

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

5 Attorneys for Plaintiff  
MICHAEL DIPIRRO  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF ALAMEDA  
10

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12 MICHAEL DIPIRRO, an individual ) No. H220170-2  
13 Plaintiff, ) CONSENT JUDGMENT  
14 v. )  
15 JET EQUIPMENT & TOOLS, INC.; )  
and DOES 1 through 1000, )  
16 Defendants. )  
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20 This Consent Judgment ("Agreement" or "Consent Judgment")  
21 is entered into by and between Michael DiPirro, a California  
22 citizen, and Jet Equipment & Tools, Inc., a Washington  
23 corporation ("Jet Equipment"), as of February 8, 2002 (the  
24 "Effective Date"). The parties agree to the following terms  
25 and conditions:  
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28 CONSENT JUDGMENT

1     **WHEREAS:**

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

7             B.     Jet Equipment is a company that currently  
8     manufactures, distributes and sells power tools in the State  
9     of California. DiPirro alleges that the customary use and  
10    application of these power tools is likely to produce fumes,  
11    gases or dust that contain chemicals listed pursuant to  
12    Proposition 65 (California Health & Safety Code §25249.5 et  
13    seq.) including lead (or lead compounds), crystalline silica,  
14    arsenic and chromium (hexavalent compounds) (the "Listed  
15    Chemicals");

16            C.     The products whose customary use and  
17    application are alleged by DiPirro as likely to produce fumes,  
18    gases or dust that contain one or more of the "Listed  
19    Chemicals" and which are covered by this Agreement are set  
20    forth in Exhibit A (the "Products"). The Products have been  
21    distributed and/or sold by Jet Equipment for use in California  
22    since at least June 1, 1998; and

23            D.     On March 22, 2001, Michael DiPirro first served  
24    Jet Equipment and other public enforcement agencies with a  
25    document entitled "60-Day Notice of Violation" which alleged  
26    that Jet Equipment was in violation of Health & Safety Code

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1 \$25249.6 ("Proposition 65") for failing to warn purchasers  
2 that certain products it sells or otherwise offers for use in  
3 California expose users to Proposition 65-listed chemicals.

4 E. On June 1, 2001, Michael DiPirro filed a  
5 complaint entitled Michael DiPirro v. Jet Equipment & Tools,  
6 Inc., et al. in the Alameda County Superior Court, naming Jet  
7 Equipment as a defendant and alleging violations of Business &  
8 Professions Code §17200 and Health & Safety Code §25249.6 in  
9 the interest of the general public in California who allegedly  
10 have been exposed to the Listed Chemicals allegedly produced  
11 by the Products.

12 F. Beginning in October 2000, Jet Equipment  
13 asserts it had begun a program of providing warnings for the  
14 Products consistent with those required by the Consent  
15 Judgment in *People of the State of California v. Ace Hardware*  
16 *Corporation, et. Al.*, San Francisco Superior Court No. 995893.

17 F. Nothing in this Agreement shall be construed as  
18 an admission by Jet Equipment of any fact, finding, issue of  
19 law, or violation of law, nor shall compliance with this  
20 Agreement constitute or be construed as an admission by Jet  
21 Equipment of any fact, finding, conclusion, issue of law, or  
22 violation of law. However, this paragraph shall not diminish  
23 or otherwise affect the obligations, responsibilities, and  
24 duties of Jet Equipment under this Agreement.

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28 CONSENT JUDGMENT

1 NOW THEREFORE, MICHAEL DIPIRRO AND JET EQUIPMENT AGREE AS  
2 FOLLOWS:

3 1. **Product Warnings.** Jet Equipment shall continue  
4 to make revisions to its health hazard warnings for the  
5 Products to provide the language set forth in the section 1.1  
6 below. Beginning on April 15, 2002, however, Jet Equipment  
7 agrees that it will not knowingly sell (or cause to be sold)  
8 in California any Products unless such Products comply with  
9 section 1.1 below:

10 1.1 All Products listed on Exhibit A shall  
11 bear the following warning statement:

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

16 This warning statement shall be prominently placed upon the  
17 Product's label with such conspicuousness, as compared with  
18 other words, statements, designs or devices on the label as to  
19 render it likely to be read and understood by an ordinary  
20 individual under customary conditions of purchase or use.

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

22 **§25249.7(b).** In light of the factors set forth in Health &  
23 Safety Code §25249.7(b), Jet Equipment agrees to pay a civil  
24 penalty of \$26,500 (twenty six thousand five hundred dollars).  
25 Jet Equipment shall pay that amount within ten (10) calendar  
26 days after the Effective Date. The penalty payment is to be  
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1 made payable to "Chanler Law Group In Trust For Michael  
2 DiPirro". If the Consent Judgment is not approved by the  
3 Court, DiPirro will return all funds, with interest thereon at  
4 the prevailing federal funds rate (currently set at 1.75%),  
5 within five (5) calendar days of notice of the Court's  
6 decision. Penalty monies shall be apportioned by DiPirro in  
7 accordance with Health & Safety Code §25192, with 75% of these  
8 funds remitted to the State of California's Department of  
9 Toxic Substances Control.

10 **3. Reimbursement Of Fees And Costs.** Pursuant to  
11 CCP §1021.5, Jet Equipment shall reimburse DiPirro and his  
12 counsel for his fees and costs reasonably incurred as a result  
13 of investigating, litigating and negotiating a settlement in  
14 this action. Jet Equipment agrees to pay the total sum of  
15 \$38,225 (thirty eight thousand two hundred twenty five  
16 dollars) for investigation fees, attorneys' fees and  
17 litigation costs. The parties agree that these fees include  
18 DiPirro and his counsel's reasonable attorneys' fees and costs  
19 incurred in seeking judicial approval of this agreement, as  
20 set forth in paragraph 12. Jet Equipment agrees to pay that  
21 amount within ten (10) calendar days after the Effective Date.

22 If the Consent Judgment is not approved by the Court, DiPirro  
23 will return all funds, with interest thereon at the prevailing  
24 federal funds rate (currently set at 1/75%), within five (5)  
25 calendar days of notice of the Court's decision. Payment  
26 should be made payable to the "Chanler Law Group".

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1                   **4. Michael DiPirro's Release Of Jet Equipment.**

2 Michael DiPirro, by this Agreement, on behalf of himself, his  
3 agents, representatives, attorneys, assigns and in the  
4 interest of the general public, waives all rights to institute  
5 or participate in, directly or indirectly, any form of legal  
6 action, and releases all claims, liabilities, obligations,  
7 losses, costs, expenses, fines and damages, against Jet  
8 Equipment and its directors, officers, employees, successors  
9 and assigns, whether under Proposition 65 or the Business &  
10 Profession Code §17200 et seq. based on Jet Equipment's  
11 alleged failure to warn about exposure to the Listed Chemicals  
12 produced by any of the Products.

13                   **5. Jet Equipment's Release Of Michael DiPirro.**

14 Jet Equipment, by this Agreement, waives all rights to  
15 institute any form of legal action against Michael DiPirro and  
16 his attorneys or representatives, for all actions or  
17 statements made by Michael DiPirro, and his attorneys or  
18 representatives, in the course of seeking enforcement of  
19 Proposition 65 or Business & Profession Code §17200 against  
20 Jet Equipment.

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

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

22           **8. Severability.** In the event that any of the  
23 provisions of this Agreement are held by a court to be  
24 unenforceable, the validity of the enforceable provisions  
25 shall not be adversely affected; provided, however, that if  
26 the release provided in paragraph 4 is limited or held  
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28 CONSENT JUDGMENT

1 unenforceable by a court within twelve months of the Effective  
2 Date, Jet Equipment shall have the option of declaring this  
3 Agreement null and void and, if it does so, the provisions of  
4 paragraph 7 shall apply with respect to reimbursement of  
5 amounts paid by Jet Equipment.

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

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

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

16                           Jennifer Henry or David Bush  
17                           Bush & Henry  
18                           4400 Keller Ave., Suite 200  
19                           Oakland, CA 94605  
20                           (510) 577-0747

21           All correspondence to Jet Equipment shall be  
22 mailed to:

23                           Stephen S. Walters, Esq.  
24                           Stoel Rives LLP  
25                           900 SW Fifth Avenue, Suite 2600  
26                           Portland, OR 97204  
27                           (503) 294-9468

28           **12. Compliance With Reporting Requirements.** The parties  
acknowledge that the reporting provisions of Health & Safety  
Code § 25249.7(f) apply to this Consent Judgment. Counsel for

CONSENT JUDGMENT



1 DiPirro shall comply with that section by submitting the  
2 required reporting form to, and serving a copy of this Consent  
3 Judgment on, the California Attorney General's Office when  
4 noticing the Motion to Approve hearing. Counsel for DiPirro  
5 shall submit the Consent Judgment to the Court in accordance  
6 with the requirements of Health & Safety Code § 25249.7(f) and  
7 its implementing regulations, thereby allowing the Attorney  
8 General to serve any comments to this Consent Judgment as  
9 provided by law.

10 The parties acknowledge that, pursuant to Health &  
11 Safety Code § 25249.7, a noticed motion is required to obtain  
12 judicial approval of this Agreement. Accordingly, the parties  
13 have agreed to file a *Joint Motion to Approve the Agreement*  
14 within a reasonable period of time after execution of this  
15 Agreement. In the event that any public enforcer (including  
16 the California Attorney General's Office) objects or otherwise  
17 comments to one or more provisions of this Agreement, Jet  
18 Equipment agrees to use its best efforts to support each of  
19 the terms of the Agreement, as well as to seek judicial  
20 approval of this Agreement.

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

25 **14. Authorization.** The undersigned are authorized  
26 to execute this Agreement on behalf of their respective  
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28 CONSENT JUDGMENT

1 parties and have read, understood and agree to all of the  
2 terms and conditions of this Agreement.

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AGREED TO:

AGREED TO:

DATE: 2/20/02

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

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

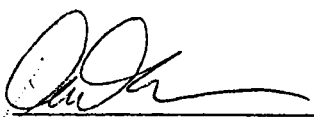
\_\_\_\_\_  
Jet Equipment & Tools, Inc.  
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 2/20/02

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

  
\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

\_\_\_\_\_  
Stephen S. Walters  
Attorneys for Defendant  
JET EQUIPMENT & TOOLS, INC.

CONSENT JUDGMENT

1 parties and have read, understood and agree to all of the  
2 terms and conditions of this Agreement.


5 **AGREED TO:**

**AGREED TO:**

6 **DATE:** \_\_\_\_\_  
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**DATE:** 2/13/2002

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9 \_\_\_\_\_  
10 Michael DiPirro  
11 PLAINTIFF

  
12 \_\_\_\_\_  
13 Jet Equipment & Tools, Inc.  
14 DEFENDANT


13 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

14 **DATE:** \_\_\_\_\_  
15

**DATE:** 2/20/02

16  
17 \_\_\_\_\_  
18 David Bush  
19 Attorneys for Plaintiff  
20 MICHAEL DIPIRRO

  
21 \_\_\_\_\_  
22 Stephen S. Walters  
23 Attorneys for Defendant  
24 JET EQUIPMENT & TOOLS, INC.

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28 **CONSENT JUDGMENT**

## Exhibit A

### Products for which a warning is required

#### Power Tools

Saws such as band, circular, chop, cut-off machines, jig, miter, reciprocating, scroll, table and wall-mounted saws.

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

Power cutout tools.

Sanders, polishers, abrading machines and buffers.

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

Drills and augers such as general purpose, driver, hammer, and drill presses.

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.

Joiners such as general purpose and plate joiners.

CLERK'S CERTIFICATE OF MAILING

I am employed by the County of Alameda. I certify that I am over eighteen (18) years of age and not a party to this action.

This correspondence was mailed first class, prepaid postage, in a sealed envelope to the parties at the address(es) shown below.

The mailing and this certification occurred at the place and on the date shown below:

Derek R. Longstaff  
Sheffer & Chanler LLP  
160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104

Stephen S. Walters  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204

Place of Mailing: Hayward, CA  
Date of Mailing: 5/29/03

ARTHUR SIMS, Executive Officer/Clerk

By: CC Farales, Deputy Clerk  
Cheryl C. Farales