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ENDORSED
FILED
ALAMEDA COUNTY

OCT 02 2001

5 Attorneys for Plaintiff
6 MICHAEL DIPIRRO

CLERK OF THE SUPERIOR COURT
By GLORIA J. AN MATHEWS

Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF ALAMEDA

10 MICHAEL DIPIRRO, an individual) No. H220122-5
11)
12 Plaintiff,) CONSENT JUDGMENT
13)
14 v.)
15)
16 PANASONIC COMPANY; and DOES 1)
through 1000,)
17 Defendants.)
_____)

18
19
20 This Consent Judgment ("Agreement" or "Consent Judgment")
21 is entered into by and between Michael DiPirro, a California
22 citizen, and Matsushita Electric Corporation of America,
23 formerly doing business as Panasonic Company ("Matsushita"),
24 as of July 20, 2001 (the "Effective Date"). The parties agree
25 to the following terms and conditions:
26
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28

CONSENT JUDGMENT

1 **WHEREAS:**

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

7 B. Matsushita is a company that currently
8 manufactures, distributes and/or sells in the State of
9 California certain power tools whose customary use and
10 application are alleged to expose persons to chemicals listed
11 pursuant to Proposition 65 (California Health & Safety Code
12 §25249.5 et seq.) including lead (or lead compounds),
13 crystalline silica, arsenic and chromium (hexavalent
14 compounds) (the "Listed Chemicals");

15 C. The products whose customary use and
16 application are alleged to expose persons to the "Listed
17 Chemicals" and which are covered by this Agreement are set
18 forth in Exhibit A (the "Products"). The Products have been
19 distributed and/or sold by Matsushita for use in California
20 since at least May 31, 1997; and

21 D. On March 22, 2001, Michael DiPirro first served
22 Matsushita and other public enforcement agencies with a
23 document entitled "60-Day Notice of Violation" which provided
24 Matsushita and such public enforcers with notice that
25 Matsushita was in violation of Health & Safety Code §25249.6
26 for allegedly failing to warn purchasers that certain products
27 it sells or otherwise offers for use in California expose

28 **CONSENT JUDGMENT**

1 users to the Listed chemicals; and

2 E. On May 31, 2001, Michael DiPirro filed a
3 complaint entitled Michael DiPirro v. Matsushita Company, et
4 al. in the Alameda County Superior Court, naming Matsushita as
5 a defendant and alleging violations of Business & Professions
6 Code §17200 and Health & Safety Code §25249.6 on behalf of
7 individuals in California who allegedly have been exposed to
8 the "Listed Chemicals" produced by certain Matsushita products
9 (the "Action").

10 F. Nothing in this Agreement shall be construed as
11 an admission by Matsushita of any fact, finding, issue of law,
12 or violation of law; nor shall compliance with this Agreement
13 constitute or be construed as an admission by Matsushita of
14 any fact, finding, conclusion, issue of law, or violation of
15 law. However, this paragraph shall not diminish or otherwise
16 affect the obligations, responsibilities, and duties of
17 Matsushita under this Agreement.

18 **NOW THEREFORE, MICHAEL DIPIRRO AND MATSUSHITA AGREE AS**
19 **FOLLOWS:**

20 1. **Product Warnings.** Beginning immediately from
21 the Effective Date, Matsushita shall initiate commercially
22 reasonable efforts to revise the current product or packaging
23 warnings for the Products manufactured and/or distributed by
24 Matsushita and sold in California consistent with this
25 Agreement ("Revised Warnings"). Matsushita agrees that it
26 will provide Revised Warnings on all Products sold in
27 California and manufactured and/or distributed by Matsushita

28 CONSENT JUDGMENT

1 more than four months after the date this Agreement is
2 approved and entered by the Court, the use of which are
3 allegedly likely to result in exposures to users to lead (or
4 lead compounds), crystalline silica, arsenic, and/or chromium
5 (hexavalent compounds) or any other, or combination of, Listed
6 Chemicals. The Revised Warnings shall bear one of the
7 following warning statements:

8 **"WARNING: Some dust created by power sanding,**
9 **sawing, grinding, drilling, and other**
10 **construction activities contains**
11 **chemicals known [to the State of**
12 **California] to cause cancer, birth**
13 **defects or other reproductive harm.**
14 **Some examples of these chemicals are:**
15 **• lead from lead-based paints,**
16 **• crystalline silica from bricks and**
17 **cement and other masonry products,**
18 **and**
19 **• arsenic and chromium from**
20 **chemically-treated lumber.**
21 **Your risk from these exposures**
22 **varies, depending on how often you do**
23 **this type of work. To reduce your**
24 **exposure to these chemicals: work in**
25 **a well ventilated area, and work with**
26 **approved safety equipment, such as**
27 **those dust masks that are specially**
28 **designed to filter out microscopic**
 particles.";

[Note: Text in brackets is optional.]

-or-

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

 The Revised Warning may be (1) printed in the owner's
manual in accordance with Exhibit B or (2) placed on a label

CONSENT JUDGMENT

1 that is (a) fastened to the packaging or the product and may
2 be included with the owner's manual. The Revised Warning shall
3 be deemed to cover all uses of the Products, and all other
4 products used in connection with the Products.

5 The foregoing notwithstanding, Matsushita shall have no
6 obligation or liability with respect to providing the Revised
7 Warning to the extent that Proposition 65 does not apply to a
8 particular user of the Products of Matsushita or in any
9 particular circumstances, including to the extent the federal
10 Occupational Safety and Health Act ("OSH Act") preempts
11 Proposition 65.

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

13 **§25249.7 (b)**. Pursuant to Health & Safety Code §25249.7 (b),
14 Matsushita shall pay a civil penalty of \$3,800. The payment of
15 the \$3,800 referred to in the preceding sentence shall be paid
16 within five (5) calendar days after the Effective Date of this
17 Agreement and shall be held in trust by DiPirro's counsel
18 until the Alameda County Superior Court approves and enters
19 the Consent Judgment. The penalty payment is to be made
20 payable to "Chanler Law Group In Trust For Michael DiPirro".
21 If the Consent Judgment is not approved by the Court, DiPirro
22 will return all funds, with interest thereon at a rate of six
23 percent (6%) per annum, within ten (10) calendar days of
24 notice of the Court's decision. Penalty monies shall be
25 apportioned by DiPirro in accordance with Health & Safety Code
26 §25192, with 75% of these funds remitted to the State of
27 California's Department of Toxic Substances Control.

28 CONSENT JUDGMENT

1 Matsushita understands that the payment schedule as
2 stated in this Consent Judgment is a material factor upon
3 which DiPirro has relied in entering into this Consent
4 Judgment. Matsushita agrees that all payments will be made in
5 a timely manner in accordance with the payment due dates.
6 Matsushita will be given a five (5) calendar day grace period
7 from the date payment is due. Matsushita agrees to pay
8 Michael DiPirro a \$250 per calendar day fee for each day the
9 payment is received after the grace period ends. For purposes
10 of this paragraph, each new day (requiring an additional \$250
11 payment) will begin at 5 p.m. (PST).

12 **3. Reimbursement Of Fees And Costs.** The parties
13 acknowledge that DiPirro offered to resolve the dispute
14 without reaching terms on the amount of fees and costs to be
15 reimbursed, thereby leaving this open issue to be resolved
16 after the material terms of the agreement had been reached,
17 and the matter settled. Matsushita then expressed a desire to
18 resolve the fee and cost issue concurrently with other
19 settlement terms, so the parties tried to (and did) reach an
20 accord on the compensation due to DiPirro and his counsel
21 under, inter alia, the private attorney general doctrine
22 codified at C.C.P. §1021.5.

23 Matsushita shall reimburse DiPirro and his counsel
24 for his fees and costs incurred as a result of investigating,
25 bringing the matter to Matsushita's attention, litigating and
26 negotiating a settlement in the public interest. Matsushita
27 shall pay the total sum of \$16,200 for investigation fees,
28

CONSENT JUDGMENT

attorneys' fees and litigation costs (except as provided in 3.1, below) within five (5) calendar days of the Effective Date of the Agreement. Such sum shall be held in trust by DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent Judgment. If the Consent Judgment is not approved by the Court, DiPirro will return all funds, with interest thereon at a rate of six percent (6%) per annum, within ten (10) calendar days of notice of the Court's decision. Payment should be made payable to the "Chanler Law Group".

Matsushita understands that the payment schedule as stated in this Consent Judgment is a material factor upon which DiPirro and his counsel have relied in entering into this Consent Judgment. Matsushita agrees that all payments will be made in a timely manner in accordance with the payment due dates. Matsushita will be given a five (5) calendar day grace period from the date payment is due. Matsushita agrees to pay Michael DiPirro and his counsel a \$250 per calendar day fee for each day the payment is 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).

3.1 Additional Contingent Fees and Costs. In the event that the California Attorney General's office, pursuant to 11 CRC 3000, et seq., serves objections to this Consent Judgment on either of the parties, such that it requires plaintiff to incur additional legal fees or costs relating to this Consent

CONSENT JUDGMENT

Judgment, Defendant shall reimburse DiPirro for any fees and costs incurred by DiPirro and his counsel in excess of \$1,500 from the date of receipt of the Attorney General's objections, provided that DiPirro first obtains Defendant's consent to proceed with the Consent Judgment under these circumstances and further provided that the total amount of any such additional fees and costs do not exceed a total of \$3,000 above the initial \$1500. Such additional legal fees or costs relating to this Consent Judgment include, but are not limited to: further editing and finalizing of the Consent Judgment; corresponding with opposing counsel; retention of experts; presenting of the Consent Judgment (or any modifications thereof) to the Attorney General for further comment; and any briefing and/or appearance before the Court related to this Consent Judgment. Plaintiff agrees to document all fees and costs incurred from the date of receipt of the Attorney General's objections through the date of court approval of the Consent Judgment. Prior to receiving such documentation, Defendant agrees to enter into a letter agreement in which the parties agree that, by transmitting such information, no privilege will be waived by DiPirro or his counsel. Such additional reimbursement of legal fees and costs shall be due within ten (10) calendar days after receipt of both notice of Court approval of the Consent Judgment and final billing statement from plaintiff. Defendant has the right to object to such reimbursement and may submit the resolution of this issue to the American Arbitration Association (AAA) in

CONSENT JUDGMENT

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

10 **4. Michael DiPirro's Release Of Matsushita.**

11 Michael DiPirro, by this Agreement, on behalf of himself, his
12 agents, representatives, attorneys, assigns and in the
13 interest of the general public, waives all rights to institute
14 or participate in, directly or indirectly, any form of legal
15 action, and releases all claims, liabilities, obligations,
16 losses, costs, expenses, fines and damages, against Matsushita
17 and its directors, officers, employees, parents, sister
18 companies, successors and assigns (including other sellers of
19 the Products), whether under Proposition 65 or California
20 Business & Profession Code §17200 et seq. based on their
21 alleged failure to warn about exposure to the Listed Chemicals
22 associated with the use of any of the Products.

23 **5. Matsushita's Release Of Michael DiPirro.**

24 Matsushita, by this Agreement, waives all rights to institute
25 any form of legal action against Michael DiPirro and his
26 attorneys or representatives, for all actions or statements
27 made by Michael DiPirro, and his attorneys or representatives,
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CONSENT JUDGMENT

1 in the course of seeking enforcement of Proposition 65 or
2 Business & Profession Code §17200 against Matsushita in this
3 Action.

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

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

28 CONSENT JUDGMENT

2
1 notifies Matsushita that he is rescinding this Agreement
2 pursuant to this Paragraph.

3 **8. Product Characterization.** Matsushita
4 acknowledges that DiPirro alleges that each of the Products,
5 through their customary use or application, are likely to
6 expose persons to the Listed Chemicals. In the event that
7 Matsushita obtains analytical, risk assessment or other data
8 ("Exposure Data") that shows an exposure to any or all of the
9 Listed Chemicals poses "no significant risk" or will have "no
10 observable effect," as each such standard is applicable and as
11 each is defined under Health & Safety Code §25249.10(c) and
12 Matsushita seeks to eliminate the warnings, then Matsushita
13 shall provide DiPirro with ninety (90) days prior written
14 notice of its intent to limit or eliminate the warning
15 provisions under this Agreement based on the Exposure Data and
16 shall provide DiPirro with all such supporting Exposure Data.

17 Within ninety (90) days of receipt of Matsushita Exposure
18 Data, DiPirro shall provide Matsushita with written notice of
19 his intent to challenge the Exposure Data (in the event that
20 he chooses to make such a challenge). If DiPirro fails to
21 provide Matsushita written notice of his intent to challenge
22 the Exposure Data within ninety (90) days of receipt of
23 Matsushita's notice and the Exposure Data, DiPirro shall waive
24 all rights to challenge the Exposure Data, and Matsushita
25 shall be entitled to limit or eliminate the warning provisions
26 required under this Agreement with respect to those Product(s)
27 to which the Exposure Data applies. If DiPirro timely

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CONSENT JUDGMENT

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

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

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

25 **11. Governing Law.** The terms of this Agreement
26 shall be governed by the laws of the State of California.

27 **12. Notices.** All correspondence to Michael DiPirro
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CONSENT JUDGMENT

1 shall be mailed to:

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 Matsushita shall be
6 mailed to:

7 Robert L. Falk, Esq.
8 Morrison & Foerster, LLP
425 Market Street
9 San Francisco, CA 94105-2482
(415) 268-7000

10 **13. Compliance With Reporting Requirements.** The
11 parties agree to comply with the reporting form requirements
12 referenced in Health & Safety Code §25249.7(f). Pursuant to
13 the new regulations promulgated under Health & Safety Code
14 §25249.7(f), DiPirro shall present this Consent Judgment to
15 the California Attorney General's office upon receiving all
16 necessary signatures. It will then be presented to the
17 Alameda County Superior Court thirty (30) days later, provided
18 that the Attorney General has not served any objections to
19 this Consent Judgment prior to the end of the thirty day
20 period.

21 **14. 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 **15. Authorization.** The undersigned are authorized
26 to execute this Agreement on behalf of their respective
27 parties and have read, understood and agree to all of the

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CONSENT JUDGMENT

1 terms and conditions of this Agreement.

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AGREED TO:

AGREED TO:

DATE: 7/24/01

DATE: _____

Michael DiPirro
Michael DiPirro
PLAINTIFF

Matsushita Electric
Corporation of America
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Robert L. Falk
Attorneys for Defendant
MATSUSHITA ELECTRIC
CORPORATION OF AMERICA

CONSENT JUDGMENT

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terms and conditions of this Agreement.


AGREED TO:

AGREED TO:

DATE: _____

DATE: 7-17-01

Michael DiPirro
PLAINTIFF

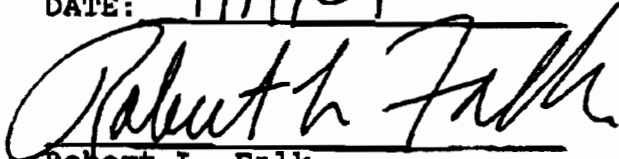


Matsushita Electric
Corporation of America
DEPENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: 7/19/01


David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Robert L. Falk
Attorneys for Defendant
MATSUSHITA ELECTRIC
CORPORATION OF AMERICA

CONSENT JUDGMENT

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terms and conditions of this Agreement.

AGREED TO:

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DATE: _____

DATE: _____

Michael DiPirro
PLAINTIFF

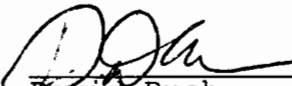
Matsushita Electric
Corporation of America
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: July 24, 2001

DATE: _____



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Robert L. Falk
Attorneys for Defendant
MATSUSHITA ELECTRIC
CORPORATION OF AMERICA

CONSENT JUDGMENT

Exhibit A

EXHIBIT A

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Power tools, including: screw drivers, drills, circular saws, rotary hammers, and impact drivers (and combinations of the foregoing).

CONSENT JUDGMENT

Exhibit B

EXHIBIT B

Warnings in Manuals. A Revised Warning for Products may be provided in the owner's manual for purposes of Paragraph 1 if all of the following conditions are met:

a. The warning shall be located in one of the following places in the owner's manual: the outside of the front cover; the inside of the front cover; the first page other than the cover; or the outside of the back cover; The warning shall have the content as the warning under subparagraph 1, except that, at the option of Matsushita, the bracketed language may be omitted; The warning shall be printed in a font no smaller than the font used for other safety warnings in the manual. The format shown in Paragraph 1 is illustrative only, provided that the warning meets the other requirements of this Agreement; Alternatively, the warning may be included in a safety warning section consistent with specifications UL 745-1 or UL 45, issued by Underwriters Laboratories Inc., as amended; The warning may either be printed in the manual or contained in a durable label or sticker affixed to the manual. If the graphic is used, and the manual is printed in a single color of ink on paper, then the warning need not contain the yellow color;

b. The Product contains a durable label or sticker directing the operator's attention to the owner's manual;

c. The owner's manual is intended by Matsushita to be provided with the original packaging of the Product to the initial consumer/purchaser;

d. At least one other safety warning appears in the owner's manual; and

e. All or a substantial portion of operation instructions, if any, are contained in the owner's manual.

CONSENT JUDGMENT