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8 Attorneys for Defendant  
9 KBC TOOLS & MACHINERY, INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

11 MICHAEL DIPIRRO,  
12  
13 Plaintiffs,

14 v.

15 KBC TOOLS & MACHINERY, INC.; and  
16 DOES 1 through 1000,  
17 Defendants.

No. H215619-4  
[CONSOLIDATED ACTIONS]  
[PROPOSED] CONSENT JUDGMENT

18 **1. Introduction**

19 1.1 Michael DiPirro is an individual residing in San Francisco, California, who seeks  
20 to promote awareness of exposures to toxic chemicals and improve human health by reducing or  
21 eliminating hazardous substances contained in consumer and industrial products.

22 1.2 KBC TOOLS & MACHINERY, INC. ("KBC") is a company that currently sells  
23 lead hammers, brass hammers and other non-marring or non-sparking hammers as set forth in  
24 Exhibit A hereto that are alleged to contain lead (or lead compounds). KBC also sells certain  
25 lubricants as set forth in Exhibit A that are alleged to contain nickel (or nickel compounds).  
26 Lead, lead compounds, nickel and nickel compounds are identified as substances listed in the  
27 regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act,  
28 California Health & Safety Code sections 25249.5 *et seq.* ("Proposition 65") as chemicals

1 known to the State of California to cause cancer. Lead and lead compounds also are listed in the  
2 regulations promulgated under Proposition 65 as chemicals known to the State of California to  
3 cause birth defects or other reproductive harm. A list of the products which contain lead (or  
4 lead compounds) and nickel (or nickel compounds) (collectively, the "Listed Chemicals") and  
5 which are covered by this Consent Judgment is provided in Exhibit A (the "Products").

6 1.3 On July 17, 2000, Michael DiPirro first served KBC and other public  
7 enforcement agencies with a document entitled "60-Day Notice of Violation" which provided  
8 KBC and such public enforcers with notice that KBC was allegedly in violation of Proposition  
9 65 for failing to warn purchasers that certain products it sells in California expose users to  
10 Proposition 65-listed chemicals. On October 11, 2000 and again on November 6, 2000, Michael  
11 DiPirro served a Supplemental Proposition 65 60-Day Notices of Violation, asserting similar  
12 claims as to other KBC products. These three Notices collectively are referred to as the  
13 "Notices."

14 1.4 On September 21, 2000, Michael DiPirro brought an action in the public interest  
15 entitled *Michael DiPirro v. KBC Tools & Machinery, et al.* ("KBC I"), in the Alameda County  
16 Superior Court, naming KBC as a defendant and alleging violations of Business & Professions  
17 Code § 17200 and Health & Safety Code § 25249.6 on behalf of individuals in California who  
18 allegedly have been exposed to chemicals listed pursuant to Proposition 65 contained in certain  
19 Products. On January 17, 2001, Michael DiPirro brought a second action in the public interest  
20 entitled *Michael DiPirro v. KBC Tools & Machinery, et al.* ("KBC II"), in the Alameda County  
21 Superior Court, asserting similar claims with respect to certain other Products. These two  
22 lawsuits were consolidated on February 7, 2001 (Alameda County Superior Court Consolidated  
23 Case No. H215619-4).

24 1.5 Neither the Attorney General nor any of the other designated public prosecutors  
25 has commenced any action in response to the Notices. For purposes of this Consent Judgment,  
26 Plaintiff acts on behalf of the general public as to those matters alleged in the Notices, *KBC I*  
27 and *KBC II*.

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1           1.6     For purposes of this Consent Judgment only, the parties stipulate that this Court  
2 has jurisdiction over the allegations of violations contained in the Complaints filed in *KBC I* and  
3 *KBC II*, that the Court has personal jurisdiction over settling Defendant KBC as to the acts  
4 alleged in the Complaints filed in *KBC I* and *KBC II*, that venue is proper in the county of  
5 Alameda and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
6 and resolution of the allegations contained in the Complaints filed in *KBC I* and *KBC II*, and of  
7 all claims which were or could have been raised by any person or entity based on whole or in  
8 part, directly or indirectly, on the facts alleged in the Notices; in the Complaints filed in *KBC I*  
9 and *KBC II*, or arising therefrom or related thereto.

10           1.7     This Consent Judgment resolves claims that are denied and disputed. The parties  
11 enter into this Consent Judgment to settle disputed claims between them, to avoid prolonged  
12 litigation and to provide a prompt remedy for the matters alleged in the Notices and in the  
13 Complaints filed in *KBC I* and *KBC II*. The parties intend this settlement to be full and final  
14 adjudication of all claims that were or could have been brought against KBC, its customers,  
15 directors, officers, employees, affiliates, and the successors and assigns of any of them, whether  
16 or not they were named in the Action, with respect to the claims that were the subject of the  
17 Notices, *KBC I*, and *KBC II*.

18           1.8     Nothing in this Consent Judgment shall be construed as an admission by KBC of  
19 any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent  
20 Judgment constitute or be construed as an admission by KBC of any fact, finding, conclusion,  
21 issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect  
22 the obligations, responsibilities, and duties of KBC under this Consent Judgment.

23       **2.     Entry of Consent Judgment.**

24           2.1     The parties hereby request that the Court promptly enter this Consent Judgment.  
25 Upon entry of the Consent Judgment, the parties waive their respective rights to a hearing or  
26 trial on the allegations of the Complaint.  
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1     **3.     Court Approval.**

2             3.1     If this Consent Judgment is not approved by the Court, it shall be of no force or  
3 effect, and cannot be used any proceeding for any purpose.

4     **4.     Injunctive Relief -- Proposition 65 Warnings.**

5             4.1     Beginning on April 30, 2001, KBC agrees that it will not knowingly sell any  
6 Products containing the Listed Chemicals for sale in the State of California unless such Products  
7 comply with sections 4.1(a) and 4.1(b) below:

8                     (a)     *All Products containing lead.*, All Products containing lead shall bear the  
9 following warning statement:

10                             “WARNING: This product contains lead, a chemical known to the State of  
11                                     California to cause cancer and birth defects or other reproductive  
12                                     harm”;

13   or

14                             “WARNING: This product contains a chemical known to the State of California  
15                                     to cause cancer and birth defects or other reproductive harm”;

16                     (b)     *All Products containing nickel.* The parties acknowledge that KBC no  
17 longer sells nickel-containing lubricants in California.

18                             (i) If KBC in the future sells lubricants containing nickel and nickel  
19                                     compounds in California, such products shall bear the following warning  
20                                     statement:

21                                     “WARNING: This product contains nickel, a chemical known to the State of  
22                                     California to cause cancer”;

23   or

24                             “WARNING: This product contains a chemical known to the State of California  
25                                     to cause cancer.

26                             (ii) If KBC in the future sells lubricants containing nickel carbonyl in  
27                                     California, then such products shall bear the following warning  
28                                     statement:

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“WARNING: This product contains nickel carbonyl, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm”;

or

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.”

4.2 The warning statements referenced in Paragraph 4.1 above shall be prominently placed on or near the Products at the point of sale with such conspicuousness, as compared with other words, statements, designs, or devices in proximity of the location of the Products or the store shelf or on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase.

**5. Payment Pursuant To Health & Safety Code § 25249.7(b).**

5.1 Pursuant to Health & Safety Code § 25249.7(b), KBC shall pay a civil penalty of \$4000.00 (Four Thousand Dollars). The payment of \$4000.00 shall be paid within five (5) calendar days after April 25, 2001 (hereinafter the “Effective Date”). The penalty payment is to be made payable to “Chanler Law Group In Trust For Michael DiPirro” and shall be held in trust until the Alameda County Superior Court approves and enters the Consent Judgment. If the Alameda County Superior Court refuses to enter the Consent Judgment, then KBC shall be reimbursed within five (5) calendar days of such refusal. Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California’s Department of Toxic Substances Control.

**6. Reimbursement Of Fees And Costs.**

6.1 The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the Consent Judgment had been reached, and the matter settled. KBC then expressed a desire to resolve the fee and cost issue concurrently with

1 other settlement terms, so the parties tried to reach an accord on the compensation due to  
2 DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. § 1021.5.

3         6.2 KBC shall reimburse DiPirro for his fees and costs, incurred as a result of  
4 investigating, bringing this matter to KBC's attention, litigating and negotiating a settlement in  
5 the public interest. KBC shall pay the total sum of \$25,050 (Twenty Five Thousand Fifty  
6 Dollars) for investigation fees, attorneys' fees and litigation costs. KBC agrees to pay \$25,050  
7 within five (5) calendar days after the Effective Date. Payment should be made payable to the  
8 "Chanler Law Group" and shall be held in trust until the Alameda County Superior Court  
9 approves and enters the Consent Judgment. If the Alameda County Superior Court refuses to  
10 enter the Consent Judgment, then KBC shall be reimbursed within five (5) calendar days of such  
11 refusal.

12         7.     **Claims Covered.**

13         7.1 This Consent Judgment is a final and binding resolution between and among the  
14 Plaintiff and its agents and attorneys, acting on behalf of the general public, on the one hand,  
15 and KBC, its customers, directors, officers, employees, affiliates, any other person who may  
16 use, maintain or sell the Products (other than KBC's suppliers), and the successors and assigns  
17 of any of them, on the other hand, of any and all Claims, as that term is defined in herein.  
18 "Claims" shall mean all manner of action or actions, cause or causes of action, in law or in  
19 equity, administrative actions, petitions, suits, debts, liens contracts, agreements, promises,  
20 liabilities, claims, demands, known or unknown, fixed or contingent, that have existed or now  
21 exist, all to the extent based upon or arising out of compliance by KBC with Proposition 65, its  
22 implementing regulations, and Business & Professions Code section 17200 *et seq.*, with respect  
23 to the sale, distribution, marketing or use of the Products.

24         7.2 Compliance with the terms of this Consent Judgment resolves any issue, now and  
25 in the past, concerning compliance by KBC, its customers, directors, officers, employees,  
26 affiliates, or any other person who may use, maintain or sell the Products (other than KBC's  
27 suppliers) and the successors and assigns of any of them, with the requirements of Proposition  
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1 65, its implementing regulations, and Business & Professions Code section 17200, with respect  
2 to Products that were sold, distributed or marketed by KBC.

3 **8. Mutual Releases of Claims**

4 8.1 **Michael DiPirro's Release of KBC.** Michael DiPirro, by this Consent  
5 Judgment, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of  
6 the State of California, waives all rights to institute or participate in, directly or indirectly, any  
7 form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses,  
8 penalties, fines and damages, against KBC and its customers, directors, officers, employees,  
9 affiliates, any other person who may use, maintain or sell the Products (other than KBC's  
10 suppliers), and the successors and assigns of any of them, whether under Proposition 65 or the  
11 Business & Profession Code § 17200 *et seq.* based on KBC's failure to warn about exposure to  
12 the chemicals contained in any of the Products.

13 8.2 **KBC's Release of Michael DiPirro.** KBC, by this Consent Judgment, waives  
14 all rights to institute any form of legal action against Michael DiPirro and his attorneys or  
15 representatives, for all actions or statements made by Michael DiPirro, and his attorneys or  
16 representatives, in the course of seeking enforcement of Proposition 65 or Business &  
17 Profession Code § 17200 against KBC as to the Products that are the subject of the Notices,  
18 *KBC I* and *KBC II*.

19 **9. Retention of Jurisdiction.**

20 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

21 **10. KBC Sales Data.**

22 10.1 KBC understands that the sales data provided to counsel for DiPirro by KBC was  
23 a material factor upon which DiPirro has relied to determine the amount of payments made  
24 pursuant to Health & Safety Code § 25249.7(b) in this Consent Judgment. To the best of KBC's  
25 knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts  
26 which demonstrate to a reasonable degree of certainty that the sales data are materially  
27 inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10)  
28 days of KBC's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales

1 data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to  
2 re-institute this enforcement action against KBC within ten (10) days from the date on which  
3 DiPirro notifies KBC of his intent to do so. In such case, all applicable statutes of limitations  
4 shall be deemed tolled for the period between the date DiPirro filed the Action and the date  
5 DiPirro notifies KBC that he is re-instituting this enforcement action pursuant to this Paragraph,  
6 but this tolling period shall not exceed two years.

7 **11. No Waiver of Right to Seek Modification from the Court.**

8 11.1 Nothing in this Consent Judgment is intended to limit or waive any of the parties'  
9 rights to seek modifications hereto from the Court, and any modification to this Consent  
10 Judgment are effective only upon entry of a modified Consent Judgment by the Court.

11 **12. Severability.**

12 12.1 In the event that any of the provisions of this Consent Judgment are held by a  
13 court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
14 affected.

15 **13. Attorneys' Fees.**

16 13.1 In the event that a dispute arises with respect to any provision(s) of the Consent  
17 Judgment, and such disputes are resolved by the Court or through mediation, arbitration or other  
18 alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall  
19 be entitled to recover costs and reasonable attorneys' fees.

20 **14. Entire Agreement.**

21 This Consent Judgment contains the sole and entire agreement and understanding of the  
22 parties with respect to the entire subject matter hereof, and any and all prior discussions,  
23 negotiations, commitments and understandings related hereto. No representations, oral or  
24 otherwise, express or implied, other than those contained herein have been made by any party  
25 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
26 deemed to exist or bind any of the parties.

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1     **15. Governing Law.**

2             15.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
3 California.

4     **16. Notices.**

5             16.1 All correspondence to Michael DiPirro shall be mailed to:

6  
7                     David R. Bush or Jennifer Henry  
8                     Bush & Henry  
9                     4400 Keller Ave., Suite 200  
                      Oakland, CA 94605-4229  
                      (510) 577-0747

10            16.2 All correspondence to KBC shall be mailed to:

11  
12                    Gail F. Klein, Esq.  
13                    Attorney at Law  
14                    5651 W. Maple  
                      West Bloomfield, MI 48322  
                      (248) 851-2985

15            with copy to

16                    Ann G. Grimaldi, Esq.  
17                    McKenna & Cuneo, L.L.P.  
18                    One Market Plaza, Steuart Tower  
19                    San Francisco, CA 94105  
                      Tel.: 415-267-4000  
                      Fax: 415-267-4198

20     **17. Compliance With Reporting Requirements.**

21             17.1 The parties acknowledge that the reporting provisions of Health & Safety Code  
22 § 25249.7(f) apply to this Consent Judgment. As of the Effective Date, the California Attorney  
23 General's reporting forms are not available. In order to effect compliance with that section,  
24 counsel for Plaintiff DiPirro will send a copy of this Consent Judgment to the California  
25 Attorney General's Office prior to or concurrently with the presentation of the Consent  
26 Judgment to the Alameda County Superior Court.

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**16. Counterparts and Facsimile.**

16.1 This Consent Judgment may be executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**17. Authorization.**

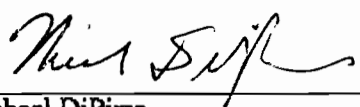
17.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

DATE: 4/25/01

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



\_\_\_\_\_

Michael DiPirro  
PLAINTIFF

KBC TOOLS & MACHINERY, INC.  
DEFENDANT

**AGREED AS TO FORM:**

**AGREED AS TO FORM:**

BUSH & HENRY

MCKENNA & CUNEO

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff Michael DiPirro

\_\_\_\_\_  
Ann G. Grimaldi  
Attorneys for Defendant KBC TOOLS &  
MACHINERY, INC.

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

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

1 **16. Counterparts and Facsimile.**

2 16.1 This Consent Judgment may be executed in counterparts and facsimile, each of  
3 which shall be deemed an original, and all of which, when taken together, shall constitute one  
4 and the same document.

5 **17. Authorization.**

6 17.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
7 their respective parties and have read, understood and agree to all of the terms and conditions of  
8 this Consent Judgment.

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10 **AGREED TO:**

**AGREED TO:**

11 **DATE:** \_\_\_\_\_

11 **DATE:** 5/2/01

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14 **Michael DiPirro**  
**PLAINTIFF**

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**KBC TOOLS & MACHINERY, INC.**  
**DEFENDANT**

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16 **AGREED AS TO FORM:**

**AGREED AS TO FORM:**

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18 **BUSH & HENRY**

**MCKENNA & CUNEO**

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20  
21 **David Bush**  
**Attorneys for Plaintiff Michael DiPirro**

21 **Ana G. Grimaldi**  
**Attorneys for Defendant KBC TOOLS &**  
**MACHINERY, INC.**

22  
23 **DATE:** \_\_\_\_\_

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

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7 their respective parties and have read, understood and agree to all of the terms and conditions of  
8 this Consent Judgment.

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10    **AGREED TO:**

**AGREED TO:**

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

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

\_\_\_\_\_  
KBC TOOLS & MACHINERY, INC.  
DEFENDANT

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17    **AGREED AS TO FORM:**

**AGREED AS TO FORM:**

18    BUSH & HENRY

MCKENNA & CUNEO

19    

\_\_\_\_\_  
Ann G. Grimaldi  
Attorneys for Defendant KBC TOOLS &  
MACHINERY, INC.

20    David Bush  
21    Attorneys for Plaintiff Michael DiPirro

22    DATE: April 26, 2001

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

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**18. Counterparts and Facsimile.**

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**19. Authorization.**

19.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**

**AGREED TO:**

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

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

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

\_\_\_\_\_  
KBC TOOLS & MACHINERY, INC.  
DEFENDANT

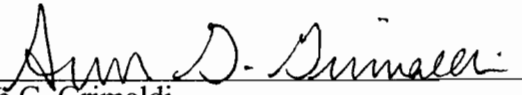
**AGREED AS TO FORM:**

**AGREED AS TO FORM:**

BUSH & HENRY

MCKENNA & CUNEO

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff Michael DiPirro

  
\_\_\_\_\_  
Ann G. Grimaldi  
Attorneys for Defendant KBC TOOLS &  
MACHINERY, INC.

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

DATE: 5/2/07