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MICHAEL DIPIRRO
6
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9
10 IN AND FOR THE COUNTY OF ALAMEDA
11

12 MICHAEL DIPIRRO, an individual) No. H220483-5
13 Plaintiff,) CONSENT JUDGMENT
14 v.)
15 HILTI, INC.; and DOES 1 through)
16 1000,)
17 Defendants.)
_____)

18
19
20 This Consent Judgment ("Agreement") is entered into by
21 and between Michael DiPirro, a California citizen, and Hilti,
22 Inc., an Oklahoma corporation headquartered in Tulsa, Oklahoma
23 ("Hilti"), as of November 13, 2001 (the "Effective Date").

24 The parties agree to the following terms and conditions:

25 **WHEREAS:**

26 A. Michael DiPirro is an individual residing in San
27 Francisco, California, who seeks to promote awareness of
28

1 exposure to toxic chemicals and improve human health by
2 reducing or eliminating hazardous substances contained in or
3 produced by consumer and industrial products;

4 B. Hilti is a company that currently manufactures,
5 distributes, rents and/or sells various power tools and other
6 equipment in the State of California whose customary use and
7 application is likely to expose users to chemicals listed
8 pursuant to Proposition 65 (California Health & Safety Code
9 §25249.5 et seq.) (The "Listed Chemicals") including lead (or
10 lead compounds), crystalline silica, arsenic, and/or chromium
11 (hexavalent compounds);

12 C. The products whose customary use and application is
13 likely to expose users to the "Listed Chemicals" and which are
14 covered by this Agreement are set forth in Exhibit A (the
15 "Products"). The Products have been manufactured,
16 distributed, rented and/or sold by Hilti for use in California
17 since at least June 5, 1998;

18 D. On March 22, 2001, Michael DiPirro first served
19 Hilti and other public enforcement agencies with a document
20 entitled "60-Day Notice of Violation" which provided Hilti and
21 such public enforcers with notice that Hilti was allegedly in
22 violation of Health & Safety Code §25249.6 for allegedly
23 failing to warn purchasers that certain products it sells,
24 rents or otherwise offers for use in California expose users
25 to Proposition 65 - listed chemicals; and

26 E. On June 5, 2001, Michael DiPirro filed a complaint
27 entitled Michael DiPirro v. Hilti Corporation; et al. in the
28

1 Alameda County Superior Court, naming Hilti as a defendant and
2 alleging violations of Business & Professions Code §17200 and
3 Health & Safety Code §25249.6 on behalf of individuals in
4 California who allegedly have been exposed to the "Listed
5 Chemicals" contained in or produced by certain Hilti products.

6 F. Nothing in this Agreement shall be construed as an
7 admission by Hilti of any fact, finding, issue of law, or
8 violation, of law, nor shall compliance with this Agreement
9 constitute or be construed as an admission by Hilti of any
10 fact, finding, conclusion, issue of law, or violation of law.

11 However, this paragraph shall not diminish or otherwise
12 affect the obligations, responsibilities, and duties of Hilti
13 under this agreement.

14

15 **NOW THEREFORE, MICHAEL DIPIRRO AND HILTI AGREE AS FOLLOWS:**

16

17 1. Product Warnings. Hilti shall begin to initiate
18 revisions to its health hazard warnings for its Products to
19 provide the language set forth in the section 1.1 below.
20 Beginning 60 days after entry of entry of this Consent
21 Judgment, Hilti agrees that it will not knowingly sell (or
22 cause to be sold) any Products that are likely to expose users
23 to the Listed Chemicals in the State of California unless such
24 Products comply with section 1.1. below:

25 1.1 For all Products of Exhibit A whose customary
26 use and application is likely to expose users to Listed
27 Chemicals, such Products shall bear the following warning

28

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1 statement:

2 **WARNING:** This product contains or produces an
3 exposure to lead (or lead compounds),
4 crystalline silica, arsenic, and/or
5 chromium (hexavalent compounds), chemicals
6 known to the State of California to cause
7 cancer and birth defects (or other
8 reproductive harm);

6 or

7 **WARNING:** This product contains or produces an
8 exposure to chemicals known to the State
9 of California to cause cancer and birth
10 defects (or other reproductive harm)";

11 The warning statement shall be prominently
12 placed upon a label on the Product's packaging with such
13 conspicuousness, as compared with other words, statements,
14 designs or devices on the label as to render it likely to be
15 read and understood by an ordinary individual under customary
16 conditions of purchase or use.

17 1.2 Alternative locations for the warnings are
18 permitted that comply with the applicable requirements of
19 California Health & Safety Code §25249.6 and regulations
20 thereunder.

21 **2. Payment Pursuant To Health & Safety Code Sec.**

22 **25249.7(b)**. Pursuant to Health & Safety Code §25249.7(b),
23 Hilti shall pay a civil penalty of \$6,250.00 (six thousand two
24 hundred fifty dollars). The payment of \$6,250.00 shall be
25 paid within ten (10) calendar days of the Effective Date and
26 shall be held in trust by DiPirro's counsel until the Alameda
27 County Superior Court approves and enters the Consent
28 Judgment. The penalty payment is to be made payable to

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1 "Chanler Law Group In Trust For Michael DiPirro". If the
2 Consent Judgment is not approved by the Court, DiPirro will
3 return all funds, with interest thereon at a rate of six
4 percent (6%) per annum, within the (10) calendar days of
5 notice of the Court's decision. Penalty monies shall be
6 apportioned by DiPirro in accordance with Health & Safety Code
7 §25192, with 75% of these funds remitted to the State of
8 California's Department of Toxic Substances Control.

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

19 **3. Reimbursement Of Fees And Costs.** The parties
20 acknowledge that DiPirro offered to resolve the dispute
21 without reaching terms on the amount of fees and costs to be
22 reimbursed, thereby leaving this open issue to be resolved
23 after the material terms of the agreement had been reached,
24 and the matter settled. Hilti then expressed a desire to
25 resolve the fee and cost issue concurrently with other
26 settlement terms, so the parties tried to reach an accord on
27 the compensation due to DiPirro and his counsel under the
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1 private attorney general doctrine codified at C.C.P. §1021.5.

2 Hilti shall reimburse DiPirro for his fees and costs,
3 incurred as a result of investigating, bringing this matter to
4 Hilti's attention, litigating and negotiating a settlement in
5 the public interest. Hilti shall pay \$14,000.00 (fourteen
6 thousand dollars) for pre-60 Day Notice investigation fees and
7 costs, and \$6,250.00 (six thousand two hundred fifty dollars)
8 for all other attorneys' fees and litigation costs. Hilti
9 agrees to pay the total sum of \$20,250.00 (twenty thousand two
10 hundred fifty dollars) within ten (10) days of the Effective
11 Date. Such sum shall be held in trust by DiPirro's counsel
12 until the Alameda County Superior Court approves and enters
13 the Consent Judgment. If the Consent Judgment is not approved
14 by the Court, DiPirro will return all funds, with interest
15 thereon at a rate of six percent (6%) per annum, within the
16 (10) calendar days of notice of the Court's decision. The
17 Payment should be made payable to the "Chanler Law Group".

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

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1 **3.1 Additional Contingent Fees and Costs.** In the
2 event that the California Attorney General's office, pursuant
3 to 11 CRC 3000, et seq., serves objections to this Consent
4 Judgment on either of the parties, such that it requires
5 plaintiff to incur additional legal fees or costs relating to
6 this Consent Judgment, Defendant shall reimburse DiPirro for
7 any fees and costs incurred by DiPirro and his counsel in
8 excess of \$1,500 from the date of receipt of the Attorney
9 General's objections, provided that DiPirro first obtains
10 Defendant's consent to proceed with the Consent Judgment under
11 these circumstances and further provided that the total amount
12 of any such additional fees and costs do not exceed a total of
13 \$3,000 above the initial \$1,500. Such additional legal fees
14 or costs relating to this Consent Judgment include, but are
15 not limited to: further editing and finalizing of the
16 Consent Judgment; corresponding with opposing counsel;
17 retention of experts; presenting of the Consent Judgment (or
18 any modifications thereof) to the Attorney General for further
19 comment; and any briefing and/or appearance before the Court
20 related to this Consent Judgment; all occurring as a result of
21 the Attorney General's objections.

22 Plaintiff agrees to document all fees and costs incurred
23 from the date of receipt of the Attorney General's objections
24 through the date of court approval of the Consent Judgment.
25 Prior to receiving such documentation, Defendant agrees to
26 enter into a letter agreement in which the parties agree that,
27 by transmitting such information, no privilege will be waived
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1 by DiPirro or his counsel. Such additional reimbursement of
2 legal fees and costs shall be due within ten (10) calendar
3 days after receipt of both notice of Court approval of the
4 Consent Judgment and final billing statement from plaintiff.
5 Defendant has the right to object to such reimbursement and
6 may submit the resolution of this issue to the American
7 Arbitration Association (AAA) in Northern California to
8 determine the reasonableness of the additional fees and costs
9 sought, provided that such notice of objection or decision to
10 arbitrate is received by plaintiff by the end of the ten (10)
11 calendar days. If an arbitration notice is not filed with AAA
12 in a timely manner, DiPirro may file a motion with the Court
13 for fees and costs pursuant to CCP §1021.5 and this Consent
14 Judgment associated with any additional fees and costs
15 incurred as set forth in this paragraph.

16 4. **Michael DiPirro's Release of Hilti.** Michael
17 DiPirro, by this Agreement, on behalf of himself, his agents,
18 representatives, attorneys, assigns, and in the interest of
19 the general public, waives all rights to institute or
20 participate in, directly or indirectly, any form of legal
21 action, and releases all claims, liabilities, obligations,
22 losses, costs, expenses, fines and damages, against Hilti and
23 its directors, officers, employees, affiliates, successors and
24 assigns, whether under Proposition 65 or the Business &
25 Profession Code §17200 et seq. based on Hilti's alleged
26 failure to warn about exposure to the Listed Chemicals
27 contained in or produced by any of the Products.

1 This paragraph expressly excludes any waiver or release
2 of any entity (other than Hilti, its directors, officers,
3 employees, affiliates, successors and assigns) which engages
4 in the business of renting or leasing any Product (s) listed
5 on Exhibit A to individuals residing in the State of
6 California. The term "Affiliates" is limited to: (a)
7 entities related through common stock ownership; and (b)
8 formally authorized Hilti distributors.

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

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

19 **7. Intent of Parties That This Agreement Have**
20 **Preclusive Effect.** DiPirro and Hilti agree that this
21 Agreement is intended to resolve and preclude any and all
22 claims that were or could have been brought in the case filed
23 by DiPirro against Hilti in Alameda County Superior Court, or
24 otherwise brought by any person or entity under Proposition
25 65, Business and Professions Code Sections 17200 et seq., or
26 any other statute or common law rule that involves, relates to
27 or arises out of the alleged failure to warn about exposure to
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1 chemicals contained in or produced by any of the Products
2 listed in Exhibit A or by accessories to the Products listed
3 in Exhibit B. The parties agree that DiPirro is entering into
4 this Consent Judgment in the interests of the general public
5 as authorized by Proposition 65 and any other applicable law,
6 and that this Agreement and the judgment entered pursuant
7 hereto accordingly are intended to, and shall, have full
8 preclusive effect against any other person or entity with
9 respect to such claims, whether purporting to act in his, her
10 or its own interests or in the public interest. The parties
11 further intend this Agreement to be appropriate and adequate
12 to protect the public from any of the acts alleged, or that
13 could have been alleged, in the complaint filed by DiPirro
14 against Hilti.

15 **8. Non-Admission.** Hilti enters into this Agreement in
16 compromise of disputed claims. Neither the execution of this
17 Agreement and the releases provided for herein, nor the
18 payment of any consideration hereunder, nor any other act or
19 agreement in furtherance of this Agreement, shall be construed
20 in any way as an admission of wrongdoing or liability on the
21 part of any party hereto or any party released hereby. Hilti
22 completely denies any such liability or wrongdoing and intends
23 by this Agreement only to avoid further and prolonged
24 litigation.

25 **9. Hilti Sales Data.** Hilti understands that the sales
26 data provided to counsel for DiPirro by Hilti was a material
27 factor upon which DiPirro has relied to determine the amount
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1 of payments made pursuant to Health & Safety Code §25249.7 (b)
2 in this Agreement. To the best of Hilti's knowledge, the
3 sales data provided is true and accurate. In the event that
4 DiPirro discovers facts which demonstrate to a reasonable
5 degree of certainty that the sales data is materially
6 inaccurate, the parties shall meet in a good faith attempt to
7 resolve the matter within ten (10) days of Hilti's receipt of
8 notice from DiPirro of his intent to challenge the accuracy of
9 the sales data. If this good faith attempt fails to resolve
10 DiPirro's concerns, DiPirro shall have the right to rescind
11 the Agreement and re-institute an enforcement action against
12 Hilti, provided that all sums paid by Hilti pursuant to
13 paragraphs 2 and 3 are returned to Hilti within ten (10) days
14 from the date on which DiPirro notifies Hilti of his intent to
15 rescind this Agreement. In such case, all applicable statutes
16 of limitation shall be deemed tolled for the period between
17 the date DiPirro filed the instant action and the date DiPirro
18 notifies Hilti that he is rescinding this Agreement pursuant
19 to this Paragraph.

20 **10. Product Characterization.** Hilti acknowledges that
21 each of the Products listed in Exhibit A may contain, or in
22 the customary use or application of the Products is likely to
23 expose users to the Listed Chemicals. In the event that Hilti
24 obtains analytical, risk assessment or other data ("Exposure
25 Data") that shows an exposure to any or all Products poses "no
26 significant risk" or will have "no observable effect," as each
27 such standard is applicable and as each is defined under
28

1 Health & Safety Code §25249.10 (c) and Hilti seeks to
2 eliminate the warnings, then Hilti shall provide DiPirro with
3 ninety (90) days prior written notice of its intent to limit
4 or eliminate the warning provisions under this Agreement based
5 on the Exposure Data and shall provide DiPirro with all such
6 supporting Exposure Data, DiPirro shall provide Hilti with
7 written notice of his intent to challenge the Exposure Data
8 (in the event that he chooses to make such a challenge). If
9 DiPirro fails to provide Hilti written notice of his intent to
10 challenge the Exposure Data within ninety (90) days of receipt
11 of Hilti's notice and the Exposure Data, DiPirro shall waive
12 all rights to challenge the Exposure Data, and Hilti shall be
13 entitled to limit or eliminate the warning provisions required
14 under this Agreement with respect to those Product (s) to
15 which the Exposure Data applies. If DiPirro timely notifies
16 Hilti of his intent to challenge the Exposure Data, (a) Hilti
17 may stop its efforts to eliminate the warnings upon notice to
18 DiPirro with no further liability or obligations or (b)
19 DiPirro and Hilti shall negotiate in good faith for a period
20 not to exceed thirty (30) days following receipt of Hilti's
21 notice to attempt to reach a settlement of this issue. If a
22 settlement is not reached, DiPirro and Hilti agree to submit
23 such challenge to the superior court for determination,
24 pursuant to the court's continuing jurisdiction of this matter
25 under C.C.P. §664.6 and this Agreement. The prevailing party
26 shall be entitled to reasonable attorney's fees and costs
27 associated with bringing a motion brought under this paragraph
28

CONSENT JUDGMENT

1 to the court for determination.

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

6 **12. Attorney's Fees.** In the event that a dispute arises
7 with respect to any provision (s) of this Agreement,
8 (including, but not limited to, disputes arising from the late
9 payments provisions in paragraphs 2 and 3) the prevailing
10 party shall be entitled to recover costs and reasonable
11 attorney's fees.

12 **13. Compliance with Reporting Requirements.** The parties
13 agree to comply with the reporting form requirements
14 referenced in Health & Safety Code §25249.7 (f). Pursuant to
15 the new regulations promulgated under Health & Safety Code
16 §25249.7 (f), DiPirro shall serve a copy of this Consent
17 Judgment on the California Attorney General's office within
18 two business days of receiving all necessary signatures. It
19 will then be presented to the Alameda County Superior Court
20 thirty (30) days later, provided that the Attorney General has
21 not served any objections to this Consent Judgment prior to
22 the end of the thirty day period.

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

25 David R. Bush or Jennifer Henry
26 Bush & Henry
27 4400 Keller Ave., Suite 200
28 Oakland, CA 94605-4229
(510) 577-0747

1 All correspondence to Hilti shall be mailed to:

2 Robert L. Zink
3 Hilti, Inc.
4 P. O. Box 21148
Tulsa, OK 74121
(918) 252-6000

5 **15. Accessories.** If the item is listed in Exhibit B, no
6 warning under this agreement shall be applied unless required
7 by the federal Hazard Communication Standard.

8 **16. Occupational Exposures.** No relief is sought under
9 this agreement, and nothing herein requires that Proposition
10 65 warnings be given, for occupational exposures associated
11 with any Product that is manufactured outside of the State of
12 California within the meaning of the June 6, 1997, U.S.
13 Department of Labor, Occupational Safety and Health
14 Administration, "Approval; California State Standard on Hazard
15 Communication Incorporating Proposition 65", 62 Federal
16 Register 31159-31181.

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

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22 ///

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24 ///

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CONSENT JUDGMENT

11/16/01 FRI 10:30 FAX

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11 15 01 11:18 HILTI + 9F15105770727

NO. 329 PAGE 003

1 **10. Authorization.** The undersigned are authorized to
 2 execute this Agreement on behalf of their respective parties
 3 and have read, understood and agree to all of the terms and
 4 conditions of this Agreement.

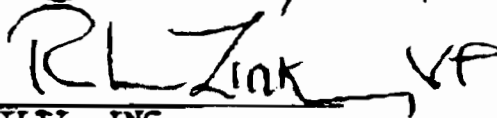
5 **AGREED TO:**

AGREED TO:

6 **DATE:** 11/17/01

DATE: Nov 16, 2001

7
 8 
 9 Michael DiPirro
 PLAINTIFF

by:  VP
HILTI, INC.


11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 **DATE:** _____

DATE: Nov 16, 2001

14 _____
 15 David Bush
 16 Attorney for Plaintiff
 MICHAEL DiPIRRO


 17 Robert L. Zink
 18 Attorney for Defendant
 19 HILTI, INC.

28 CONSENT JUDGMENT

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

5 **AGREED TO:**

AGREED TO:

6 DATE: _____

DATE: Nov. 16, 2001

7 _____

by: RL Zink, VP
HILTI, INC.

8 Michael DiPirro
9 PLAINTIFF

11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 DATE: 11/30/01

DATE: Nov 16, 2001

13 _____

RL Zink

14 David Bush
15 Attorney for Plaintiff
16 MICHAEL DiPIRRO

17 Robert L. Zink
18 Attorney for Defendant
19 HILTI, INC.

20 _____

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CONSENT JUDGMENT

Exhibit A

EXHIBIT A TOOLS AND EQUIPMENT:	EXHIBIT B ACCESSORIES FOR USE WITH TOOLS AND EQUIPMENT IN EXHIBIT A
laser positioners, and steel detection and range meters	accessories for use with laser positioners, range meters, and steel detection systems
electric and battery drills, including combi-hammers, breakers, rotary hammer drills, rotary drills, and electric screwdrivers	drill bits, chisels, breakers, scalers, cutters, tampers, ground rod adapters, setting tools, bushing tools, corers, and hole saws
	extension cords
	ground fault interrupters
	socket adapters
	water swivels
	kit boxes
	dust traps and dust removers
	battery chargers and adapters
	batteries for portable power tools
	safety goggles and ear plugs
	lubricant grease and spray
	concrete anchors: expansion, coil, and adhesive
	plastic and metal wall anchors
	dust blow-out pump and brush
diamond core drills/rigs/wall saws	diamond core bits
	circular blades: masonry, dry and wet, diamond and abrasive wheels
	rail carts
	water collectors
angle grinders	grinding wheels, wire brush wheels, cup wheels, dust collectors
circular, jig and reciprocating saws	Circular, jig, hacksaw and reciprocating saw blades
	driven fasteners, including pins, studs, nails, clips, and specialty fasteners
	threaded rod and fasteners, screws, nuts and washers
powder actuated tools	Cartridges (loads)
	poles for ceiling attachment
	marking heads and characters
pneumatic fastening tools	compressor accessories