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17 Attorneys for Defendant
18 OLYMPIA GROUP, INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 IN AND FOR THE COUNTY OF ALAMEDA

21 UNLIMITED CIVIL JURISDICTION

22 MICHAEL DIPIRRO,) No. 01-026558
23)
24 Plaintiff,) CONSENT JUDGMENT
25)
26 v.)
27)
28 OLYMPIA GROUP, INC.; and DOES 1)
through 1000,)
Defendants.)
_____)

29 This Consent Judgment is entered into by and between Plaintiff Michael DiPirro
30 and Defendant Olympia Group, Inc. (hereafter referred to as "Olympia ") on an Effective
31 Date that shall be the date on which both parties have signed and dated the consent
32 judgment. The parties agree to the following:
33

1
2 1. INTRODUCTION

3 1.1 Michael DiPirro is an individual residing in San Francisco, California, who
4 seeks to promote awareness of exposures to toxic chemicals and improve human health by
5 reducing or eliminating hazardous substances contained in consumer and industrial
6 products.

7 1.2 Since August 3, 1998, Olympia has manufactured, distributed and sold in
8 the State of California certain power tools whose customary use and application are likely
9 to produce fumes, gases or dust which contain lead (or lead compounds), crystalline silica,
10 arsenic and/or chromium (hexavalent compounds) (hereafter referred to as the "Products")
11 that Plaintiff contends the customary use and application of which are likely to produce
12 fumes, gases or dust which contain one or more chemicals listed pursuant to the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
14 §§25249.5 *et seq.*, also known as Proposition 65: lead (or lead compounds), crystalline silica,
15 arsenic and/or chromium (hexavalent compounds) (the "Listed Chemicals").
16

17 1.3 On August 3, 2001, Michael DiPirro first served Olympia and other public
18 enforcement agencies with a document entitled "60-Day Notice of Violation" which
19 provided Olympia and such public enforcers with notice that Olympia was allegedly in
20 violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain
21 products it sells in California expose users to one or more of the Listed Chemicals.

22 1.4 On October 9, 2001, Michael DiPirro filed a complaint entitled Michael
23 DiPirro v. Olympia Group, Inc., et al. in the Alameda County Superior Court, naming
24 Olympia as a defendant and alleging violations of Business & Professions Code §17200 and
25 Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have
26 been exposed to one or more of the Listed Chemicals produced by certain Olympia
27 products.
28

1 1.5 Olympia denies the material factual and legal allegations contained in
2 Michael DiPirro's above mentioned 60-Day Notice of Violation and Complaint and
3 maintains that all products manufactured, distributed or sold by Olympia in California
4 including, but not limited to, the Products, have been and are in compliance with all laws.
5 Specifically, Olympia asserts that it implemented the warning program set forth in
6 paragraph 2 below after receiving DiPirro's 60-Day Notice.
7

8 1.6 Nothing in this Consent Judgment shall be construed as an admission by
9 Olympia of any fact, finding, issue of law or violation of law, nor shall compliance with
10 this Consent Judgment constitute or be construed as an admission by Olympia of any fact,
11 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not
12 diminish or otherwise affect the obligations, responsibilities and duties of Olympia under
13 this Agreement.
14

15 2. PRODUCT WARNINGS

16 2.1 Olympia agrees to continue to provide the warnings set forth in paragraph
17 2.2 below for all Products that it knowingly distributes or sells in the state of California that
18 are likely to expose users to lead (or lead compounds), crystalline silica, arsenic, and/or
19 chromium (hexavalent compounds.)
20

21 2.2 All Products that are likely to expose users to lead (or lead compounds),
22 crystalline silica, arsenic, and/or chromium (hexavalent compounds) shall bear the
23 following warning:

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

27 The warning statement referenced above shall be prominently placed upon the packaging
28 of the Product or within the instructions for the Products (and in the same section as other

1 warnings) with such conspicuousness, as compared with other words, statements, designs
2 or devices on the label as to render it likely to be read and understood by an ordinary
3 individual under customary conditions of purchase or use.

4
5 **3. MONETARY PAYMENTS**

6 **3.1 Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to
7 Health & Safety Code §25249.7(b), Olympia shall pay a civil penalty of \$1,000. The
8 payment of \$1,000 shall be paid within five (5) calendar days of the Effective Date and shall
9 be held in trust by DiPirro's counsel until the Alameda County Superior Court approves
10 and enters the Consent Judgment. The penalty payment is to be made payable to "Sheffer
11 & Chanler LLP In Trust For Michael DiPirro". If the Consent Judgment is not approved by
12 the Court, DiPirro will return all funds, with interest thereon at a rate of one and a quarter
13 percent (1.25%) per annum, within ten (10) calendar days of notice of the Court's decision.
14 Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code
15 §25192, with 75% of these funds remitted to the State of California's Department of Toxic
16 Substances Control.
17

18 **3.2 Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro
19 and his counsel offered to resolve this dispute without reaching terms on the amount of
20 fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after
21 the material terms of the agreement had been settled. Olympia then expressed a desire to
22 resolve the fee and cost issue shortly after the other settlement terms had been finalized.
23 The parties then attempted to (and did) reach an accord on the compensation due to
24 DiPirro and his counsel under the private attorney general doctrine codified at CCP
25 §1021.5 for all work performed through the Effective Date of the Agreement.
26

27 Under the private attorney general doctrine codified at CCP §1021.5, Olympia shall
28 reimburse DiPirro and his counsel for his fees and costs, incurred as a result of

1 investigating, bringing this matter to Olympia's attention, litigating and negotiating a
2 settlement in the public interest. Olympia shall pay DiPirro and his counsel \$8,600, except
3 as provided for in paragraph 3.3 to 3.8 below, for all attorneys' fees, expert and
4 investigation fees and litigation costs, within five (5) days of the Effective Date. Payment
5 should be made payable to "Sheffer & Chanler LLP". If the Consent Judgment is not
6 approved by the Court, DiPirro and Sheffer & Chanler LLP will return all funds, with
7 interest thereon at the rate of 1.25% per annum, simple interest, within ten (10) calendar
8 days of written notice of the Court's decision.
9

10 **3.3 Additional Fees And Costs In Seeking Judicial Approval.** The parties
11 acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a
12 noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the
13 parties agree to use their best efforts to file a Joint Motion to Approve Proposition 65
14 Settlement Agreement within a reasonable period of time after execution of this
15 Agreement. Best efforts shall mean that Olympia shall return an initial draft of the Motion
16 To Approve within ten (10) days of receiving a motion template from plaintiff. Best efforts
17 shall also mean that Olympia agree to return any modifications or comments on
18 subsequent drafts received from plaintiff within five (5) days of their receipt.
19

20 Pursuant to CCP §1021.5, Olympia agrees to reimburse DiPirro and his counsel for
21 their reasonable fees and costs incurred in seeking judicial approval of this Agreement and
22 fulfilling the requisite reporting requirements, to the extent described in paragraphs 3.4
23 through 3.6.

24 **3.4** If no opposition to the Motion to Approve (nor objection to the terms of the
25 agreement) is filed or otherwise transmitted by any third party, Olympia agrees to
26 reimburse DiPirro under Section 3.1, for additional reasonable fees and costs in an amount
27 not to exceed \$400.

28 **3.5** In the event that any third party, including any public enforcer, objects or

1 otherwise comments to one or more provisions of this Agreement, Olympia agrees to use
2 their best efforts to support each of the terms of the Agreement, as well as to seek judicial
3 approval of this Agreement.

4 3.6 Olympia's payment of DiPirro's legal fees and costs pursuant to sections 3.3-
5 3.4 shall be due within ten (10) calendar days after receipt of a billing statement from
6 DiPirro ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made
7 payable to the "Sheffer & Chanler LLP". Olympia has the right to object to DiPirro's
8 reimbursement request and may submit the resolution of this issue to the American
9 Arbitration Association (AAA) in Northern California to determine the reasonableness of
10 the additional fees and costs sought. Any arbitration claim on this issue of reimbursement
11 for the Additional Fee Claim must be filed with AAA and served on DiPirro within ten (10)
12 calendar days following DiPirro's service of the Additional Fee Claim on Olympia. If an
13 arbitration notice is not filed with AAA in a timely manner, Olympia's right to arbitrate
14 this matter is waived. DiPirro may then file a motion, pursuant to CCP §1021.5, with the
15 Court for recovery of his (and his attorneys') fees and costs incurred as set forth in this
16 paragraph.
17

18 19 **4. RELEASE OF ALL CLAIMS**

20 4.1 Michael DiPirro's Release Of Olympia. In further consideration of the
21 promises and agreements herein contained, and for the payments to be made pursuant to
22 Section 3, Michael DiPirro, on behalf of himself, his agents, representatives, attorneys,
23 and/or assignees, and in the interest of the general public on whose behalf this action was
24 brought, hereby waives all rights to institute or participate in, directly or indirectly, any
25 form of legal action and releases all claims, including, without limitation, all actions, causes
26 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
27 penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees
28

1 and other costs, other than those stated herein) of any nature whatsoever, whether known
2 or unknown, fixed or contingent (collectively, "Claims"), against Olympia and any of its
3 parent companies, divisions, subdivisions, subsidiaries (and the predecessors, successors
4 and assigns of any of them), and its respective officers, directors, attorneys, representatives,
5 shareholders, partners, agents, and employees (collectively, "Olympia Releasees"). This
6 waiver and release shall pertain only to Claims arising under Proposition 65 or Business &
7 Professions Code §17200 *et seq.*, related to the Olympia Releasees alleged failure to warn
8 about exposures on or before the Effective Date to the Listed Chemicals produced by any of
9 the Products. It is specifically understood and agreed that Olympia's compliance with the
10 terms of this Release resolves all issues and liability, now and in the future, concerning the
11 Olympia Releasees' past and present compliance with the requirements of Proposition 65
12 or Business and Professions Code §17200 *et seq.*, as to the Products.

14 4.2 DiPirro's Release of "Downstream Persons." In further consideration of
15 the promises and agreements herein contained, and for the payments to be made pursuant
16 to Section 3, Michael DiPirro, on behalf of himself, his agents, representatives, attorneys,
17 and/or assignees, and in the interest of the general public on whose behalf this action was
18 brought, further waives all rights to institute any form of legal action and releases all
19 Claims, as defined above, against each distributor, wholesaler, auctioneer, retailer, dealer,
20 customer, owner, operator, purchaser, lessor, lessee, renter, or user of the Products, or any
21 of their respective parent companies, divisions, subdivisions, subsidiaries (and the
22 predecessors, successors and assigns of any of them) and their respective officers, directors,
23 shareholders, partners, attorneys, representatives, agents, employees (collectively,
24 "Downstream Persons"). This waiver and release shall pertain only to Claims arising under
25 Proposition 65 or Business & Professions Code §17200 *et seq.*, related to the Downstream
26 Persons' alleged failure to warn about exposures on or before the Effective Date to the
27 Listed Chemicals produced by any of the Products. It is specifically understood and
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1 agreed that this Consent Judgment resolves all issues and liability, now and in the future,
2 concerning the Downstream Persons' compliance with the requirements of Proposition 65
3 or Business & Professions Code §17200, *et seq.*, as to the Products.

4 **4.3 Olympia's Release of Michael DiPirro** Olympia waives all rights to
5 institute any form of legal action against Michael DiPirro, and his attorneys or
6 representatives, for all actions taken or statements made, on or before the court approval of
7 this Consent Judgment, by Michael DiPirro and his attorneys or representatives, in the
8 course of seeking enforcement of Proposition 65 or Business & Professions Code §17200, *et*
9 *seq.* against Olympia.

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12 **5.0 OLYMPIA SALES DATA.** Olympia understands that the sales data provided to
13 counsel for DiPirro by Olympia was a material factor upon which DiPirro has relied to
14 determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in
15 this Agreement. To the best of Olympia's knowledge, the sales data provided is true and
16 accurate. In the event that DiPirro discovers facts that demonstrate to a reasonable degree
17 of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith
18 attempt to resolve the matter within ten (10) days of Olympia's receipt of notice from
19 DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt
20 fails to resolve DiPirro's concerns, DiPirro shall have the right to re-institute an
21 enforcement action against Olympia, for those additional Products, based upon any
22 existing 60-Day Notices of Violation served on Olympia. In such case, all applicable
23 statutes of limitation shall be deemed tolled for the period between the date DiPirro filed
24 the instant action and the date DiPirro notifies Olympia that he is re-instituting the action
25 for the additional Products. Provided, however, that Olympia shall have no additional
26 liability, and DiPirro waives any claims that might otherwise be asserted, from the
27 Effective Date until the date that DiPirro provides notice under this Paragraph 7, so long as
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1 Olympia have complied with the requirements of Section 2 for all of the Products,
2 including those numbers of Products additionally discovered.

3
4 6. **COURT APPROVAL.** If this Consent Judgment is not ultimately approved and
5 entered by the Court, it shall be deemed null and void.

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8 7. **SEVERABILITY.** In the event that any of the provisions of this consent Judgment
9 are held by a court to be unenforceable, the validity of the enforceable provision remaining
10 shall not be adversely affected.

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12 8. **ATTORNEY'S FEES.** In the event that a dispute arises with respect to any
13 provision(s) of the Consent Judgment, the prevailing party shall be entitled to recover costs
14 and reasonable attorneys' fees.

15
16 9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the
17 laws of the State of California. In the event that Proposition 65 is repealed or is otherwise
18 rendered inapplicable by reason of law generally, or as to the Products specifically,
19 Olympia shall have no further obligations pursuant to this Consent Judgment with respect
20 to, and to the extent that, those Products are so affected.

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23 10. **NOTICES.** All correspondence and notices required to be provided pursuant to
24 this Consent Judgment shall be in writing and shall be personally delivered or sent by first-
25 class, registered, certified mail, overnight courier and/or via facsimile transmission (with
26 presentation of facsimile transmission confirmation) addressed as follows:

27
28 If to DiPirro: Gregory M. Sheffer, Esq.
Sheffer & Chanler LLP

1 4400 Keller Avenue, Suite 200
2 Oakland, CA 94605-4229

3
4 If to Olympia: David Cartwright, President
5 Olympia Group, Inc.
6 505 South 7th Avenue
7 City of Industry, CA 91746-3121

8 With a copy to: Thomas H. Clark, Jr., State Bar No.
9 Dennis J. Byrne, State Bar No.
10 Ropers, Majeski, Kohn & Bentley
11 333 Market Street, Suite 3150
12 San Francisco, CA 94105

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14 Either party, from time to time, may specify a change of address or facsimile
15 number to which all notices and other communications shall be sent.
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18 **11. NO ADMISSIONS.** Nothing in this Consent Judgment shall constitute or be
19 construed as an admission by Olympia of any fact, finding, conclusion, issue of law, or
20 violation of law, nor shall compliance with this Consent Judgment constitute or be
21 construed as an admission by Olympia of any fact, finding, conclusion, issue of issue of
22 law, or violation of law, such being specifically denied by Olympia. Olympia reserves all
23 of its rights and defenses with regard to any claim by any party under Proposition 65 or
24 otherwise. However, this Paragraph shall not diminish or otherwise affect Olympia's
25 obligations, responsibilities and duties under this Consent Judgment.

26
27 **12. ENTIRE AGREEMENT; MODIFICATION.** This Consent Judgment constitutes
28 the entire agreement between the parties relating to the rights and obligations herein
granted and assumed, and supersedes all prior agreements and understandings between
the parties. This Consent Judgment may be modified only upon the written agreement of
the parties or upon motion to the Court.

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13. **COUNTERPARTS; FAXSIMILE SIGNATURES.** This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document.

14. **COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY CODE §25249.7(f)).** This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. **COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY CODE §25249.7(f)).** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). DiPirro represents that his counsel will send a copy of this Agreement to the California Attorney General's Office when filing the motion to approve.

16. **AUTHORIZATION.** 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:
Date: 12/19/02


Plaintiff Michael DiPirro

AGREED TO:
Date: 12/20/02


Defendant Olympia Group, Inc.

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AGREED AS TO FORM:

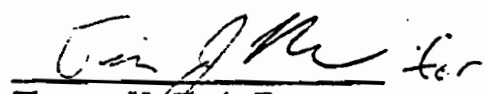
Date: 12.19.02



Gregory M. Sheffer
Attorneys for Plaintiff
Michael DiPirro

AGREED AS TO FORM:

Date: 2/14/03



Thomas H. Clark, Esq.
Attorneys for Defendant
Olympia Group, Inc.