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ENDORSED
FILED
ALAMEDA COUNTY

JUN 21 2001

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6 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
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CLERK OF THE SUPERIOR COURT
By SARA DALLESE
Deputy

8 Attorneys for Plaintiff
9 MICHAEL DIPIRRO

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO, an individual) No. H217766-3
)
Plaintiff,) CONSENT JUDGMENT
)
v.)
)
FREUD, INC.; and DOES 1 through)
1000,)
)
Defendants.)
_____)

This Consent Judgment is entered into by and between
Michael DiPirro, a California citizen, and Freud USA, Inc.,
a North Carolina corporation and Freud TMM, Inc., a North

1 Carolina corporation (collectively "Freud"), as of June 15,
2 2001 (the "Effective Date"). The parties agree to the
3 following terms and conditions:

4
5 **RECITALS:**

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

11 B. Freud is a company that currently
12 manufactures, distributes and/or sells in the State of
13 California certain power tools (such as Variable Router
14 Speed Router/Trimmer Kit) that Michael DiPirro alleges
15 contain, or whose customary use and application may produce
16 fumes, gases or dust which contain, chemicals listed
17 pursuant to Proposition 65 (California Health & Safety Code
18 § 25249.5 et seq.) including lead (or lead compounds),
19 crystalline silica, arsenic and chromium (hexavalent
20 compounds) (the "Listed Chemicals").

21 C. Products that Michael DiPirro alleges
22 contain, or whose customary use and application may produce
23 fumes, gases or dust which contain, one or more of the
24 "Listed Chemicals" and which are covered by this Consent
25 Judgment are set forth in Exhibit A (the "Products"). The
26 Products have been manufactured, distributed and/or sold by

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1 Freud for use in California since at least January 17,
2 1997.

3 D. On November 6, 2000, Michael DiPirro first
4 served Freud and other public enforcement agencies with a
5 document entitled "60-Day Notice of Violation" which
6 provided Freud and such public enforcers with notice that
7 Freud was allegedly in violation of Health & Safety Code
8 § 25249.6 for allegedly failing to warn purchasers that
9 certain products it sells or otherwise offers for use in
10 California expose users to Proposition 65-listed chemicals.

11 E. On January 17, 2001, Michael DiPirro filed a
12 complaint entitled Michael DiPirro v. Freud, Inc., et al.
13 in the Alameda County Superior Court, naming Freud as a
14 defendant and alleging violations of Business & Professions
15 Code § 17200 and Health & Safety Code § 25249.6 on behalf
16 of individuals in California who allegedly have been
17 exposed to the "Listed Chemicals" contained in or produced
18 by certain Freud products.

19 F. Nothing in this Consent Judgment shall be
20 construed as an admission by Freud of any fact, finding,
21 issue of law, or violation of law, nor shall compliance
22 with this Consent Judgment constitute or be construed as an
23 admission by Freud of any fact, finding, conclusion, issue
24 of law, or violation of law. However, this paragraph shall
25 not diminish or otherwise affect the obligations,

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28 CONSENT JUDGMENT

1 responsibilities, and duties of Freud under this Consent
2 Judgment.

3 **NOW THEREFORE, MICHAEL DIPIRRO AND FREUD AGREE AS**
4 **FOLLOWS:**

5
6 **1. Product Warnings.** Freud shall begin to
7 initiate revisions to its health hazard warnings for its
8 Products to provide the language set forth in the Section
9 1.1 hereinbelow. For purposes of this Consent Judgment,
10 the term "Products" includes all power tools listed on
11 Exhibit A and any other substantially similar products
12 which may be distributed, marketed or sold by Freud in
13 California after the Effective Date which now or in the
14 future contain or whose customary use and application
15 produce fumes, gases, exhaust or dust which contain Listed
16 Chemicals. Beginning on January 1, 2002, Freud agrees that
17 it will not knowingly sell (or cause to be sold) any
18 Products that contain, or produce fumes, gases or dust that
19 contain, the Listed Chemicals for sale in the State of
20 California unless such Products comply with Section 1.1
21 hereinbelow:

22 **1.1 Labels.** For all power tools that are
23 likely to expose users to lead (or lead compounds),
24 crystalline silica, arsenic, and/or chromium (hexavalent
25 compounds) or any combination of chemicals listed by the
26 State of California as known to cause cancer as well as

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1 birth defects (or other reproductive harm), such Products
2 shall bear the following warning statement¹:

3 **WARNING:** Some dust created by power
4 sanding, sawing, grinding,
5 drilling, and other construction
6 or woodworking activities
7 contains chemicals known [to the
8 State of California] to cause
9 cancer, birth defects or other
10 reproductive harm. Some
11 examples of these chemicals are:

- 12 • lead from lead-based
13 paints, crystalline
14 silica from bricks and
15 cement and other masonry
16 products, and
- 17 • arsenic and chromium
18 from chemically-treated
19 lumber.

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

[Note: Text in brackets is optional.]

or

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

The warning statement shall be prominently

¹ Such a warning may be placed in the owner's manual of the Products,
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1 placed upon the Product's label with such conspicuousness,
2 as compared with other words, statements, designs or
3 devices on the label as to render it likely to be read and
4 understood by an ordinary individual under customary
5 conditions of purchase or use. In addition, such a warning
6 statement shall be prominently placed upon any form or
7 agreement executed by Freud for the retail sale of the
8 Product to consumers with such conspicuousness, as compared
9 with other words, statements, designs or devices on the
10 label as to render it likely to be read and understood by
11 an ordinary individual under customary conditions of rental
12 or purchase.

13 **1.2 Deemed Compliance.** Any New Products
14 (as defined in this Paragraph) manufactured, distributed
15 and/or sold by Freud after December 1, 2001, shall be
16 deemed to comply with the provisions of this Agreement and
17 the requirements of Proposition 65 with respect to product
18 warnings if they are accompanied by warnings as set forth
19 in Section 1.1 hereinabove of this Consent Judgment. For
20 purposes of this Agreement, "New Products" shall include
21 any Products that are substantially similar to those
22 included in Exhibit A which contain a Listed Chemical and
23 which were not manufactured, distributed and/or sold by
24 Defendant into California on or before the Effective Date.

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instead of on the Products directly, pursuant to Exhibit B.
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1 **2. Payment Pursuant To Health & Safety Code**

2 **§ 25249.7 (b).** Pursuant to Health & Safety Code

3 § 25249.7(b), Freud shall pay a civil penalty of \$2,500.00
4 (Two Thousand Five Hundred Dollars). The payment of
5 \$2,500.00 shall be paid within five (5) calendar days after
6 the Effective Date of this Consent Agreement and shall be
7 held in trust by Michael DiPirro's counsel until the
8 Alameda County Superior Court approves and enters the
9 Consent Judgment. The penalty payment is to be made
10 payable to "Chanler Law Group In Trust For Michael
11 DiPirro". If the Consent Judgment is not approved by the
12 Court, Michael DiPirro will return all funds, with interest
13 thereon at a rate of six percent (6%) per annum, within ten
14 (10) calendar days of notice of the Court's decision.

15 Penalty monies shall be apportioned by Michael DiPirro in
16 accordance with Health & Safety Code § 25192, with 75% of
17 these funds remitted to the State of California's
18 Department of Toxic Substances Control. Michael DiPirro
19 shall immediately notify the Office of Attorney General of
20 the State of California of the Consent Judgment.

21 **3. Reimbursement Of Fees And Costs.** The

22 parties acknowledge that Michael DiPirro offered to resolve
23 the dispute without reaching terms on the amount of fees
24 and costs to be reimbursed, thereby leaving this open issue
25 to be resolved after the material terms of the agreement
26 had been reached, and the matter settled. Freud then

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28 CONSENT JUDGMENT

1 expressed a desire to resolve the fee and cost issue
2 concurrently with other settlement terms, so the parties
3 tried to reach an accord on the compensation due to DiPirro
4 and his counsel under the private attorney general doctrine
5 codified at Code of Civil Procedure § 1021.5. Freud shall
6 reimburse Michael DiPirro for his fees and costs incurred
7 as a result of investigating, bringing the matter to
8 Freud's attention, litigating and negotiating a settlement
9 in the public interest. Freud shall pay the total sum of
10 \$10,000.00 (Ten Thousand Dollars) for investigation fees,
11 attorneys' fees and litigation costs. Freud agrees to pay
12 \$10,000.00 within five (5) calendar days of the Effective
13 Date of the Agreement. Such sum shall be held in trust by
14 Michael DiPirro's counsel until the Alameda County Superior
15 Court approves and enters the Consent Judgment. If the
16 Consent Judgment is not approved by the Court, DiPirro will
17 return all funds, with interest thereon at a rate of six
18 percent (6%) per annum, within ten (10) calendar days of
19 notice of the Court's decision. Payment should be made
20 payable to the ``Chanler Law Group''.

21 **4. Michael DiPirro's Release Of Freud.** Michael
22 DiPirro, by this Consent Judgment, on behalf of himself,
23 his agents, representatives, attorneys, assigns and in the
24 interest of the general public, waives all rights to
25 institute or participate in, directly or indirectly, any
26 form of legal action, and releases all claims, liabilities,

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1 obligations, losses, costs, expenses, fines and damages,
2 against Freud and its directors, officers, employees,
3 affiliates, suppliers of Freud who manufacture any of the
4 Products or components for the Products under the Freud
5 label, agents, distributors, retailers, sales
6 representatives, associates, successors and assigns,
7 whether under Proposition 65 or the Business & Profession
8 Code §17200 et seq. based on Freud's alleged failure to
9 warn about exposure to the Listed Chemicals contained in or
10 produced by any of the Products.

11 **5. Freud's Release Of Michael DiPirro.** Freud,
12 by this Consent Judgment, waives all rights to institute
13 any form of legal action against Michael DiPirro and his
14 attorneys or representatives, for all actions or statements
15 made by Michael DiPirro, and his attorneys or
16 representatives, in the course of seeking enforcement of
17 Proposition 65 or Business & Profession Code § 17200
18 against Freud.

19 **6. Mutual General Release of Freud and Michael**
20 **DiPirro, Individually, of Known and Unknown Claims.** Except
21 as otherwise stated herein, in consideration of the terms
22 and conditions of this Consent Judgment, the parties alone
23 on their own behalf and on behalf of their respective
24 agents, servants, employees, representatives, partners,
25 attorneys, heirs, successors and assigns, past and present,
26 and each of them collectively, "Releasers"), hereby

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1 release, remise and forever discharge the other and their
2 respective agents, servants, employees, members of its
3 board of directors, officers, shareholders, suppliers,
4 distributors, retailers, affiliates, subsidiaries,
5 representatives, partners, attorneys, heirs, successors and
6 assigns, past and present, and each of them (collectively,
7 "Releasees"), from any and all claims, demands, debts,
8 accounts, acts, obligations, costs, liens, damages, losses,
9 liabilities, demands, causes of action, acts or omissions
10 of any type or nature whatsoever that occurred, existed or
11 was omitted at any time before the Effective Date, whether
12 known or unknown, suspected or unsuspected by the
13 Releasers, at law or in equity, which the Releasers hold or
14 at any time heretofore have held or owned against the
15 Releasees, or any of them, including those which arise out
16 of, relate to or in any way are connected with the Action,
17 the facts set forth in paragraphs (A) through (F) of the
18 Recitals hereinabove.

19 The parties acknowledge, represent and warrant to the
20 other that they are familiar with the provisions of
21 California Civil Code section 1542 and expressly waive and
22 relinquish any and all rights and benefits that they may
23 have under said Section 1542 to the fullest extent
24 permitted by law. Such Section states:

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CONSENT JUDGMENT

1 **"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
2 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**
3 **EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE**
4 **RELEASE, WHICH IF KNOWN BY HIM MUST HAVE**
5 **MATERIALLY AFFECTED HIS SETTLEMENT WITH THE**
6 **DEBTOR."**

7 The parties acknowledge, represent and warrant to the
8 other that they have consulted with legal counsel and/or
9 had the opportunity to do so before executing this Consent
10 Judgment, that they are familiar with and understand the
11 effect of Section 1542 of the California Civil Code, and
12 expressly consent that the releases set forth herein shall
13 be given full force and effect according to each and all of
14 its express terms and provisions, including those relating
15 to the release of unknown and unsuspected claims, demands
16 and causes of action. It is expressly understood by the
17 parties that Michael DiPirro is agreeing to the Section
18 1542 waiver in his individual capacity and not in his
19 representative capacity on behalf of the general public.

20 **7. No Other Representations.** The parties
21 acknowledge, represent and warrant to the other that they
22 have relied wholly upon their own judgment belief and
23 knowledge of the existence, nature and extent each claim,
24 demand or cause of action that they may have against the
25 other which is hereby released and that they have not been
26 influenced to any extent in entering into this Consent
27 Judgment by any representations, warranties or statements,
28 whether written or oral, regarding any such claim, demand
29 or cause of action made by the other, except that each

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1 party has consulted with its own legal counsel and/or had
2 the opportunity to do so. No covenants, agreements,
3 representations or warranties of any kind whatsoever have
4 been made by any party hereto, except as specifically set
5 forth in this Consent Judgment.

6 **8. Intent of Parties That This Consent Judgment**
7 **Have Preclusive Effect.** The Consent Judgment is intended

8 to resolve and preclude any and all claims that were or
9 could have been brought in the case filed by Michael
10 DiPirro against Freud in Alameda County Superior Court, or
11 otherwise brought by any person or entity under Proposition
12 65, Business and Professions Code Sections 17200 et seq.,
13 or any other statute or common law rule that involves,
14 relates to or arises out of the alleged failure to warn
15 about exposure to the Listed Chemicals contained in,
16 related to, or produced by any of the Products. The parties
17 agree that Michael DiPirro is entering into this Consent
18 Judgment in the interest of the general public as
19 authorized by Proposition 65 and any other applicable law,
20 and that this Consent Judgment entered pursuant hereto
21 accordingly are intended to, and shall, have full
22 preclusive effect against any other person or entity with
23 respect to such claims, whether purporting to act in his,
24 her or its own interests or in the public interest. The
25 parties further agree that this Consent Judgment is
26 appropriate and adequate to protect the public from any of

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28 CONSENT JUDGMENT

1 the acts alleged, or that could have been alleged, in the
2 complaint filed by Michael DiPirro against Freud.

3 **9. Court Approval.** If, for any reason, this
4 Consent Judgment is not approved by the Court, this Consent
5 Judgment shall be deemed null and void.

6 **10. Product Characterization.** Freud
7 acknowledges that Michael DiPirro alleges that each of the
8 Products listed in Exhibit A contains, or in the customary
9 use or application of the Products may produce fumes, gases
10 or dust that contain, lead (or lead compounds), crystalline
11 silica, arsenic and chromium (hexavalent compounds) and
12 that Michael DiPirro alleges that the customary use or
13 application of the Products is likely to expose users to
14 lead (or lead compounds), crystalline silica, arsenic and
15 chromium (hexavalent compounds), substances known to the
16 State of California to cause cancer and/or birth defects
17 (or other reproductive harm). In the event that Freud
18 obtains analytical, risk assessment or other data
19 ("Exposure Data") that shows an exposure to any or all
20 Products poses "no significant risk" or will have "no
21 observable effect," as each such standard is applicable and
22 as each is defined under Health & Safety Code §25249.10(c)
23 and Freud seeks to eliminate the warnings, then Freud shall
24 provide Michael DiPirro with ninety (90) days prior written
25 notice of its intent to limit or eliminate the warning
26 provisions under this Consent Judgment based on the

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1 Exposure Data and shall provide Michael DiPirro through his
2 counsel of record indicated herein with all such supporting
3 Exposure Data. Within ninety (90) days of receipt of Freud
4 Exposure Data, Michael DiPirro shall provide Freud with
5 written notice of his intent to challenge the Exposure Data
6 (in the event that he chooses to make such a challenge).

7 If Michael DiPirro fails to provide Freud written notice of
8 his intent to challenge the Exposure Data within ninety
9 (90) days of receipt of Freud's notice and the Exposure
10 Data, Michael DiPirro shall waive all rights to challenge
11 the Exposure Data, and Freud shall be entitled to limit or
12 eliminate the warning provisions required under this
13 Agreement with respect to those Product(s) to which the
14 Exposure Data applies. If Michael DiPirro timely notifies
15 Freud of his intent to challenge the Exposure Data, Michael
16 DiPirro and Freud (a) may stop its efforts to eliminate the
17 warnings upon notice to Michael DiPirro with no further
18 liability or obligations or (b) shall negotiate in good
19 faith for a period not to exceed thirty (30) days following
20 receipt of Freud's notice to attempt to reach a settlement
21 of this issue. If a settlement is not reached, Michael
22 DiPirro and Freud agree to submit such challenge to the
23 superior court for determination, pursuant to the court's
24 continuing jurisdiction of this matter under C.C.P.

25 § 664.6. The prevailing party shall be entitled to
26 reasonable attorneys' fees and costs associated with

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1 bringing a motion brought under this paragraph to the court
2 for determination.

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

7 **12. Attorney's Fees.** In the event that a
8 dispute arises with respect to any provision(s) of this
9 Consent Judgment, the prevailing party shall be entitled to
10 recover costs and reasonable attorneys' fees.

11 **13. Governing Law.** The terms of this Consent
12 Judgment shall be governed by the laws of the State of
13 California.

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

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

19 to: All correspondence to Freud shall be mailed
20

Geoffrey M. Gold, Esq.
Rutter, Hobbs & Davidoff
Incorporated Lawyers
1900 Avenue of the Stars, Suite 2700
Los Angeles, CA 90067-4301
(310)286-1700

24 **15. Compliance With Reporting Requirements.** The
25 parties agree to comply with the reporting form
26 requirements referenced in Health & Safety Code
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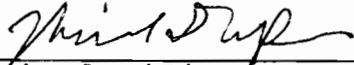
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1 § 25249.7(f). As of the Effective Date, the California
2 Attorney General's reporting forms are not available.
3 DiPirro represents and warrants, however, that his counsel
4 will send a copy of this Consent Judgment to the California
5 Attorney General's Office on the Effective Date. If the
6 new reporting regulations go into effect before the
7 Effective Date, DiPirro shall present this Consent Judgment
8 to the Alameda County Superior Court thirty (30) days after
9 serving the Attorney General with a copy of this Consent
10 Judgment, thereby allowing the Attorney General to serve
11 any objections to this Consent Judgment prior to the end of
12 the thirty (30) day period.

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

17 **17. Authorization.** The undersigned are
18 authorized to execute this Agreement on behalf of their
19 respective parties and have read, understood and agree to
20 all of the terms and conditions of this Agreement.

21 **AGREED TO:**
22 DATE: 6/14/07
23 
24 Michael DiPirro
PLAINTIFF

AGREED TO:
DATE: _____

Freud USA, Inc.
DEFENDANT

Freud TMM, Inc.
DEFENDANT

1 § 25249.7(f). As of the Effective Date, the California
2 Attorney General's reporting forms are not available.
3 DiPirro represents and warrants, however, that his counsel
4 will send a copy of this Consent Judgment to the California
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6 new reporting regulations go into effect before the
7 Effective Date, DiPirro shall present this Consent Judgment
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14 may be executed in counterparts and facsimile, each of
15 which shall be deemed an original, and all of which, when
16 taken together, shall constitute one and the same document.

17 **17. Authorization.** The undersigned are
18 authorized to execute this Agreement on behalf of their
19 respective parties and have read, understood and agree to
20 all of the terms and conditions of this Agreement.

21 **AGREED TO:**

22 DATE: _____

23 _____
24 Michael DiPirro
25 PLAINTIFF

AGREED TO:

22 DATE: JUNE-14-01

23 *Stephan Pappas*
24 Freud USA, Inc.
25 DEFENDANT

26 *Stephan Pappas*
27 Freud TMM, Inc.
28 DEFENDANT

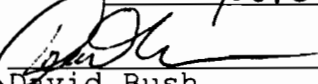
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CONSENT JUDGMENT

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APPROVED AS TO FORM:

DATE: June 18, 2001



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: _____

Geoffrey M. Gold
Attorneys for
FREUD USA, INC. and
FREUD TMM, INC.

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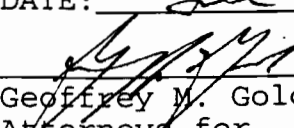
APPROVED AS TO FORM:

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: June 18, 2001



Geoffrey M. Gold
Attorneys for
FREUD USA, INC. and
FREUD TMM, INC.

Exhibit A

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EXHIBIT A

Power Tool Description:

Routers, Laminate Trimmers, Rotary Cutters, Flexible Shaft Tools, Grinders, Rotary Drills, Biscuit Joiners, Jig Saws, Heat Guns, Edge Banders, Hammer Drills, Cordless Drills, Hand-Held Power Planers, Sliding Compound Miter Saws, Compound Miter Saws.

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CONSENT JUDGMENT

Exhibit B

EXHIBIT B

1
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3 1. Warnings in manuals. Defendant required to
4 provide a warning for the Products under subparagraph 1 may
5 provide that warning in the owner's manual for that Product
6 if all of the following conditions are met:

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

26 b. the Product contains a durable label or

1 sticker directing the operator's attention to the owner's
2 manual;

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

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

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

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