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17 Big 4 Rents, Inc., Hertz Equipment
Rental Corporation and The Hertz Corporation
18

19 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

20 MICHAEL DiPIRRO,
21 Plaintiff,
22 vs.
23 HERTZ BIG 4 RENTS, INC.; HERTZ
24 EQUIPMENT RENTAL; THE HERTZ
CORPORATION and DOES 1
through 1000,
25 Defendants.
26

No. H-216083-0
CONSENT JUDGMENT

ENDORSED
FILED
ALAMEDA COUNTY

MAY 30 2001

CLERK OF THE SUPERIOR COURT
By LINDNELL WILLIAMS
Deputy

1 **1. INTRODUCTION**

2
3 **1.1.** Michael DiPirro ("DiPirro") is an individual residing in San Francisco
4 who seeks to promote awareness of exposures to toxic chemicals and improve
5 human health by reducing or eliminating hazardous substances contained in
6 consumer and industrial products;

7
8 **1.2.** Big 4 Rents, Inc., Hertz Equipment Rental Corporation and The Hertz
9 Corporation (hereafter "Hertz") have rented, distributed or sold in the State of
10 California certain welding machines, power sources and other welding equipment
11 identified in Exhibit A (hereafter "Welding Products"), that Plaintiff contends contain
12 or whose customary use and application may produce fumes, gases or exhaust
13 which contain chemicals listed pursuant to the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*, also
15 known as Proposition 65 including, but not limited to, nickel (and nickel
16 compounds), chromium (hexavalent compounds), carbon monoxide, exhaust from
17 diesel and gasoline engines and other chemicals that are known to the State of
18 California to cause cancer or birth defects (or other reproductive harm).

19
20 **1.3.** By notice dated August 4, 2000, DiPirro served Hertz and all of the
21 requisite public enforcement agencies with a document entitled "60-Day Notice of
22 Violation" which provided Hertz and such public agencies with notice that Hertz
23 was allegedly violating Proposition 65 in failing to warn California renters and
24 purchasers that certain Welding Products exposed users to chemicals listed under
25 Proposition 65.

26
27 **1.4.** On October 20, 2000, DiPirro filed a complaint in the Alameda County
28 Superior Court, entitled *Michael DiPirro v. Hertz Big 4 Rents, Inc., et. al.*, Action

1 No. H-216083-0, naming Hertz and various does as defendants and alleging
2 violations of Proposition 65 and Business & Professions Code §17200 *et seq.*, on
3 behalf of individuals in California who may have been exposed to certain Proposition
4 65 listed chemicals contained in or produced by certain Welding Products that Hertz
5 rented, distributed or sold. Hertz filed its answer to the complaint on December 4,
6 2000.

7
8 **1.5** Hertz has rented, distributed or sold in the State of California certain
9 power tools identified in Exhibit A (hereafter "Power Tools") that Plaintiff contends
10 contain or whose customary use and application may produce "dust" (with the term
11 "dust" including, but not limited to, particles, fibers, chips, residues, powder,
12 smoke, fumes, vapors, soot, grime, dirt, chaff, fines, flakes, sand, granules,
13 attritus, efflorescence, sawdust, detritus, filings, debris, grains, friable material,
14 turnings, sweepings, scourings, rinse, raspings, shavings, dregs, mud, remains, mist
15 and precipitates) which contain chemicals listed under Proposition 65 including, but
16 not limited to nickel (and nickel compounds), lead (or lead compounds), crystalline
17 silica, arsenic, chromium (hexavalent compounds) and other chemicals known to the
18 State of California to cause cancer or birth defects (or other reproductive harm).

19 **1.6.** By notice dated March 22, 2001, DiPirro served Hertz and all of the
20 requisite public enforcement agencies with a document entitled "Supplemental 60-
21 Day Notice of Violation" which provided Hertz and such public agencies with notice
22 that Hertz was allegedly violating Proposition 65 in failing to warn California renters
23 and purchasers that certain Power Tools exposed users to certain Proposition 65
24 listed chemicals;

25
26 **1.7** On or about May 25, 2001, DiPirro filed a First Amended Complaint in
27 the Alameda County Superior Court, entitled *Michael DiPirro v. Hertz Big 4 Rents,*
28 *Inc., et. al.,* Action No. H-216083-0, naming Hertz and various does as defendants

1 and alleging violations of Proposition 65 and Business & Professions Code §17200,
2 et seq., on behalf of individuals in California who may have been exposed to certain
3 Proposition 65 listed chemicals contained in or produced by certain Welding
4 Products and Power Tools that Hertz rented, distributed or sold. Plaintiff and Hertz
5 stipulated that Hertz's answer to the original complaint was deemed to be Hertz's
6 answer to Plaintiff's First Amend Complaint.

7
8 **1.8** The Power Tools that Hertz has rented, distributed or sold in California
9 have been manufactured by various companies, with some (or all) of those
10 manufacturers having resolved their Proposition 65 compliance obligations, if any,
11 by way of various settlements and consent judgments including, but not limited to,
12 People v. Ace Hardware, et. al., San Francisco Superior Court No. 995893. The
13 Consent Judgment entered in People v. Ace Hardware on September 29, 2000 (a
14 copy of which is attached as Exhibit C), resolved all Proposition 65 compliance
15 issues as regards the manufacturers of the power tools identified therein and any
16 entity to whom those manufacturers have sold or will sell those power tools.

17
18 **1.9** Hertz denies the material factual and legal allegations contained in the
19 DiPirro's above mentioned 60-Day Notices of Violation and Complaint for alleged
20 violations of Proposition 65 and Business & Professions Code §17200 et seq., and
21 maintains that all products rented, distributed or sold by Hertz in California,
22 including, but not limited to Welding Products and Power Tools have been and are
23 in compliance with all laws.

24
25 **1.10** For purposes of this Consent Judgment, the term "Effective Date" shall
26 mean May 25, 2001.

27
28 **1.11** For purposes of this Consent Judgment, the term "Listed Chemicals"

1 means chemicals that are currently or may in the future be listed under Proposition
2 65.

3
4 **1.12** For purposes of this Consent Judgment, the term "Covered Products"
5 includes all Welding Products and Power Tools listed on Exhibit A and any other
6 substantially similar products which may be rented, distributed or sold by Hertz in
7 California after the Effective Date which now or in the future contain or whose
8 customary use and application produce fumes, gases, exhaust or dust which
9 contain Listed Chemicals.

10
11 **1.13** For purposes of this Consent Judgment, the term "New Products" shall
12 include any products that are substantially similar to those included in Exhibit A
13 which contain a Listed Chemical or whose customary use and application produce
14 fumes, gases, exhaust or dust which contain a Listed Chemical, and which were not
15 rented, distributed or sold by Hertz into California on or before the Effective Date.

16
17 **2. INJUNCTIVE RELIEF**

18
19 **2.1. Welding Products**

20
21 **a.** Hertz shall not, after June 30, 2001, knowingly rent, distribute
22 or sell in California any Welding Products that contain or whose customary use and
23 application produce fumes, gases or exhaust that contain Listed Chemicals, unless
24 such Welding Products comply with the warning requirements set forth in
25 Section 2.1(b).

26
27
28 **b.** Hertz may satisfy any Section 2.1(a) warning obligations by

1 complying with one or more of the warning methods identified in Sections 2.1(b)(1)
2 through 2.1(b)(4). The warnings identified in Sections 2.1(b)(1) through 2.1(b)(4)
3 shall be prominent and displayed with such conspicuousness, as compared with
4 other words, statements, or designs, as to render them likely to be read and
5 reasonably understood by ordinary individuals under customary conditions of
6 purchase or use.

7
8 **1. Warning in Consumer Handouts:** Including a warning in a
9 handout given to the purchaser or renter of the Welding Product at the time of the
10 Welding Product's purchase or rental, with the language of that warning being
11 either: (i) that set forth below in this subsection; (ii) equivalent to the language set
12 forth below in this subsection and one that complies with Section 12601 of Title 22
13 of the California Code of Regulations; or (iii) that which complies with a settlement
14 or consent judgment involving those Welding Products:

15 **WARNING:** Welding machines produce an exposure to one or more
16 chemicals known to the State of California to cause cancer and birth
defects (or other reproductive harm).

17
18 **2. Warning on the Welding Products:** Having a durable label
19 affixed to the Welding Product itself in a location that can be seen by the user of
20 the product under normal circumstances of use that contains a warning, with the
21 language of that warning being either: (i) that set forth below in this subsection;
22 (ii) equivalent to the language set forth below in this subsection and one that
23 complies with Section 12601 of Title 22 of the California Code of Regulations; or
24 (iii) that which complies with a settlement or consent judgment involving those
25 Welding Products:

26 **WARNING:** This product contains (or produces an exposure to)
27 one or more chemicals known to the State of California to cause
28 cancer and birth defects (or other reproductive harm).

1 **3. Warning on the Packaging of the Welding Products:**
2 Having a durable label containing a warning affixed or attached to the packaging of
3 the Welding Product by way of an adhesive sticker, stamp or permanent changes to
4 the outside packaging of the Welding Product, so long as the packaging is
5 transferred to the consumer, with the language of that warning being either: (i) that
6 set forth below in this subsection; (ii) equivalent to the language set forth below in
7 this subsection and one that complies with Section 12601 of Title 22 of the
8 California Code of Regulations; or (iii) that which complies with a settlement or
9 consent judgment involving those Welding Products:

10 **WARNING:** This product contains (or produces an exposure to)
11 one or more chemicals known to the State of California to cause
12 cancer and birth defects (or other reproductive harm).

13 **4. In Store Sign Posting:** Posting a sign, adjacent to the cash
14 registers or check-outs in the front of the California Hertz stores where the Welding
15 Products are rented or sold, with the sign containing a warning, with the language
16 of that warning being either: (i) that set forth below in this subsection; (ii)
17 equivalent to the language set forth below in this subsection and one that complies
18 with Section 12601 of Title 22 of the California Code of Regulations; or (iii) that
19 which complies with a settlement or consent judgment involving those Welding
20 Products:

21 **WARNING:** Welding machines produce an exposure to one or more
22 chemicals known to the State of California to cause cancer and birth
23 defects (or other reproductive harm).

24
25 **2.2 Power Tools**

26
27 **a. Power Tools For Which Proposition 65 Warnings Are Not**
28 **Required Under People v. Ace Hardware, SFSC No. 995893:** Hertz shall not have

1 any Proposition 65 warning obligations for those Power Tools (as defined in
2 Exhibit A) that Hertz rents, distributes or sells in California and for which the
3 Consent Judgment in People v. Ace Hardware, et. al., San Francisco Superior Court
4 No. 995893 (a copy of which is attached as Exhibit C) has determined that no
5 Proposition 65 warning is required or that companies situated in the same position
6 as Hertz (i.e., non-manufacturers of such products) do not have Proposition 65
7 warning obligations for such products. Specifically, Hertz shall not have any
8 Proposition 65 warning obligations for the Power Tools that it has in the past or
9 may in the future purchase from the Power Tool manufacturers and entities
10 affiliated therewith (e.g., subsidiaries) identified in the People v. Ace Hardware,
11 et. al. Consent Judgment.

12
13 **b. Power Tools For Which Proposition 65 Warnings May Not Be**
14 **Required Under Settlements or Judgments Other Than The One Identified in Section**

15 **2.2(a)**: For Power Tools (as defined in Exhibit A) that are subject to other
16 settlements or judgments (past and future) that determine that no Proposition 65
17 warning is required or that companies situated in the same position as Hertz (i.e.,
18 non-manufacturers of such products) do not have Proposition 65 warning
19 obligations for such products, Hertz can seek to modify or amend this Consent
20 Judgment so that Proposition 65 warning obligations, if any, that Hertz may have
21 for those Power Tools are consistent with those other settlements or judgments.
22 Plaintiff shall not unreasonably withhold consent for such modification or
23 amendment.

24
25 **c. Power Tools For Which Proposition 65 Warnings Are Required:**

26 Hertz shall not, after October 31, 2001, knowingly rent, distribute or sell in
27 California any Power Tools (as identified in Exhibit A) which have not been the
28 subject of determination referenced in Section 2.2(a) or modification under

1 Section 2.2(b), that contain Listed Chemicals or whose customary use and
2 application produce fumes, gases or dust that contain Listed Chemicals, unless such
3 Power Tools comply with Section 2.3.

4

5 **2.3 Methods Of Warning For Power Tools:** Hertz may satisfy any Section
6 2.2(c) warning obligations by complying with one or more of the warning methods
7 identified in Sections 2.3(a) through 2.3(e). The warnings identified in Sections
8 2.3(a) through (e) shall be prominent and displayed with such conspicuousness, as
9 compared with other words, statements, or designs, as to render them likely to be
10 read and reasonably understood by ordinary individuals under customary conditions
11 of purchase or use.

12

13 **a. Warning in Consumer Handout:** Including a warning in a handout
14 given to the purchaser or renter of the Power Tool at the time of the Power Tool's
15 purchase or rental, with the language of that warning being either: (i) that set forth
16 in Exhibit D to this Consent Judgment; (ii) equivalent to the language in Exhibit D
17 and one that complies with Section 12601 of Title 22 of the California Code of
18 Regulations; or (iii) that which complies with a settlement or consent judgment
19 involving the Power Tool's manufacturer as allowed under Section 2.2(a) or (b).

20

21 **b. Warning in Power Tools' Owner's Manuals:** Including a warning
22 in the Power Tool's Owners Manual, with the Owners Manual to be given to the
23 purchaser or renter at the time of the Power Tool's purchase or rental. If this
24 paragraph is relied upon to satisfy any Section 2.2(c) warning obligations, then all
25 of the following conditions must be met:

26

27 1. At least one other safety warning appears in the Owner's
28 Manual;

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2. All or a substantial portion of operation instructions, if any, are contained in the Owner's Manual;

3. The warning is 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. Alternatively, the warning may be included in a safety warning section consistent with specifications UL 745-1 or UL 45, issued by Underwriter's 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;

4. The language of the warning is either the exact content of the warning set forth in Exhibit E or that which complies with a settlement or consent judgment involving the Power Tool's manufacturer and relating to any Proposition 65 warning obligations, as allowed under Section 2.2(a) or (b);

5. The warning is printed in a font no smaller than the font used for other safety warnings in the Owner's Manual; and

6. The Power Tool contains a durable label or sticker directing the operator's attention to the Owner's Manual.

1 c. **Warning on the Power Tools:** Having a durable label containing a
2 warning affixed or attached to the Power Tool in a location that can be seen by the
3 Power Tool's user under normal circumstances of use, with the language of the
4 warning being either: (i) that set forth in Exhibit D; (ii) equivalent to the language in
5 Exhibit D and one that complies with Section 12601 of Title 22 of the California
6 Code of Regulations; or (iii) that which complies with a settlement or consent
7 judgment involving the Power Tool's manufacturer as allowed under Section 2.2(a)
8 or (b).

9
10 d. **Warning on Power Tool Packaging:** Having a durable label
11 containing a warning affixed or attached to the packaging of the Power Tool by way
12 of an adhesive sticker, stamp or permanent changes to the outside packaging of the
13 Power Tool, so long as the packaging is transferred to the consumer, with the
14 language of the warning being either: (i) that set forth in Exhibit D; (ii) equivalent to
15 the language in Exhibit D and one that complies with Section 12601 of Title 22 of
16 the California Code of Regulations; or (iii) that which complies with a settlement or
17 consent judgment involving the Power Tool's manufacturer as allowed under
18 Section 2.2(a) or (b).

19
20 e. **In Store Sign Posting:** Posting a warning sign adjacent to the
21 cash registers or check outs in the front of the California Hertz stores where the
22 Power Tools are rented or sold, with the language of the warning being either: (i)
23 that set forth in Exhibit E; (ii) equivalent to the language in Exhibit E and one that
24 complies with Section 12601 of Title 22 of the California Code of Regulations; or
25 (iii) that which complies with a settlement or consent judgment involving the Power
26 Tool's manufacturer as allowed under Section 2.2(a) or (b).

27
28

1 **2.4 Deemed Compliance.** Any New Products that are rented, distributed or
2 sold by Hertz after the Revised Label Compliance Date shall be deemed to comply
3 with this Consent Judgment and the product warning requirements of Proposition
4 65 if they are accompanied by warnings that comply with Sections 2.1 through 2.3
5 of this Consent Judgment.

6
7 **2.5 Product Characterization.** Plaintiff contends that each of the Covered
8 Products listed in Exhibit A contains or produces gas, fumes or exhaust that contain
9 one or more substances known to the State of California to cause cancer or birth
10 defects (or other reproductive harm). In the event that Hertz obtains analytical, risk
11 assessment or other data ("Exposure Data") that shows that an exposure to any or
12 all Covered Products or the fumes, gases, exhaust and dust generated from the use
13 of those products poses "no significant risk" or will have "no observable effect," as
14 each such standard is applicable and as each is defined under Health & Safety Code
15 §25249.10(c), Hertz shall provide DiPirro with 90 days prior written notice of its
16 intent to limit or eliminate the Proposition 65 warnings discussed in Sections 2.1
17 through 2.3 of this Consent Judgment, or any of them, based on the Exposure Data
18 and shall provide DiPirro with all such supporting Exposure Data. Within thirty
19 (30) days of receipt of Hertz's Exposure Data, DiPirro shall provide Hertz with
20 written notice of his intent to challenge the Exposure Data (in the event that he
21 chooses to make such a challenge). If DiPirro fails to provide Hertz written notice of
22 his intent to challenge the Exposure Data within thirty (30) days of receipt of
23 Hertz's notice and the Exposure Data, DiPirro shall waive all rights to challenge the
24 Exposure Data, and Hertz shall be entitled to limit or eliminate the Proposition 65
25 warnings required under this Consent Judgment with respect to those Covered
26 Product(s) to which the Exposure Data applies. If DiPirro timely notifies Hertz of his
27 intent to challenge the Exposure Data, DiPirro and Hertz shall negotiate in good
28 faith to attempt to reach a settlement. In the event that no settlement is reached

1 within thirty (30) days of mailing by DiPirro of such notice of challenge, DiPirro and
2 Hertz agree to submit such challenge to the Court for determination, pursuant to the
3 Court's continuing jurisdiction of this matter under California Code of Civil
4 Procedure Section 664.6 and this Consent Judgment. The prevailing party shall be
5 entitled to reasonable attorneys' fees and costs associated with such a
6 determination. If DiPirro does not challenge Hertz's notice or the Court determines
7 that no warning is required for particular Covered Products, Hertz shall no longer be
8 required to provide the warnings described in this Consent Judgment for those
9 Covered Products.

10
11 **3. MONETARY PAYMENTS**

12
13 **3.1. Civil Penalty.** Subject to the limitations set forth below, Hertz shall,
14 pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$7,200
15 within five (5) calendar days of the Effective Date. This payment shall be made
16 payable to the "Chanler Law Group in Trust for Michael DiPirro" and shall be held in
17 escrow by DiPirro's counsel until this Consent Judgment has been entered. Any
18 penalty monies received shall be apportioned by DiPirro in accordance with Health &
19 Safety Code § 25192, with 75% of these funds remitted to the State of California.
20 DiPirro shall bear all responsibility for apportioning and paying to the State of
21 California the appropriate civil penalties paid in accordance with this paragraph. In
22 the event this Consent Judgment is not entered, any payment made pursuant to
23 this paragraph shall be returned to Hertz, with interest thereon at a rate of six
24 percent (6%) per annum, within five (5) days of receipt of notice of the Court's
25 rejection of this proposed Consent Judgment.

26
27 **3.2. Reimbursement of Fees and Costs.** The parties acknowledge that
28 DiPirro offered to resolve the dispute without reaching terms on the amount of fees

1 and costs to be reimbursed, thereby leaving this open issue to be resolved after the
2 material terms of the agreement had been reached and the matter settled. Hertz
3 then expressed a desire to resolve the fee and cost issue concurrently with other
4 settlement terms, so the parties reached an accord on the compensation due to
5 DiPirro and his counsel under the private attorney general doctrine codified at
6 California Code of Civil Procedure Section 1021.5.

7
8 Hertz shall reimburse DiPirro for his fees and costs, incurred as a result of
9 investigating, bringing this matter to Hertz's attention, litigating and negotiating a
10 settlement in the public interest. Hertz shall within five (5) calendar days of the
11 Effective Date, pay to DiPirro the sum of \$34,750 for his investigation, expert,
12 attorneys' and paraprofessional fees and costs incurred in this matter. The
13 \$34,750 amount shall be made payable to the "Chanler Law Group" and held in
14 escrow by DiPirro's counsel until this Consent Judgment has been entered by the
15 court. In the event this Consent Judgment is not entered, any payment made
16 pursuant to this paragraph shall be returned to Hertz, with interest thereon at a rate
17 of six percent (6%) per annum, within five (5) days of receipt of notice of the
18 Court's rejection of this proposed Consent Judgment.

19
20 **4. RELEASE OF ALL CLAIMS**

21
22 **4.1. DiPirro's Release of Hertz.** In further consideration of the promises and
23 agreements herein contained, and for the payments to be made pursuant to Section
24 3, DiPirro, on behalf of himself, his agents, representatives, attorneys, and/or
25 assignees, and in the interest of the general public on whose behalf this action was
26 brought, hereby waives all rights to institute and participate in, directly or indirectly,
27 any form of legal action and releases all claims including, without limitation, all
28 actions, causes of action, in law or in equity, suits, liabilities, demands, damages,

1 fines, penalties, losses or expenses (including investigation fees, expert fees and
2 attorneys' fees and other costs, other than those stated herein) of any nature
3 whatsoever, whether known or unknown, fixed or contingent (collectively,
4 "Claims"), against Hertz and any of its parent companies and affiliated companies,
5 divisions, subdivisions, subsidiaries (and the predecessors, successors and assigns
6 of any of them), and its respective officers, directors, attorneys, representatives,
7 shareholders, partners, agents, and employees (collectively, "Hertz Releasees").
8 This waiver and release shall pertain only to Claims arising under Proposition 65 or
9 Business & Professions Code §17200 *et seq.*, related to the Hertz Releasees alleged
10 failure to warn about exposures on or before the Effective Date to certain Listed
11 Chemicals contained in or produced by the customary use of any of the Covered
12 Products. It is specifically understood and agreed that Hertz's compliance with the
13 terms of this Release resolves all issues and liability, now and in the future,
14 concerning the Hertz Releasees' compliance with the requirements of Proposition 65
15 or Business and Professions Code §17200 *et seq.*, as to the Covered Products.

16
17 **4.2. DiPirro's Release of "Downstream Persons."** DiPirro, on behalf of
18 himself, his agents, and/or assignees and in the interest of the general public on
19 whose behalf this action was brought, further waives all rights to institute any form
20 of legal action and releases all Claims, as defined below, against each distributor,
21 wholesaler, auctioneer, retailer, dealer, customer, owner, operator, purchaser,
22 lessor, lessee, renter, or user of the Covered Products, or any of their respective
23 parent and affiliated companies, divisions, subdivisions, subsidiaries (and the
24 predecessors, successors and assigns of any of them) and their respective officers,
25 directors, shareholders, partners, attorneys, representatives, agents, employees
26 (collectively, "Downstream Persons"). This waiver and release shall pertain only to
27 Claims arising under Proposition 65 or Business & Professions Code §17200 *et*
28 *seq.*, related to the Downstream Persons' alleged failure to warn about exposures

1 on or before the Effective Date to certain Listed Chemicals contained in any of the
2 Covered Products. It is specifically understood and agreed that this Consent
3 Judgment resolves all issues and liability, now and in the future, concerning the
4 Downstream Persons' compliance with the requirements of Proposition 65 or
5 Business & Professions Code §17200, *et seq.*, as to the Covered Products.

6
7 **4.3. Hertz Release of Michael DiPirro.** Hertz waives all rights to institute
8 any form of legal action against DiPirro, and his attorneys or representatives, for all
9 actions taken or statements made on or before the Effective Date by DiPirro, in the
10 course of seeking enforcement of Proposition 65 or Business & Professions Code
11 §17200, *et seq.* against Hertz.

12
13 **5. HERTZ'S COVERED PRODUCT INFORMATION:** Hertz understands that the
14 information Hertz has provided to counsel for DiPirro about Hertz's rentals and sales
15 of the Covered Products was a material factor upon which DiPirro has relied to
16 determine a fair and reasonable settlement. To the best of Hertz's knowledge, the
17 information provided is true and accurate. In the event DiPirro discovers facts
18 which demonstrate to a reasonable degree of certainty that the information is
19 materially inaccurate, all other parts of this Consent Judgment notwithstanding,
20 DiPirro shall have the right to vacate this Consent Judgment and re-institute an
21 enforcement action against Hertz, provided that all sums paid by Hertz pursuant to
22 Section 3 are returned to Hertz, with interest thereon at a rate of six percent (6%)
23 per annum, within five (5) days from the date on which DiPirro notifies Hertz of his
24 intent to vacate this Consent Judgment. In such case, all applicable statutes of
25 limitation shall be deemed tolled for the period between the date DiPirro filed the
26 instant action and the date DiPirro notifies Hertz that he is seeking to vacate this
27 Consent Judgment pursuant to this paragraph, provided that, in no event shall any
28 statute of limitation be tolled beyond four (4) years from the date this action was

1 filed.

2

3 **6. COURT APPROVAL:** If this Consent Judgment is not approved and entered by
4 the Court within 60 days of the Effective Date, it shall be deemed null and void as
5 of the sixty-first (61st) day after the Effective Date and cannot be used in any
6 proceeding.

7

8 **7. SEVERABILITY:** In the event that any of the provisions of this Consent
9 Judgment are held by a court to be unenforceable, the validity of the enforceable
10 provisions remaining shall not be adversely affected thereby.

11

12 **8. ATTORNEY'S FEES:** In the event a dispute arises with respect to any
13 provision(s) of this Consent Judgment, the prevailing party shall be entitled to
14 recover costs and reasonable attorneys' fees.

15

16 **9. GOVERNING LAW:** The terms of this Consent Judgment shall be governed by
17 the laws of the State of California. In the event that Proposition 65 is repealed or is
18 otherwise rendered inapplicable by reason of law generally, or as to the Covered
19 Products specifically, Hertz shall have no further obligations pursuant to this
20 Consent Judgment with respect to, and to the extent that, those Covered Products
21 are so affected.

22

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

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If to DiPirro: Clifford Chanler, Esq.

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Chanler Law Group
Magnolia Lane
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with a copy to Jennifer Henry or David Bush, Esq.
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4400 Keeler Ave Suite 200
Oakland, CA 94605-0747
Fax (510) 577-0787

If to Hertz: Virginia Carlson, Esq.
Assistant General Counsel
The Hertz Corporation
225 Brae Boulevard
Park Ridge, New Jersey 07656-0713
(Fax) (201) 307-2876

with a copy to: John E. Dittoe, Esq.
Crosby, Heafey, Roach & May
1999 Harrison Street
P.O. Box 2084
Oakland, CA 94604-2084
(Fax) (510) 273-8832

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

11. NO ADMISSIONS: Nothing in this Consent Judgment shall constitute or be construed as an admission by Hertz of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Hertz of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by Hertz. Hertz reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect Hertz's obligations, responsibilities and duties under this Consent Judgment.

12. ENTIRE AGREEMENT; MODIFICATION: This Consent Judgment constitutes the entire agreement between the parties relating to the rights and obligations

1 herein granted and assumed, and supersedes all prior agreements and
2 understandings between the parties. This Consent Judgment may be modified only
3 upon the written agreement of the parties or upon motion to the court.

4
5 **13. COUNTERPARTS; FACSIMILE SIGNATURES:** This Consent Judgment may be
6 approved as to form by counsel for the parties in counterparts and by facsimile,
7 each of which shall be deemed an original, and all of which, when taken together,
8 shall constitute one and the same document.

9
10 **14. COMPLIANCE WITH REPORTING REQUIREMENTS:** The parties shall
11 cooperate in complying with the reporting requirements set forth in Health & Safety
12 Code §25249.7(f). If, as of the Effective Date, a form approved by the Attorney
13 General's Office is available for use, such form shall be promptly completed and
14 then sent to the California Attorney General's Office, along with a copy of this
15 proposed Consent Judgment, by certified mail, return receipt requested. If a form
16 approved by the Attorney General's office is not available as of the Effective Date,
17 Hertz shall promptly send this Consent Judgment to the California Attorney
18 General's Office by certified mail, return receipt requested, along with a cover letter
19 stating that "The attached proposed Consent Judgment is provided to you pursuant
20 to Health & Safety Code §25249.7(f)." Exhibit B attached hereto contains a
21 statement by counsel for Hertz that, consistent with this Section 14.1, the
22 proposed Consent Judgment is being submitted concurrently to the California
23 Attorney General's Office with its presentation to the Alameda County Superior
24 Court.

25
26 **15. AUTHORIZATION:** The undersigned are authorized to execute this Consent
27 Judgment on behalf of their respective parties and have read, understood and agree
28 to all of the terms and conditions of this Consent Judgment.

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CROSBY, HEAFEY, ROACH & MAY
PROFESSIONAL CORPORATION

AGREED TO:

DATED: 5/25, 2001

Michael DiPirro
Plaintiff Michael DiPirro

AGREED TO:

DATED: _____, 2001

Virginia Carlson,
Assistant General Counsel of The Hertz
Corporation on behalf of Big 4 Rents, Inc.,
Hertz Equipment Rental Corporation and The
Hertz Corporation

APPROVED AS TO FORM:

DATED: 5/25, 2001

BUSH & HENRY

By: Jennifer Henry
Jennifer Henry
Attorneys for Plaintiff
Michael DiPirro

APPROVED AS TO FORM:

DATED: _____, 2001

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By: _____
John E. Dittoe
Attorneys for Defendants Big 4 Rents,
Inc., Hertz Equipment Rental
Corporation and The Hertz Corporation

IT IS TO ORDERED.

DATED: _____, 2001

Judge of the Superior Court

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AGREED TO:
DATED: _____, 2001

Plaintiff Michael DiPirro

AGREED TO:
DATED: May 18, 2001

Virginia Carlson
Virginia Carlson,
Assistant General Counsel of The Hertz
Corporation on behalf of Big 4 Rents, Inc.,
Hertz Equipment Rental Corporation and The
Hertz Corporation

APPROVED AS TO FORM:
DATED: _____, 2001

BUSH & HENRY

By: _____
Jennifer Henry
Attorneys for Plaintiff
Michael DiPirro

APPROVED AS TO FORM:
DATED: May 25, 2001

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

By: John E. Dittoe
John E. Dittoe
Attorneys for Defendants Big 4 Rents,
Inc., Hertz Equipment Rental
Corporation and The Hertz Corporation

IT IS TO ORDERED.

DATED: MAY 30, 2001

DAVID E. HUNTER

Judge of the Superior Court

Exhibit A

EXHIBIT A – HERTZ

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Welding Products

Welding machines, power sources and other welding equipment.
Welding machines (such as MIG welders, TIG welders, stick welders, arc welders and cutters,
plasma cutters and oxy-fuel welders)
Welding power sources.

Power Tools

Saws (such as band, block, brick, circular, chop, clearing, concrete, cut-off machines, floor, jig,
masonry, miter, pavement, radial, reciprocating, scroll, stonecutting, table, tile and wall
mounted).
Power shears and cutters (such as rotary tile and pipe cutters, 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
drywall drills).
Power sharpeners and files, including drill bit sharpeners.
Power screw drivers.
Power hammers (such as breaker, chipper and rotary).
Rotary tools and impact wrenches.
Lathes, planers, shapers, edgers and nibblers.
Routers (such as general purpose, masonry and plunge).
Joiners (such as general purpose and plate).
Paint drying and removing tools, including sandblasters and heat guns.
Drywall cutters and trimmers.

Exhibit B

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EXHIBIT B

As counsel for Big 4 Rents, Inc., Hertz Equipment Rental Corporation and The Hertz Corporation in the matter of Michael DiPirro v. Hertz Big 4 Rents, Inc. et. al., Alameda County Superior Court No. H-216083-0, the undersigned hereby represents that this proposed Consent Judgment was sent to the California Attorney General's Office by certified mail, return receipt requested, on ____, 2001.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: _____, 2001.

CROSBY, HEAFEY, ROACH & MAY
Professional Corporation

John E. Dittoe
Attorneys for Big 4 Rents, Inc., Hertz
Equipment Rental Corporation and The Hertz
Corporation

Exhibit C

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EXHIBIT C

Consent Judgment in People v. Ace Hardware, San Francisco Superior Court
No. 995893

1 **BILL LOCKYER**
Attorney General of the State of California
2 **RICHARD M. FRANK**
Chief Assistant Attorney General
3 **CRAIG C. THOMPSON**
Acting Assistant Attorney General
4 **EDWARD G. WEIL (S.B. No. 88302)**
Deputy Attorney General
5 1515 Clay Street, 20th Floor
Oakland, CA 94612
6 Telephone: (510) 622-2149

7 Attorneys for Plaintiffs People of the State of California

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SAN FRANCISCO**

| | | | |
|----|---|---|-------------------------|
| 10 | PEOPLE OF THE STATE OF CALIFORNIA ex. rel. |) | No. 995893 |
| 11 | BILL LOCKYER, Attorney General of the State of |) | |
| | California, |) | CONSENT JUDGMENT |
| 12 | |) | |
| | Plaintiffs, |) | |
| 13 | |) | |
| | v. |) | |
| 14 | Ace Hardware Corporation, et al. |) | |
| 15 | |) | |
| | Defendants. |) | |

17 **1. INTRODUCTION**

18 1.1. On June 18, 1998, the Attorney General of the State of California, on behalf of the
19 People of the State of California ("People"), filed a complaint for civil penalties and injunctive
20 relief for violations of Proposition 65 and unlawful business practices in this Court.

21 1.2. The following defendants were named in the complaint: The Carborundum
22 Co., Wal-Mart Stores, Inc., Minnesota Mining and Manufacturing Company, sued herein as 3M
23 Corporation, Post Tool, Sungold Abrasives U.S.A., Inc., Truestone Block, Inc., Shamrock
24 Materials, Inc. (sued herein as "Shamrock Materials"), Sears Roebuck & Co., Orchard Supply
25 Hardware Stores Corporation, Boral Industries, Inc., Boral Bricks, Inc., Coronado Stone
26 Products, CPC Terminals, Hokanson Bldg. Block Co., Bosch Power, Div. of SB Power Tool Co.,
27 Dremel, Skil, Div. of SB Power Tool Co., Yardbirds, John Deere Consumer Products, Inc.,

1 United Abrasives, Inc., Husqvarna Forest & Garden Co., Shindaiwa, Partner Industrial Prods.,
2 Norton Company, Stow Manufacturing Co., Stihl, Inc., Echo, Inc., Cushion Cut, Inc., Hitachi
3 Koki U.S.A., Ltd. (sued as "Hitachi Power Tools" and "Hitachi Koki"), Makita U.S.A., Inc.,
4 Bullard Abrasives, Inc., Norton High Performance Refractories, Acme Brick Co., Alsey
5 Refractories Co., Atkinson Brick Co., Belden Brick Company, BNZ Materials, Inc., Calstone
6 Company, Castaic Brick Manufacturing Co., Chicago Fire Brick Co., Delta International
7 Machinery Corp., Endicott Clay Products Co., Glen-Gery Corporation, Hanson North America,
8 Inc., McNear Brick Company, National Refractories & Minerals, North American Refractories
9 Company, Pacific Clay Brick Co., Pacific Coast Building Products (sued as itself and as its
10 operating divisions Basalite Block and Pacific Supply), Pacific Holding Company, Pine Hall
11 Brick Co., P.K. Insulation Manufacturing Company, Inc., Porter Cable Corporation, Premier
12 Refractories, Inc., The Quikrete Company, Richtex Corporation, Ryobi America Corporation,
13 Thermal Ceramics, Inc., Unifrax Corporation, Wellsville Fire Brick Co., Ace Hardware Corp.,
14 American Tool Co., Inc., Black & Decker (U.S.), Inc., Diamond Products, The M.K. Morse
15 Company, Milwaukee Electric Tool Corporation, Pferd, Inc., Powers Fastening, Inc.(Rawplug),
16 Terra Diamond Industrial, Vermont American Corp., AirVol Block, Inc., Costco Wholesale,
17 Waban, Inc., dba Home Base, K-Mart Corporation, The Home Depot U.S.A., Inc., Calaveras
18 Cement Co., Forney Industries, Lydall, Inc., Clesco Manufacturing Div., Glit, Inc., The Oatey
19 Company, Kaiser Cement Corp., Fibrex, Inc., Magnum Diamond & Machinery, Ali Industries,
20 TruServ Corporation, Global Material Technologies, Inc.(incorrectly sued herein as Rhodes
21 American), and United States Gypsum Company.

22 1.3. The following defendants were dismissed from this action: Sungold Abrasives
23 U.S.A., Inc., United Abrasives, Inc., Shindaiwa, Inc., Boral Industries, Inc., Boral Bricks, Inc.,
24 Norton High Performance Refractories, Acme Brick Co., Alsey Refractories Co., Belden Brick
25 Company, BNZ Materials, Inc., Chicago Fire Brick Co., Endicott Clay Products Co., Glen-Gery
26 Corporation, Hanson North America, Inc., Pine Hall Brick Co., P.K. Insulation Manufacturing
27 Company, Inc., Premier Refractories, Inc., Richtex Corporation, Thermal Ceramics, Inc., Unifrax

1 Corporation, Wellsville Fire Brick Co., Diamond Products, The M.K. Morse Company, Pferd,
2 Inc., Powers Fastening, Inc. (Rawplug), Terra Diamond Industrial, Lydall, Inc., The Oatey
3 company, Fibrex, Inc., Clesco Manufacturing Div., and Magnum Diamond & Machinery. All
4 defendants remaining in this action are hereinafter referred to as "Settling Defendants".

5 1.4. Each Settling Defendant is a corporation or other business entity that employs more
6 than 10 persons and which imports, distributes and/or sells Covered Products in the State of
7 California or has done so in the past.

8 a. For purposes of this Consent Judgment, the term "Covered Products" means all
9 products described in Exhibit A to this Consent Judgment, regardless of product nomenclature
10 and model design or designation including past or future modifications not affecting the basic
11 function of the products. Covered Products do not include soldering irons or soldering guns.
12 Products described as "Accessories" in Exhibit A are attachments to the power tools or hand tools
13 identified in Exhibit A, or otherwise work in connection or association with them, and are
14 Covered Products when used as accessories to other Covered Products identified as power tools.

15 b. For the purposes of this Consent Judgment, the term "dust" refers both to fine
16 particulate matter and to any material released from a Covered Product or from the use of a
17 Covered Product on masonry, wood, metal, or any other natural or synthetic substances. The
18 term includes but is not limited to particles, fibers, chips, residues, powder, smoke, fumes,
19 vapors, soot, grime, dirt, chaff, fines, flakes, sand, granules, attritus, efflorescence, sawdust,
20 detritus, filings, debris, grains, friable material, turnings, sweepings, scourings, rinse, raspings,
21 shavings, dregs, mud, remains, mist, and precipitates. "Dust" does not include engine exhaust.

22 1.5. The People's Complaint alleges that the Settling Defendants failed to provide clear
23 and reasonable warnings that use of the Covered Products would result in exposure to crystalline
24 silica, lead, hexavalent chromium, arsenic, or other chemicals known to the State of California to
25 cause cancer, birth defects or other reproductive harm. The Complaint further alleges that under
26 the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section
27 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and

1 reasonable warning" before exposing individuals to these chemicals, and that the Settling
2 Defendants failed to do so. The Complaint also alleges that these acts constitute unlawful acts in
3 violation of the Unfair Competition Law, Pursuant to Business and Professions Code sections
4 17200 *et seq.* The Complaint specifically alleges that the action does not seek any relief with
5 respect to occupational exposures to listed chemicals caused by products manufactured outside
6 the State of California.

7 1.6. For purposes of this Consent Judgment only, the parties stipulate that this Court has
8 jurisdiction over the allegations of violations contained in the People's Complaint and personal
9 jurisdiction over each Settling Defendant as to the acts alleged in the People's Complaint, that
10 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
11 Consent Judgment as a full and final resolution of all claims which were or could have been
12 raised in the Complaint based on the facts alleged therein.

13 1.7. For the purpose of avoiding prolonged litigation, the Attorney General, acting on
14 behalf of and in the interests of the People, and Settling Defendants enter into this Consent
15 Judgment as a full and final settlement of all claims that were raised in the Complaint, or which
16 could have been raised in the Complaint, arising out of the facts or conduct alleged therein. By
17 execution of this Consent Judgment and agreeing to provide the relief and remedies specified
18 herein, Settling Defendants do not admit any violations of Proposition 65 or Business and
19 Professions Code sections 17200 *et seq.*, or any other law or legal duty, and specifically deny that
20 they have committed any such violations. Nothing in this Consent Judgment shall prejudice,
21 waive or impair any right, remedy, or defense the Attorney General and Settling Defendants may
22 have in any other or in future legal proceedings unrelated to these proceedings. However, this
23 paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of the
24 parties under this Consent Judgment.

25 2. CLEAR AND REASONABLE WARNINGS

26 2.1. Manufacturers of Covered Products identified in Exhibit B and sold for use in the
27 State of California ("Exhibit B Products") shall provide clear and reasonable warnings that some

1 uses of those products expose persons to chemicals known to the State of California to cause
2 cancer, birth defects, or other reproductive harm; these warnings shall be given under the
3 circumstances, in the manner, and according to the schedules provided in this Consent Judgment.

4 For purposes of this section 2, a manufacturer ("Manufacturer") is any Settling Defendant that
5 either manufactures an Exhibit B product, or that sells an Exhibit B product in packaging (not
6 including price tags, inventory control labels, and other labels affixed to products) bearing the
7 name or trademark of that Settling Defendant. However, nothing in this Consent Judgment shall
8 require (1) any Manufacturer of an Exhibit B product to provide warnings on or with any
9 products other than those it manufactures or sells in packaging bearing its name or trademark, or
10 (2) Settling Defendants other than Manufacturers of Exhibit B products to provide any warnings
11 other than those interim warnings identified in subparagraph 3.1. Proposition 65 permits
12 warnings to be provided through mechanisms such as point-of-sale signs, which are not product
13 labels and do not travel with products through interstate commerce. The use of other warning
14 methods, such as labels and in-manual warnings under this Consent Judgment, is consented to by
15 the parties to the Consent Judgment, and shall not be construed to mean that those methods are
16 the only lawful means of compliance with Proposition 65.

17 2.2. Where a Proposition 65 warning is not required by this Consent Judgment for a
18 Covered Product sold for use in the State of California (*i.e.* those products listed on Exhibit A
19 that are not listed on Exhibit B, or "No Warning Products"), the Settling Defendants shall not
20 provide that product with a Proposition 65 warning concerning any exposure, unless required by
21 the federal Hazard Communication Standard. Provided, however, that chain saws and any other
22 product may retain any Proposition 65 warning required by the settlement of previous litigation.
23 The sole means of modifying this prohibition is a motion brought in accordance with section 5.

24 a. If a Proposition 65 warning is currently being provided with or on any No Warning
25 Products, and the warning is not otherwise allowed by this Consent Judgment, the Manufacturer
26 of each of these shall remove the warning in accordance with the schedule provided by this
27 Consent Judgment. However, a Settling Defendant may retain Proposition 65 warnings that

1 would otherwise have to be removed under this subparagraph if it reasonably believes that the
2 warning is required for occupational use of the product, and the product is sold in the same
3 packaging to both occupational and consumer customers.

4 b. For the purposes of this Consent Judgment, a Proposition 65 warning is one that
5 contains the phrase "Proposition 65", the phrase "a chemical known to the State of California", or
6 language substantially similar. However, nothing in this Consent Judgment shall prevent a party
7 from providing any warning that is or may potentially be required by any law other than
8 Proposition 65, including any regulatory or tort law. In particular, Settling Defendants may
9 provide warnings about cancer, birth defects, and reproductive harm, so long as the warnings are
10 not Proposition 65 warnings as defined in this subparagraph.

11 2.3. Nothing in this Consent Judgment requires that warnings be given for Covered
12 Products sold for use outside the State of California.

13 2.4. Nothing in this Consent Judgment requires that Proposition 65 warnings be given for
14 occupational exposures associated with any Covered Product that is manufactured outside of the
15 State of California, within the meaning of the June 6, 1997, U.S. Department of Labor,
16 Occupational Safety and Health Administration, "Approval; California State Standard on Hazard
17 Communication Incorporating Proposition 65," 62 Federal Register 31159-31181. All Covered
18 Products falling within this provision are deemed to be excluded from Exhibit B.

19 2.5. Warnings in manuals. A Manufacturer required to provide a warning for an Exhibit
20 B Product under subparagraph 2.1 may provide that warning in the owner's manual for that
21 Exhibit B Product if all of the following conditions are met:

22 a. the warning shall be located in one of the following places in the owner's manual: the
23 outside of the front cover, the inside of the front cover, the first page other than the cover, or the
24 outside of the back cover. Unless a different warning is approved by the Attorney General, the
25 warning shall have the exact content as the warning in Exhibit C, except that, at the option of the
26 manufacturer, the bracketed language may be omitted. The warning shall be printed in a font no
27 smaller than the font used for other safety warnings in the manual. The format shown in Exhibit

1 C is illustrative only, provided that the warning meets the other requirements of this section.
2 Alternatively, the warning may be included in a safety warning section consistent with
3 specifications UL 745-1 or UL 45, issued by Underwriters Laboratories Inc., as amended. The
4 warning may either be printed in the manual or contained in a durable label or sticker affixed to
5 the manual. If the graphic is used, and the manual is printed in a single color of ink on paper,
6 then the warning need not contain the yellow color shown on Exhibit C. Modifications
7 concerning colors of manual warnings may be made with the advance consent of the Attorney
8 General, which shall not be unreasonably withheld.

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

11 c. the owner's manual is intended by the Manufacturer to be provided with the original
12 packaging of the Exhibit B Product to the initial consumer/purchaser;

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

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

16 2.6. Warnings on the Product. As an alternative to complying with the requirements of
17 subparagraph 2.5, a Manufacturer of an Exhibit B Product may satisfy its obligations under this
18 Consent Judgment by providing warnings on the product. Any such warning may be provided
19 by affixing a durable label containing a warning with the language contained in Exhibit D on the
20 Exhibit B Product in a location that can be seen by the user of the Exhibit B Product under
21 normal circumstances of use of the Exhibit B Product.

22 2.7. Reporting to the Attorney General. Each Manufacturer responsible for providing
23 one or more warnings under subparagraph 2.1 shall mail one sample copy of a warning,
24 regardless of the number of product types manufactured, together with a certificate stating that
25 the warning requirements under the Consent Judgment have been complied with, to the Attorney
26 General within one year and 30 days following the entry of this Consent Judgment.

27 ///

1 2.8. No Proposition 65 warnings concerning any exposure shall be provided on or with
2 Covered Products except as required by subparagraphs 2.1, 2.5, 2.6, or 3.1, or as allowed by
3 subparagraph 2.2. The sole means of modifying this prohibition is a motion brought in
4 accordance with section 5.

5 **3. INTERIM AND FINAL WARNINGS**

6 3.1 An interim warning program for Exhibit B products sold to consumers in the State of
7 California shall be conducted in accordance with the following provisions.

8 a. Within 60 days from the date of entry of this Consent Judgment, each Settling
9 Defendant who owns or operates any retail store within the State of California ("Retail
10 Defendant" or, as a group, "Retail Defendants") shall provide to the store manager of every retail
11 store owned or operated by that Retail Defendant in the State of California that sells Exhibit B
12 products (1) a warning sign containing the language in Exhibit E, and (2) a communication
13 substantially in the form of Exhibit F (directing the recipient to post the warning sign). As shown
14 in Exhibit F, the letter shall direct the recipient to execute an acknowledgment and return it to the
15 sender within 21 days of receipt. If the sender has not received the acknowledgment within 30
16 days of sending, the sender shall so inform the Attorney General and provide a copy of the
17 original letter and any response from the recipient.

18 b. Within 60 days from the date of entry of this Consent Judgment, each Settling
19 Defendant who has a cooperative or franchise agreement with any retail store within the State of
20 California ("Coop Defendant" or, as a group, "Coop Defendants") shall provide to the store
21 manager of every store in the State of California that sells Exhibit B products with which the
22 Coop Defendant has a cooperative or franchise agreement (1) a warning sign containing the
23 language in Exhibit E, and (2) a communication substantially in the form of Exhibit G (informing
24 the recipient of its obligation to post the warning sign).

25 c. Within 60 days from the date of entry of this Consent Judgment, each Manufacturer of
26 an Exhibit B product shall provide to each retailer in the State of California to whom the
27 Manufacturer sells one or more Exhibit B products (1) a warning sign containing the language in

1 Exhibit E, and (2) a communication substantially in the form of Exhibit G (informing the
2 recipient of its obligation to post the warning sign). As shown in Exhibit G, the letter shall direct
3 the recipient to execute an acknowledgment and return it to the sender within 21 days of receipt.
4 If the sender has not received the acknowledgment within 30 days of sending, the sender shall so
5 inform the Attorney General and provide a copy of the original communication and any response
6 from the recipient. In providing the sign and communication in accordance with this
7 subparagraph, the Manufacturers of Exhibit B products may act individually or in one or more
8 groups, and may use third parties to send out the signs and communications and collect
9 acknowledgments. The parties recognize that any list of retailers provided to the Attorney
10 General under this subparagraph will be provided as confidential business information. The lists
11 and their contents shall be treated as official information in accordance with Evidence Code §
12 1040, and the Attorney General shall exercise its privilege to keep them confidential and
13 protected from public disclosure, if he determines this is required by law. The retailers to whom
14 signs and letters must be sent in accordance with this subparagraph do not include parties to this
15 Consent Judgment, defendants in *People v. Albertson's* (San Francisco Superior Court No.
16 306343), distributors who do not sell directly to the general public, and any retailer who
17 purchases 0.1% or less of the Covered Products the Manufacturer sells in California.

18 d. Retail stores may take down warning signs provided in accordance with this
19 subparagraph 3.1 one year after the entry of this Consent Judgment or when they have ascertained
20 that all Covered Products for which a warning is required being sold in their stores are providing
21 warnings under other parts of this judgment, whichever is sooner.

22 e. The requirements of this subparagraph 3.1 may be enforced by the Attorney General in
23 accordance with subparagraph 7.2.

24 3.2 All Exhibit B Products manufactured more than one year after entry of this Consent
25 Judgment shall have the warnings required under subparagraph 2.1, and described in
26 subparagraphs 2.5 and 2.6. However, the Manufacturer of any Exhibit B Product that begins to
27 design, lay out, and reprint the manual for that product after the entry of this Consent Judgment

1 but before the one-year deadline shall include in the reprinted manual the warning described in
2 subparagraph 2.5, unless the Manufacturer chooses to provide warnings in accordance with
3 subparagraph 2.6.

4 3.3 The provisions in subparagraph 2.2 requiring the removal of Proposition 65 warnings
5 from No Warning Products shall apply only to No Warning Products that are manufactured more
6 than one year after entry of this Consent Judgment. However, the manufacturer of any No
7 Warning Product that begins to design, lay out, and reprint the product packaging or warning
8 label for that product after the entry of this Consent Judgment but before the one-year deadline
9 shall remove from the product packaging or warning label any Proposition 65 warning prohibited
10 by subparagraph 2.2. This subparagraph 3.3 is enforceable only against a Settling Defendant that
11 actually manufactures the product at issue, and not against any Settling Defendant that merely
12 sells the product at issue in packaging bearing the name or trademark of that Settling Defendant.

13 3.4. Optional Interim Owner's Manual/Product Warning Program. A Defendant may
14 elect to provide the warnings otherwise required by subparagraph 3.1 by assuring that each
15 Exhibit B product it manufactures and is offered for sale in California on or after 90 days
16 following entry of this Consent Judgment: either (a) has affixed to it a sticker in the form set forth
17 in Exhibit I, displayed on the outside of the product package so that it may be seen and read by
18 customers in the store; or (b) has affixed to the owner's manual, a warning in the form set forth in
19 Exhibit C. Alternatively, a Defendant may provide warnings by placing them in manuals for
20 Exhibit B products in accordance with subparagraph 2.5, or by affixing to the manuals a warning
21 in the form of Exhibit C, in accordance with the following schedule: (a) in the 30 largest selling
22 Exhibit B product manuals within 90 days, (b) in a total of the 60 largest selling Exhibit B
23 product manuals within 180 days, (c) in a total of the 90 largest selling Exhibit B product
24 manuals within 270 days and (d) in all Exhibit B product manuals within one year after the entry
25 of the consent judgment. Such warning shall be in lieu of any obligations imposed by
26 subparagraph 3.1, but is in addition to all obligations imposed by Paragraphs 2.1 through 2.8.

27 ///

1 **4. PAYMENTS**

2 4.1. Within 30 days following receipt of notice of entry of this Consent Judgment,
3 Settling Defendants, or an entity acting on their behalf, shall pay a total of \$100,000 to the
4 Attorney General as reimbursement of costs and fees in prosecuting this matter. Settling
5 Defendants may divide the responsibility for this \$100,000 payment in any manner they choose.
6 Payment shall be made by delivery of immediately available funds to the Attorney General of the
7 State of California, attention Edward G. Weil, Deputy Attorney General, 1515 Clay Street, 20th
8 Floor, Oakland, California, 94612

9 4.2. The payment under Paragraph 4.1 is in satisfaction of all claims for civil penalties,
10 attorney's fees, costs, restitution, cy pres funding, or any other form of financial relief against
11 Settling Defendants.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 5.1. This Consent Judgment may be modified by written agreement of the Attorney
14 General and Settling Defendants, after noticed motion, and upon entry of a modified consent
15 judgment by the court thereon, or upon motion of the Attorney General or any Settling Defendant
16 as provided by law and upon entry of a modified consent judgment by the court.

17 **6. CONTINUING OBLIGATIONS**

18 6.1. The manufacture, distribution, sale, resale, and/or use of Covered Products by
19 Settling Defendants, their suppliers, or those who are in their respective chains of distribution
20 (including wholesalers, brokers, resellers, dealers, distributors, original equipment manufacturers,
21 and retailers) does not violate Proposition 65 or the Unfair Competition Act if warnings are
22 provided to consumers in compliance with this Consent Judgment.

23 6.2. Any Settling Defendant that has complied with the terms of this Consent Judgment
24 shall not be found to have violated this Consent Judgment because any other person shall have
25 failed to provide warnings.

26 6.3. Provided, however, that this paragraph shall not expand or diminish any duty to
27 comply with any changes made to Proposition 65 or its implementing regulations after the date of

1 this Consent Judgment. The parties recognize that, for purposes of this subparagraph, the listing
2 of chemicals under Proposition 65 is not a change in the statute or its implementing regulations.

3 6.4. This paragraph shall not resolve any claim with respect to a Covered Product for
4 which no warning is provided and the product is changed after entry of this Consent Judgment to
5 include Listed Chemicals not previously contained in the product, or chemicals that were
6 contained in the Covered Product but are added to the Proposition 65 list of chemicals after the
7 entry of judgment.

8 6.5 By entering into this Consent Judgment, the Attorney General does not waive any
9 right to take further enforcement action in accordance with paragraph 7.

10 7. ENFORCEMENT

11 7.1. The Attorney General may, by motion or application for an order to show cause
12 before this Court, enforce the terms and conditions contained in this Consent Judgment. In any
13 such proceeding, the Attorney General may seek whatever fines, costs, penalties, or remedies are
14 provided by law for failure to comply with the Consent Judgment and where said violations of
15 this Consent Judgment constitute subsequent violations of Proposition 65 or other laws
16 independent of the Consent Judgment and/or those alleged in the Complaint, the Attorney
17 General is not limited to enforcement of the Consent Judgment, but may seek in another action,
18 whatever fines, costs, penalties, or remedies are provided for by law for failure to comply with
19 Proposition 65 or other laws. In any action brought by the Attorney General alleging subsequent
20 violations of Proposition 65 or other laws, the Settling Defendant may assert any and all defenses
21 that are available. Only the Attorney General may enforce the provisions of this Consent
22 Judgment.

23 7.2 The Attorney General may enforce the requirements of subparagraph 3.1 against any
24 Retail Defendant, Coop Defendant, cooperative member, franchisee, or independent retailer who
25 does not comply with the requirements of that paragraph, or who receives a warning sign sent in
26 accordance with that subparagraph but does not post the warning sign during the appropriate
27 interval. Provided, however, that if a defendant sends out the warning signs and letters as

1 required by subparagraph 3.1, and nevertheless a retail store fails to post the warning, the retail
2 store shall pay a stipulated penalty of \$100 for each sign that is required to be posted, but is not,
3 for each day on which the sign is not posted, or, where the retail store is relying on optional
4 warnings under section 3.4, for each product package on display without the required warning.

5 **8. APPLICATION OF CONSENT JUDGMENT**

6 8.1. This Consent Judgment shall apply to and be binding upon the parties, their parents,
7 divisions, subdivisions, subsidiaries, affiliates, franchisees, and licensees, and the predecessors,
8 successors, and assigns of any of them. For the purposes of this Consent Judgment, "affiliate"
9 means, with respect to any Settling Defendant, any other entity directly or indirectly controlling,
10 controlled by, or under common control with such Settling Defendant. This Consent Judgment
11 shall also be binding on the People of the State of California, as represented by the Attorney
12 General or by any person who may bring a claim in the public interest or on behalf of the general
13 public.

14 **9. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

15 9.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
16 by the party he or she represents to stipulate to this Consent Judgment and to enter into and
17 execute the Consent Judgment on behalf of the party represented and legally to bind that party.

18 **10. CLAIMS COVERED**

19 10.1. This Consent Judgment is a full, final, and binding resolution between the People
20 and Settling Defendants, of any violation of Proposition 65, Business & Professions Code
21 sections 17200 *et seq.*, or any other statutory or common law claim that could have been asserted
22 in the complaint against Settling Defendants for failure to provide clear and reasonable warnings
23 of exposure to chemicals known to cause cancer or reproductive toxicity associated with the
24 Covered Products, or any other claim based on the facts or conduct alleged in the Complaint,
25 whether based on actions committed by Settling Defendants or by any entity to whom they
26 distribute or sell Covered Products. Compliance with the terms of this Consent Judgment
27 resolves any issue now, in the past, and in the future concerning compliance by Settling

1 Defendants, their parents, divisions, subdivisions, subsidiaries, affiliates, franchisees, cooperative
2 members, and licensees; their distributors, wholesalers, and retailers who sell Covered Products;
3 and the predecessors, successors, and assigns of any of them; with the requirements of
4 Proposition 65 and Business & Professions Code sections 17200 *et seq.* Nothing in this Consent
5 Judgment shall be construed to affect the duties or liability of any employer with respect to any
6 duty to warn its employees.

7 **11. RETENTION OF JURISDICTION**

8 11.1. This Court shall retain jurisdiction of this matter to implement the Consent
9 Judgment.

10 **12. PROVISION OF NOTICE**

11 12.1. When any party is entitled to receive any notice under this Consent Judgment, the
12 notice shall be sent by overnight courier service to the person and address set forth in this
13 Paragraph. Any party may modify the person and address to whom the notice is to be sent by
14 sending each other party notice by certified mail, return receipt requested. Said change shall take
15 effect for any notice mailed at least five days after the date the return receipt is signed by the
16 party receiving the change.

17 12.2. Notices shall be sent to the following when required:

18 For the Attorney General:

19 Edward G. Weil
20 Deputy Attorney General
21 1515 Clay St., 20th Flr.
22 Oakland, CA 94612-1413
Telephone: (510) 622-2149
Facsimile: (510) 622-2270

23 12.3 Notices for the Settling Defendants shall be sent to the names and addresses set
24 forth in Exhibit H.

25 **13. COURT APPROVAL**

26 13.1. If this Consent Judgment is not approved by the Court, it shall be of no force or
27 effect.

1 **14. EXECUTION IN COUNTERPARTS**

2 14.1. The stipulations to this Consent Judgment may be executed in counterparts and by
3 means of facsimile, which taken together shall be deemed to constitute one document.

4 IT IS SO STIPULATED:

5 Dated: *July 10, 2000* BILL LOCKYER
6 Attorney General
7 RICHARD M. FRANK
8 Chief Assistant Attorney General
9 CRAIG C. THOMPSON
10 Acting Assistant Attorney General

11 By: *Edward G. Weil*
12 Edward G. Weil
13 Deputy Attorney General
14 For Plaintiffs People of the State of California

15 Dated:

16 By: _____
17 Title:

18 On behalf of Defendant:

19
20
21 IT IS SO ORDERED, ADJUDGED, AND DECREED.

22 Dated: _____
23 JUDGE OF THE SUPERIOR COURT
24

Exhibit A: Covered Products

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 A continued)

Building Materials

Clay and ceramic bricks, pavers, tiles, and other shapes; crushed brick, powdered brick, ground clay, and clay used for making bricks.

Concrete blocks, bricks, pavers, tiles, pipes, panels, and other concrete shapes.

Refractory bricks, blocks, and other shapes; refractory castables; and refractory products used to make other refractory products.

Gypsum wallboard, drywall, and other wallboards.

Mortars, grouts, portland cements, cement mixes, blended cements, magnesium oxide, magnesium hydroxide, and joint and other compounds used in connection with wallboard.

Chemically treated wood.

Sand, gravel, crushed stone, and aggregate.

Hand Tools

Saws.

Drills.

Hammers.

Screwdrivers.

Scrapers.

Knives.

Chisels.

Pry bars.

Files, rasps, and planes.

Sanding blocks, sandpaper, and sharpening stones.

Brooms.

Steel wool.

Exhibit B: Products for Which a Warning is Required

Power Tools

Saws such as band, block, brick, circular, 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.

Paint drying and removing tools, including heat guns.

Drywall cutters and trimmers.

Exhibit C: Text of Manual 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. 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.

[Note: Text in brackets is optional.]

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 wear approved safety equipment such as those dust masks that are specially designed to filter out microscopic particles.

Exhibit D: Warning Label

WARNING: Some dust created by using power tools contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Exhibit E:

[SAME WARNING AS EXHIBIT C]



Ex D

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.

EX E

Exhibit F:

**[COMMUNICATION FROM RETAIL DEFENDANTS TO STORE MANAGERS
DIRECTING THEM TO POST WARNING SIGNS OR AFFIX WARNING LABELS.]**

(Company letterhead, proper address)

Dear Store Manager:

Enclosed are [signs for posting in your store] [labels to be affixed on power tool products] concerning exposures to chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm, caused by use of power tools. Dust from materials such as concrete blocks, lead-based paint, and chemically-treated wood contains these chemicals in amounts that can be significant for people who use power tools frequently.

Warnings for these products are required by a Consent Judgment approved by the Superior Court and agreed to by the parties in *People of the State of California v. Ace Hardware, et al.* (San Francisco Superior Court No. 995893). Accordingly, it is very important that you post the signs as directed.

FAILURE TO [POST THE SIGNS] [AFFIX THE LABELS] COULD RESULT IN LEGAL ACTION BY THE ATTORNEY GENERAL SEEKING COURT ORDERS AND CIVIL PENALTIES AGAINST OUR COMPANY. THESE PENALTIES COULD AMOUNT TO \$100 PER SIGN THAT YOU FAIL TO POST.

You must [post the signs] [affix the labels] in one of the following ways:

[1. For stores that have central check-outs in the front of the store, one sign should be posted at every aisle devoted to power tools. For stores that have multiple check-outs located elsewhere in their stores, one sign can be posted either at each aisle where power tools are displayed or at the cash register or check-out counter nearest to where the power tools are displayed.]

[2. If over 50% of the shelf space (by estimate) in your store is devoted to sales of power tools, post at the check-out registers.]

[1. Affix one of the enclosed labels on the packaging of each power tool product listed on Exhibit B (attached), in a location on the packaging likely to be seen by consumers purchasing the product, without obscuring any other warnings that may appear on the packaging.]

[Do NOT post the signs on the front door of the store, or on walls that could be blocked or difficult for your customers to see.]

[Full-color signs] [Durable adhesive labels] are enclosed. If you need more, call or e-mail me at [telephone number and e-mail address]. [Do NOT make black-and-white copies of the sign.]

Because of the importance of this matter, please acknowledge receipt of this communication ASAP, by using the attached form. We must have 100% compliance on this matter. We are

subject to a \$100 fine for EACH sign that is missing, for EACH DAY the sign is missing.

Exhibit 1 [same list as Exhibit B]

Saws such as band, block, brick, circular, 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.

Paint drying and removing tools, including heat guns.

Drywall cutters and trimmers.

Exhibit 2

ACKNOWLEDGMENT

People v. Ace Hardware Consent Judgment: Warning Signs

I received the letter, and our store will post the signs as required.

Store Name:

Address:

Printed Or Typed Name Of Signatory:

Title:

Signature:

Date:

Exhibit G:

[LETTER FROM COOP DEFENDANTS AND MANUFACTURERS OF EXHIBIT B PRODUCTS TO INDEPENDENT RETAILERS NOTIFYING THEM OF THEIR OBLIGATION TO POST WARNING SIGNS.]

Dear Retailer:

The Attorney General of the State of California has filed suit against 95 defendants who manufacture or sell power tools, accessories, bricks, cement blocks, and other products, and has alleged that the sale of these products violates the California laws known as Proposition 65 and the ~~Unfair Competition Law~~ (*People of the State of California v. Ace Hardware*, San Francisco Superior Court No. 995893). Without admitting liability, the power-tool manufacturers and other defendants have negotiated a settlement in which independent retailers are protected from liability for selling these products, so long as they follow certain procedures specified by the Attorney General. This letter explains the nature of the suit, and identifies the procedures you need to follow. A copy of the settlement document will be provided at your request.

However, if you do not sell any of the products identified in Exhibit 1, you are not required to implement any of the procedures. Please check the box in the acknowledgment form attached as Exhibit 2, and sign and return the acknowledgment in the enclosed envelope.

Proposition 65 requires that a warning be given in many circumstances in which people are exposed to substances "known to the State of California" to cause cancer, birth defects, or other reproductive harm. The Attorney General's suit claims that these chemicals are generated when power tools are applied to substances such as (a) old lead-based paints, (b) bricks, cement blocks, and other products that contain crystalline silica, and (c) wood treated with arsenic and chromium.

The defendants who manufacture products identified in Exhibit 1 have agreed to place warnings in the manuals they supply with the products. However, it will take some time to get the thousands of different manuals revised and reprinted, and in the meantime the Attorney General has required an interim warning program consisting of warning signs posted in retail stores. The defendant retailers, which include many of the largest national retailers and cooperatives, have agreed to comply with this program.

If you implement the following procedures, you will be protected from liability under Proposition 65 and the Unfair Competition Law for selling these products. However, **if you sell the products listed on Exhibit 1 and do not implement the following procedures, YOU MAY BE SUED** by the Attorney General or a "private enforcer", and may be required to pay penalties and post warning signs.

You must post the enclosed sign in one of the following ways:

1. In the section of your store where power tools are sold, post one sign in the power-tool section or, if the section extends for more than one aisle, post one sign for each side of every aisle.

2. If you have a separate check-out for power tools, you may post the sign on the cash register or check-out counter for the power-tool section.
3. If you have no more than two cash registers for the store, you may post the sign at the check-out registers.
4. If over 50% of the shelf space (by estimate) in your store is devoted to sales of power tools, you may post at the check-out registers.

DO NOT post the sign on the front door of the store, or on walls that could be blocked or difficult for your customers to see.

A full-color sign is enclosed. If you need more, call [insert number] for more, or send an e-mail to [insert e-mail address]. **DO NOT** make black-and-white copies of the sign.

You may take the sign down [one year after the entry of the consent judgment] or when you ascertain that the Exhibit 1 products you are selling contain manuals that include the warning, whichever is sooner.

Please sign the enclosed acknowledgment attached as Exhibit 2 and return it in the enclosed envelope ASAP. If you do not return the acknowledgment, the Attorney General make take legal action against you.

[Closing, signature, name, title]

Exhibit 1 [same list as Exhibit B]

Saws such as band, block, brick, circular, 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.

Paint drying and removing tools, including heat guns.

Drywall cutters and trimmers.

Exhibit 2

ACKNOWLEDGMENT

People v. Ace Hardware Consent Judgment: Warning Signs

- I received the letter, and our store will post the signs as required.

- Our store does not sell any of the products identified in the letter and Exhibit 1.

Company Or Store Name:

Address:

Printed Or Typed Name Of Signatory:

Title:

Signature:

Date:

Exhibit H: Address for Receiving Notice

(Each Settling Defendant will provide the appropriate name and address.)

Exhibit I: Business Card Size Warning, Stating :

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 Example of these chemicals are:

- **Lead from lead-based paints**
- **Crystalline silica from bricks and cement and other masonry products**
- **Arsenic and chromium from chemically-treated lumber**

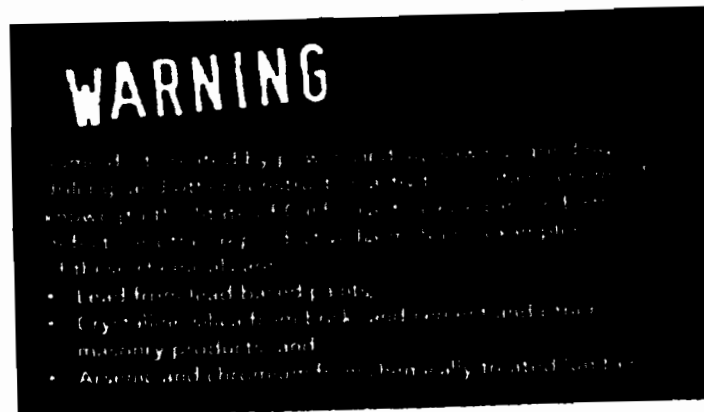


Exhibit D

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EXHIBIT D

WARNING: Some dust created by using power tools contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Exhibit E

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EXHIBIT E

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 and 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 rubber**

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 dust masks that are specially designed to filter out microscopic particles.