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8 Attorneys for Plaintiff  
MICHAEL DIPIRRO  
9

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

12 MICHAEL DIPIRRO, ) No. H217761-8  
13 Plaintiff, )  
14 v. )  
15 ) CONSENT JUDGMENT  
16 ROCKFORD PRODUCTS CORPORATION; )  
ROCKFORD INTERNATIONAL GROUP )  
17 DIVISION; and DOES 1 through )  
1000, )  
18 Defendants. )

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19  
20 This Consent Judgment ("Agreement" or "Consent Judgment")  
21 is entered into by and between Michael DiPirro, on one hand,  
22 and Rockford Products Corporation, an Illinois Corporation,  
23 and Rockford International Group Division, an Illinois  
24 corporation, ("Rockford"), on the other hand, as of August 31,  
25 2001, (the "Effective Date"). The parties agree to the  
26 following terms and 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  
6 consumer and industrial products;

7           B. Rockford is a company that currently  
8 manufactures, distributes and sells machine screws and certain  
9 other brass-containing hardware products as set forth in  
10 Exhibit "A" that contain lead (or lead compounds), a substance  
11 known to the State of California to cause cancer and birth  
12 defects (or other reproductive harm);

13           C. A list of the products which contain lead (or  
14 lead compounds) (the "Listed Chemical") and which are covered  
15 by this Agreement is provided in Exhibit "A" (the "Products")  
16 The Products have been distributed by third-party distributors  
17 and sold in California since January 17, 1997; and

18           D. On November 6, 2000, Michael DiPirro first  
19 served Rockford and other public enforcement agencies with a  
20 document entitled "60-Day Notice of Violation" which provided  
21 Rockford and such public enforcers with notice that Rockford  
22 was in violation of Health & Safety Code §25249.6 for  
23 allegedly failing to warn purchasers that certain products it  
24 sells in California expose users to one or more Proposition  
25 65-listed chemicals; and

26           E. On January 17, 2001, Michael DiPirro filed a  
27

28 **CONSENT JUDGMENT**

1 complaint entitled Michael DiPirro v. Rockford Products  
2 Corporation, et al. in the Alameda County Superior Court,  
3 naming Rockford as a defendant and alleging violations of  
4 Business & Professions Code §17200 and Health & Safety Code  
5 §25249.6 on behalf of individuals in California who allegedly  
6 have been exposed to one or more chemicals listed pursuant to  
7 Proposition 65 contained in certain Rockford products.

8 F. Nothing in this Agreement shall be construed as  
9 an admission by Rockford of any fact, finding, issue of law,  
10 or violation of law, nor shall compliance with this Agreement  
11 constitute or be construed as an admission by Rockford of any  
12 fact, finding, conclusion, issue of law, or violation of law.

13 However, this paragraph shall not diminish or otherwise  
14 affect the obligations, responsibilities, and duties of  
15 Rockford under this Agreement.

16  
17 **NOW THEREFORE, MICHAEL DIPIRRO AND ROCKFORD AGREE AS FOLLOWS:**

18 1. **Product Warnings.** Rockford shall begin to take  
19 steps regarding its sale of the Products to provide the  
20 language set forth in the section 1.1 below. Beginning on  
21 December 15, 2001, Rockford agrees that it will not knowingly  
22 sell any Products containing the Listed Chemical in the State  
23 of California unless such Products comply with section 1.1  
24 below:

25 1.1 For all Products containing lead (or lead  
26 compounds), such Products shall bear the following warning  
27

28 CONSENT JUDGMENT

1 statement:

2                   **"WARNING: This product contains a chemical**  
3                   **known to the State of California to**  
4                   **cause cancer, and birth defects (or**  
5                   **other reproductive harm)."**

6                   The warning statement shall be prominently  
7 placed with such conspicuousness, as compared with other  
8 words, statements, designs or devices, as to render it likely  
9 to be read and understood by an ordinary individual under  
10 customary conditions of purchase.

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

12                   **§25249.7(b).** Pursuant to Health & Safety Code §25249.7(b),  
13 Rockford shall pay a civil penalty of \$1,600. The payment of  
14 \$1,600 shall be paid within five (5) calendar days of the  
15 Effective Date and shall be held in trust by DiPirro's counsel  
16 until the Alameda County Superior Court approves and enters  
17 the Consent Judgment. The penalty payment is to be made  
18 payable to "Chanler Law Group In Trust For Michael DiPirro".  
19 If the Consent Judgment is not approved by the Court, DiPirro  
20 will return all funds, with interest thereon at a rate of six  
21 percent (6%) per annum, within ten (10) calendar days of  
22 notice of the Court's decision. Penalty monies shall be  
23 apportioned by DiPirro in accordance with Health & Safety Code  
24 §25192, with 75% of these funds remitted to the State of  
25 California's Department of Toxic Substances Control.

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

28 CONSENT JUDGMENT

1 which DiPirro has relied in entering into this Consent  
2 Judgment.. Rockford agrees that all payments will be made in a  
3 timely manner in accordance with the payment due dates.  
4 Rockford will be given a five (5) calendar day grace period  
5 from the date payment is due. Rockford agrees to pay Michael  
6 DiPirro a \$250 per calendar day fee for each day the payment  
7 is received after the grace period ends. For purposes of this  
8 paragraph, each new day (requiring an additional \$250 payment)  
9 will begin at 5 p.m. (PST).

10           3.    **Reimbursement Of Fees And Costs.** The parties  
11 acknowledge that DiPirro offered to resolve the dispute  
12 without reaching terms on the amount of fees and costs to be  
13 reimbursed, thereby leaving this open issue to be resolved  
14 after the material terms of the agreement had been reached,  
15 and the matter settled. Rockford then expressed a desire to  
16 resolve the fee and cost issue concurrently with other  
17 settlement terms, so the parties tried to reach an accord on  
18 the compensation due to DiPirro and his counsel under the  
19 private attorney general doctrine codified at C.C.P. §1021.5.

20           Rockford shall reimburse DiPirro and his counsel for  
21 his fees and costs, incurred as a result of investigating,  
22 bringing this matter to Rockford's attention, litigating and  
23 negotiating a settlement in the public interest. Rockford  
24 shall pay \$10,900 for all attorneys' fees, expert and  
25 investigation fees, and litigation costs. Rockford agrees to  
26 pay the total sum of \$10,900 within five (5) calendar days of  
27

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1 the Effective Date. Such sum shall be held in trust by  
2 DiPirro's counsel until the Alameda County Superior Court  
3 approves and enters the Consent Judgment. If the Consent  
4 Judgment is not approved by the Court, DiPirro will return all  
5 funds, with interest thereon at a rate of six percent (6%) per  
6 annum, within ten (10) calendar days of notice of the Court's  
7 decision. Payment should be made payable to the "Chanler Law  
8 Group."

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

20 **3.1 Additional Contingent Fees and Costs.** In the  
21 event that the California Attorney General's Office, pursuant  
22 to 11 CCR 3000, *et seq.*, serves objections to this Consent  
23 Judgment on either of the parties, such that it requires  
24 plaintiff to incur additional legal fees or costs relating to  
25 this Consent Judgment, Rockford shall reimburse DiPirro for  
26 reasonable fees and costs incurred by DiPirro and his counsel

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28 CONSENT JUDGMENT

1 in excess of \$1,500, but in any event not more than \$5,000,  
2 from the date of receipt of the Attorney General's objections.  
3 Such additional legal fees or costs relating to this Consent  
4 Judgment include, but are not limited to: further editing and  
5 finalizing of the Consent Judgment; corresponding with  
6 opposing counsel; retention of experts; presenting of the  
7 Consent Judgment (or any modifications thereof) to the  
8 Attorney General for further comment; and any briefing and/or  
9 appearance before the Court related to the approval of this  
10 Consent Judgment.

11           **4. Michael DiPirro's Release Of Rockford.** Michael  
12 DiPirro, (for himself, his attorneys, representatives, agents,  
13 partners, partnerships, employees, insurers, predecessors,  
14 successors, assignors and assignees, and all persons and  
15 entities acting or claiming by, through, under or in concert  
16 with him or any of them) hereby irrevocably releases and  
17 forever discharges Rockford along with Rockford's distributors  
18 (specifically including, but not limited to, W.W. Grainger,  
19 Inc.), retailers and customers which sell products listed in  
20 Exhibit "A" and each of their distributors, retailers and  
21 customers' predecessors, successors, subsidiaries, divisions,  
22 affiliated companies, parent companies, holding companies,  
23 partners, partnerships, officers, directors, employees,  
24 agents, representatives, insurers, attorneys, assignors and  
25 assignees, and all persons and entities acting or claiming by,  
26 through, under or in concert with them or any of them of and  
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1 from any and all manner of action or actions, cause or causes  
2 of action, in law or in equity, suits, liabilities, claims,  
3 demand, damages, losses, costs or expenses (including  
4 attorneys' fees), of any nature whatsoever, fixed or  
5 contingent, which DiPirro has against any of them whether  
6 under Proposition 65 or California Business and Professions  
7 Code §§17200 et seq. based on alleged failure to warn  
8 consumers about exposure to lead contained in any of the  
9 products listed in Exhibit "A." This release specifically  
10 includes, but is not limited to, Rockford's distributor W.W.  
11 Grainger, Inc.

12 **5. Rockford's Release Of Michael DiPirro.**

13 Rockford, (for itself, its officers, directors, attorneys,  
14 representatives, agents, partners, partnerships, employees,  
15 insurers, predecessors, successors, assignors and assignees,  
16 and all persons and entities acting or claiming by, through,  
17 under or in concert with it or any of them), by this  
18 Agreement, hereby irrevocably releases and forever discharges  
19 DiPirro, his attorneys, employees and representatives and all  
20 persons and entities acting or claiming by, through, under or  
21 in concert with him or any of them (the "DiPirro Releasees"),  
22 of and from any and all manner of action or actions, cause or  
23 causes of action, in law or in equity, suits, liabilities,  
24 claims, demand, damages, losses, costs or expenses (including  
25 attorneys' fees), of any nature whatsoever, fixed or  
26 contingent, which Rockford has against DiPirro arising from  
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28 CONSENT JUDGMENT



1 any or all actions or statements made by the DiPirro Releasees  
2 in the course of seeking enforcement of Proposition 65 or  
3 California Business & Professions Code §§17200 et seq. against  
4 Rockford.

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

8           **7. Rockford Sales Data.** Rockford understands that  
9 the sales data provided to counsel for DiPirro by Rockford was  
10 a material factor upon which DiPirro has relied to determine  
11 the amount of payments made pursuant to Health & Safety Code  
12 §25249.7(b) in this Agreement. To the best of Rockford's  
13 knowledge, the sales data provided is true and accurate. In  
14 the event that DiPirro discovers facts which demonstrate to a  
15 reasonable degree of certainty that the sales data is  
16 materially inaccurate, the parties shall meet in a good faith  
17 attempt to resolve the matter within ten (10) days of  
18 Rockford's receipt of notice from DiPirro of his intent to  
19 challenge the accuracy of the sales data. If this good faith  
20 attempt fails to resolve DiPirro's concerns, DiPirro shall  
21 have the right to rescind the Agreement and re-institute an  
22 enforcement action against Rockford, provided that all sums  
23 paid by Rockford pursuant to paragraphs 2 and 3 are returned  
24 to Rockford within ten (10) days from the date on which  
25 DiPirro notifies Rockford of his intent to rescind this  
26 Agreement. In such case, all applicable statutes of  
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28 CONSENT JUDGMENT

1 limitation shall be deemed tolled for the period between the  
2 date DiPirro filed the instant action and the date DiPirro  
3 notifies Rockford that he is rescinding this Agreement  
4 pursuant to this Paragraph.

5           **8. Product Characterization.** Rockford  
6 acknowledges that each of the Products listed in Exhibit "A"  
7 contains lead (or lead compounds) and that Plaintiff alleges  
8 that the customary use or application of the Products is  
9 likely to expose users to lead (or lead compounds), a  
10 substance known to the State of California to cause cancer  
11 and/or birth defects (or other reproductive harm). In the  
12 event that Rockford obtains analytical, risk assessment or  
13 other data ("Exposure Data") that shows an exposure to any or  
14 all Products poses "no significant risk" or will have "no  
15 observable effect," as each such standard is applicable and as  
16 each is defined under Health & Safety Code §25249.10(c) and  
17 Rockford seeks to eliminate the warnings, then Rockford shall  
18 provide DiPirro with ninety (90) days prior written notice of  
19 its intent to limit or eliminate the warning provisions under  
20 this Agreement based on the Exposure Data and shall provide  
21 DiPirro with all such supporting Exposure Data. Within ninety  
22 (90) days of receipt of Rockford Exposure Data, DiPirro shall  
23 provide Rockford with written notice of his intent to  
24 challenge the Exposure Data (in the event that he chooses to  
25 make such a challenge). If DiPirro fails to provide Rockford  
26 written notice of his intent to challenge the Exposure Data

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28 CONSENT JUDGMENT

1 within ninety (90) days of receipt of Rockford's notice and  
2 the Exposure Data, DiPirro shall waive all rights to challenge  
3 the Exposure Data, and Rockford shall be entitled to limit or  
4 eliminate the warning provisions required under this Agreement  
5 with respect to those Product(s) to which the Exposure Data  
6 applies. If DiPirro timely notifies Rockford of his intent to  
7 challenge the Exposure Data, DiPirro and Rockford (a) may stop  
8 its efforts to eliminate the warnings upon notice to DiPirro  
9 with no further liability or obligations or (b) shall  
10 negotiate in good faith for a period not to exceed thirty (30)  
11 days following receipt of Rockford's notice to attempt to  
12 reach a settlement of this issue. If a settlement is not  
13 reached, DiPirro and Rockford agree to submit such challenge  
14 to the superior court for determination, pursuant to the  
15 court's continuing jurisdiction of this matter under C.C.P.  
16 §664.6 and this Agreement. The prevailing party shall be  
17 entitled to reasonable attorneys' fees and costs associated  
18 with bringing a motion brought under this paragraph to the  
19 court for determination.

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

24           **10. Attorney's Fees.** In the event that a dispute  
25 arises with respect to any provision(s) of this Agreement  
26 (including, but not limited to, disputes arising from the late  
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28 CONSENT JUDGMENT

1 payments provisions in paragraphs 2 and 3), the prevailing  
2 party shall be entitled to recover costs and reasonable  
3 attorneys' fees.

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

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

8                           Jennifer Henry or David Bush  
9                           Bush & Henry  
10                           4400 Keller Ave., Suite 200  
11                           Oakland, CA 94605  
12                           (510) 577-0747

13                           All correspondence to Rockford shall be mailed  
14 to:

15                           David R. Gabor, Esq.  
16                           McDermott, Will & Emery  
17                           ~~2049 Century Park East, 34<sup>th</sup> Floor~~  
18                           Los Angeles, CA 90067  
19                           (310) 277-4110

20           **13. Counterparts and Facsimile.** This Agreement may  
21 be executed in counterparts and facsimile, each of which shall  
22 be deemed an original, and all of which, when taken together,  
23 shall constitute one and the same document.

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CONSENT JUDGMENT

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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:  
DATE: 8/24/01

AGREED TO:  
DATE: \_\_\_\_\_

*Michael DiPirro*  
Michael DiPirro

\_\_\_\_\_  
Rockford Products Corporation and Rockford International Group Division

APPROVED AS TO FORM:  
DATE: \_\_\_\_\_

APPROVED AS TO FORM:  
DATE: \_\_\_\_\_

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

\_\_\_\_\_  
David R. Gabor  
Attorneys for Defendant  
ROCKFORD PRODUCTS AND  
ROCKFORD INTERNATIONAL  
GROUP DIVISION

CONSENT JUDGMENT

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

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

AGREED TO: 8/24/01  
DATE: \_\_\_\_\_

\_\_\_\_\_  
Richard H. Gabor  
Rockford Products  
Corporation and Rockford  
International Group  
Division

APPROVED AS TO FORM:  
DATE: \_\_\_\_\_

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

APPROVED AS TO FORM:  
DATE: 8/27/01 \_\_\_\_\_

\_\_\_\_\_  
DAVID GABOR  
David R. Gabor  
Attorneys for Defendant  
ROCKFORD PRODUCTS AND  
ROCKFORD INTERNATIONAL  
GROUP DIVISION

CONSENT JUDGMENT

1                   14. 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  
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7   **AGREED TO:**

**AGREED TO:**

8   DATE: \_\_\_\_\_

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

9  
10 \_\_\_\_\_  
11 Michael DiPirro


\_\_\_\_\_   
Rockford Products  
Corporation and Rockford  
International Group  
Division

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15   **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

16   DATE: 8/28/01

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

17  
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19 \_\_\_\_\_  
20 David Bush  
21 Attorneys for Plaintiff  
22 MICHAEL DIPIRRO  
23 CORPORATION

\_\_\_\_\_   
David R. Gabor  
Attorneys for Defendant  
ROCKFORD PRODUCTS AND  
ROCKFORD INTERNATIONAL  
GROUP DIVISION

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28   **CONSENT JUDGMENT**

# **Exhibit A**



EXHIBIT A

Released Products:

Brass fasteners

Brass manifold units

Round head slotted brass machine screws NC (#3303)

Flat head slotted brass machine screws NC (#3304)

Oval head slotted brass machine screws NC (#3305)

Round head slotted brass machine screws NF (#3403)

Flat head slotted brass machine screws NF (#3404)

Round head slotted brass wood screws (#5203)

Flat head slotted brass wood screws (#5204)

Oval head slotted brass wood screws (#5205)

Flat head phillips brass wood screws (#5224)

Brass pins (#8229)

Brass tacks (#8305)

Brass nails (#8301)

Brass anchors (#8308)

Brass grommets (*to be added this fall*)

Brass washers (*to be added this fall*)

Brass cotter pins (*to be added this fall*)

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