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8 Attorneys for Defendant
9 SLIDE PRODUCTS, INC.

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

MICHAEL DIPIRRO,

Plaintiffs,

v.

SLIDE PRODUCTS, INC.; and DOES 1
through 1000,

Defendants.

No. CGC-01-405901

[PROPOSED] CONSENT JUDGMENT

1. Introduction

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

1.2 SLIDE PRODUCTS, INC. ("SLIDE"), a corporation, manufactures and sells chemical products in Illinois, which it asserts are intended for use in the workplace for lubricating and cleaning molds that are used for casting and manufacturing plastic objects. Some of SLIDE's cleaner and degreaser products contain the chemical trichloroethylene (CAS No. 79016), which is listed in the regulations promulgated under the California Safe Drinking Water and Toxic Enforcement Act, California Health & Safety Code sections 25249.5, *et seq.* ("Proposition 65"), as a chemical known to the State of California to cause cancer (hereinafter

1 "Listed Chemical"). The cleaner and degreaser products that contain trichloroethylene are
2 covered by this Consent Judgment and are identified in Exhibit A (the "Products").

3 1.3 On December 31, 2001, Michael DiPirro served SLIDE, the Office of the
4 Attorney General, and other public prosecutors with a document entitled "60-Day Notice of
5 Violation" ("Notice"), which alleged that SLIDE had violated Proposition 65 by failing to
6 provide to persons in California, who are exposed to chemicals in the Products when they are
7 used in areas where chemical hazards are not governed by the Occupational Safety and Health
8 Act ("OSH Act"), a clear and reasonable warning that the Products contain a chemical known to
9 the State of California to cause cancer.

10 1.4 On March 22, 2002, Michael DiPirro brought an action in the public interest
11 entitled *Michael DiPirro v. Slide Products, Inc.* in the San Francisco County Superior Court,
12 Case No. CGC-01-405901, naming SLIDE as a defendant and alleging violations of Business &
13 Professions Code §§ 17200, *et seq.*, 17500, *et seq.* and Health & Safety Code § 25249.6, insofar
14 as persons in California have been exposed to a chemical listed pursuant to Proposition 65
15 contained in the Products without a clear and reasonable warning (the "Action").

16 1.5 Neither the Attorney General, nor any of the other designated public prosecutors,
17 has commenced any action in response to the Notice. For purposes of this Consent Judgment,
18 Plaintiff acts in the interests of the general public as to those matters alleged in the Notice and in
19 the Action.

20 1.6 For purposes of this Consent Judgment only, the parties stipulate that this Court
21 has jurisdiction over the allegations of violations contained in the complaint filed in the Action
22 and in the Notice, that the Court has personal jurisdiction over settling Defendant SLIDE as to
23 the acts alleged in the Complaint filed in the Action and in the Notice, that venue is proper in
24 the county of San Francisco and that this Court has jurisdiction to enter this Consent Judgment
25 as a full settlement and resolution of the allegations contained in the Complaint filed in the
26 Action and in the Notice and of all claims which were or could have been raised by any person
27 or entity based on whole or in part, directly or indirectly, on the facts alleged in the Notice, in
28 the Complaint filed in the Action, or arising therefrom or related thereto.

1.7 This Consent Judgment resolves claims that are denied and disputed. The parties enter into this Consent Judgment to settle these disputed claims, to avoid prolonged litigation and to provide a prompt remedy for the matters alleged in the Notice and in the complaint filed in the Action. The parties intend this settlement to be full and final adjudication of all claims that were or could have been brought against SLIDE, its customers, directors, officers, employees, parent companies, sister companies, subsidiaries, and any person who may use, maintain or sell the Products, and the successors and assigns of any of them, whether or not they were named in the Action, with respect to the claims that were the subject of the Notice and the Action.

1.8 SLIDE asserts that it is an out-of-state manufacturer of workplace products within the meaning of the 1997 decision of the federal Occupational Safety & Health Administration, which approved the incorporation of occupational exposure warning provisions of Proposition 65 in the California Hazard Communication Standard, in part on the condition that Proposition 65 may not be enforced against out-of-state manufacturers of workplace products. SLIDE further asserts that it does not sell these products directly to California consumers, and that it does not intend these products to be sold to California consumers. Accordingly, SLIDE asserts that the occupational exposure warning requirements of Proposition 65 cannot be enforced against SLIDE.

1.9 DiPirro asserts that SLIDE's Products are available for sale to consumers and other persons for use in places where chemical hazard warnings are not governed by the OSH Act, and that such persons have purchased SLIDE's Products for such uses during periods relevant to this Action. DiPirro further asserts that he has possession of supporting evidence of such sales.

1.10 SLIDE and DiPirro have entered into this Consent Judgment to resolve these claims. Nothing in this Consent Judgment shall be construed as an admission by SLIDE of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by SLIDE of any fact, finding, conclusion, issue of

1 law, or violation of law. However, this paragraph shall not diminish or otherwise affect the
2 obligations, responsibilities, and duties of SLIDE under this Consent Judgment.

3 **2. Entry of Consent Judgment.**

4 2.1 The parties hereby request that the Court promptly enter this Consent Judgment.
5 Upon entry of the Consent Judgment, the parties waive their respective rights to a hearing or
6 trial on the allegations of the Complaint.

7 **3. Court Approval.**

8 3.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
9 effect, and cannot be used in any proceeding for any purpose.

10 **4. Injunctive Relief -- Proposition 65 Warnings.**

11 DiPirro and SLIDE agree that SLIDE shall:

12 4.1 Provide all of the distributors of the Products located in California with warning
13 information letters, in the form attached hereto as Exhibit B within fifteen (15) calendar days
14 from entry of this Consent Judgment by the San Francisco County Superior Court, and annually
15 thereafter. SLIDE shall provide such warning letters to such distributors by e-mail, certified
16 United States Mail, or overnight delivery service, such that the written communication of these
17 warning information letters may be verified.

18 4.2 SLIDE further shall provide to any such distributor that does not confirm in
19 writing that it offers or makes the Products available only to businesses, whose workplace
20 warning requirements are governed by the OSH Act, an appropriate amount of 1.5 inch by 1.5
21 inch stickers to be applied by such distributor to the packaging of the Products. SLIDE shall
22 provide such stickers within five (5) business days to any distributor that informs SLIDE that it
23 sells, or intends to sell, Products to California consumers, and within thirty days of the date
24 referred to in paragraph 4.1 to any distributor that fails to confirm that it sells the Products only
25 to businesses, whose workplace warning requirements are governed by the OSH Act. These
26 stickers shall bear the following warning statement, as appropriate:

27 "WARNING: This product contains trichloroethylene, a chemical
28 known to the State of California to cause cancer."

or

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

In the event that SLIDE determines that any of the Products contain, in addition to trichloroethylene, a chemical listed pursuant to Proposition 65 as a chemical known to the State of California or to cause reproductive toxicity, then the sticker may include the following statement:

"WARNING: This product contains a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm."

Nothing in this paragraph shall be construed to preclude SLIDE from including any of the warnings above on its product labels. If SLIDE should choose to include such warnings on the labels for the Products covered by this Consent Judgment, then SLIDE shall not be required to distribute the letters and warning materials described above, and any requirement of this paragraph shall be deemed satisfied as to any such Product for which the warning is included on the label.

4.4 Nothing in this Consent Judgment shall be interpreted to impose occupational exposure warning obligations that are different from, or contrary to, the 1997 federal Occupational Health & Safety Administration ruling that conditionally incorporated the Proposition 65 occupational exposure warning requirement into the California Hazard Communication Standard.

5. Payment Pursuant To Health & Safety Code § 25249.7(b).

5.1 Pursuant to Health & Safety Code § 25249.7(b), SLIDE shall pay a civil penalty of one thousand dollars (\$1000). The payment of \$1000 shall be paid within five (5) calendar days after November 8, 2002 (hereinafter the "Effective Date"). The penalty payment is to be made payable to "Sheffer & Chanler LLP In Trust For Michael DiPirro". If the Consent Judgment is not approved by the Court, DiPirro will return all funds, with interest thereon at the prevailing federal funds rate (currently set at 1.75% per annum), within five (5) calendar days of notice of the Court's decision. All penalty monies shall be apportioned by DiPirro in

1 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of
2 California's Department of Toxic Substances Control.

3 **6. Reimbursement Of Fees And Costs.**

4 6.1 The parties acknowledge that DiPirro offered to resolve the dispute without
5 reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue
6 to be resolved after the material terms of the Consent Judgment had been reached, and the
7 matter settled. SLIDE then expressed a desire to resolve the fee and cost issue concurrently
8 with other settlement terms, so the parties tried to and did reach an accord on the compensation
9 due to DiPirro and his counsel under the private attorney general doctrine codified at C.C.P.
10 § 1021.5.

11 6.2 SLIDE shall reimburse DiPirro and his attorneys for his fees and costs, incurred
12 as a result of investigating, bringing this matter to SLIDE's attention, litigating and negotiating
13 a settlement in the public interest. SLIDE shall pay the total sum of four thousand two hundred
14 dollars (\$4200) for investigation fees, attorneys' fees and litigation costs. SLIDE agrees to pay
15 \$4200 within five (5) calendar days after the Effective Date. The penalty payment is to be made
16 payable to "Sheffer & Chanler LLP In Trust For Michael DiPirro". If the Consent Judgment is
17 not approved by the Court, counsel for DiPirro will return all funds, with interest thereon at the
18 prevailing federal funds rate (currently set at 1.75% per annum), within five (5) calendar days of
19 notice of the Court's decision.

20 **7. Additional Fees and Costs in Seeking Judicial Approval.**

21 7.1 The parties acknowledge that, pursuant to recent interpretations of Health &
22 Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this
23 Agreement. Accordingly, the parties agree to use their best efforts to file a Joint Motion to
24 Approve the Agreement ("Joint Motion") within a reasonable period of time after execution of
25 this Agreement. As part of its best efforts commitment, SLIDE agrees to transmit a draft of the
26 moving papers for the approval within ten (10) calendar days of the Effective date of this
27 Agreement. It is understood that DiPirro may, in his sole discretion, file the Joint Motion on his
28 own. Pursuant to C.C.P. §1021.5, SLIDE agrees to reimburse DiPirro and his counsel for their

1 reasonable fees and costs incurred in seeking judicial approval of this Agreement, to the extent
2 described in paragraphs 7.2 through 7.6.

3 7.2 If no opposition to the motion to approve (nor objection to the terms of the
4 agreement) is filed or otherwise transmitted by any third party, SLIDE agrees to reimburse
5 DiPirro under Paragraph 7.1, for additional reasonable fees and costs in an amount not to exceed
6 two thousand eight hundred dollars (\$2800).

7 7.3 In the event that any third party, including any public enforcer, objects or
8 otherwise comments to one or more provisions of this Agreement, SLIDE agrees to use its best
9 efforts to support each of the terms of the Agreement, as well as to seek judicial approval of this
10 Agreement.

11 7.4 In the event that such an objection or opposition is transmitted or filed by any
12 third party, SLIDE agrees to reimburse DiPirro under Paragraph 7.1, in addition to any
13 reasonable fees and costs due under Paragraph 7.2, for his additional reasonable attorneys' fees
14 and costs incurred in securing approval of this Consent Judgment in an amount not to exceed
15 four thousand dollars (\$4000).

16 7.5 In the event that defending this Agreement from such objection or opposition
17 from any third party requires a declaration from an expert, then SLIDE agrees to reimburse
18 DiPirro, in addition to any attorney's fees and costs under Paragraph 7.2 or 7.4, for such
19 expert's reasonable fees and costs in an amount not to exceed one thousand dollars (\$ 1000).

20 7.6 SLIDE's payment of DiPirro's legal fees and costs pursuant to Paragraphs 7.1-
21 7.6 shall be due within ten (10) calendar days after receipt of a billing statement from DiPirro
22 ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be made payable to the
23 "Sheffer & Chanler LLP." SLIDE has the right to object to DiPirro's reimbursement request
24 and may submit the resolution of this issue to the American Arbitration Association (AAA) in
25 New York to determine the reasonableness of the additional fees and costs sought. Any
26 arbitration claims on this issue of reimbursement for the Additional Fee Claim must be filed
27 with AAA and served on DiPirro within ten (10) calendar days following DiPirro's service of
28 the Additional Fee Claim on SLIDE. If an arbitration notice is not filed with the AAA in a

1 timely manner, SLIDE's right to arbitrate this matter is waived. DiPirro may then file a motion,
2 pursuant C.C.P. §1021.5, with the Court seeking his (and his attorneys') fees and costs incurred
3 as set forth in this paragraph.

4 **8. Claims Covered.**

5 8.1 This Consent Judgment is a final and binding resolution between and among the
6 Plaintiff and its agents and attorneys, acting in the interests of the general public, on the one
7 hand, and SLIDE, its customers, directors, officers, employees, parent companies, sister
8 companies, subsidiaries, or any other person who may use, maintain or sell the Products, and the
9 successors and assigns of any of them, on the other hand, of any and all Claims, as that term is
10 defined in herein. "Claims" shall mean all manner of action or actions, cause or causes of
11 action, in law or in equity, administrative actions, petitions, suits, debts, liens contracts,
12 agreements, promises, liabilities, claims, demands, known or unknown, fixed or contingent, that
13 have existed or now exist, all to the extent based upon or arising out of compliance by SLIDE
14 with Proposition 65, its implementing regulations, and Business & Professions Code sections
15 17200, *et seq.* and 17500, *et seq.* based on SLIDE's alleged failure to warn about exposure to
16 the Listed Chemical contained in any of the Products sold, distributed, marketed or used by
17 SLIDE.

18 8.2 Compliance with the terms of this Consent Judgment resolves any issue, now and
19 in the past, concerning compliance by SLIDE, its customers, directors, officers, employees,
20 parent companies, sister companies, subsidiaries, or any other person who may use, maintain or
21 sell the Products, and the successors and assigns of any of them, with the requirements of
22 Proposition 65, its implementing regulations, and Business & Professions Code sections 17200,
23 *et seq.*, and 17500, *et seq.* with respect to the Listed Chemical contained in any of the Products
24 sold, distributed or marketed by SLIDE.

25 **9. Mutual Releases of Claims**

26 9.1 **Michael DiPirro's Release of SLIDE.** Michael DiPirro, by this Consent
27 Judgment, on behalf of himself, his agents, representatives, attorneys, assigns, and in the interest
28 of the general public, waives all rights to institute or participate in, directly or indirectly, any

1 form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses,
2 penalties, fines and damages, against SLIDE and its customers (including its distributors),
3 directors, officers, employees, parent companies, sister companies, subsidiaries, or any other
4 person who may use, maintain or sell the Products, and the successors and assigns of any of
5 them, whether under Proposition 65 or the Business & Profession Code §§ 17200, *et seq.* and
6 17500, *et seq.*, based upon SLIDE's failure to warn about exposure to the Listed Chemical
7 contained in any of the Products.

8 **9.2 SLIDE's Release of Michael DiPirro.** SLIDE, by this Consent Judgment,
9 releases and waives all rights to institute any form of legal action against Michael DiPirro and
10 his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his
11 attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business
12 & Profession Code §§ 17200, *et seq.* and 17500, *et seq.*, against SLIDE in this Action.

13 **10. Retention of Jurisdiction.**

14 This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

15 **11. No Waiver of Right to Seek Modification from the Court.**

16 Nothing in this Consent Judgment is intended to limit or waive any of the parties' rights
17 to seek modifications hereto from the Court, and any modification to this Consent Judgment are
18 effective only upon entry of a modified Consent Judgment by the Court.

19 **12. Attorneys' Fees.**

20 In the event that a dispute arises with respect to any provision(s) of the Consent
21 Judgment, and such disputes are resolved by the Court or through mediation, arbitration or other
22 alternative dispute resolution proceeding, the prevailing party in such action or proceeding shall
23 be entitled to recover costs and reasonable attorneys' fees. This provision shall not apply,
24 however, to the procedures set forth at paragraphs 7.1 through 7.6, which shall be governed
25 under California Code of Civil Procedure § 1021.5.

26 **13. Entire Agreement.**

27 This Consent Judgment contains the sole and entire agreement and understanding of the
28 parties with respect to the entire subject matter hereof, and any and all prior discussions,

1 negotiations, commitments and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or bind any of the parties.

5 **14. Governing Law.**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **15. Notices.**

9 15.1 All correspondence to Michael DiPirro shall be mailed to:

10 Greg Sheffer
11 Sheffer & Chanler
12 4400 Keller Ave., Suite 200
13 Oakland, CA 94605-4229
14 (510) 577-0747

15 15.2 All correspondence to SLIDE shall be mailed to:

16 Michael Muth
17 Slide Products, Inc.
18 430 S. Wheeling Rd.
19 P.O. Box 156
20 Wheeling, IL 60090-0156

21 with copy to

22 Stanley W. Landfair, Esq.
23 McKenna Long & Aldridge LLP
24 One Market Plaza, Steuart Tower
25 San Francisco, CA 94105
26 Tel.: 415-267-4000
27 Fax: 415-267-4198

28 **16. 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 business days after the parties
execute this Consent Judgment. Following the expiration of the Attorney General's thirty-day

11/21/02 THU 13:45 FAX

1 review period, counsel for DiPirro shall submit the Consent Judgment to the Court in
2 accordance with the requirements of Health & Safety Code § 25249.7(f) and its implementing
3 regulations, thereby allowing the Attorney General to serve any comments to this Consent
4 Judgment prior to the end of the thirty (30) day period.

5 **17. Counterparts and Facsimile.**

6 This Consent Judgment may be executed in counterparts and facsimile, each of which
7 shall be deemed an original, and all of which, when taken together, shall constitute one and the
8 same document.

9 **18. Authorization.**

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

13 **19. Severability.**

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

16

17 **AGREED TO:**

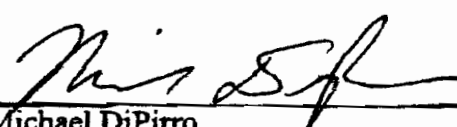
AGREED TO:

18

19 DATE: NOV 21, 2002

DATE: _____, 2002

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21 
Michael DiPirro
PLAINTIFF

James E. Harms, President
SLIDE PRODUCTS, INC.
DEFENDANT

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15 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

16 **AGREED TO:**

AGREED TO:

17
18 DATE: _____, 2002

DATE: 11-15-, 2002

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21 Michael DiPirro
22 PLAINTIFF

James E. Harms, President
23 SLIDE PRODUCTS, INC.
24 DEFENDANT
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1 AGREED AS TO FORM:

2 SHEFFER & CHANLER

3
4 
5 Greg Sheffer
6 Attorneys for Plaintiff
Michael DiPirro

7 DATE: Nov 22, 2002

AGREED AS TO FORM:

MCKENNA LONG & ALDRIDGE

8
9 
10 Stanley W. Landfair
11 Attorneys for Defendant
12 SLIDE PRODUCTS, INC.

13 DATE: Nov. 22, 2002

14
15 IT IS SO ORDERED, ADJUDGED AND DECREED.

16 Date:

17 _____
18 Judge of the Superior Court

EXHIBIT A**Products Covered by Consent Judgment**

| Product Name | Product Number |
|-------------------------------|--------------------------------|
| Mold Cleaner Plus Degreaser 3 | 45920, 45901B, 45905B, 45955B |
| Bare Metal | 45016, 45001B, 45005B, 45055B |
| Resin Remover | 41916T, 41901B, 41905B, 41955B |

EXHIBIT B

Dear California Distributor:

The California Safe Drinking Water and Toxic Enforcement Act, commonly known as "Proposition 65," requires that individuals receive "clear and reasonable" warnings of exposures to certain chemicals known by the State of California to cause cancer and/or reproductive harm.

Some of the SLIDE products that your company distributes and sells contain trichloroethylene, a chemical listed under Proposition 65 as a chemical known to the State of California to cause cancer. Information concerning this chemical appears on the Material Safety Data Sheet for each product that contains the chemical. As long as these products are used in the workplace, they are not required to have Proposition 65 warnings on the labels. Proposition 65 warnings must be provided with these products, however, if they are sold to California customers for consumer use.

The warning statements required under Proposition 65 for these products appear below:

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

or

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

For any product that contains, in addition to trichloroethylene, a chemical that is listed under Proposition 65 as known to the State to cause reproductive toxicity, the following warning should be used:

WARNING: This product contains a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm.

Slide Products does not intend or recommend that *any* of its products be sold for consumer use. If you sell or intend to sell such products for consumer use in California, rather than to a business for use in the workplace, you are required to provide Proposition 65 warnings. *Failure to do so may subject you to liability under Proposition 65 and other laws.* In order to help you to avoid such liability, we are asking you to contact us and confirm that your company sells Slide products only to businesses for use in the workplace. If you do not confirm this, or if you advise us that your company sells or intends to sell Slide products for consumer use in California, we will provide you with appropriate warning stickers, which you must apply to the products before you sell them to consumers.

If you have any questions about this letter, please contact Slide Products. If you have any questions about the Proposition 65 warning requirement, please contact an attorney. You may access the most recent Proposition 65 list of chemicals at www.oehha.ca.gov.

Sincerely,

[SLIDE representative]