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8
9 Attorneys for Plaintiff
Michael DiPirro

10 SUPERIOR COURT OF CALIFORNIA
11
12 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH

13 UNLIMITED CIVIL JURISDICTION

14 MICHAEL DiPIRRO, No. 01-025131
15 Plaintiff, **CONSENT JUDGMENT**

16 vs.

17 RENTAL SERVICE CORPORATION,
18 as successor in interest to PRIME
EQUIPMENT, INC.; PRIME
19 SERVICES, INC.; ATLAS COPCO
NORTH AMERICA, INC.; and DOES
20 1 through 1000,
21 Defendants.

22
23
24 **1. INTRODUCTION**

25
26 1.1. Michael DiPirro ("DiPirro") asserts that he is an individual residing in
27 San Francisco who seeks to promote awareness of exposures to toxic chemicals
28 and improve human health by reducing or eliminating hazardous substances

1 contained in consumer and industrial products;

2
3 1.2. DiPirro asserts that Prime Equipment, Inc. and Prime Services, Inc.,
4 now Rental Service Corporation, as successor in interest to Prime Equipment, Inc.
5 and Atlas Copco North America, Inc.; (hereafter "Prime") have rented, distributed or
6 sold in the State of California certain power tools identified in Exhibit A (hereafter
7 "Power Tools" or "Products"), that Plaintiff contends contain or whose customary
8 use and application may produce "dust" (with the term "dust" including, but not
9 limited to, particles, fibers, chips, residues, powder, smoke, fumes, vapors, soot,
10 grime, dirt, chaff, fines, flakes, sand, granules, attrite, efflorescence, sawdust,
11 detritus, filings, debris, grains, friable material, turnings, sweepings, scourings,
12 rinse, raspings, shavings, dregs, mud, remains, mist and precipitates) which contain
13 chemicals listed un pursuant to the Safe Drinking Water and Toxic Enforcement Act
14 of 1986, California Health & Safety Code §§25249.5 et seq., also known as
15 Proposition 65 including, but not limited to, nickel (and nickel compounds), lead (or
16 lead compounds), crystalline silica, arsenic, chromium (hexavalent compounds) and
17 other chemicals known to the State of California to cause cancer or birth defects (or
18 other reproductive harm).

19
20 1.3. By notice dated July 23, 2001, DiPirro served Prime and all of the
21 requisite public enforcement agencies with a document entitled "Supplemental 60-
22 Day Notice of Violation" which provided Prime and such public agencies with notice
23 that Prime was allegedly violating Proposition 65 in failing to warn California renters
24 and purchasers that certain Power Tools exposed users to chemicals listed under
25 Proposition 65.

26
27 1.4. On or about September 26, 2001, DiPirro filed a complaint in the
28 Alameda County Superior Court, entitled *Michael DiPirro v. Prime Equipment, Inc. et*

1 *al.*, Action No. 01-025131, naming Prime and various does as defendants and
2 alleging violations of Proposition 65 and Business & Professions Code §17200 *et*
3 *seq.*, on behalf of individuals in California who may have been exposed to certain
4 Proposition 65 listed chemicals produced by certain Power Tools that Prime rented,
5 distributed or sold.

6
7 1.5 Prime denies the material factual and legal allegations contained in the
8 DiPirro's above mentioned Supplemental 60-Day Notices of Violation and Complaint
9 for alleged violations of Proposition 65 and Business & Professions Code §17200 *et*
10 *seq.*, and maintains that all products rented, distributed or sold by Prime in
11 California, including, but not limited to, Power Tools have been and are in
12 compliance with all laws.

13
14 1.6 For purposes of this Consent Judgment, the term "Effective Date" shall
15 mean September 26, 2001.

16
17 1.7 For purposes of this Consent Judgment, the term "Listed Chemicals"
18 means nickel (and nickel compounds), lead (or lead compounds), crystalline silica,
19 arsenic and chromium (hexavalent compounds).

20
21 **2. INJUNCTIVE RELIEF**

22
23 **2.1 Power Tools**

24
25 **a. Power Tools For Which Proposition 65 Warnings Are Not Required**
26 **Under People v. Ace Hardware, SFSC No. 995893:** Prime shall not have any
27 Proposition 65 warning obligations for those Power Tools (as defined in Exhibit A)
28 that Prime rents, distributes or sells in California and for which the Consent

1 Judgment in People v. Ace Hardware, et. al., San Francisco Superior Court No.
2 995893 (a copy of the face page of which is attached as Exhibit C) has determined
3 that no Proposition 65 warning is required or that companies situated in the same
4 position as Prime (i.e., non-manufacturers of such products) do not have Proposition
5 65 warning obligations for such products. Specifically, Prime shall not have any
6 Proposition 65 warning obligations for the Power Tools that it has in the past or
7 may in the future purchase from the Power Tool manufacturers and entities
8 affiliated therewith (e.g., subsidiaries) identified in the People v. Ace Hardware,
9 et. al. Consent Judgment.

10
11 **b. Power Tools For Which Proposition 65 Warnings May Not Be**
12 **Required Under Settlements or Judgments Other Than The One Identified in Section**

13 **2.1(a)**: For Power Tools (as defined in Exhibit A) that are subject to other
14 settlements or judgments (past and future) that determine that no Proposition 65
15 warning is required or that companies situated in the same position as Prime (i.e.,
16 non-manufacturers of such products) do not have Proposition 65 warning
17 obligations for such products, Prime can seek to modify or amend this Consent
18 Judgment so that Proposition 65 warning obligations, if any, that Prime may have
19 for those Power Tools are consistent with those other settlements or judgments.
20 Plaintiff shall not unreasonably withhold consent for such modification or
21 amendment.

22
23 **c. Power Tools For Which Proposition 65 Warnings Are Required:**

24 Prime shall not, after October 31, 2001, knowingly rent, distribute or sell in
25 California any Power Tools (as identified in Exhibit A) which have not been the
26 subject of determination referenced in Section 2.1(a) or modification under Section
27 2.1(b), whose customary use and application produce fumes, gases or dust that
28 contain Listed Chemicals, unless such Power Tools comply with Section 2.2.

1 **2.2 Methods Of Warning For Power Tools:** Prime may satisfy any Section
2 2.1(c) warning obligations by complying with one or more of the warning methods
3 identified in Sections 2.2(a) through 2.2(e). The warnings identified in Sections
4 2.2(a) through (e) shall be prominent and displayed with such conspicuousness, as
5 compared with other words, statements, or designs, as to render them likely to be
6 read and reasonably understood by ordinary individuals under customary conditions
7 of purchase or use.

8
9 **a. Warning in Consumer Handout:** Including a warning in a handout
10 given to the purchaser or renter of the Power Tool at the time of the Power Tool's
11 purchase or rental, with the language of that warning being either: (i) that set forth
12 in Exhibit B to this Consent Judgment; (ii) equivalent to the language in Exhibit B
13 and one that complies with Section 12601 of Title 22 of the California Code of
14 Regulations; or (iii) that which complies with a settlement or consent judgment
15 involving the Power Tool's manufacturer.

16
17 **b. Warning in Power Tools' Owner's Manuals:** Including a warning
18 in the Power Tool's Owners Manual, with the Owners Manual to be given to the
19 purchaser or renter at the time of the Power Tool's purchase or rental. If this
20 paragraph is relied upon to satisfy any Section 2.1(c) warning obligations, then all
21 of the following conditions must be met:

- 22
- 23 1. At least one other safety warning appears in the Owner's
 - 24 Manual;
 - 25
 - 26 2. All or a substantial portion of operation instructions, if
 - 27 any, are contained in the Owner's Manual;
 - 28

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3. The warning is 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. Alternatively, the warning may be included in a safety warning section consistent with specifications UL 745-1 or UL 45, issued by Underwriter's 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;

4. The language of the warning is either the exact content of the warning set forth in Exhibit B or that which complies with a settlement or consent judgment involving the Power Tool's manufacturer and relating to any Proposition 65 warning obligations, as allowed under Section 2.1(a) or (b);

5. The warning is printed in a font no smaller than the font used for other safety warnings in the Owner's Manual; and

6. The Power Tool contains a durable label or sticker directing the operator's attention to the Owner's Manual.

c. **Warning on the Power Tools:** Having a durable label containing a warning affixed or attached to the Power Tool in a location that can be seen by the

1 Power Tool's user under normal circumstances of use, with the language of the
2 warning being either: (i) that set forth in Exhibit B; (ii) equivalent to the language in
3 Exhibit B and one that complies with Section 12601 of Title 22 of the California
4 Code of Regulations; or (iii) that which complies with a settlement or consent
5 judgment involving the Power Tool's manufacturer.

6
7 **d. Warning on Power Tool Packaging:** Having a durable label
8 containing a warning affixed or attached to the packaging of the Power Tool by way
9 of an adhesive sticker, stamp or permanent changes to the outside packaging of the
10 Power Tool, so long as the packaging is transferred to the consumer, with the
11 language of the warning being either: (i) that set forth in Exhibit B; (ii) equivalent to
12 the language in Exhibit B and one that complies with Section 12601 of Title 22 of
13 the California Code of Regulations; or (iii) that which complies with a settlement or
14 consent judgment involving the Power Tool's manufacturer.

15
16 **e. In Store Sign Posting:** Posting a warning sign adjacent to the
17 cash registers or check outs in the front of the California Prime stores where the
18 Power Tools are rented or sold, with the language of the warning being either: (i)
19 that set forth in Exhibit B; (ii) equivalent to the language in Exhibit B and one that
20 complies with Section 12601 of Title 22 of the California Code of Regulations; or
21 (iii) that which complies with a settlement or consent judgment involving the Power
22 Tool's manufacturer.

23
24 **2.3 Product Characterization.** Plaintiff contends that each of the Products
25 listed in Exhibit A produces fumes, dust or gases that contain one or more
26 substances known to the State of California to cause cancer or birth defects (or
27 other reproductive harm). In the event that Prime obtains analytical, risk assessment
28 or other data-("Exposure Data") that shows that an exposure to any or all Products

1 or the dust, fumes or gases generated from the use of those products poses "no
2 significant risk" or will have "no observable effect," as each such standard is
3 applicable and as each is defined under Health & Safety Code §25249.10(c), Prime
4 shall provide DiPirro with 90 days prior written notice of its intent to limit or
5 eliminate the Proposition 65 warnings discussed in Sections 2.1 through 2.2 of this
6 Consent Judgment, or any of them, based on the Exposure Data and shall provide
7 DiPirro with all such supporting Exposure Data. Within thirty (30) days of receipt of
8 Prime's Exposure Data, DiPirro shall provide Prime with written notice of his intent
9 to challenge the Exposure Data (in the event that he chooses to make such a
10 challenge). If DiPirro fails to provide Prime written notice of his intent to challenge
11 the Exposure Data within thirty (30) days of receipt of Prime's notice and the
12 Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and
13 Prime shall be entitled to limit or eliminate the Proposition 65 warnings required
14 under this Consent Judgment with respect to those Product(s) to which the
15 Exposure Data applies. If DiPirro timely notifies Prime of his intent to challenge the
16 Exposure Data, DiPirro and Prime shall negotiate in good faith to attempt to reach a
17 settlement. In the event that no settlement is reached within thirty (30) days of
18 mailing by DiPirro of such notice of challenge, DiPirro and Prime agree to submit
19 such challenge to the Court for determination, pursuant to the Court's continuing
20 jurisdiction of this matter under California Code of Civil Procedure Section 664.6
21 and this Consent Judgment. The prevailing party shall be entitled to reasonable
22 attorneys' fees and costs associated with such a determination.

23 24 **3. MONETARY PAYMENTS**

25
26 **3.1. Civil Penalty.** Subject to the limitations set forth below, Prime shall,
27 pursuant to Health & Safety Code § 25249.7(b), pay a civil penalty of \$2,000
28 within ten (10) calendar days after receipt of notice of the Court's entry and

1 approval of this Consent Judgment. This payment shall be made payable to the
2 "Chanler Law Group in Trust for Michael DiPirro." Any penalty monies received
3 shall be apportioned by DiPirro in accordance with Health & Safety Code § 25192,
4 with 75% of these funds remitted to the State of California. DiPirro shall bear all
5 responsibility for apportioning and paying to the State of California the appropriate
6 civil penalties paid in accordance with this paragraph. In the event this Consent
7 Judgment is not entered, any payment made pursuant to this paragraph shall be
8 returned to Prime, with interest thereon at a rate of six percent (6%) per annum,
9 within five (5) days of receipt of notice of the Court's rejection of this proposed
10 Consent Judgment.

11
12 Prime understands that the payment schedule as stated in this Consent
13 Judgment is a material factor upon which DiPirro and his counsel have relied in
14 entering into this Consent Judgment. Prime agrees that all payments will be made
15 in a timely manner in accordance with the payment due dates. Prime will be given a
16 five (5) calendar day grace period from the date payment is due. Prime agrees to
17 pay Michael DiPirro and his counsel a \$250 per calendar day fee for each day the
18 payment is not received after the grace period ends. For purposes of this
19 paragraph, each new day (requiring an additional \$250 payment) will begin at 5
20 p.m. (PST).

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

1 California Code of Civil Procedure Section 1021.5.

2

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

14

15 Prime understands that the payment schedule as stated in this Consent
16 Judgment is a material factor upon which DiPirro and his counsel have relied in
17 entering into this Consent Judgment. Prime agrees that all payments will be made
18 in a timely manner in accordance with the payment due dates. Prime will be given a
19 five (5) calendar day grace period from the date payment is due. Prime agrees to
20 pay Michael DiPirro and his counsel a \$250 per calendar day fee for each day the
21 payment is not received after the grace period ends. For purposes of this
22 paragraph, each new day (requiring an additional \$250 payment) will begin at 5
23 p.m. (PST).

24

25 **3.2(a). Additional Contingent Fees and Costs.** In the event that
26 the California Attorney General's office, pursuant to 11 CCR 3000, *et seq.*, serves
27 objections to this Consent Judgment on either of the parties, such that it requires
28 plaintiff to incur additional legal fees or costs relating to this Consent Judgment,

1 Prime agrees to cooperate with DiPirro in performing what actions need to be done
2 to satisfy the Attorney General's concerns and finalize the Consent Judgment,
3 including making further court appearances. Prime agrees to meet and confer with
4 DiPirro regarding the reimbursement of any fees and costs incurred by DiPirro and
5 his counsel in excess of \$1,500 from the date of receipt of the Attorney General's
6 objections. Should the parties not reach agreement on the reimbursement of fees
7 within thirty (30) days of the "meet and confer" date, plaintiff reserves the right to
8 rescind this Agreement and re-institute an enforcement action against Prime,
9 provided that all sums paid by Prime pursuant to paragraphs 3.1 and 3.2 are
10 returned to Prime within ten (10) days from the date on which DiPirro notifies Prime
11 of his intent to rescind this Agreement. In such case, all applicable statutes of
12 limitation shall be deemed tolled for the period between the date DiPirro filed the
13 instant action and the date DiPirro notifies Prime that he is rescinding this
14 Agreement pursuant to this Paragraph.

15
16 Such additional legal fees or costs relating to this Consent Judgment
17 include, but are not limited to: further editing and finalizing of the Consent
18 Judgment; corresponding with opposing counsel; retention of experts; presenting of
19 the Consent Judgment (or any modifications thereof) to the Attorney General for
20 further comment; and any briefing and/or appearance before the Court related to
21 this Consent Judgment; all occurring as a result of the Attorney General's
22 objections.

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

1 If the parties agree to such additional reimbursement of legal fees and
2 costs, reimbursement shall be due within ten (10) calendar days after receipt of
3 both notice of Court approval of the Consent Judgment and final billing statement
4 from plaintiff.

5
6 **4. RELEASE OF ALL CLAIMS**

7
8 **4.1. DiPirro's Release of Prime.** In further consideration of the promises and
9 agreements herein contained, and for the payments to be made pursuant to Section
10 3, DiPirro, on behalf of himself, his agents, representatives, attorneys, and/or
11 assignees, and in the interest of the general public, hereby waives all rights to
12 institute and participate in, directly or indirectly, any form of legal action and
13 releases all claims including, without limitation, all actions, causes of action, in law
14 or in equity, suits, liabilities, demands, damages, fines, penalties, losses or
15 expenses (including investigation fees, expert fees and attorneys' fees and other
16 costs, other than those stated herein) of any nature whatsoever, whether known or
17 unknown, fixed or contingent (collectively, "Claims"), against Prime and any of its
18 parent companies and affiliated companies, divisions, subdivisions, subsidiaries (and
19 the predecessors, successors and assigns of any of them), and its respective
20 officers, directors, attorneys, representatives, shareholders, partners, agents, and
21 employees (collectively, "Prime Releasees"). This waiver and release shall pertain
22 only to Claims arising under Proposition 65 or Business & Professions Code §17200
23 *et seq.*, related to the Prime Releasees alleged failure to warn about exposures as
24 required by this Consent Judgment. It is specifically understood and agreed that
25 Prime's compliance with the terms of this Release resolves all issues and liability,
26 now and in the future, concerning the Prime Releasees' compliance with the
27 requirements of Proposition 65 or Business and Professions Code §17200 *et seq.*,
28 as to the Products.

1 **4.2. DiPirro's Release of "Downstream Persons."** DiPirro, on behalf of
2 himself, his agents, and/or assignees, and in the interest of the general public,
3 further waives all rights to institute any form of legal action and releases all Claims,
4 as defined below, against each distributor, wholesaler, auctioneer, retailer, dealer,
5 customer, owner, operator, purchaser, lessor, lessee, renter, or user of the
6 Products, or any of their respective parent and affiliated companies, divisions,
7 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of
8 them) and their respective officers, directors, shareholders, partners, attorneys,
9 representatives, agents, employees (collectively, "Downstream Persons"). This
10 waiver and release shall pertain only to Claims arising under Proposition 65 or
11 Business & Professions Code §17200 *et seq.*, related to the Downstream Persons'
12 alleged failure to warn about exposures on or before the Effective Date to certain
13 Listed Chemicals contained in any of the Products. It is specifically understood and
14 agreed that this Consent Judgment resolves all issues and liability, now and in the
15 future, concerning the Downstream Persons' compliance with the requirements of
16 Proposition 65 or Business & Professions Code §17200, *et seq.*, as to the Products.

17
18 **4.3. Prime Release of Michael DiPirro.** Prime waives all rights to institute
19 any form of legal action against DiPirro, and his attorneys or representatives, for all
20 actions taken or statements made on or before the Effective Date by DiPirro, in the
21 course of seeking enforcement of Proposition 65 or Business & Professions Code
22 §17200, *et seq.* against Prime.

23
24 **5. PRIME'S PRODUCT INFORMATION:** Prime understands that the information
25 Prime has provided to counsel for DiPirro about Prime's rentals and sales of the
26 Products was a material factor upon which DiPirro has relied to determine a fair and
27 reasonable settlement. To the best of Prime's knowledge, the information provided
28 is true and accurate. In the event DiPirro discovers facts which demonstrate to a

1 reasonable degree of certainty that the information is materially inaccurate, all other
2 parts of this Consent Judgment notwithstanding, DiPirro shall have the right to
3 vacate this Consent Judgment and re-institute an enforcement action against Prime,
4 provided that all sums paid by Prime pursuant to Section 3 are returned to Prime,
5 with interest thereon at a rate of six percent (6%) per annum, within five (5) days
6 from the date on which DiPirro notifies Prime of his intent to vacate this Consent
7 Judgment. In such case, all applicable statutes of limitation shall be deemed tolled
8 for the period between the date DiPirro filed the instant action and the date DiPirro
9 notifies Prime that he is seeking to vacate this Consent Judgment pursuant to this
10 paragraph, provided that, in no event shall any statute of limitation be tolled beyond
11 four (4) years from the date this action was filed.

12
13 **6. COURT APPROVAL:** If this Consent Judgment is not approved and entered by
14 the Court within 90 days of the Effective Date, it shall be deemed null and void as
15 of the ninety-first (91st) day after the Effective Date and cannot be used in any
16 proceeding.

17
18 **7. SEVERABILITY:** In the event that any of the provisions of this Consent
19 Judgment are held by a court to be unenforceable, the validity of the enforceable
20 provisions remaining shall not be adversely affected thereby.

21
22 **8. ATTORNEY'S FEES:** In the event a dispute arises with respect to any
23 provision(s) of this Consent Judgment (including, but not limited to, disputes arising
24 from the late payments provisions in paragraphs 3.1 and 3.2), the prevailing party
25 shall be entitled to recover costs and reasonable attorneys' fees, including any
26 action brought pursuant to paragraph 3.2(a) herein.

27
28 **9. GOVERNING LAW:** The terms of this Consent Judgment shall be governed by

1 the laws of the State of California. In the event that Proposition 65 is repealed or is
2 otherwise rendered inapplicable by reason of law generally, or as to the Products
3 specifically, Prime shall have no further obligations pursuant to this Consent
4 Judgment with respect to, and to the extent that, those Products are so affected.

5
6 **10. NOTICES:** All correspondence and notices required to be provided pursuant to
7 this Consent Judgment shall be in writing and shall be personally delivered or sent
8 by first-class, registered, certified mail, overnight courier, and/or via facsimile
9 transmission (with presentation of facsimile transmission confirmation) addressed as
10 follows:

11 If to DiPirro: Jennifer Henry or David Bush, Esq.
12 Bush & Henry
13 4400 Keeler Ave Suite 200
Oakland, CA 94605-0747
Fax (510) 577-0787

14 If to Prime: Erik Olsson, Chief Financial Officer
15 Rental Service Corporation
16 6929 East Greenway Parkway, Suite 200
Scottsdale, AZ 85254

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

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

22 **11. NO ADMISSIONS:** Nothing in this Consent Judgment shall constitute or be
23 construed as an admission by Prime of any fact, finding, conclusion, issue of law, or
24 violation of law, nor shall compliance with this Consent Judgment constitute or be
25 construed as an admission by Prime of any fact, finding, conclusion, issue of issue
26 of law, or violation of law, such being specifically denied by Prime. Prime reserves
27 all of its rights and defenses with regard to any claim by any party under
28

1 Proposition 65 or otherwise. However, this Paragraph shall not diminish or
2 otherwise affect Prime's obligations, responsibilities and duties under this Consent
3 Judgment.

4
5 **12. ENTIRE AGREEMENT; MODIFICATION:** This Consent Judgment constitutes
6 the entire agreement between the parties relating to the rights and obligations
7 herein granted and assumed, and supersedes all prior agreements and
8 understandings between the parties. This Consent Judgment may be modified only
9 upon the written agreement of the parties or upon motion to the court.

10
11 **13. COUNTERPARTS; FACSIMILE SIGNATURES:** This Consent Judgment may be
12 approved as to form by counsel for the parties in counterparts and by facsimile,
13 each of which shall be deemed an original, and all of which, when taken together,
14 shall constitute one and the same document.

15
16 **14. COMPLIANCE WITH REPORTING REQUIREMENTS:** The parties acknowledge
17 that the reporting provisions of Health & Safety Code § 25249.7(f) apply to this
18 Consent Judgment. Counsel for DiPirro shall comply with that section by
19 submitting the required reporting form to, and serving a copy of this Consent
20 Judgment on, the California Attorney General's Office within two business days
21 after the parties execute this Consent Judgment. Following the expiration of the
22 Attorney General's thirty-day review period, counsel for DiPirro shall submit the
23 Consent Judgment to the Court in accordance with the requirements of Health &
24 Safety Code § 25249.7(f) and its implementing regulations, thereby allowing the
25 Attorney General to serve any comments to this Consent Judgment prior to the end
26 of the thirty (30) day period.

27
28 **15. AUTHORIZATION:** The undersigned are authorized to execute this Consent

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

9
10 **15. AUTHORIZATION:** The undersigned are authorized to execute this Consent
11 Judgment on behalf of their respective parties and have read, understood and agree to
12 all of the terms and conditions of this Consent Judgment.

13
14
15 **AGREED TO:**

16 DATED: _____, 2001

17
18 _____
19 Plaintiff Michael DiPirro

AGREED TO:

20 DATED: 10-23, 2001

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

26 **APPROVED AS TO FORM:**

27 DATED: _____, 2001

28 BUSH & HENRY

APPROVED AS TO FORM:

DATED: _____, 2001

CARROLL, BURDICK & MCDONOUGH LLP
Attorneys at Law

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AGREED TO:

AGREED TO:

DATED: _____, 2001

DATED: _____, 2001

Plaintiff Michael DiPirro

Rental Service Corporation, as successor in
interest to Defendant Prime Equipment, Inc.;
Prime Services, Inc

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATED: _____, 2001

DATED: 10 24, 2001

BUSH & HENRY

CARROLL, BURDICK & MCDONOUGH LLP
Attorneys at Law

By: _____
Jennifer Henry
Attorneys for Plaintiff
Michael DiPirro

By: _____
Garrett Sanderson III
Attorneys for Defendant Prime
Equipment, Inc.; Prime Services, Inc

EXHIBIT A – PRIME

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- Saws (such as band, block, brick, circular, chop, clearing, concrete, cut-off machines, floor, jig, masonry, miter, pavement, radial, reciprocating, scroll, stonecutting, table, tile and wall mounted).
- Power shears and cutters (such as rotary tile and pipe cutters, trimmers).
- Power cutout tools.
- Sanders, polishers, abrading machines and buffers.
- Grinders (such as pavement, right angle, die, straight and bench grinders and grooving equipment).
- Drills and augers (such as general purpose, diamond coring, driver, hammer, drill press and drywall drills).
- Power sharpeners and files, including drill bit sharpeners.
- Power screw drivers.
- Power hammers (such as breaker, chipper and rotary).
- Rotary tools and impact wrenches.
- Lathes, planers, shapers, edgers and nibblers.
- Routers (such as general purpose, masonry and plunge).
- Joiners (such as general purpose and plate).
- Paint drying and removing tools, including sandblasters and heat guns.
- Drywall cutters and trimmers.

EXHIBIT B

WARNING: Some dust created by using power tools contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

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EXHIBIT C

Consent Judgment in People v. Ace Hardware, San Francisco Superior Court
No. 995893

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ENDORSED
FILED
San Francisco County Superior Court

SEP 29 2000

GORDON PARK-LI, Clerk
BY: JENNIFER W. MACK
Deputy Clerk

7 Attorneys for Plaintiffs People of the State of California

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10 PEOPLE OF THE STATE OF CALIFORNIA ex. rel.)
BILL LOCKYER, Attorney General of the State of)
11 California,)
12 Plaintiffs,)
13 v.)
14 Ace Hardware Corporation, et al.)
15 Defendants.)

No. 995893
CONSENT JUDGMENT

17 1. INTRODUCTION

18 1.1. On June 18, 1998, the Attorney General of the State of California, on behalf of the
19 People of the State of California ("People"), filed a complaint for civil penalties and injunctive
20 relief for violations of Proposition 65 and unlawful business practices in this Court.

21 1.2. The following defendants were named in the complaint: The Carborundum
22 Co., Wal-Mart Stores, Inc., Minnesota Mining and Manufacturing Company, sued herein as 3M
23 Corporation, Post Tool, Sungold Abrasives U.S.A., Inc., Truestone Block, Inc., Shamrock
24 Materials, Inc. (sued herein as "Shamrock Materials"), Sears Roebuck & Co., Orchard Supply
25 Hardware Stores Corporation, Boral Industries, Inc., Boral Bricks, Inc., Coronado Stone
26 Products, CPC Terminals, Hokanson Bldg. Block Co., Bosch Power, Div. of SB Power Tool Co.,
27 Dremel, Skil, Div. of SB Power Tool Co., Yardbirds, John Deere Consumer Products

FOLEY & MANIACI
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JUL 8 3 2001

CONSENT JUDGMENT

Ans'd.....