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8 Attorneys for Plaintiff
MICHAEL DIPIRRO
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA

12
13 MICHAEL DIPIRRO,) No. H221283-8
14 Plaintiff,)
15 v.) CONSENT JUDGMENT
16 MICHIGAN INDUSTRIAL TOOL; and DOES)
17 1 through 1000,)
18 Defendants.)
19 _____)

20 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by and
21 between Michael DiPirro, Michigan Industrial Tools, a Michigan corporation, ("Michigan
22 Industrial") as of September 20, 2001 (the "Effective Date") to resolve all claims raised in
23 the above-captioned action. The parties agree to the following terms and conditions:
24

25 CONSENT JUDGMENT
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1 Safety Code §25249.6 on behalf of individuals in California who allegedly have been
2 exposed to one or more chemicals listed pursuant to Proposition 65 contained in certain
3 Michigan Industrial products.

4 6. Michigan Industrial enters into this Consent Judgment to settle the
5 disputed claims, to avoid prolonged litigation, to ensure that the objectives of Proposition 65
6 are expeditiously carried out, and to provide a prompt remedy for the matters alleged in this
7 action. By entering into this Consent Judgment, Michigan Industrial does not admit any
8 violation of Proposition 65 or the Unfair Competition Law, or any other law or standard
9 applicable to warning or disclosure concerning the manufacture, distribution and/or sale of
10 the products at issue in this action. Nothing in this Consent Judgment shall be construed as
11 an admission by Michigan Industrial of any fact, finding, issue of law, or violation of law,
12 nor shall compliance with this Agreement constitute or be construed as an admission by
13 Michigan Industrial of any fact, finding, conclusion, issue of law, or violation of law.
14 Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy or
15 defense either DiPirro or Michigan Industrial may have in any other or further legal
16 proceeding. However, this paragraph shall not diminish or otherwise affect the obligations,
17 responsibilities, and duties of Michigan Industrial under this Agreement.

18 **II. PROPOSITION 65 COMPLIANCE REQUIREMENTS**

19 7. Except as provided in subparagraph (b) hereof, Michigan Industrial
20 shall begin to take steps in connection with its sale of the Products to provide the warning
21 language set forth in subparagraph (a) hereof.

22 a. Except as provided in subparagraph (b) hereof, beginning on
23 September 20, 2002, Michigan Industrial agrees that it will not knowingly ship, or caused to
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1 be shipped, any Products containing the Listed Chemical for use in the State of California
2 unless such Products comply with the following:

3 (1) For all Products containing lead (or lead compounds),
4 such Products shall bear the following warning statement:

5 **"WARNING: This product contains**
6 **lead, a chemical known to the State of California to**
7 **cause cancer and birth defects (or other**
8 **reproductive harm).";**

9 or

10 **"WARNING: This product contains a**
11 **chemical known to the State of California to cause**
12 **cancer and birth defects (or other reproductive**
13 **harm).";**

14 (2) The warning statement shall be prominently placed on
15 or near the Products at the point of sale with such conspicuousness as to render it likely to be
16 read and understood by an ordinary individual under customary conditions of purchase.

17 b. Products containing brass alloys composed of no more than
18 1.5 percent lead (15,000 parts per million) shall be exempted from the requirements of
19 subparagraph 7.a. In order to demonstrate its compliance with the terms of this
20 subparagraph, Michigan Tool shall obtain a certification from its supplier of the Products
21 confirming that the brass alloy used to manufacture the Products that its brass alloy contains
22 less than 1.5 percent lead. Such certification shall state that it is based on a test method of
23 sufficient sensitivity to establish a limit of quantification (as distinguished from detection) of
24 less than 15,000 parts per million.

25 CONSENT JUDGMENT

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2 **III. PAYMENT PURSUANT TO HEALTH & SAFETY CODE §25249.7(b)**

3 8. Pursuant to Health & Safety Code §25249.7(b), Michigan Industrial
4 shall pay a civil penalty of \$1,340 (one thousand three hundred and forty dollars). The
5 payment of \$1,340 shall be paid within ten (10) calendar days of the Effective Date and shall
6 be held in trust by DiPirro's counsel until the Alameda County Superior Court approves and
7 enters the Consent Judgment. The penalty payment is to be made payable to "Chanler Law
8 Group In Trust For Michael DiPirro". If the Consent Judgment is not approved by the
9 Court, DiPirro will return all funds, with interest thereon at a rate of six percent (6%) per
10 annum, within ten (10) calendar days of notice of the Court's decision. Penalty monies shall
11 be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of
12 these funds remitted to the State of California's Department of Toxic Substances Control.

13 9. Michigan Industrial understands that the payment schedule as stated
14 in this Consent Judgment is a material factor upon which DiPirro has relied in entering into
15 this Consent Judgment. Michigan Industrial agrees that all payments will be made in a
16 timely manner in accordance with the payment due dates. Michigan Industrial will be given
17 a five (5) calendar day grace period from the date payment is due. Michigan Industrial
18 agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is
19 received after the grace period ends. For purposes of this paragraph, each new day
(requiring an additional \$250 payment) will begin at 5 p.m. (PST).

20 **IV. REIMBURSEMENT OF FEES AND COSTS**

21 10. The parties acknowledge that DiPirro offered to resolve the dispute
22 without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving
23 this open issue to be resolved after the material terms of the agreement had been reached,
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25 CONSENT JUDGMENT

1 and the matter settled. Michigan Industrial then expressed a desire to resolve the fee and
2 cost issue concurrently with other settlement terms, so the parties tried to reach an accord on
3 the compensation due to DiPirro and his counsel under the private attorney general doctrine
4 codified at C.C.P. §1021.5.

5 11. Michigan Industrial shall reimburse DiPirro and his counsel for his
6 reasonable fees and costs, incurred as a result of investigating, bringing this matter to
7 Michigan Industrial's attention, litigating and negotiating a settlement in the public interest.
8 Michigan Industrial shall pay \$12,660 (twelve thousand six hundred and sixty dollars),
9 except as provided for in paragraph 13 below, for all reasonable attorneys' fees, expert and
10 investigation fees, and litigation costs. Michigan Industrial agrees to pay the total sum of
11 \$12,660, except as provided for in paragraph 13 below, within ten (10) calendar days of the
12 Effective Date. Such sum shall be held in trust by DiPirro's counsel until the Alameda
13 County Superior Court approves and enters the Consent Judgment. If the Consent Judgment
14 is not approved by the Court, DiPirro will return all funds, with interest thereon at a rate of
15 six percent (6%) per annum, within ten (10) calendar days of notice of the Court's decision.
16 Payment should be made payable to the "Chanler Law Group".

17 12. Michigan Industrial understands that the payment schedule as stated
18 in this Consent Judgment is a material factor upon which DiPirro has relied in entering into
19 this Consent Judgment. Michigan Industrial agrees that all payments will be made in a
20 timely manner in accordance with the payment due dates. Michigan Industrial will be given
21 a five (5) calendar day grace period from the date payment is due. Michigan Industrial
22 agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is
23 received after the grace period ends. For purposes of this paragraph, each new day
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25 CONSENT JUDGMENT

1 (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

2 **V. ADDITIONAL CONTINGENT FEES AND COSTS**

3 13. In the event that the California Attorney General's office, pursuant to
4 11 Cal. Code Regs. § 3000, *et seq.*, serves objections to this Consent Judgment on either of
5 the parties, such that it requires plaintiff to incur additional legal fees or costs relating to this
6 Consent Judgment, Michigan Industrial shall reimburse DiPirro for reasonable fees and
7 costs incurred by DiPirro and his counsel in excess of \$1,500 from the date of receipt of the
8 Attorney General's objections. Such additional legal fees or costs relating to this Consent
9 Judgment include, but are not limited to: further editing and finalizing of the Consent
10 Judgment; corresponding with opposing counsel; retention of experts; presenting of the
11 Consent Judgment (or any modifications thereof) to the Attorney General for further
12 comment; and any briefing and/or appearance before the Court related to this Consent
13 Judgment.

14 14. Plaintiff agrees to document all fees and costs incurred from the date
15 of receipt of the Attorney General's objections through the date of court approval of the
16 Consent Judgment. Prior to receiving such documentation, Michigan Industrial agrees to
17 enter into a letter agreement in which the parties agree that, by transmitting such
18 information, no privilege will be waived by DiPirro or his counsel.

19 15. Such additional reimbursement of legal fees and costs shall be due
20 within ten (10) calendar days after receipt of both notice of Court approval of the Consent
21 Judgment and final billing statement from plaintiff. Michigan Industrial has the right to
22 object to such reimbursement and may submit the resolution of this issue to the American
23 Arbitration Association (AAA) in Northern California to determine the reasonableness of
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25 CONSENT JUDGMENT

1 the additional fees and costs sought, provided that such notice of objection or decision to
2 arbitrate is received by plaintiff by the end of the ten (10) calendar days. If an arbitration
3 notice is not filed with AAA in a timely manner, DiPirro may file a motion with the Court
4 for fees and costs pursuant to CCP §1021.5 and this Consent Judgment associated with any
5 additional fees and costs incurred as set forth in this paragraph.

6 **VI. RELEASES**

7 16. Michael DiPirro, by this Consent Judgment, on behalf of himself, his
8 agents, representatives, attorneys, assigns and in the interest of the general public, waives all
9 rights to institute or participate in, directly or indirectly, any form of legal action, and
10 releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against
11 Michigan Industrial and its distributors, customers, directors, officers, employees,
12 successors and assigns, whether under Proposition 65 or the Business & Profession Code
13 §17200 et seq. based on Michigan Industrial's alleged failure to warn about exposure to the
14 Listed Chemical contained in any of the Products.

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

20 18. DiPirro, on behalf of himself, his agents, representatives, attorneys,
21 successors and assigns, and only in his individual capacity, and Michigan Industrial hereby
22 waive their respective rights under Section 1542 of the California Civil Code, which
23 provides as follows:

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25 CONSENT JUDGMENT

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2 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH**
3 **THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN**
4 **HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE,**
5 **WHICH IF KNOWN BY HIM MIGHT HAVE MATERIALLY**
6 **AFFECTED HIS SETTLEMENT WITH THE DEBTOR.**

7 **VIII. COURT APPROVAL**

8 19. If, for any reason, this Consent Judgment is not approved by the
9 Court, this Agreement shall be deemed null and void.

10 **IX. SALES DATA AND OTHER INFORMATION**

11 20. Michigan Industrial understands that the sales data provided to
12 counsel for DiPirro by Michigan Industrial was a material factor upon which DiPirro has
13 relied to determine the amount of payments made pursuant to Health & Safety Code
14 §25249.7(b) in this Agreement. To the best of Michigan Industrial's knowledge, the sales
15 data provided is true and accurate. In the event that DiPirro discovers facts which
16 demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate,
17 the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of
18 Michigan Industrial's receipt of notice from DiPirro of his intent to challenge the accuracy
19 of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall
20 have the right to rescind the Agreement and re-institute an enforcement action against
21 Michigan Industrial, provided that all sums paid by Michigan Industrial pursuant to
22 paragraphs 8, 11 and 13-15 are returned to Michigan Industrial within ten (10) days from the
23 date on which DiPirro notifies Michigan Industrial of his intent to rescind this Agreement.
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25 **CONSENT JUDGMENT**

1 In such case, all applicable statutes of limitation shall be deemed tolled for the period
2 between the date DiPirro filed the instant action and the date DiPirro notifies Michigan
3 Industrial that he is rescinding this Agreement pursuant to this Paragraph.

4 21. Neither DiPirro nor his agents or attorneys shall use documents or
5 information that Michigan Industrial has produced in the course of this action or in
6 settlement discussions, except in the course of monitoring compliance with the terms of this
7 Consent Judgment. Within thirty (30) days of receiving a written request to do so, DiPirro
8 shall return all sales data that have been produced in the course of this action.

9 **X. SEVERABILITY**

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

13 **XII. ATTORNEY'S FEES**

14 23. In the event that a dispute arises with respect to any provision(s) of
15 this Agreement (including, but not limited to, disputes arising from the late payments
16 provisions in paragraphs 9 and 12), the prevailing party shall be entitled to recover costs and
17 reasonable attorneys' fees.

18 **XIII. GOVERNING LAW**

19 24. The terms of this Agreement shall be governed by the laws of the
20 State of California.

21 **XIV. NOTICES**

22 25. All correspondence to Michael DiPirro shall be mailed to:
23
24

1
2 Jennifer Henry or David Bush
3 Bush & Henry
4 4400 Keller Ave., Suite 200
Oakland, CA 94605
(510) 577-0747

5 All correspondence to Michigan Industrial shall be mailed to:

6 Evelyn F. Heidelberg, Esq.
7 Latham & Watkins
8 633 West Fifth Street, Suite 4000
Los Angeles, CA 9071-2007
(213) 485-1234

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10 **XV. COMPLIANCE WITH REPORTING REQUIREMENTS**

11 26. The parties acknowledge that the reporting provisions of Health &
12 Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply
13 with that section by submitting the required reporting form to, and serving a copy of this
14 Consent Judgment on, the California Attorney General's Office within two business days
15 after the parties execute this Consent Judgment. Following the expiration of the Attorney
16 General's thirty-day review period, counsel for DiPirro shall submit the Consent Judgment
17 to the Court in accordance with the requirements of Health & Safety Code § 25249.7(f) and
18 its implementing regulations, thereby allowing the Attorney General to serve any comments
19 to this Consent Judgment prior to the end of the thirty (30) day period.

20 **XVI. COUNTERPARTS AND FACSIMILE**

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

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25 CONSENT JUDGMENT

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XVII. AUTHORIZATION

28. 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: 9/28/01

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Michigan Industrial Tools
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Evelyn F. Heidelberg
Attorneys for Defendant
MICHIGAN INDUSTRIAL TOOLS

CONSENT JUDGMENT

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XVII. AUTHORIZATION

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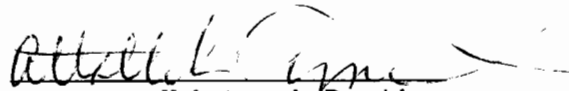
AGREED TO:

AGREED TO:

DATE: _____

DATE: 9/21/01

Michael DiPirro
PLAINTIFF


Attallah Amash, President
Michigan Industrial Tools
DEFENDANT

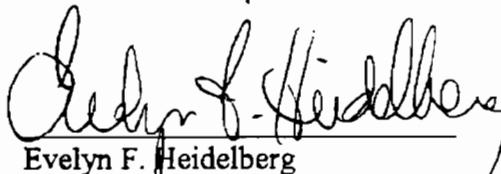
APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: September 20, 2001

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO


Evelyn F. Heidelberg
Attorneys for Defendant
MICHIGAN INDUSTRIAL TOOLS

CONSENT JUDGMENT

1 **XVII. AUTHORIZATION**

2 28. The undersigned are authorized to execute this Consent Judgment on
3 behalf of their respective parties and have read, understood and agree to all of the terms and
4 conditions of this Consent Judgment.
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8 **AGREED TO:**

AGREED TO:

9 DATE: _____

DATE: _____

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12 _____
Michael DiPirro
13 PLAINTIFF

_____ Michigan Industrial Tools
DEFENDANT

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17 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

18
19 DATE: 10/2/01

DATE: _____

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22 _____
David Bush
23 Attorneys for Plaintiff
MICHAEL DIPIRRO

_____ Evelyn F. Heidelberg
Attorneys for Defendant
MICHIGAN INDUSTRIAL TOOLS

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28 CONSENT JUDGMENT

Exhibit A

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EXHIBIT A

Brass Hammers, and screwdriver kits containing brass hammers, that contain lead. These kits include, but are not limited to, 5-in-1 Brass Hammer/Screwdriver sets.