Florida Pneumatic 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.

Florida Pneumatic shall reimburse DiPirro for his fees and costs, incurred as a

result of investigating, bringing this matter to Florida Pneumatic's attention, litigating and negotiating a settlement in the public interest. Florida Pneumatic shall pay \$13,525.00 (thirteen thousand five hundred and twenty five dollars) for investigation fees and attorneys' fees, plus \$475.00 (four hundred seventy five) for litigation costs. Florida Pneumatic agrees to pay the total sum of \$14,000.00 (fourteen thousand) within five (5) days of the Effective Date of the Agreement. Payment should be made payable to the "Chanler Law Group".

**4. Michael DiPirro's Release Of Florida Pneumatic.** 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 Florida Pneumatic and its directors, officers, employees, affiliates, parent (including, but not limited to, P & F Industries, Inc.), successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 *et seq.* based on Florida Pneumatic's alleged failure to warn about exposure to the "Listed Chemicals" contained in (or produced by) any of the Products.

**5. Florida Pneumatic's Release Of Michael DiPirro.** Florida Pneumatic, 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 Florida Pneumatic.

**6. Stipulated Judgment.** Concurrently with the execution of this Agreement, Michael DiPirro and Florida Pneumatic shall execute and file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the Alameda 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. Product Characterization.** In the event that Florida Pneumatic 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), Florida Pneumatic 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 Florida Pneumatic Exposure Data, DiPirro shall provide Florida Pneumatic 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 Florida Pneumatic written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Florida Pneumatic's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and Florida Pneumatic 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 Florida Pneumatic of his intent to challenge the Exposure Data, DiPirro and Florida Pneumatic shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Florida Pneumatic's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Florida Pneumatic 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.

**8. 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.

**9. 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.

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

**11. Notices.** All correspondence to Michael DiPirro shall be mailed to:

David R. Bush or Jennifer Henry, Esq.  
Bush & Henry  
4400 Keller Ave., Suite 200  
Oakland, CA 94605-4229  
(510) 577-0747

or

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

All correspondence to Florida Pneumatic Manufacturing Corporation shall be mailed to:

Raymond J. Keegan, Vice President - Finance  
Florida Pneumatic Manufacturing Corporation  
851 Jupiter Park Lane  
Jupiter, Florida 33458  
(561) 744-9500

12. **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 his counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

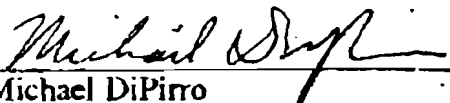
13. **Counterparts and Facsimile.** This Agreement may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of its respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

**AGREED TO:**

DATE:

2/14/01

  
Michael DiPirro  
PLAINTIFF

**AGREED TO:**

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

\_\_\_\_\_  
Florida Pneumatic Manufacturing Corporation  
DEFENDANT



All correspondence to Florida Pneumatic Manufacturing Corporation shall be mailed to:

Raymond J. Keegan, Vice President - Finance  
Florida Pneumatic Manufacturing Corporation  
851 Jupiter Park Lane  
Jupiter, Florida 33458  
(561) 744-9500

12. **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 his counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

13. **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.

14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of its respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

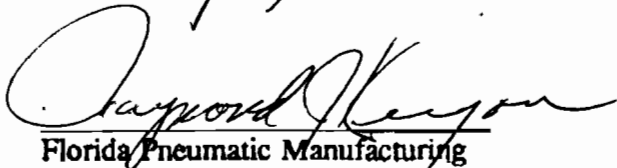
**AGREED TO:**

**AGREED TO:**

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

DATE: 2/13/01


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

  
\_\_\_\_\_  
Florida Pneumatic Manufacturing Corporation  
DEFENDANT


APPROVED AS TO FORM:

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: 2/13/01, 2001

by:   
 David R. Bush  
 Attorneys for Plaintiff  
 MICHAEL DIPIRRO

Dated: 2/13/01, 2001

by:   
 Raymond J. Keegan  
 FLORIDA PNEUMATIC  
 MANUFACTURING CORP.;

# **Exhibit A**

## **EXHIBIT A**

### **Power Tools**

Saws such as band, block, brick, circular, chain, chop, clearing, concrete, cut-off machines, floor, jig, masonry, miter, pavement, radial, reciprocating, refractory, scroll, stonecutting, table, tile, and wall-mounted saws.

Power shears and cutters such as rotary, tile and pipe cutters, and trimmers.

Power cutout tools.

Sanders, polishers, abrading machines and buffers.

Grinders such as pavement, right angle, die, straight and bench grinders and grooving equipment.

Drills and augers such as general purpose, diamond coring, driver, hammer, drill press, and dry wall drills.

Power sharpeners and files, including drill bit sharpeners.

Power screw drivers.

Power hammers such as breaker, chipper and rotary hammers.

Rotary tools and impact wrenches.

Lathes, planers, shapers, edgers, nibblers.

Routers such as general purpose, masonry, and plunge routers.

Joiners such as general purpose and plate joiners.

Power hobby tools, such as multipurpose tool kits used for cutting and etching.

Paint drying and removing tools, including heat guns.

Drywall cutters and trimmers.

### **Accessories**

Bits such as general purpose drill, bull point, forstner, masonry, diamond, core, cutter, router, auger, sander, grinding stone, mandrel, and screwdriver bits.

Saw blades such as circular, diamond, reciprocating, hole, band, jig, grit rod, grit back, masonry, abrasive, hack saw, and edge blades.

Carving tools, molding heads, dadoes, cutting blades.

Shaper and knife products, wires and lines for cutting, saw chains.

Chisels, chippers, breakers, bushing tools, files, and rasps.

Wire brushes.

Vacuums and other dust removal equipment.

Lathe equipment.

Wheels, discs, belts, rubs and pads such as sand, grinding, cutting, abrasive, diamond, mounted points, polishing, and buffing wheels, discs, belts and pads.

Sand paper such as sheet, disk, pre-cut and pre-form papers.

# **Exhibit B**

## 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 over, 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;


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

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

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

1 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

2  
3 DATE: FEB 22 2001

4  Judge Barbara J. Miller  
5  
6 Judge of the Superior Court

7 → Case no. H-218173-4

8 Judgment entered pursuant  
9 to settlement signed 2/14/01.

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28