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7 Attorneys for Plaintiff
8 MICHAEL DIPIRRO

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

11 MICHAEL DIPIRRO,
12 Plaintiff

No. H220169-6

13 CONSENT JUDGMENT

14 v.

15 INGERSOLL-RAND COMPANY; and DOES 1
16 through 1000,
17 Defendants.

18
19 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by and
20 between Michael DiPirro, a California citizen on behalf of himself and in the interest of the
21 general public (collectively referred to herein as "DiPirro") and Ingersoll-Rand Company, a New
22 Jersey corporation ("Ingersoll-Rand"), as of November 11, 2002 (the "Effective Date"). The
23 parties agree to the following terms and conditions:
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1 **WHEREAS:**

2 A. DiPirro is an individual residing in San Francisco, California, who seeks to
3 promote awareness of exposures to toxic chemicals and improve human health by reducing or
4 eliminating hazardous substances contained in or produced by consumer and industrial products;

5 B. Ingersoll-Rand is a company that currently distributes and sells in the State
6 of California certain power tools for consumer use;

7 C. The products manufactured and distributed by Ingersoll-Rand for consumer
8 use whose customary use and application allegedly produce dust which contains: lead, arsenic,
9 chromium or crystalline silica ("Listed Chemicals") and which are covered by this Agreement are
10 set forth in Exhibit A (the "Products"). As used in this Agreement, the term "dust" shall mean fine
11 particulate matter and any material released from a Product or from the use of a Product on
12 masonry, wood, metal, or any other natural or synthetic substances. The term includes but is not
13 limited to particles, fibers, chips, residues, powder, smoke, fumes, vapors, soot, grime, dirt, chaff,
14 fines, flakes, sand, granules, attritus, efflorescence, sawdust, detritus, filings, debris, grains, friable
15 material, turnings, sweepings, scourings, rinse, raspings, shavings, dregs, mud, remains, most and
16 precipitates. Dust does not include engine exhaust. Some Products have been distributed and/or
17 sold by Ingersoll-Rand for consumer use in California since at least June 1, 1997; and

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

23 E. On June 1, 2001, Michael DiPirro filed a complaint entitled Michael
24 DiPirro v. Ingersoll-Rand Company, et al. in the Alameda County Superior Court, naming
25 Ingersoll-Rand as a defendant and alleging violations of Business & Professions Code §17200 and
26 Health & Safety Code §25249.6 in the interest of the general public, who allegedly have been
27 exposed to the "Listed Chemicals" produced by the customary use and application of certain
28 Ingersoll-Rand products.

1 F. Ingersoll-Rand disputes each and every allegation of violation of
2 Proposition 65 and any other alleged wrongdoing. Nothing in this Agreement is, nor shall it be
3 construed as, an admission by Ingersoll-Rand of any fact, finding, issue of law, or violation of law,
4 nor shall compliance with this Agreement constitute or be construed as an admission by Ingersoll-
5 Rand of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph
6 shall not diminish or otherwise affect the obligations, responsibilities, and duties of Ingersoll-Rand
7 under this Agreement. DiPirro specifically acknowledges Ingersoll Rand's denial of violation of
8 law or other wrongdoing and DiPirro agrees that neither this Agreement nor any part of this
9 Agreement shall be admissible or admitted in any judicial or administrative processing, except for
10 the limited purpose of enforcing this Agreement.

11 **NOW THEREFORE, DIPIRRO AND INGERSOLL-RAND AGREE AS FOLLOWS:**

12 **1. Product Warnings.** Ingersoll-Rand shall not have any Proposition 65 warning
13 obligations for Products that are: (1) manufactured before January 1, 2003; (2) distributed or
14 shipped for sale outside the State of California; or (3) manufactured outside of the State of
15 California, within the meaning of the June 6, 1997 U.S. Department of Labor, Occupational Safety
16 and Health Administration, "Approval California State Standard on Hazard Communication
17 Incorporating Proposition 65," 62 Federal Register 31159-31181 (ie – occupational exposures) and
18 not sold to consumers. Ingersoll-Rand shall also have no Proposition 65 warning obligations for
19 those products (accessories, building materials and hand tools) that Ingersoll-
20 Rand manufactures, distributes or sells in California, if any, and for which the Consent Judgment
21 in *People v. Ace Hardware, et al.*, San Francisco Superior Court No. 995893 has determined that
22 no Proposition 65 warning is required.

23 Ingersoll-Rand shall begin to initiate revisions to its warnings for its Products to provide
24 the language set forth in the section 1.1 below. Beginning on January 3, 2003, Ingersoll-Rand
25 agrees that the Products manufactured with the intention of being sold or distributed in California
26 will comply with section 1.1 below:

27 **1.1** An operating manual, instruction manual or other owners' manual
28 for the Products (identified on Exhibit A) shall bear the warning statement set forth in Exhibit B,

1 attached hereto, pursuant to the conditions established therein.

2 The warning statement shall be prominently placed within or as part of the
3 Product's operating, owners or instruction manual with such conspicuousness, as compared with
4 other words, statements, designs or devices on the operating manual as to render it likely to be read
5 and understood by an ordinary individual under customary conditions of purchase or use.

6 **2. Settlement Payments.**

7 **(a) Payment of Penalties and Incurred Fees and Costs.**

8 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute by
9 negotiating the penalty payment separately and distinctly from the reimbursement of DiPirro's
10 incurred fees and costs. Ingersoll-Rand expressed a desire to resolve the fee and cost issue shortly
11 after the other settlement terms had been finalized and to make one payment to cover both
12 penalties and reimbursement of fees and costs. The parties then attempted (and did) reach an
13 accord on the penalties to be paid pursuant to Health & Safety Code §25249.7(b), and the
14 compensation due to DiPirro and his counsel under the private attorney general doctrine codified
15 at California Code of Civil Procedure §1021.5 for all work performed through the Effective Date
16 of this Agreement.

17 Ingersoll-Rand shall make a total payment of \$14,000, exclusive of additional fees incurred
18 pursuant to Section 2(b), below, within thirty (30) calendar days of the Effective Date of this
19 Agreement. This sum shall also represent payment for any costs and fees incurred by David Bush,
20 who previously represented DiPirro in this action. Such payment is to be made payable to "Sheffer
21 & Chanler LLP."

22 Pursuant to Health & Safety Code §25249.7(b), \$1,500.00 of this total amount is allocated
23 for the payment of civil penalties. Such \$1,500.00 shall be held by Sheffer & Chanler LLP in trust
24 for Michael DiPirro until the Alameda County Superior Court approves and enters the Consent
25 Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return all funds,
26 with interest thereon at a rate of 1.75% per annum, within ten (10) calendar days of notice of the
27 Court's decision. Such penalty monies shall be apportioned by DiPirro in accordance with Health
28 & Safety Code §25192, with 75% of these funds remitted to the State of California's Department

1 of Toxic Substances Control.

2 Pursuant to the private attorney general doctrine, codified at California Code of Civil
3 Procedure §1021.5, \$12,500.00 of this total amount is allocated to reimburse DiPirro and his
4 counsel for his fees and costs, incurred as a result of investigating, litigating and negotiating a
5 settlement in the public interest. This amount shall be exclusive of any additional amount
6 provided for in section 2(b), below.

7 Ingersoll-Rand understands that the payment schedule as stated in this Consent Judgement
8 is a material factor upon which DiPirro and his counsel have relied in entering into this Consent
9 Judgment. Ingersoll-Rand agrees that all payments will be made in a timely manner in accordance
10 with the payment due dates. Ingersoll-Rand will be given a five (5) calendar day grace period for
11 the date payment is due. Ingersoll-Rand agrees to pay Michael DiPirro and his counsel \$250 per
12 calendar day fee for each day, or portion thereof, passing between the time the grace pperiod ends
13 and the time the payment is received by counsel for Michael DiPirro. For purposes of this
14 paragraph, each new day (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

15 (b) **Additional Fees and Costs in Seeking Judicial Approval.** The Parties
16 acknowledge and agree that pursuant to Health & Safety Code section 25249.7, a noticed motion is
17 required to obtain judicial approval of this Consent Judgment. The Parties have agreed to use their
18 best efforts in the filing of a joint Motion to Approve the Consent Judgment within a reasonable
19 time after execution of this Agreement. Best efforts shall mean that Ingersoll-Rand shall return an
20 initial draft of the Motion to Approve within ten (10) days of receiving a motion template from
21 plaintiff. Best efforts shall also mean that Ingersoll-Rand agrees to return any modifications or
22 comments on subsequent drafts received from plaintiff within five (5) days of their receipt.

23 Pursuant to California Code of Civil Procedure §1021.5, Ingersoll-Rand agrees to
24 reimburse DiPirro and his counsel for their reasonable fees and costs incurred in seeking judicial
25 approval of this Consent Judgment subject to the limitations set forth below.

26 (i) If no oppsition to the Motion to Approve (nor objections to the terms of the agreement)
27 is filed or otherwise transmitted by any third party, Ingersoll-Rand agrees to reimburse DiPirro for
28 additional reasonable fees and costs in an amount not to exceed \$3,800.00.

1 (ii) In the event that any third party, including any person or public enforcer, objects or
2 otherwise comments to one or more provisions of the Consent Judgment, Ingersoll-Rand agrees to
3 use its best efforts to support each of the terms of the Consent Judgment, as well as to seek judicial
4 approval of the Consent Judgment.

5 (iii) In the event that such an objection or opposition is transmitted or filed by any third
6 party, Ingersoll-Rand agrees to reimburse DiPirro, in addition to any reasonable fees and costs due
7 under sections 2(a) and 2(b)(i), for his additional reasonable attorneys' fees and costs incurred in
8 securing approval of this Consent Judgment in an amount not to exceed \$2,000.00.

9 (iv) In the event the declaration of an expert witness is required to oppose any objection to
10 the Motion, Ingersoll-Rand agrees to reimburse DiPirro, in addition to any attorneys' fees and
11 costs under sections 2(a), 2(b)(i) and 2(b)(iii), for such expert's reasonable fees and costs in an
12 amount not to exceed \$2,000.00.

13 Ingersoll-Rand's payment of DiPirro's legal fees and costs under this paragraph shall be
14 due within thirty (30) calendar days after receipt of either the notice of the Court's approval of the
15 Consent Judgment or a billing statement from DiPirro ("Additional Fee Claim"), whichever is
16 later. Payment of the Additional Fee Claim shall be made payable to "Sheffer & Chanler LLP."
17 Ingersoll-Rand has the right to object to DiPirro's reimbursement request and may submit the
18 resolution of this issue to the American Arbitration Association (AAA) in Northern California to
19 determine the reasonableness of the additional fees and costs sought.

20 **3. Michael DiPirro's Release Of Ingersoll-Rand.** DiPirro, by this
21 Agreement, in his individual and representative capacity, on behalf of himself, his agents,
22 representatives, attorneys, assigns and in the interest of the general public, absolutely and
23 unequivocally waives each and every, any and all rights to institute or participate in, directly or
24 indirectly, any form of legal, administrative and equitable action, and releases all claims, liabilities,
25 obligations, losses, costs, expenses, fines and damages, known or unknown that were or could
26 have been asserted against Ingersoll-Rand and its directors, officers, employees, attorneys, sister
27 companies, representatives, customers, end-users, successors and assigns based on Ingersoll-
28 Rand's alleged failure to warn about exposure to the Listed Chemicals produced by any of the

1 Products.

2 **4. Ingersoll-Rand's Release Of Michael DiPirro.** Ingersoll-Rand, by this
3 Agreement, waives all rights to institute any form of legal action against DiPirro and his attorneys
4 or representatives, for all actions or statements made by DiPirro, and his attorneys or
5 representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession
6 Code §17200 against Ingersoll-Rand with respect to the Products.

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

9 **6. Product Characterization.** Ingersoll-Rand acknowledges that DiPirro
10 alleges that each of the Products, through their customary use or application by consumers, may
11 produce dust that contains the Listed Chemicals. In the event that Ingersoll-Rand obtains
12 analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all of
13 the Listed Chemicals poses "no significant risk" or will have "no observable effect," as each such
14 standard is applicable and as each is defined under Health & Safety Code §25249.10(c) and
15 Ingersoll-Rand seeks to eliminate the warnings, then Ingersoll-Rand shall provide DiPirro with
16 ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under
17 this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting
18 Exposure Data. Within ninety (90) days of receipt of Ingersoll-Rand Exposure Data, DiPirro shall
19 provide Ingersoll-Rand with written notice of his intent to challenge the Exposure Data (in the
20 event that he chooses to make such a challenge). If DiPirro fails to provide Ingersoll-Rand written
21 notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Ingersoll-
22 Rand's notice and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure
23 Data, and Ingersoll-Rand shall be entitled to limit or eliminate the warning provisions required
24 under this Agreement with respect to those Product(s) to which the Exposure Data applies. If
25 DiPirro timely notifies Ingersoll-Rand of his intent to challenge the Exposure Data, Ingersoll-Rand
26 (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or
27 obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following
28 receipt of Ingersoll-Rand's notice to attempt to reach a settlement of this issue. If a settlement is

1 not reached, DiPirro and Ingersoll-Rand agree to submit such challenge to the superior court for
2 determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. §664.6
3 and this agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs
4 associated with bringing or defending a motion brought under this paragraph to the court for
5 determination. In no event shall the warning obligations of Ingersoll-Rand terminate, pursuant to
6 this section, before one of the following occurs: (1) an express agreement by plaintiff; (2) a failure
7 by plaintiff to provide Ingersoll-Rand with written notice of his intent to challenge the Exposure
8 Data within ninety (90) days of receipt of Ingersoll-Rand's notice and the Exposure Data; or (3) a
9 determination and order of the Court eliminating the warning obligations.

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

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

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

16 Gregory M. Sheffer, Esq.
17 Sheffer & Chanler LLP
18 4400 Keller Ave., Suite 200
19 Oakland, CA 94605
(510) 577-0747

20 All correspondence to Ingersoll-Rand shall be mailed to:

21 Gregory P. O'Hara, Esq.
22 Thelen Reid & Priest LLP
23 Seventeenth Floor
24 333 West San Carlos Street
25 San Jose, CA 95110-2701
(408) 292-5800

with a copy to:
Aaron Kleinbaum
Ingersoll-Rand
P.O. Box 8738
Woodcliff Lake, NJ 07675-8738

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27 **10. Compliance With Reporting Requirements.** The parties agree to comply
28 with the reporting form requirements referenced in Health & Safety Code §25249.7(f). DiPirro

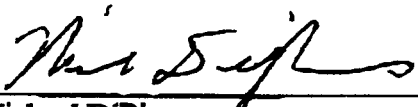
1 represents that his counsel will serve a copy of this Agreement on the California Attorney
 2 General's Office within two business days of the execution of the Agreement. Pursuant to the new
 3 regulations promulgated under Health & Safety Code §25249.7(f), DiPirro shall present this
 4 Consent Judgment to the Alameda County Superior Court thirty (30) days later, thereby allowing
 5 the Attorney General to serve any comments to this Consent Judgment prior to the end of the thirty
 6 (30)-day period.

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

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

13
 14 **AGREED TO:**
 15 DATE: 11/12/02


AGREED TO:
 DATE: _____

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 18 _____
 19 Michael DiPirro
 20 PLAINTIFF

 Ingersoll-Rand Company
 DEFENDANT

21 **APPROVED AS TO FORM:**
 22 DATE: Nov. 12, 2002

APPROVED AS TO FORM:
 DATE: _____

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 25 _____
 26 Gregory M. Shetter
 27 Attorneys for Plaintiff
 28 MICHAEL DIPIRRO

 Gregory P. O'Hara
 Attorneys for Defendant
 INGERSOLL-RAND COMPANY

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

13
14 **AGREED TO:**

AGREED TO:

15 DATE: _____

DATE: Feb. 11, 2002

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Michael DiPirro
PLAINTIFF

Patricia Nachtigal
Ingersoll-Rand Company
DEFENDANT
Patricia Nachtigal

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21 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

22 DATE: _____

DATE: _____

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25 _____
Gregory M. Sheffer
Attorneys for Plaintiff
MICHAEL DIPIRRO

Gregory P. O'Hara
Attorneys for Defendant
INGERSOLL-RAND COMPANY

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12 conditions of this Agreement.

13
14 **AGREED TO:**

AGREED TO:

15 DATE: _____

DATE: _____

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18 _____
Michael DiPirro
PLAINTIFF

Ingersoll-Rand Company
DEFENDANT

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21 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

22 DATE: _____

DATE: November 11, 2007

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25 _____
Gregory M. Sheffer
Attorneys for Plaintiff
MICHAEL DIPIRRO

Gregory P. O'Hara
Gregory P. O'Hara
Attorneys for Defendant
INGERSOLL-RAND COMPANY

EXHIBIT A

PRODUCT	MODEL NUMBERS
Saws	429, 4429
Power Shears	7802s, 7802su
Cut-off Tools	326
Sanders/Polishers	310, 311a, 312, 313, 314, 315, 317, 318, 319, 4151, 4151u, 919906, 4151-HI, 4151-5, 328b, 4151p, 4151-2, Pf100, Pf150
Tire buffers	327, 327ls
Grinders	301, 301-2mk, 301-32mk, 301-3mk, 301-K, 302, 302-2mk, 302-32mk, 302-3mk, 302I, 307-K, 307a, 308, 308i, 344, 344i, 301-N0rt0n, 3445, Pf400, Pf450
Drills	7802kc, 7802, 7802r, 7802rkc, 7803, 7803r, 7804r, 7807r, 7811, 7811kc, 7816, 7816kc, 7811r, 7816r, Pf500
Screwdrivers	371
Power Hammers	132, 115, 115k, 116, 116k, 117, 117k, 121-G, 121-K6, 121/q, 121/q-Eu, 121k, Pf600
Impact Wrench	280, 280-6, 280-S-6, 231xp, 231xp-2, 231, 919914, 919915, 231h, 231h-2, 231c, 231ha, 231ha-2, 211, 212, Ir-C212, Mt1738, C232a, 232tgs1, Mt1758a, Mt1758a-2, Mt1758c001er, 244, 244-2, Aw4400, Aw4400-2, 244a, 244a-2, 19905, Mt1759a, 2131a, 2131a/c, 2131as-2, 2131as-2/c, 18932, Ir-C2131, 2131qt, 2131qt-2, Ir-C2131a, Mt1759q, Aw5000, 2131aflag, 261, 261-3, 261-6, 271, Mt261, 2161xp, 2161xp-6, 2171xp, 290, 290-S, 293, 293s, 2112, 2112s, 919916, 2121, 2121s,

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	Aw3800, Mt2112, Ir-C2112, 2112/pr0m0, 2112w, 2080, 2080-6, 2141, 18593, Aw7500, 2141s, Mt2141, 225, 215, 235, 252, 255a, 295, 295-S, Ir-C215, 285a, 285a-6, 285-S-6, 216, 258, Ai150, Pf800, Pf850
Ratchet Wrench	1077xp, 107xp, 1099xp, 109xp, 103, 1033, 104M0d.A, 111, 1111 Model A, Ir-C103, Ir-C107xp, 1107, 1177, 919891, 1107lr, Mt1847, Mt1848, Mt1849, 1103, 1107cooler, 103cooler, 107xpcooler, 109xpcooler, Pf700
Scalers	125
Nibblers	325

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EXHIBIT B

1. **Warnings in manuals.** Product warnings under this Agreement shall comply with the following conditions:

a. the warning shall be located in one of the following places in the owner's manual, instruction manual or other operating 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. The warning shall have the exact content as the warning under subsection 2, below, except that, at the option of the Defendant, the bracketed language may be omitted. The warning shall be printed in a font no smaller than the font used for other safety warnings in the manual. The format shown in subsection 2, below is illustrative only, provided that the warning meets the other requirements of this section. Alternatively, the warning may be included in a safety warning section of the owner's manual, instruction manual or other operating manual, including one consistent with specifications UL 745-1, as amended. The warning may either be printed in the manual or contained in a durable label or sticker affixed to the manual.

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

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

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

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

2. **Language of Warnings in manual.** For all Products that allegedly expose users to lead (or lead compounds), crystalline silica, arsenic, and/or chromium (hexavalent compounds) or any combination of these chemicals listed by the State of California as known to cause cancer as well as birth defects (or other reproductive harm), such Products shall bear the following warning

1 statement in an instruction manual, owners manual or other operating manual, or on the label or
2 packaging consistent with this Agreement:

3 “WARNING: Some dust created by power sanding, sawing, grinding, drilling, and
4 other construction activities contains chemicals known [to the State
5 of California] to cause cancer, birth defects or other reproductive
6 harm. Some examples of these chemicals are lead from lead based
7 paint, crystalline silica from bricks, cement and other masonry
8 products, and arsenic and chromium from chemically treated lumber.
9 Your risk from these exposures varies, depending on how often you
10 do this type of work. To reduce your exposure to these chemicals,
11 work in a well ventilated area and work with approved safety
12 equipment such as those dust masks that are specially designed to
13 filter out microscopic particles.”

14 **3. Warnings on Product.** As an alternative to complying with the requirements of
15 subsections 1 and 2 above, Defendant may satisfy its obligations under this Agreement by
16 providing warnings on the Product itself. Any such warning may be provided by affixing a
17 durable label on the Product in a location that can be seen by the user of the Product under
18 circumstances of its customary use. Any such warning label affixed to the Product itself shall bear
19 the following warning language:

20 “WARNING: Some dust created by power sanding, sawing, grinding, drilling and
21 other construction activities contains chemicals known [to the State
22 of California] to cause cancer and birth defects or other reproductive
23 harm.”