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ALAMEDA COUNTY

OCT 02 2001

CLERK OF THE SUPERIOR COURT
By Cecilia Anchundo, Deputy

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MICHAEL DIPIRRO
9

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA
13

14 MICHAEL DIPIRRO,) No. H218319-2
15)
16 Plaintiff,)
17 v.) CONSENT JUDGMENT
18 RENT X EQUIPMENT RENTALS; and)
DOES 1 through 1000,)
19 Defendants.)
20 _____)

21 This Consent Judgment ("Agreement" or "Consent
22 Judgment") is entered into by and between Michael DiPirro, a
23 California citizen, and Rent X Equipment Rentals, a Delaware
24 corporation ("Rent X"), as of August 20, 2001 (the "Effective
25 Date"). The parties agree to the following terms and
26 conditions:
27
28

CONSENT JUDGMENT

1 **WHEREAS:**

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

7 B. Rent X is a company that currently rents
8 certain welding machines, power sources and other welding
9 equipment in the State of California;

10 C. The products that Rent X rents, and which may
11 contain, or whose customary use and application may produce
12 fumes or gases which contain, chemicals listed pursuant to
13 Proposition 65 (California Health & Safety Code 25249.5 et
14 seq.) including nickel and nickel compounds, chromium
15 (hexavalent compounds) and carbon monoxide ("Listed
16 Chemicals") and which are covered by this Agreement are set
17 forth in Exhibit A (the "Products"). The Products have been,
18 rented by Rent X for use in California since at least February
19 22, 1997; and

20 D. On November 24, 2000, Michael DiPirro served
21 Rent X and other public enforcement agencies with a document
22 entitled "60-Day Notice of Violation" which provided Rent X
23 and such public enforcers with notice that DiPirro contended
24 that Rent X was in violation of Health & Safety Code §25249.6
25 for allegedly failing to warn purchasers that certain products
26 it sells, rents or otherwise offers for use in California
27 expose users to Proposition 65-listed chemicals; and

1 E. On February 22, 2001, Michael DiPirro filed a
2 complaint entitled Michael DiPirro v. Rent X Equipment
3 Rentals; et al. in the Alameda County Superior Court, naming
4 Rent X as a defendant and alleging violations of Business &
5 Professions Code §17200 and Health & Safety Code §25249.6 on
6 behalf of individuals in California who allegedly have been
7 exposed to the "Listed Chemicals" contained in or produced by
8 certain products rented by Rent X.

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

17
18 **NOW THEREFORE, MICHAEL DIPIRRO AND RENT X AGREE AS**
19 **FOLLOWS:**

20 **1. Product Warnings.** Within fifteen (15) days of
21 the execution of this Agreement, Rent X shall begin to
22 initiate revisions to the health hazard warnings for its
23 Products in conformance with this Agreement to provide the
24 language set forth in the section 1.1 below. Beginning on
25 September 15, 2001, Rent X agrees that it will not knowingly
26 rent (or cause to be rented) any Products that contain, or
27 produce fumes or gases that contain, the Listed Chemicals

28
CONSENT JUDGMENT

1 unless such Products comply with section 1.1 below:

2 **1.1** For all Products that contain, or produce
3 fumes or gases that contain, nickel (and nickel compounds),
4 chromium (hexavalent compounds) and carbon monoxide, such
5 Products shall bear the following warning statement:

6 **"WARNING: This product contains or produces**
7 **nickel (and nickel compounds),**
8 **chromium (hexavalent compounds) and**
9 **carbon monoxide, chemicals known to**
 the State of California to cause
 cancer and birth defects (or other
 reproductive harm)";

10 **1.2** For all Products that contain, or produce
11 fumes or gases that contain, only one of the Listed Chemicals,
12 or any combination of the Listed Chemicals, such Products
13 shall bear the following warning statement:

14 **"WARNING: This product contains or produces one**
15 **or more chemicals known to the State**
16 **of California to cause cancer and**
17 **birth defects (or other reproductive**
 harm)";

18 The warning statement shall be prominently
19 placed upon the Product's label with such conspicuousness, as
20 compared with other words, statements, designs or devices on
21 the label as to render it likely to be read and understood by
22 an ordinary individual under customary conditions of purchase
23 or use. In addition, such a warning statement shall be
24 prominently placed upon any form or agreement regarding the
25 rental of the Product with such conspicuousness, as compared
26 with other words, statements, designs or devices on the label
27 as to render it likely to be read and understood by an
28 ordinary individual under customary conditions of rental.

1
2 **2. Payment Pursuant To Health & Safety Code**

3 **§25249.7(b)**. Pursuant to Health & Safety Code §25249.7(b),
4 Rent X shall pay a civil penalty of \$1,000 (one thousand
5 dollars). The payment of \$1,000 shall be paid within five (5)
6 calendar days of the Effective Date of this Agreement, and
7 shall be held in trust by DiPirro's counsel until the Alameda
8 County Superior Court approves and enters the Consent
9 Judgment. The penalty payment is to be made payable to
10 "Chanler Law Group In Trust For Michael DiPirro". If the
11 Consent Judgment is not approved by the Court, DiPirro will
12 return all funds, with interest thereon at a rate of six
13 percent (6%) per annum, within five (5) calendar days of
14 notice of the Court's decision. Penalty monies shall be
15 apportioned by DiPirro in accordance with Health & Safety Code
16 §25192, with 75% of these funds remitted to the State of
17 California's Department of Toxic Substances Control. As used
18 herein, the term "Effective Date" means the date at which time
19 this Consent Judgment is fully executed by both parties.

20 Rent X understands that the payment schedule as
21 stated in this Consent Judgment is a material factor upon
22 which DiPirro has relied in entering into this Consent
23 Judgment. Rent X agrees that all payments will be made in a
24 timely manner in accordance with the payment due dates. Rent
25 X will be given a five (5) calendar day grace period from the
26 date payment is due.

27
28 CONSENT JUDGMENT

1 **3. Reimbursement Of Fees And Costs.** The parties
2 acknowledge that the parties have resolved their dispute
3 without reaching terms on the amount of fees and costs to be
4 reimbursed, thereby leaving this open issue to be resolved
5 after the material terms of the agreement had been reached,
6 and the matter settled. The parties expressed a desire to
7 resolve the fee and cost issue concurrently with other
8 settlement terms, and have reached an accord on the
9 compensation DiPirro and his counsel claim an entitlement to
10 under the private attorney general doctrine codified at C.C.P.
11 \$1021.5.

12 In accordance with the terms and conditions of this
13 Agreement, Rent X shall reimburse DiPirro and his counsel
14 \$9,000 (Nine Thousand Dollars) for DiPirro's fees and costs,
15 incurred as a result of investigating, bringing this matter to
16 Rent X's attention, litigating and negotiating a settlement in
17 the public interest. Rent X agrees to pay the sum of \$9,000
18 within five (5) calendar days of the Effective Date. Rent-X's
19 settlement payment should be made payable to the "Chanler Law
20 Group". Such sum shall be held in trust by DiPirro's counsel
21 until the Alameda County Superior Court approves and enters
22 the Consent Judgment. If the Consent Judgment is not approved
23 by the Court, DiPirro will return all funds, with interest
24 thereon at a rate of six percent (6%) per annum, within ten
25 (10) calendar days of notice of the Court's decision.

26 Rent X understands that the payment schedule as
27 stated in this Consent Judgment is a material factor upon
28

1 which DiPirro has relied in entering into this Consent
2 Judgment. Rent X agrees that all payments will be made in a
3 timely manner in accordance with the payment due dates. Rent
4 X will be given a five (5) calendar day grace period from the
5 date payment is due.

6 **3.1 Additional Contingent Fees and Costs.** In the
7 event that the California Attorney General's office, pursuant
8 to 11 CCR 3000, *et seq.*, serves objections to this Consent
9 Judgment on either of the parties, such that it requires
10 plaintiff to incur additional legal fees or costs relating to
11 this Consent Judgment, Rent X shall reimburse DiPirro for any
12 fees and costs incurred by DiPirro and his counsel in excess
13 of \$3,000 from the date of receipt of the Attorney General's
14 objections. Such additional legal fees or costs relating to
15 this Consent Judgment include, but are not limited to: further
16 editing and finalizing of the Consent Judgment; corresponding
17 with opposing counsel; retention of experts; presenting of the
18 Consent Judgment (or any modifications thereof) to the
19 Attorney General for further comment; and any briefing and/or
20 appearance before the Court related to this Consent Judgment.

21 Plaintiff agrees to document all fees and costs
22 incurred from the date of receipt of the Attorney General's
23 objections through the date of court approval of the Consent
24 Judgment. Prior to receiving such documentation, Rent X
25 agrees to enter into a letter agreement in which the parties
26 agree that, by transmitting such information, no privilege
27 will be waived by DiPirro or his counsel.

1 Such additional reimbursement of legal fees and
2 costs shall be due within ten (10) calendar days after receipt
3 of both notice of Court approval of the Consent Judgment and
4 final billing statement from plaintiff. Rent X has the right
5 to object to such reimbursement and may submit the resolution
6 of this issue to the American Arbitration Association (AAA) in
7 Northern California to determine the reasonableness of the
8 additional fees and costs sought, provided that such notice of
9 objection or decision to arbitrate is received by plaintiff by
10 the end of the ten (10) calendar days. If an arbitration
11 notice is not filed with AAA in a timely manner, DiPirro may
12 file a motion with the Court for fees and costs pursuant to
13 CCP §1021.5 and this Consent Judgment associated with any
14 additional fees and costs incurred as set forth in this
15 paragraph.

16 **4. Michael DiPirro's Release Of Rent X.** Michael
17 DiPirro, by this Agreement, on behalf of himself, his agents,
18 representatives, attorneys, assigns and in the interest of the
19 general public, waives all rights to institute or participate
20 in, directly or indirectly, any form of legal action, and
21 releases all claims, liabilities, obligations, losses, costs,
22 expenses, fines and damages, against Rent X and its directors,
23 officers, employees, successors and assigns, whether under
24 Proposition 65 or the Business & Profession Code §17200 et
25 seq. based on Rent X's alleged failure to warn about exposure
26 to the Listed Chemicals contained in or produced by any of the
27 Products.

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

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

11 **7. Rent X Rental Data.** Rent X understands that
12 the rental and/or sales data provided to counsel for DiPirro
13 by Rent X was a material factor upon which DiPirro has relied
14 to determine the amount of payments made pursuant to Health &
15 Safety Code §25249.7(b) in this Agreement. To the best of Rent
16 X's knowledge, the rental data provided is true and accurate.
17 In the event that DiPirro discovers facts which demonstrate to
18 a reasonable degree of certainty that the rental data is
19 materially inaccurate, the parties shall meet in a good faith
20 attempt to resolve the matter within ten (10) days of Rent X's
21 receipt of notice from DiPirro of his intent to challenge the
22 accuracy of the rental data. If this good faith attempt fails
23 to resolve DiPirro's concerns, DiPirro shall have the right to
24 submit the resolution of this issue to the American
25 Arbitration Association (AAA) in Northern California.

26 **8. Product Characterization.** Rent X acknowledges
27 that the customary use or application of the Products listed
28

1 in Exhibit A may produce fumes or gases that contain, nickel
2 (and nickel compounds), chromium (hexavalent compounds) and
3 carbon monoxide and Plaintiff alleges that the customary use
4 or application of the Products is likely to expose users to
5 nickel (and nickel compounds), chromium (hexavalent compounds)
6 and carbon monoxide, substances known to the State of
7 California to cause cancer and/or birth defects (or other
8 reproductive harm). In the event that Rent X obtains
9 analytical, risk assessment or other data ("Exposure Data")
10 that shows an exposure to any or all Products poses "no
11 significant risk" or will have "no observable effect," as each
12 such standard is applicable and as each is defined under
13 Health & Safety Code §25249.10(c) and Rent X seeks to
14 eliminate the warnings called for by this Consent Decree, then
15 Rent X shall provide DiPirro with thirty (30) days prior
16 written notice of its intent to limit or eliminate the warning
17 provisions under this Agreement based on the Exposure Data and
18 shall provide DiPirro with all such supporting Exposure Data.

19 Within thirty(30) days of receipt of Rent X's Exposure Data,
20 DiPirro shall provide Rent X with written notice of his intent
21 to challenge the Exposure Data (in the event that he chooses
22 to make such a challenge). If DiPirro fails to provide Rent X
23 written notice of his intent to challenge the Exposure Data
24 within thirty (30) days of receipt of Rent X's notice and the
25 Exposure Data, DiPirro shall waive all rights to challenge the
26 Exposure Data, and Rent X shall be entitled to limit or
27 eliminate the warning provisions required under this Agreement

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

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

20 **10. Attorney's Fees.** In the event that a dispute
21 arises with respect to any provision of this Agreement, the
22 prevailing party shall be entitled to recover costs and
23 reasonable attorneys' fees.

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

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

David R. Bush or Jennifer Henry, Esq.
Bush & Henry
4400 Keller Ave., Suite 200
Oakland, CA 94605-4229
(510) 577-0747

All correspondence to Rent X shall be mailed
to:

David A. Harris, Esq.
Trump, Alioto, Trump & Prescott, LLP
2280 Union Street
San Francisco, CA 94123
(415) 563-7200

13. Compliance With Reporting Requirements. The parties acknowledge that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with that section by submitting the required reporting form to, and serving a copy of this Consent Judgment on, the California Attorney General's Office within two (2) business days after the parties execute this Consent Judgment. Following the expiration of the Attorney General's thirty (30) day review period, counsel for DiPirro shall submit the Consent Judgment to the Court in accordance with the requirements of Health & Safety Code § 25249.7(f) and its implementing regulations, thereby allowing the Attorney General to serve any comments to this Consent Judgment prior to the end of the thirty (30) day period.

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.

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

5 AGREED TO:

AGREED TO:

6 DATE: 8/24/01

DATE: _____

7
8 *Michael DiPirro*
9 Michael DiPirro
10 PLAINTIFF

Rent X Equipment Rentals
DEFENDANT

11
12 APPROVED AS TO FORM:

APPROVED AS TO FORM:

13 DATE: _____

DATE: _____

14
15
16 David Bush
17 Attorneys for Plaintiff
MICHAEL DIPIRRO

David A. Harris
Attorneys for Defendant
RENT X EQUIPMENT RENTALS

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CONSENT JUDGMENT

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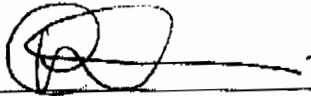
4 **AGREED TO:**

AGREED TO:

5 DATE: _____

DATE: 8/24/01

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8 Michael DiPirro
9 PLAINTIFF

Rent X Equipment Rentals
DEFENDANT

10
11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12
13 DATE: _____

DATE: _____

14
15 David Bush
16 Attorneys for Plaintiff
MICHAEL, DIPIRRO

David A. Harris
Attorneys for Defendant
RENT X EQUIPMENT RENTALS

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CONSENT JUDGMENT

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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: _____


AGREED TO:
DATE: _____

Michael DiPirro
PLAINTIFF

Rent X Equipment Rentals
DEFENDANT

APPROVED AS TO FORM:
DATE: 8/29/01

APPROVED AS TO FORM:
DATE: _____



David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

David A. Harris
Attorneys for Defendant
RENT X EQUIPMENT RENTALS

1 to execute this Agreement on behalf of their respective
2 parties and have read, understood and agree to all of the
3 terms and conditions of this Agreement.

4 **AGREED TO:**

AGREED TO:

5 DATE: _____

DATE: _____

6
7
8 Michael DiPirro
PLAINTIFF

Rent X Equipment Rentals
DEFENDANT

9
10
11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 DATE: _____

13 DATE: 8/27/01


14
15 David Bush
Attorneys for Plaintiff
16 MICHAEL DIPIRRO

David A. Harris
Attorneys for Defendant
RENT X EQUIPMENT RENTALS

Exhibit A

EXHIBIT A

1
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3 All welding machines, power sources and other welding
4 equipment rented by Rent X, including, but not limited to,
5 Multiquip's Portable Arc Welder (180 Amp.).
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