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ENDORSED  
FILED  
ALAMEDA COUNTY

MAY 3 1 2001

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CLERK OF THE SUPERIOR COURT  
By MAY CHOO Deputy

Attorneys for Plaintiff  
Michael DiPirro

10 SUPERIOR COURT OF CALIFORNIA – COUNTY OF ALAMEDA

11 MICHAEL DiPIRRO,

No. H216084-9

12 Plaintiff,

**CONSENT JUDGMENT**

13 vs.

14 PRIME EQUIPMENT, INC.; PRIME  
15 SERVICES, INC.; ATLAS COPCO  
16 NORTH AMERICA, INC.; and DOES  
1 through 1000,

17 Defendants.

18  
19  
20 **1. INTRODUCTION**

21  
22 1.1. Michael DiPirro ("DiPirro") asserts that he is an individual residing in  
23 San Francisco who seeks to promote awareness of exposures to toxic chemicals  
24 and improve human health by reducing or eliminating hazardous substances  
25 contained in consumer and industrial products;

26  
27 1.2. DiPirro asserts that Prime Equipment, Inc. and Prime Services, Inc.,  
28

1 now Rental Service Corporation, as successor in interest to Prime Equipment, Inc.  
2 and Primes Services, Inc.; (hereafter "Prime") have rented, distributed or sold in the  
3 State of California certain welding machines, power sources and other welding  
4 equipment identified in Exhibit A (hereafter "Welding Products" or "Products"), that  
5 Plaintiff contends contain or whose customary use and application may produce  
6 fumes or gases which contain chemicals listed pursuant to the Safe Drinking Water  
7 and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et  
8 seq., also known as Proposition 65 including, but not limited to, nickel (and nickel  
9 compounds), chromium (hexavalent compounds), carbon monoxide and other  
10 chemicals that are known to the State of California to cause cancer or birth defects  
11 (or other reproductive harm).

12  
13       **1.3.** By notice dated August 4, 2000, DiPirro served Prime and all of the  
14 requisite public enforcement agencies with a document entitled "60-Day Notice of  
15 Violation" which provided Prime and such public agencies with notice that Prime  
16 was allegedly violating Proposition 65 in failing to warn California renters and  
17 purchasers that certain Welding Products exposed users to chemicals listed under  
18 Proposition 65.

19  
20       **1.4.** On October 20, 2000, DiPirro filed a complaint in the Alameda County  
21 Superior Court, entitled *Michael DiPirro v. Prime Equipment, Inc. et al.*, Action  
22 No. H216084-9, naming Prime and various does as defendants and alleging  
23 violations of Proposition 65 and Business & Professions Code §17200 et seq., on  
24 behalf of individuals in California who may have been exposed to certain Proposition  
25 65 listed chemicals contained in or produced by certain Welding Products that Prime  
26 rented, distributed or sold. Named party Atlas Copco North America, Inc. was  
27 dismissed from the case on December 20, 2000.

1           **1.5** Prime denies the material factual and legal allegations contained in the  
2 DiPirro's above mentioned 60-Day Notices of Violation and Complaint for alleged  
3 violations of Proposition 65 and Business & Professions Code §17200 *et seq.*, and  
4 maintains that all products rented, distributed or sold by Prime in California,  
5 including, but not limited to Welding Products have been and are in compliance with  
6 all laws.

7  
8           **1.6** For purposes of this Consent Judgment, the term "Effective Date" shall  
9 mean May 31, 2001.

10  
11           **1.7** For purposes of this Consent Judgment, the term "Listed Chemicals"  
12 means nickel (and nickel compounds), chromium (hexavalent compounds) and  
13 carbon monoxide.

14  
15           **2.     INJUNCTIVE RELIEF**

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17           **2.1.   Welding Products**

18                   **a.** Prime shall not, after August 1, 2001, knowingly rent, distribute  
19 or sell in California any Welding Products that contain or whose customary use and  
20 application produce fumes or gases that contain Listed Chemicals, unless such  
21 Welding Products comply with the warning requirements set forth in Section 2.1(b).  
22

23                   **b.** Prime may satisfy any Section 2.1(a) warning obligations by  
24 complying with one or more of the warning methods identified in Sections 2.1(b)(1)  
25 through 2.1(b)(4). The warnings identified in Sections 2.1(b)(1) through 2.1(b)(4)  
26 shall be prominent and displayed with such conspicuousness, as compared with  
27 other words, statements, or designs, as to render them likely to be read and  
28 reasonably understood by ordinary individuals under customary conditions of

1 purchase or use.

2  
3 **1. Warning in Consumer Handouts:** Including a warning in a  
4 handout given to the purchaser or renter of the Welding Product at the time of the  
5 Welding Product's purchase or rental, with the language of that warning being  
6 either: (i) that set forth below in this subsection; (ii) equivalent to the language set  
7 forth below in this subsection and one that complies with Section 12601 of Title 22  
8 of the California Code of Regulations; or (iii) that which complies with a settlement  
9 or consent judgment involving the Welding Product's manufacturer:

10 **WARNING:** Welding machines produce an exposure to one or more  
11 chemicals known to the State of California to cause  
12 cancer and birth defects (or other reproductive harm).

13 **2. Warning on the Welding Products:** Having a durable label  
14 affixed to the Welding Product itself in a location that can be seen by the user of  
15 the product under normal circumstances of use that contains a warning, with the  
16 language of that warning being either: (i) that set forth below in this subsection;  
17 (ii) equivalent to the language set forth below in this subsection and one that  
18 complies with Section 12601 of Title 22 of the California Code of Regulations; or  
19 (iii) that which complies with a settlement or consent judgment involving the  
20 Welding Product's manufacturer:

21 **WARNING:** This product contains (or produces an exposure to) one or  
22 more chemicals known to the State of California to cause  
23 cancer and birth defects (or other reproductive harm).

24 **3. Warning on the Packaging of the Welding Products:**  
25 Having a durable label containing a warning affixed or attached to the packaging of  
26 the Welding Product by way of an adhesive sticker, stamp or permanent changes to  
27 the outside packaging of the Welding Product, so long as the packaging is  
28 transferred to the consumer, with the language of that warning being either: (i) that

1 set forth below in this subsection; (ii) equivalent to the language set forth below in  
2 this subsection and one that complies with Section 12601 of Title 22 of the  
3 California Code of Regulations; or (iii) that which complies with a settlement or  
4 consent judgment involving the Welding Product's manufacturer:

5  
6 **WARNING:** This product contains (or produces an exposure to)  
7 one or more chemicals known to the State of  
8 California to cause cancer and birth defects (or  
9 other reproductive harm).

10 **4. In Store Sign Posting:** Posting a sign, adjacent to the cash  
11 registers or check-outs in the front of the California Prime stores where the Welding  
12 Products are rented or sold, with the sign containing a warning, with the language  
13 of that warning being either: (i) that set forth below in this subsection; (ii)  
14 equivalent to the language set forth below in this subsection and one that complies  
15 with Section 12601 of Title 22 of the California Code of Regulations; or (iii) that  
16 which complies with a settlement or consent judgment involving the Welding  
17 Product's manufacturer:

18 **WARNING:** Welding machines produce an exposure to one or more  
19 chemicals known to the State of California to cause  
20 cancer and birth defects (or other reproductive harm).

21 **2.2 Product Characterization.** Plaintiff contends that each of the Products  
22 listed in Exhibit A contains or produces gases or fumes that contain one or more  
23 substances known to the State of California to cause cancer or birth defects (or  
24 other reproductive harm). In the event that Prime obtains analytical, risk assessment  
25 or other data ("Exposure Data") that shows that an exposure to any or all Products  
26 or the fumes or gases generated from the use of those products poses "no  
27 significant risk" or will have "no observable effect," as each such standard is  
28 applicable and as each is defined under Health & Safety Code §25249.10(c), Prime

1 shall provide DiPirro with 90 days prior written notice of its intent to limit or  
2 eliminate the Proposition 65 warnings discussed in Sections 2.1 through 2.3 of this  
3 Consent Judgment, or any of them, based on the Exposure Data and shall provide  
4 DiPirro with all such supporting Exposure Data. Within thirty (30) days of receipt of  
5 Prime's Exposure Data, DiPirro shall provide Prime with written notice of his intent  
6 to challenge the Exposure Data (in the event that he chooses to make such a  
7 challenge). If DiPirro fails to provide Prime written notice of his intent to challenge  
8 the Exposure Data within thirty (30) days of receipt of Prime's notice and the  
9 Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and  
10 Prime shall be entitled to limit or eliminate the Proposition 65 warnings required  
11 under this Consent Judgment with respect to those Product(s) to which the  
12 Exposure Data applies. If DiPirro timely notifies Prime of his intent to challenge the  
13 Exposure Data, DiPirro and Prime shall negotiate in good faith to attempt to reach a  
14 settlement. In the event that no settlement is reached within thirty (30) days of  
15 mailing by DiPirro of such notice of challenge, DiPirro and Prime agree to submit  
16 such challenge to the Court for determination, pursuant to the Court's continuing  
17 jurisdiction of this matter under California Code of Civil Procedure Section 664.6  
18 and this Consent Judgment. The prevailing party shall be entitled to reasonable  
19 attorneys' fees and costs associated with such a determination.

20  
21 **3. MONETARY PAYMENTS**

22  
23 **3.1. Civil Penalty.** Subject to the limitations set forth below, Prime shall,  
24 pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$4,000  
25 within ten (10) calendar days after receipt of notice of the Court's entry and  
26 approval of this Consent Judgment. This payment shall be made payable to the  
27 "Chanler Law Group in Trust for Michael DiPirro." Any penalty monies received  
28 shall be apportioned by DiPirro in accordance with Health & Safety Code § 25192,

1 with 75% of these funds remitted to the State of California. DiPirro shall bear all  
2 responsibility for apportioning and paying to the State of California the appropriate  
3 civil penalties paid in accordance with this paragraph. In the event this Consent  
4 Judgment is not entered, any payment made pursuant to this paragraph shall be  
5 returned to Prime, with interest thereon at a rate of six percent (6%) per annum,  
6 within five (5) days of receipt of notice of the Court's rejection of this proposed  
7 Consent Judgment.

8  
9 Prime understands that the payment schedule as stated in this Consent  
10 Judgment is a material factor upon which DiPirro has relied in entering into this  
11 Consent Judgment. Prime agrees that all payments will be made in a timely manner  
12 in accordance with the payment due dates. Prime will be given a five (5) calendar  
13 day grace period from the date payment is due. Prime agrees to pay Michael DiPirro  
14 a \$250 per calendar day fee for each day the payment is received after the grace  
15 period ends. For purposes of this paragraph, each new day (requiring an additional  
16 \$250 payment) will begin at 5 p.m. (PST).

17  
18 **3.2. Reimbursement of Fees and Costs.** The parties acknowledge that  
19 DiPirro offered to resolve the dispute without reaching terms on the amount of fees  
20 and costs to be reimbursed, thereby leaving this open issue to be resolved after the  
21 material terms of the agreement had been reached and the matter settled. Prime  
22 then expressed a desire to resolve the fee and cost issue concurrently with other  
23 settlement terms, so the parties reached an accord on the compensation due to  
24 DiPirro and his counsel under the private attorney general doctrine codified at  
25 California Code of Civil Procedure Section 1021.5.

26  
27 Prime shall reimburse DiPirro and his counsel for his fees and costs, incurred  
28 as a result of investigating, bringing this matter to Prime's attention, litigating and

1 negotiating a settlement in the public interest. Prime shall within ten (10) calendar  
2 days after receipt of notice of the Court's entry and approval of this Consent  
3 Judgment, pay to DiPirro's counsel the sum of \$26,000 for his investigation,  
4 expert, attorneys' and paraprofessional fees and costs incurred in this matter. The  
5 \$26,000 amount shall be made payable to the "Chanler Law Group." In the event  
6 this Consent Judgment is not entered, any payment made pursuant to this  
7 paragraph shall be returned to Prime, with interest thereon at a rate of six percent  
8 (6%) per annum, within five (5) days of receipt of notice of the Court's rejection of  
9 this proposed Consent Judgment.

10  
11 Prime understands that the payment schedule as stated in this Consent  
12 Judgment is a material factor upon which DiPirro has relied in entering into this  
13 Consent Judgment. Prime agrees that all payments will be made in a timely manner  
14 in accordance with the payment due dates. Prime will be given a five (5) calendar  
15 day grace period from the date payment is due. Prime agrees to pay Michael DiPirro  
16 a \$250 per calendar day fee for each day the payment is received after the grace  
17 period ends. For purposes of this paragraph, each new day (requiring an additional  
18 \$250 payment) will begin at 5 p.m. (PST).

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

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



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

15  
16 **4.2. DiPirro's Release of "Downstream Persons."** DiPirro, on behalf of  
17 himself, his agents, and/or assignees, and in the interest of the general public,  
18 further waives all rights to institute any form of legal action and releases all Claims,  
19 as defined below, against each distributor, wholesaler, auctioneer, retailer, dealer,  
20 customer, owner, operator, purchaser, lessor, lessee, renter, or user of the  
21 Products, or any of their respective parent and affiliated companies, divisions,  
22 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of  
23 them) and their respective officers, directors, shareholders, partners, attorneys,  
24 representatives, agents, employees (collectively, "Downstream Persons"). This  
25 waiver and release shall pertain only to Claims arising under Proposition 65 or  
26 Business & Professions Code §17200 et seq., related to the Downstream Persons'  
27 alleged failure to warn about exposures on or before the Effective Date to certain  
28 Listed Chemicals contained in any of the Products. It is specifically understood and

1 agreed that this Consent Judgment resolves all issues and liability, now and in the  
2 future, concerning the Downstream Persons' compliance with the requirements of  
3 Proposition 65 or Business & Professions Code §17200, *et seq.*, as to the Products.

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

10  
11 **5. PRIME'S PRODUCT INFORMATION:** Prime understands that the information  
12 Prime has provided to counsel for DiPirro about Prime's rentals and sales of the  
13 Products was a material factor upon which DiPirro has relied to determine a fair and  
14 reasonable settlement. To the best of Prime's knowledge, the information provided  
15 is true and accurate. In the event DiPirro discovers facts which demonstrate to a  
16 reasonable degree of certainty that the information is materially inaccurate, all other  
17 parts of this Consent Judgment notwithstanding, DiPirro shall have the right to  
18 vacate this Consent Judgment and re-institute an enforcement action against Prime,  
19 provided that all sums paid by Prime pursuant to Section 3 are returned to Prime,  
20 with interest thereon at a rate of six percent (6%) per annum, within five (5) days  
21 from the date on which DiPirro notifies Prime of his intent to vacate this Consent  
22 Judgment. In such case, all applicable statutes of limitation shall be deemed tolled  
23 for the period between the date DiPirro filed the instant action and the date DiPirro  
24 notifies Prime that he is seeking to vacate this Consent Judgment pursuant to this  
25 paragraph, provided that, in no event shall any statute of limitation be tolled beyond  
26 four (4) years from the date this action was filed.

27  
28 **6. COURT APPROVAL:** If this Consent Judgment is not approved and entered by

1 the Court within 60 days of the Effective Date, it shall be deemed null and void as  
2 of the sixty-first (61st) day after the Effective Date and cannot be used in any  
3 proceeding.

4  
5 **7. SEVERABILITY:** In the event that any of the provisions of this Consent  
6 Judgment are held by a court to be unenforceable, the validity of the enforceable  
7 provisions remaining shall not be adversely affected thereby.

8  
9 **8. ATTORNEY'S FEES:** In the event a dispute arises with respect to any  
10 provision(s) of this Consent Judgment (including, but not limited to, disputes arising  
11 from the late payments provisions in paragraphs 3.1 and 3.2), the prevailing party  
12 shall be entitled to recover costs and reasonable attorneys' fees.

13  
14 **9. GOVERNING LAW:** The terms of this Consent Judgment shall be governed by  
15 the laws of the State of California. In the event that Proposition 65 is repealed or is  
16 otherwise rendered inapplicable by reason of law generally, or as to the Products  
17 specifically, Prime shall have no further obligations pursuant to this Consent  
18 Judgment with respect to, and to the extent that, those Products are so affected.

19  
20 **10. NOTICES:** All correspondence and notices required to be provided pursuant to  
21 this Consent Judgment shall be in writing and shall be personally delivered or sent  
22 by first-class, registered, certified mail, overnight courier, and/or via facsimile  
23 transmission (with presentation of facsimile transmission confirmation) addressed as  
24 follows:

25           If to DiPirro:           Jennifer Henry or David Bush, Esq.  
26                                        Bush & Henry  
27                                        4400 Keeler Ave Suite 200  
28                                        Oakland, CA 94605-0747  
  Fax (510) 577-0787

          If to Prime:           Erik Olsson, Chief Financial Officer

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Rental Service Corporation  
6929 East Greenway Parkway, Suite 200  
Scottsdale, AZ 85254

With a copy to: Legal Department  
Atlas Copco North America  
34 Maple Avenue  
Pinebrook, NJ 07058

Either party, from time to time, may specify a change of address or facsimile number to which all notices and other communications shall be sent.

**11. NO ADMISSIONS:** Nothing in this Consent Judgment shall constitute or be construed as an admission by Prime of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Prime of any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by Prime. Prime reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect Prime's obligations, responsibilities and duties under this Consent Judgment.

**12. ENTIRE AGREEMENT; MODIFICATION:** This Consent Judgment constitutes 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.

**13. COUNTERPARTS; FACSIMILE SIGNATURES:** This Consent Judgment may be approved as to form by counsel for the parties 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.

1 14. COMPLIANCE WITH REPORTING REQUIREMENTS: The parties agree to  
2 comply with the reporting form requirements referenced in Health & Safety Code  
3 525249.7(f). As of the Effective Date, the California Attorney General's reporting  
4 forms are not available. DiPirro represents, however, that his counsel will send a  
5 copy of this Agreement to the California Attorney General's Office on the Effective  
6 Date. However, if the new regulations under Health & Safety Code §25249.7(f)  
7 become effective before June 1, 2001, DiPirro shall present this Consent Judgment  
8 to the Alameda County Superior Court thirty (30) days later, provided that the  
9 Attorney General has not served any objections to this Consent Judgment prior to  
10 the end of the thirty day period.  
11  
12

13  
14 15. AUTHORIZATION: The undersigned are authorized to execute this Consent  
15 Judgment on behalf of their respective parties and have read, understood and agree  
16 to all of the terms and conditions of this Consent Judgment.  
17

18  
19 **AGREED TO:**

20 DATED: 5/24, 2001

21   
22 Plaintiff Michael DiPirro

18  
19 **AGREED TO:**

20 DATED: \_\_\_\_\_, 2001

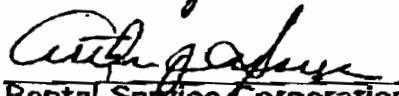
21 \_\_\_\_\_  
22 Rental Service Corporation, as successor in  
23 interest to Defendant Prime Equipment, Inc.;  
24 Prime Services, Inc

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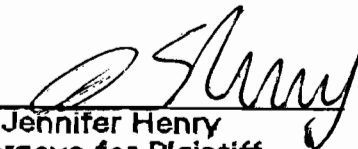
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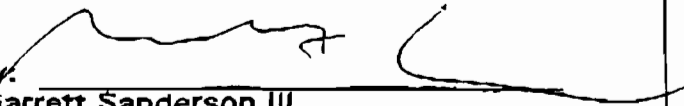
**15. AUTHORIZATION:** The undersigned are authorized to execute this Consent Judgment on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

**AGREED TO:**  
**DATED:** \_\_\_\_\_, 2001  
  
\_\_\_\_\_  
Plaintiff Michael DiPirro

**AGREED TO:**  
**DATED:** May 25, 2001  
  
  
\_\_\_\_\_  
Rental Service Corporation, as successor in interest to Defendant Prime Equipment, Inc.;  
Prime Services, Inc

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**APPROVED AS TO FORM:**  
DATED: 5/25, 2001  
**BUSH & HENRY**  
By:   
Jennifer Henry  
Attorneys for Plaintiff  
Michael DiPirro

**APPROVED AS TO FORM:**  
DATED: 5/25, 2001  
**CARROLL, BURDICK & MCDONOUGH LLP**  
Attorneys at Law  
By:   
Garrett Sanderson III  
Attorneys for Defendant Prime  
Equipment, Inc.; Prime Services, Inc

# Exhibit A



**EXHIBIT A – PRIME**

1. Welding Machines, Power Sources and Other Welding Equipment

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