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New Canaan, CT 06840-3801
Tel: (203) 966-9911

Attorneys for Plaintiff
MICHAEL DIPIRRO

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO,)	Case No. H217760-9
)	
)	
Plaintiff)	<u>CONSENT JUDGMENT</u>
)	
v.)	
)	
METABO CORPORATION; METABOWERKE)	
GMBH & CO.; and DOES 1 through)	
1000,)	
)	
)	
Defendants.)	
_____)	

This Consent Judgment ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Metabo Corporation, West Chester, PA, and Metabowerke GmbH, Nuertingen, Germany ("Metabo"), as of March 22, 2001 (the "Effective Date"). The parties agree to the following terms and conditions:

CONSENT JUDGMENT

ENDORSED
FILED
APR 30 2001
CLERK OF THE SUPERIOR COURT
ALAMEDA COUNTY

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. Metabo is a company that currently
8 manufactures, distributes, rents and/or sells various power
9 tools and other equipment in the State of California that may
10 contain, or whose customary use and application may produce
11 fumes or gases which contain, chemicals listed pursuant to
12 Proposition 65 (California Health & Safety Code §25249.5 et
13 seq.) including nickel and nickel compounds, chromium
14 (hexavalent compounds) and carbon monoxide (the "Listed
15 Chemicals");

16 C. The products that may contain, or whose
17 customary use and application may produce fumes or gases which
18 contain, one or more of the "Listed Chemicals" and which are
19 covered by this Agreement are set forth in Exhibit A (the
20 "Products"). The Products have been manufactured, distributed,
21 rented and/or sold by Metabo for use in California since at
22 least August 4, 1996;

23 D. On November 6, 2000, Michael DiPirro first
24 served Metabo and other public enforcement agencies with a
25 document entitled "60-Day Notice of Violation" which provided
26 Metabo and such public enforcers with notice that Metabo was
27 allegedly in violation of Health & Safety Code §25249.6 for
28 allegedly failing to warn purchasers that certain products it
CONSENT JUDGMENT

1 sells, rents or otherwise offers for use in California expose
2 users to Proposition 65-listed chemicals; and

3 E. On February 7, 2001, Michael DiPirro filed a
4 complaint entitled Michael DiPirro v. Metabo Corporation; et
5 al. in the Alameda County Superior Court, naming Metabo as a
6 defendant and alleging violations of Business & Professions
7 Code §17200 and Health & Safety Code §25249.6 on behalf of
8 individuals in California who allegedly have been exposed to
9 the "Listed Chemicals" contained in or produced by certain
10 Metabo products.

11 F. Nothing in this Agreement shall be construed as
12 an admission by Metabo of any fact, finding, issue of law, or
13 violation of law, nor shall compliance with this Agreement
14 constitute or be construed as an admission by Metabo of any
15 fact, finding, conclusion, issue of law, or violation of law.

16 However, this paragraph shall not diminish or otherwise
17 affect the obligations, responsibilities, and duties of Metabo
18 under this Agreement.

19
20 **NOW THEREFORE, MICHAEL DIPIRRO AND METABO AGREE AS FOLLOWS:**

21 1. **Product Warnings.** Metabo shall begin to
22 initiate revisions to its health hazard warnings for its
23 Products to provide the language set forth in the section 1.1
24 below. Beginning immediately, Metabo will take steps that are
25 commercially reasonable to ensure that the warning set forth
26 in section 1.1 is placed upon Products sold in the State of
27 California. However, no later than October 15, 2001, Metabo
28 agrees that it will not knowingly sell (or cause to be sold)
CONSENT JUDGMENT

1 any Products that may contain or produce fumes or gases (the
2 Listed Chemicals) in the State of California unless such
3 Products comply with section 1.1 below:

4 **1.1** For all Products that may contain, or
5 produce fumes or gases that contain, nickel (and nickel
6 compounds), chromium (hexavalent compounds) and carbon
7 monoxide, such Products shall bear the following warning
8 statement:

9 **WARNING: This product contains or produces an**
10 **exposure to nickel (and nickel**
11 **compounds), chromium (hexavalent**
12 **compounds) and carbon monoxide,**
13 **chemicals known to the State of**
14 **California to cause cancer and birth**
15 **defects (or other reproductive**
16 **harm)";**

17 or

18 **"WARNING: This product contains or produces an**
19 **exposure to chemicals known to the**
20 **State of California to cause cancer**
21 **and birth defects (or other**
22 **reproductive harm)";**

23 The warning statement shall be prominently
24 placed upon a label on the Product's packaging with such
25 conspicuousness, as compared with other words, statements,
26 designs or devices on the label as to render it likely to be
27 read and understood by an ordinary individual under customary
28 conditions of purchase or use.

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

25 **§25249.7 (b).** Pursuant to Health & Safety Code §25249.7(b),
26 Metabo shall pay a civil penalty of \$8500.00 (eight thousand
27 five hundred dollars). The payment of \$8500.00 shall be paid
28 within ten (10) calendar days of the Effective Date. The
CONSENT JUDGMENT

1 penalty payment is to be made payable to "Chanler Law Group In
2 Trust For Michael DiPirro". Penalty monies shall be
3 apportioned by DiPirro in accordance with Health & Safety Code
4 §25192, with 75% of these funds remitted to the State of
5 California's Department of Toxic Substances Control.

6 **3. Reimbursement Of Fees And Costs.** The parties
7 acknowledge that DiPirro offered to resolve the dispute
8 without reaching terms on the amount, of fees and costs to be
9 reimbursed, thereby leaving this open issue to be resolved
10 after the material terms of the agreement had been reached,
11 and the matter settled. Metabo then expressed a desire to
12 resolve the fee and cost issue concurrently with other
13 settlement terms, so the parties tried to reach an accord on
14 the compensation due to DiPirro and his counsel under the
15 private attorney general doctrine codified at C.C.P. §1021.5.

16 Metabo shall reimburse DiPirro for his fees and
17 costs, incurred as a result of investigating, bringing this
18 matter to Metabo's attention, litigating and negotiating a
19 settlement in the public interest. Metabo shall pay
20 \$13,500.00 (thirteen thousand five hundred dollars) for pre-60
21 Day Notice investigation fees and costs, and \$3,000.00 (three
22 thousand dollars) for all other attorneys' fees and litigation
23 costs. Metabo agrees to pay the total sum of \$16,500.00
24 (sixteen thousand five hundred dollars) within ten (10) days
25 of the Effective Date. Payment should be made payable to the
26 "Chanler Law Group".

27 **4. Michael DiPirro's Release Of Metabo.** Michael
28 DiPirro, by this Agreement, on behalf of himself, his agents,
CONSENT JUDGMENT

1 representatives, attorneys, assigns and the citizens of the
2 State of California, waives all rights to institute or
3 participate in, directly or indirectly, any form of legal
4 action, and releases all claims, liabilities, obligations,
5 losses, costs, expenses, fines and damages, against Metabo and
6 its directors, officers, employees, affiliates, successors and
7 assigns, whether under Proposition 65 or the Business &
8 Profession Code §17200 et seq. based on Metabo's alleged
9 failure to warn about exposure to the Listed Chemicals
10 contained in or produced by any of the Products.

11 This paragraph expressly excludes any waiver or
12 release of any entity (other than Metabo, its directors,
13 officers, employees, affiliates, successors and assigns) which
14 engages in the business of renting or leasing any Product(s)
15 listed on Exhibit A to individuals residing in the State of
16 California.

17 **5. Metabo's Release Of Michael DiPirro.** Metabo,
18 by this Agreement, waives all rights to institute any form of
19 legal action against Michael DiPirro and his attorneys or
20 representatives, for all actions or statements made by Michael
21 DiPirro, and his attorneys or representatives, in the course
22 of seeking enforcement of Proposition 65 or Business &
23 Profession Code §17200 against Metabo.

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

27 **7. Intent of Parties That This Agreement Have**
28 **Preclusive Effect.** DiPirro and Metabo agree that this
CONSENT JUDGMENT

1 Agreement is intended to resolve and preclude any and all
2 claims that were or could have been brought in the case filed
3 by DiPirro against Metabo in Alameda County Superior Court, or
4 otherwise brought by any person or entity under Proposition
5 65, Business and Professions Code Sections 17200 et seq., or
6 any other statute or common law rule that involves, relates to
7 or arises out of the alleged failure to warn about exposure to
8 chemicals contained in or produced by any of the Products. The
9 parties agree that DiPirro is entering into this Consent
10 Judgment as the exclusive representative of the People of the
11 State of California as authorized by Proposition 65 and any
12 other applicable law, and that this Agreement and the judgment
13 entered pursuant hereto accordingly are intended to, and
14 shall, have full preclusive effect against any other person or
15 entity with respect to such claims, whether purporting to act
16 in his, her or its own interests or in the public interest.
17 The parties further agree that this Agreement is appropriate
18 and adequate to protect the public from any of the acts
19 alleged, or that could have been alleged, in the complaint
20 filed by DiPirro against Metabo.

21 **8. Non-Admission.** This Agreement is entered into
22 in compromise of disputed claims. Neither the execution of
23 this Agreement and the releases provided for herein, nor the
24 payment of any consideration hereunder, nor any other act or
25 agreement in furtherance of this Agreement, shall be construed
26 in any way as an admission of wrongdoing or liability on the
27 part of any party hereto or any party released hereby. The
28 parties each completely deny any such liability or wrongdoing,
CONSENT JUDGMENT

1 and intend by this Agreement only to avoid further and
2 prolonged litigation.

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

25 **10. Product Characterization.** Metabo acknowledges
26 that each of the Products listed in Exhibit A may contain, or
27 in the customary use or application of the Products may
28 produce fumes or gases that contain, nickel (and nickel
CONSENT JUDGMENT

1 compounds), chromium (hexavalent compounds) and carbon
2 monoxide and Plaintiff alleges that the customary use or
3 application of the Products is likely to expose users to
4 nickel (and nickel compounds), chromium (hexavalent compounds)
5 and carbon monoxide, substances known to the State of
6 California to cause cancer and/or birth defects (or other
7 reproductive harm). In the event that Metabo obtains
8 analytical, risk assessment or other data ("Exposure Data")
9 that shows an exposure to any or all Products poses "no
10 significant risk" or will have "no observable effect," as each
11 such standard is applicable and as each is defined under
12 Health & Safety Code §25249.10(c) and Metabo seeks to
13 eliminate the warnings, then Metabo shall provide DiPirro with
14 ninety (90) days prior written notice of its intent to limit
15 or eliminate the warning provisions under this Agreement based
16 on the Exposure Data and shall provide DiPirro with all such
17 supporting Exposure Data. Within ninety (90) days of receipt
18 of Metabo's Exposure Data, DiPirro shall provide Metabo with
19 written notice of his intent to challenge the Exposure Data
20 (in the event that he chooses to make such a challenge). If
21 DiPirro fails to provide Metabo written notice of his intent
22 to challenge the Exposure Data within ninety (90) days of
23 receipt of Metabo's notice and the Exposure Data, DiPirro
24 shall waive all rights to challenge the Exposure Data, and
25 Metabo shall be entitled to limit or eliminate the warning
26 provisions required under this Agreement with respect to those
27 Product(s) to which the Exposure Data applies. If DiPirro
28 timely notifies Metabo of his intent to challenge the Exposure

CONSENT JUDGMENT

1 Data, DiPirro and Metabo (a) may stop its efforts to eliminate
2 the warnings upon notice to DiPirro with no further liability
3 or obligations or (b) shall negotiate in good faith for a
4 period not to exceed thirty (30) days following receipt of
5 Metabo's notice to attempt to reach a settlement of this
6 issue. If a settlement is not reached, DiPirro and Metabo
7 agree to submit such challenge to the superior court for
8 determination, pursuant to the court's continuing jurisdiction
9 of this matter under C.C.P. §664.6 and this Agreement. The
10 prevailing party shall be entitled to reasonable attorneys'
11 fees and costs associated with bringing a motion brought under
12 this paragraph to the court for determination.

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

17 **12. Attorney's Fees.** In the event that a dispute
18 arises with respect to any provision(s) of this Agreement, the
19 prevailing party shall be entitled to recover costs and
20 reasonable attorneys' fees.

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

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

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or

Clifford A. Chanler
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to Metabo shall be mailed
to:

John Ham, President
Metabo Corporation
1231 Wilson Drive
West Chester, PA 19380
(610) 436-5900

15. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. DiPirro represents, however, that his counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of this Consent Judgment to the Alameda County Superior Court.

16. Counterparts and Facsimile. This Agreement 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. The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

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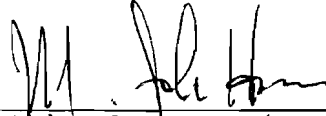
AGREED TO:

DATE: _____

Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 3-22-01



Metabo Corporation
DEFENDANT

APPROVED AS TO FORM:

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: _____

Gerhard M. Horstmann-Wilke
Attorneys for Defendant
METABO CORPORATION

CONSENT JUDGMENT

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AGREED TO:

DATE: 4/2/01

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

DATE: 3-22-01

M. J. H.
Metabo Corporation
DEFENDANT

APPROVED AS TO FORM:

DATE: 4/5/01

David Bush
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE: _____

Gerhard M. Horstmann-Wilke
Gerhard M. Horstmann-Wilke
Attorneys for Defendant
METABO CORPORATION

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AGREED TO:

DATE:

4/2/01

Michael DiPirro
Michael DiPirro
PLAINTIFF

AGREED TO:

DATE:

3-22-01

M. J. H.
Metabo Corporation
DEFENDANT

APPROVED AS TO FORM:

DATE:

David Bush
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

APPROVED AS TO FORM:

DATE:

04-05-01

Gerhard M. Horstmann-Wilke
Gerhard M. Horstmann-Wilke
Attorneys for Defendant
METABO CORPORATION

CONSENT JUDGMENT

Exhibit A

EXHIBIT A

- 1.
- Power tools such as:
 - Angle grinders
 - Angle sanders
 - Band saws
 - Chop saws
 - Circular saws
 - Cordless tools
 - Die grinders
 - Drills
 - Hammer drills
 - Heat guns
 - Hedge trimmers
 - Jig saws
 - Nibblers
 - Paint strippers
 - Planers
 - Polishers
 - Reciprocating saws
 - Rotary hammers
 - Routers
 - Sanders
 - Screw guns
 - Shears