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12 Attorneys for Plaintiff
13 MICHAEL DIPIRRO

ENDORSED
FILED
ALAMEDA COUNTY

MAR 15 2001

CLERK OF THE SUPERIOR COURT
By SARA DALLESKE Deputy

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF ALAMEDA

16 MICHAEL DIPIRRO,) No. H216430-0
17)
18 Plaintiff,)
19)
20 v.)
21)
22 RIDGE TOOL COMPANY, a subsidiary) I. CONSENT JUDGMENT
23 of EMERSON ELECTRIC CO.; and DOES 1)
24 through 1000,)
25 Defendants.)
26 _____)

27 This Consent Judgment ("Agreement") is entered into by and between Michael
28 DiPirro, a California citizen, and Ridge Tool Company, a subsidiary of Emerson

29 CONSENT JUDGMENT

1 Electric Co., a Missouri corporation ("the Defendants"), as of February 20, 2001 (the
2 "Effective Date"). The parties agree to the following terms and conditions:

3 ///

4 ///

5 **WHEREAS:**

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

11 B. Defendants are companies that manufacture, distribute and/or sell
12 various power tools in the State of California that contain, or whose customary use and
13 application are likely to produce dust or fines which contain chemicals listed pursuant to
14 Proposition 65 (California Health & Safety Code §25249.5 et seq.) including lead (or lead
15 compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds) (the
16 "Listed Chemicals");

17 C. The products that contain, or whose customary use and application are
18 likely to produce dust or fines which contain, one or more of the Listed Chemicals and
19 which are covered by this Agreement are set forth in Exhibit A (the "Products"). The
20 Products have been manufactured, distributed and/or sold by Defendants for use in
21 California since at least August 18, 1996; and

22 D. On August 18, 2000, Michael DiPirro served Defendants and other
23 public enforcement agencies with a document entitled "60-Day Notice of Violation" which

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25 CONSENT JUDGMENT

1 provided Defendants and such public enforcers with notice that Defendants were allegedly
2 in violation of Health & Safety Code §25249.6 for allegedly failing to warn purchasers that
3 certain products they sell in California expose users to Proposition 65-listed chemicals;

4 E. On or about November 14, 2000, Michael DiPirro filed a complaint
5 entitled Michael DiPirro v. Ridge Tool Company, Inc., et al. in the Alameda County
6 Superior Court, naming Defendants as defendants and alleging violations of Business &
7 Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in
8 California who allegedly have been exposed to Listed Chemicals contained in (or produced
9 by customary use and application of) certain Defendants' products;

10 F. The parties acknowledge that there is an issue as to whether the
11 Defendants were released from Proposition 65 liability through a prior agreement
12 concerning Vermont American, an affiliate of one or more of the Defendants, and this
13 question was a primary factor in resolving the case for a relatively low amount of civil fines
14 and a reduction in the costs to be reimbursed; and

15 G. Nothing in this Agreement shall be construed as an admission by
16 Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with
17 this Agreement constitute or be construed as an admission by Defendants of any fact,
18 finding, conclusion, issue of law, or violation of law. However, this paragraph shall not
19 diminish or otherwise affect the obligations, responsibilities, and duties of Defendants under
20 this Agreement.

21 **NOW THEREFORE, MICHAEL DIPIRRO AND DEFENDANTS AGREE AS**
22 **FOLLOWS:**

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25 **CONSENT JUDGMENT**

1 **1. Product Warnings.** Defendants have initiated efforts to revise their
2 current product or packaging labels for the Products consistent with this Agreement
3 ("Revised Labels"). Defendants agree to use reasonable efforts to ensure that all Products in
4 their possession intended for distribution or sale in California are packaged or sold using
5 Revised Labels as soon as commercially reasonable. Defendants agree that no later than
6 September 29, 2001, they shall not distribute or sell (or cause to be distributed or sold on
7 their behalf) any of the Products for sale or use in the State of California unless each such
8 Product is accompanied by a Revised Label on or affixed to the Product or its packaging as
9 follows:

10 For all power tools that are likely to expose users to lead (or lead
11 compounds), crystalline silica, arsenic, and/or chromium (hexavalent compounds) or any
12 combination of chemicals listed by the State of California as known to cause cancer as well
13 as birth defects (or other reproductive harm), such Products shall bear the following warning
14 statement¹:

15
16 **WARNING:** Some dust created by power sanding, sawing,
17 grinding, drilling, and other construction
18 activities is likely to contain chemicals known to
19 the State of California to cause cancer, birth
20 defects or other reproductive harm. Some
21 examples of these chemicals are:

- lead from lead-based
22 paints,
- crystalline silica from
23 bricks and cement and other masonry
24 products, and

25 ¹ Such a warning may be placed in the owner's manual of the Products, instead of on the Products directly,
26 pursuant to Exhibit B.

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• **arsenic and chromium
from chemically-treated lumber.**

Your risk from these exposures varies, depending on how often you do this type of work. To reduce your exposure to these chemicals: work in a well ventilated area, and work with approved safety equipment, such as those dust masks that are specially designed to filter out microscopic particles.

or

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

The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

1.1 - Warning Labels for Products "In Commerce". The parties agree and acknowledge that an unknown volume of Products was introduced into the "stream of commerce" before the Effective Date of this Agreement. In an effort to reasonably ensure that persons who might use or be exposed to the Listed Chemicals in or from these "in commerce" Products are provided with the requisite warnings, Defendants shall, within sixty (60) days from the Effective Date, provide Interim Warning Materials to each retailer in the State of California to whom the Defendants sell one or more of the Products. Such "Interim Warning Materials" shall consist of (1) a warning sign containing the language in Exhibit B,

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1 and (2) a communication substantially in the form of Exhibit G to the Consent Judgment
2 entered by the Superior Court in the matter of State of California v. Ace Hardware
3 Corporation, et al., Case No. 995893 (entered by the Court September 29, 2000) (informing
4 the recipient of its obligation to post the warning sign). As shown in Exhibit G to the
5 Consent Judgment entered by the Court in *Ace Hardware, supra.*, the letter shall direct the
6 recipient to execute an acknowledgment and return it to the sender within 21 days of receipt.
7 If the Defendants have not received the acknowledgment within 30 days of sending, the
8 Defendants shall so inform Plaintiff.

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

10 Pursuant to Health & Safety Code §25249.7(b), Defendants shall pay a civil penalty of
11 \$1,800. The payment of \$1,800 shall be paid within ten (10) calendar days after the
12 Effective Date of this Agreement. The penalty payment is to be made payable to "Chanler
13 Law Group In Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro
14 in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the
15 State of California's Department of Toxic Substances Control.

16 **3. Reimbursement Of Fees And Costs.** The parties acknowledge that

17 DiPirro offered to resolve the dispute without reaching terms on the amount of fees and
18 costs to be reimbursed, thereby leaving this open issue to be resolved after the material
19 terms of the agreement had been reached, and the matter settled. Defendants then expressed
20 a desire to resolve the fee and cost issue concurrently with other settlement terms, so the
21 parties tried to reach an accord on the compensation due to DiPirro and his counsel under
22 the private attorney general doctrine codified at C.C.P. §1021.5.

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1 Defendants shall reimburse DiPirro for a portion of his fees and costs
2 Defendants shall pay \$4,700 for investigation fees and attorneys' fees and litigation costs.
3 Defendants agree to pay the total sum of \$4,700 within ten (10) calendar days of the
4 Effective Date of the Agreement. Payment should be made payable to the "Chanler Law
5 Group".

6 **4. Michael DiPirro's Release Of Defendants.** Michael DiPirro, by this
7 Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the
8 citizens of the State of California, waives all rights to institute or participate in, directly or
9 indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses,
10 costs, expenses, fines and damages, against Defendants and their directors, officers,
11 employees, affiliates, subsidiaries, divisions, joint ventures, related entities, successors and
12 assigns, whether under Proposition 65, the Business & Profession Code §17200 et seq., or on
13 any other basis based on Defendants' alleged failure to warn about exposure to the "Listed
14 Chemicals" contained in (or produced by) any of the Products.

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

20 **6. Consent Judgment.** Concurrently with the execution of this
21 Agreement, Michael DiPirro and Defendants shall execute and attorneys for Plaintiff shall
22 file a proposed consent judgment to be approved pursuant to C.C.P. §664.6 by the Alameda
23 County Superior Court in accordance with the terms of this Agreement. If, for any reason,

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1 the proposed consent judgment is not approved by the Court, this Agreement shall be
2 deemed null and void.

3 **7. Product Characterization.** Defendants acknowledge that each of the
4 Products listed in Exhibit A is likely, in some customary uses or applications of the
5 Products, to expose users to lead (or lead compounds), crystalline silica, arsenic and/or
6 chromium (hexavalent compounds), substances known to the State of California to cause
7 cancer and/or birth defects (or other reproductive harm). In the event that Defendants obtain
8 analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or
9 all Products poses "no significant risk" or will have "no observable effect," as each such
10 standard is applicable and as each is defined under Health & Safety Code §25249.10(c),
11 Defendants shall provide DiPirro with ninety (90) days prior written notice of its intent to
12 limit or eliminate the warning provisions under this Agreement based on the Exposure Data
13 and shall provide DiPirro with all such supporting Exposure Data. Within ninety (90) days
14 of receipt of Defendants Exposure Data, DiPirro shall provide Defendants with written
15 notice of his intent to challenge the Exposure Data (in the event that he chooses to make
16 such a challenge). If DiPirro fails to provide Defendants written notice of his intent to
17 challenge the Exposure Data within ninety (90) days of receipt of Defendants' notice and the
18 Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and
19 Defendants shall be entitled to limit or eliminate the warning provisions required under this
20 Agreement with respect to those Product(s) to which the Exposure Data applies. If DiPirro
21 timely notifies Defendants of his intent to challenge the Exposure Data, DiPirro and
22 Defendants shall negotiate in good faith for a period not to exceed thirty (30) days following
23 receipt of Defendants' notice to attempt to reach a settlement of this issue. If a settlement is

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1 not reached, DiPirro and Defendants agree to submit such challenge to the superior court for
2 determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P.
3 §664.6 and this Agreement. The prevailing party shall be entitled to reasonable attorneys'
4 fees and costs associated with bringing a motion brought under this paragraph to the court
5 for determination.

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

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

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

14 **11. Notices.** All correspondence to Michael DiPirro shall be mailed to:

15 Jennifer Henry, Esq.
16 David Bush, Esq.
17 BUSH & HENRY
18 4400 Keller Avenue, Suite 200
19 Oakland, CA 94605
20 Tel: (510) 577-0747

21 or

22 Clifford A. Chanler, Esq.
23 Chanler Law Group
24 Magnolia Lane (off Huckleberry Hill)
25 New Canaan, CT 06840-3801
26 (203) 966-9911

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All correspondence to Defendants shall be mailed to:

Frederick S. Phillips, Esq.
Shaw Pittman
2300 N. Street NW
Washington D.C. 20037-1128
(202) 663-8000

12. **Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). As of the Effective Date, the California Attorney General's reporting forms are not available. Defendants represent, however, that their counsel will send a copy of this Agreement to the California Attorney General's Office prior to or concurrently with the presentation of the Stipulated Judgment to the Alameda County Superior Court.

13. **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.

14. **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:

2/23/01

DATE:

Michael DiPirro
PLAINTIFF

Emerson Electric Co.
DEFENDANT

CONSENT JUDGMENT

All correspondence to Defendants shall be mailed to:

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14. 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: February 21, 2001

Michael DiPirro
PLAINTIFF


Emerson Electric Co.
DEFENDANT

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AGREED TO:

DATE: February 21, 2001

AS **Harley M. Smith**
Secretary
Ridge Tool Company, Inc.
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 2/27/01

DATE: FEBRUARY 22, 2001

Clifford A. Chanler
Clifford A. Chanler
Attorneys for Plaintiff
MICHAEL DIPIRRO

Frederick S. Phillips
Frederick S. Phillips
Attorneys for Defendants
EMERSON ELECTRIC CO.
RIDGE TOOL COMPANY, INC.

CONSENT JUDGMENT

Exhibit A

1 **EXHIBIT A: Products for Which a Warning is Required**

2

3 Power Tools

4 Saws such as band, block, brick, circular, chop, clearing, concrete, cut-off machines, floor,
5 jig, masonry, miter, pavement, radial, reciprocating, refractory, scroll, stonecutting,
6 table, tile, and wall-mounted saws.

7 Power shears and cutters such as rotary, tile and pipe cutters, and trimmers.

8 Power cutout tools.

9 Sanders, polishers, abrading machines and buffers.

10 Grinders such as pavement, right angle, die, straight and bench grinders and grooving
11 equipment.

12 Drills and augers such as general purpose, diamond coring, driver, hammer, drill press, and
13 dry wall drills.

14 Power sharpeners and files, including drill bit sharpeners.

15 Power screw drivers.

16 Power hammers such as breaker, chipper and rotary hammers.

17 Rotary tools and impact wrenches.

18 Lathes, planers, shapers, edgers, nibblers.

19 Routers such as general purpose, masonry, and plunge routers.

20 Joiners such as general purpose and plate joiners.

21 Paint drying and removing tools, including heat guns.

22 Drywall cutters and trimmers.

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Exhibit B

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EXHIBIT B

1. Warnings in manuals. A Defendant required to provide a warning for power grinders or drill products under subparagraph 1 may provide that warning in the owner's manual for that Product if all of the following conditions are met:

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

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

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

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

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

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