

## **SETTLEMENT AGREEMENT**

This Settlement Agreement ("Agreement" or "Settlement Agreement") is entered into by and between Michael DiPirro, a California citizen, and Professional Tool Manufacturing, LLC, an Oregon corporation ("Professional Tool"), as of December 19, 2001, (the "Effective Date"). The parties agree to the following terms and conditions:

### **WHEREAS:**

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

B. Professional Tool is a company that currently manufactures, distributes and sells in the State of California certain power tools and diamond grinding wheels whose customary use and application contains or is likely to produce fumes, gases or dust which contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead compounds), crystalline silica, arsenic, chromium (hexavalent compounds) and nickel (the "Listed Chemicals");

C. The products whose customary use and application contain or are likely to produce fumes, gases or dust which contain one or more of the "Listed Chemicals" and which are covered by this Agreement are set forth in Exhibit A (the "Products"). The Products have been distributed and/or sold by Professional Tool for use in California since at least July 6, 1998;

D. On April 23, 2001, Michael DiPirro first served Professional Tool and other public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided Professional Tool and such public enforcers with notice that Professional Tool was in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells or otherwise offers for use in California (i.e., power tools), expose users to one or more of the Listed Chemicals;

E. On July 13, 2001, Michael DiPirro first served Professional Tool and other public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" which provided Professional Tool and such public enforcers with notice that Professional Tool was in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that certain products it sells or otherwise offers for use in California (i.e., diamond grinding wheels), expose users to one or more of the Listed Chemicals;

F. On July 6, 2001, Michael DiPirro filed a complaint entitled Michael DiPirro v. Professional Tool Manufacturing, LLC, et al. in the Alameda County Superior Court (Case No. H221298-0), naming Professional Tool as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general public in California who allegedly have been exposed to the "Listed Chemicals" contained in or produced by certain products that Professional Tool sells (i.e., power tools); and

G. On September 24, 2001, Michael DiPirro filed a complaint entitled Michael DiPirro v. Professional Tool Manufacturing, LLC, et al. in the Alameda County Superior Court (Case No. 01-024691), naming Professional Tool as a defendant and

alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 in the interest of the general public in California who allegedly have been exposed to the "Listed Chemicals" contained in or produced by certain products that Professional Tool sells (i.e., nickel grinding wheels).

H. Nothing in this Agreement shall be construed as an admission by Professional Tool of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Professional Tool of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Professional Tool under this Agreement.

**NOW THEREFORE, MICHAEL DIPIRRO AND PROFESSIONAL TOOL  
AGREE AS FOLLOWS:**

**1. Product Warnings.** Professional Tool shall begin to initiate revisions to its manufacture and sale of the Products to provide the language set forth in the section 1.1 below. Beginning on March 15, 2002, Professional Tool agrees that it will not knowingly ship (or cause to be shipped) any Products that contain or produce fumes, gases or dust that contain the Listed Chemicals in the State of California unless such Products comply with sections 1.1 and 1.2 below:

**1.1** For all power tools that are likely to expose users to lead (or lead compounds), crystalline silica, arsenic, and/or chromium (hexavalent compounds) or any combination of chemicals listed by the State of California as known

to cause cancer as well as birth defects (or other reproductive harm), such Products shall bear the following warning statement:

**“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.”;**

**1.1** For all nickel grinding wheels that are likely to expose users to nickel, such Products shall bear the following warning statement:

**"WARNING: This product contains nickel, a chemical known to the State of California to cause cancer.";**

or

**"WARNING: This product contains a chemical known to the State of California to cause cancer."**

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

## **2. Payment Pursuant To Health & Safety Code §25249.7(b).**

Pursuant to Health & Safety Code §25249.7(b), Professional Tool shall pay a civil penalty of \$1,500 (one thousand five hundred dollars). The payment of \$1,500 shall be paid within five (5) calendar days after the Effective Date of this Agreement. The penalty payment is to be made payable to "Chanler Law Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control.

Professional Tool understands that the payment schedule as stated in this Settlement Agreement is a material factor upon which DiPirro has relied in entering into this Settlement Agreement. Professional Tool agrees that all payments will be made in a timely manner in accordance with the payment due dates. Professional Tool will be given a five (5) calendar day grace period from the date payment is due. Professional Tool agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is not 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. Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Professional Tool then expressed a desire to resolve the fee and cost issue concurrently with other settlement terms, so the parties tried to (and did) reach an accord on the compensation due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

Professional Tool shall reimburse DiPirro and his counsel for his fees and costs incurred as a result of investigating, bringing the matter to Professional Tool's attention, litigating and negotiating a settlement in the public interest. Professional Tool shall pay the total sum of \$10, 250 (ten thousand two hundred and fifty dollars), except as provided for in Paragraph 3.1 below, for investigation fees, attorneys' fees and litigation costs. Professional Tool agrees to pay \$10,250, except as provided for in Paragraph 3.1

below, within five (5) calendar days of the Effective Date of the Agreement. Payment should be made payable to the “Chanler Law Group”.

Professional Tool understands that the payment schedule as stated in this Settlement Agreement is a material factor upon which DiPirro and his counsel have relied in entering into this Settlement Agreement. Professional Tool agrees that all payments will be made in a timely manner in accordance with the payment due dates. Professional Tool will be given a five (5) calendar day grace period from the date payment is due. Professional Tool agrees to pay Michael DiPirro and his counsel a \$250 per calendar day fee for each day the payment is not 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 CCR 3000, *et seq.*, serves objections to this Settlement Agreement on either of the parties, such that it requires plaintiff to incur additional legal fees or costs relating to this Settlement Agreement, Professional Tool 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. Such additional legal fees or costs relating to this Settlement Agreement include, but are not limited to: further editing and finalizing of the Settlement Agreement; corresponding with opposing counsel; retention of experts; presenting of the Settlement Agreement (or any modifications thereof) to the Attorney General for further comment; and any briefing and/or appearance before the Court related to this Settlement Agreement.

Plaintiff agrees to document all fees and costs incurred from the date of receipt of the Attorney General's objections. Prior to receiving such documentation, Professional Tool 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 of receiving the final billing statement from plaintiff. Professional Tool has the right to object to such reimbursement and may submit the resolution of this issue to the American Arbitration Association (AAA) in Northern California to determine the reasonableness of the additional fees and costs sought, provided that such notice of objection or decision to arbitrate is received by plaintiff by the end of the ten (10) calendar days. If an arbitration notice is not filed with AAA in a timely manner, DiPirro may file a motion with the Court for fees and costs pursuant to CCP §1021.5 and this Settlement Agreement associated with any additional fees and costs incurred as set forth in this paragraph.

**4. Michael DiPirro's Release Of Professional Tool.** Michael DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and in the interest of the general public, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Professional Tool and its directors, officers, employees, successors and assigns, whether under Proposition 65 or the Business & Profession Code §17200 et seq. based on Professional Tool's alleged

failure to warn about exposure to the Listed Chemicals contained in or produced by any of the Products.

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

**6. Dismissal of Action.** In consideration of the covenants contained in this Agreement, DiPirro agrees to dismiss both actions (Case No. 01-024691 and Case No. H221298-0) with prejudice against all named defendants within five (5) business days of the Effective Date.

**7. Professional Tool Sales Data.** Professional Tool understands that the sales data provided to counsel for DiPirro by Professional Tool was a material factor upon which DiPirro has relied to determine the amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Professional Tool's knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Professional Tool's receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Professional Tool, provided that all sums paid by



Professional Tool pursuant to paragraphs 2 and 3 are returned to Professional Tool within ten (10) days from the date on which DiPirro notifies Professional Tool of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Professional Tool that he is rescinding this Agreement pursuant to this Paragraph.

**8. Product Characterization.** Professional Tool acknowledges that DiPirro alleges that each of the Products, through their customary use or application, contain or are likely to produce fumes, gases or dust that contain lead (or lead compounds), crystalline silica, arsenic, chromium (hexavalent compounds) and/or nickel, substances known to the State of California to cause cancer and/or birth defects (or other reproductive harm). In the event that Professional Tool obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all of the Listed Chemicals poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c) and Professional Tool seeks to eliminate the warnings, then Professional Tool shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days of receipt of Professional Tool Exposure Data, DiPirro shall provide Professional Tool with written notice of his intent to challenge the Exposure Data (in the event that he chooses to make such a challenge). If DiPirro fails to provide Professional Tool written notice of his intent to challenge the Exposure Data within ninety (90) days of receipt of Professional Tool's notice and the Exposure Data, DiPirro shall waive all rights to

challenge the Exposure Data, and Professional Tool shall be entitled to limit or eliminate the warning provisions required under this Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro timely notifies Professional Tool of his intent to challenge the Exposure Data, DiPirro and Professional Tool (a) may stop its efforts to eliminate the warnings upon notice to DiPirro with no further liability or obligations or (b) shall negotiate in good faith for a period not to exceed thirty (30) days following receipt of Professional Tool's notice to attempt to reach a settlement of this issue. If a settlement is not reached, DiPirro and Professional Tool agree to submit such challenge to the superior court for determination, pursuant to this agreement. If DiPirro is the prevailing party, he shall be entitled to reasonable attorneys' fees and costs associated with bringing or defending a motion brought under this paragraph to the court for determination.

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

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

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

**12. Notices.** All correspondence to Michael DiPirro shall be mailed

to:

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

All correspondence to Professional Tool shall be mailed to:

Geoffrey O. Evers, Esq.  
Attorney at Law  
765 University Avenue, Suite 200  
Sacramento, CA 95825  
(916) 567-4500

**13. Compliance With Reporting Requirements.** The parties

acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this Settlement Agreement. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Settlement Agreement and the dismissals on, the California Attorney General's Office within two business days after the parties execute this Settlement Agreement.

**14. 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.

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**15. 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.

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Professional Tool Manufacturing, LLC.  
DEFENDANT

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DiPIRRO

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Geoffrey O. Evers  
Attorneys for Defendant  
PROFESSIONAL TOOL  
MANUFACTURING, LLC.

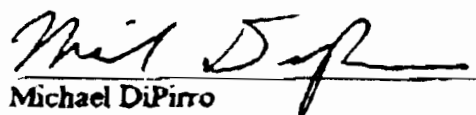
15. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

**AGREED TO:**

**AGREED TO:**

DATE: 2/20/01

DATE: \_\_\_\_\_

  
Michael DiPirro  
PLAINTIFF

\_\_\_\_\_  
Professional Tool Manufacturing, LLC.  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

\_\_\_\_\_  
Geoffrey O. Evers  
Attorneys for Defendant  
PROFESSIONAL TOOL  
MANUFACTURING, LLC.

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15. **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.

**AGREED TO:**

**AGREED TO:**

**DATE:** \_\_\_\_\_

**DATE:** 12-20-01

\_\_\_\_\_  
Michael DiPiro  
PLAINTIFF

W. O. Evers Pres. & CEO  
Professional Tool Manufacturing, LLC.  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

**DATE:** \_\_\_\_\_

**DATE:** 12/20/01

\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRO

Geoffrey O. Evers  
Geoffrey O. Evers  
Attorneys for Defendant  
PROFESSIONAL TOOL  
MANUFACTURING, LLC.

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**AGREED TO:**

**AGREED TO:**

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

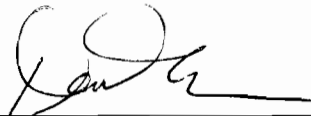
\_\_\_\_\_  
Professional Tool Manufacturing, LLC.  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: 12/20/01

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
David Bush  
Attorneys for Plaintiff  
MICHAEL DiPIRRO

\_\_\_\_\_  
Geoffrey O. Evers  
Attorneys for Defendant  
PROFESSIONAL TOOL  
MANUFACTURING, LLC.

## **EXHIBIT A**

**Diamond grinding wheels, including all nickel parts and accessories.**