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Attorneys for Plaintiff
MICHAEL DIPIRRO

ENDORSED
FILED
ALAMEDA COUNTY

MAY 29 2001

CLERK OF THE SUPERIOR COURT
By GLORIA J. AN MATHEWS
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MICHAEL DIPIRRO, an individual)	No. H216081-2
)	
Plaintiff,)	
v.)	<u>CONSENT JUDGMENT</u>
)	
UNITED RENTALS, INC.; and DOES)	
1 through 1000,)	
)	
Defendants.)	
_____)	

This Consent Judgment ("Agreement") is entered into by and between Michael DiPirro, a California citizen, United Rentals, Inc., a Connecticut corporation ("UR"), as of May 20, 2001 (the "Effective Date"). The parties agree to the following terms and conditions:

/ / /

/ / /

CONSENT JUDGMENT

1 **WHEREAS:**

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

7 B. UR is a company that currently distributes, rents
8 and/or sells in the State of California certain welding machines
9 and other welding equipment such as: welding machines (such as MIG
10 Welders, TIG Welders, Stick Welders, Arc Welders and Cutters,
11 Plasma Cutters and Oxy-Fuel Welders); saws (such as band, block,
12 brick, circular, chop, clearing, concrete, cut-off machines, floor,
13 jig, masonry, miter, pavement, radial, reciprocating, scroll,
14 stonecutting, table, tile, and wall-mounted saws); power shears and
15 cutters (such as rotary tile and pipe cutter, trimmers); power
16 cutout tools; sanders, polishers, abrading machines and buffers;
17 grinders (such as pavement, right angle, die, straight and bench
18 grinders and grooving equipment); drills and augers (such as
19 general purpose, diamond coring, driver, hammer, drill press and
20 drywall drills); power sharpeners and files, including drill bit
21 sharpeners; power screw drivers; power hammers (such as breaker,
22 chipper and rotary hammers); rotary tools and impact wrenches;
23 edgers, lathes, planers, shapers, nibblers; routers (such as
24 general purpose, masonry, and plunge routers); joiners (such as
25 general purpose and plate joiners); paint drying and removing
26 tools, including sandblasters and heat guns; drywall cutters and
27 trimmers(collectively referred to as "Products"). Such products
28 contain, or through customary use and application may produce

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1 fumes, gases or dust which contain, chemicals listed pursuant to
2 Proposition 65 (California Health & Safety Code §25249.5 et seq.)
3 including nickel and nickel compounds, chromium (hexavalent
4 compounds), carbon monoxide, lead (or lead compounds), crystalline
5 silica, and/or arsenic (collectively referred to herein as "Listed
6 Chemicals");

7 C. The products that contain, or whose customary use and
8 application are likely to produce fumes, gases, vapors or dust
9 which contain, one or more of the "Listed Chemicals" and which are
10 covered by this Agreement are set forth in Exhibit A (the
11 "Products"). The Products have allegedly been distributed, rented
12 and/or sold by UR for use in California since at least October 20,
13 1996; and

14 D. On August 4, 2000, Michael DiPirro first served UR
15 and other public enforcement agencies with a document entitled "60-
16 Day Notice of Violation" which provided UR and such public
17 enforcers with notice that UR was allegedly in violation of Health
18 & Safety Code §25249.6 for allegedly failing to warn purchasers
19 that certain products it sells, rents or otherwise offers for use
20 in California expose users to Proposition 65-listed chemicals;

21 E. On October 20, 2000, Michael DiPirro filed a
22 complaint entitled Michael DiPirro v. United Rentals, Inc., et al.
23 (Case No. H216081-2) in the Alameda County Superior Court, naming
24 UR as a defendant and alleging violations of Business & Professions
25 Code §17200 and Health & Safety Code §25249.6 on behalf of
26 individuals in California who allegedly have been exposed to the
27 "Listed Chemicals" contained in or produced by certain UR products;

28 F. On December 22, 2000, Michael DiPirro first served UR
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1 and other public enforcement agencies with a document entitled
2 "Supplemental 60-Day Notice of Violation" which provided UR and
3 such public enforcers with notice that UR was allegedly in
4 violation of Health & Safety Code §25249.6 for allegedly failing to
5 warn purchasers that certain other products, including power tools,
6 that it sells, rents or otherwise offers for use in California
7 expose users to Proposition 65-listed chemicals; and

8 G. On March 2, 2001, Michael DiPirro filed a complaint
9 entitled Michael DiPirro v. United Rentals, Inc., et al. (Case No.
10 H218474-2) in the Alameda County Superior Court, naming UR as a
11 defendant and alleging violations of Business & Professions Code
12 §17200 and Health & Safety Code §25249.6 on behalf of individuals
13 in California who allegedly have been exposed to the "Listed
14 Chemicals" contained in or produced by certain other UR products,
15 including power tools.

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

23
24 **NOW THEREFORE, MICHAEL DIPIRRO AND UR AGREE AS FOLLOWS:**

25 1. **Product Warnings.** UR shall begin to initiate
26 revisions to its health hazard warnings for its Products to provide
27 the language set forth in the section 1 below. Beginning on
28 May 15, 2001, UR agrees that it will not knowingly rent or sell (or
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1 cause to be rented or sold) any Products that contain, or produce
2 fumes, gases or dust that contain, the Listed Chemicals for sale in
3 the State of California unless such Products comply with sections
4 1.1 and 1.2 below:

5 **1.1 Warnings For Welding Products**

6 **a. Warning Language.** All welding products
7 shall bear the following warning statement:

8 "The use and operation of this equipment,
9 accessories, and its component parts is likely
10 to expose you to chemical(s) known to cause
11 cancer and birth defects (or other reproductive
12 harm)."

13 **b. Warning Methods.** UR may satisfy its
14 warning obligations by either: (1) including the above warning in a
15 handout given to the purchaser or renter at the time of purchase or
16 rental of the Welding Product; (2) having a durable label
17 containing the above warning affixed to the welding product itself
18 in a location that can be seen by the user of the product under
19 normal circumstances of use; or (3) having a durable label
20 containing the above warning affixed to the packaging of the
21 welding product by way of an adhesive sticker, stamp or permanent
22 changes to the outside packaging of the welding product, so long as
23 the packaging is transferred to the customer. The above warning in
24 any of the methods above shall be prominent and displayed with such
25 conspicuousness, as compared with other words, statements, or
26 designs, as to render it likely to be read and reasonably
27 understood by an ordinary individual under customary conditions of
28 rental, purchase or use.

1.2 Warnings For Power Tools. For all power tools,
UR shall comply with subsections (a) and (b) below:

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1 a. UR shall post a single copy of the warning
2 sign which is attached hereto as Exhibit "B" and incorporated
3 herein, at the check-out counter or cash register where the
4 Products are normally rented and/or sold. Such warning shall be
5 prominent, clearly visible and displayed with such conspicuousness,
6 as compared with other words, statements, or designs, as to render
7 it likely to be read and reasonably understood by an ordinary
8 individual under customary conditions of rental, purchase or use;
9 and

10 b. UR shall provide customer safety handouts
11 which contain the following warning statement:

12 **"The use and operation of this equipment,
13 accessories, and its component parts is likely
14 to expose you to chemical(s) known to cause
cancer and birth defects (or other reproductive
harm)."**

15 UR will continue to ensure that every individual who rents a
16 Product is provided with a customer safety handout that contains
17 the aforementioned warning statement. Such warning shall be
18 prominent, clearly visible and displayed with such conspicuousness,
19 as compared with other words, statements, or designs, as to render
20 it likely to be read and reasonably understood by an ordinary
21 individual under customary conditions of rental, purchase or use.

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

23 **§25249.7 (b).** Pursuant to Health & Safety Code §25249.7(b), UR
24 shall pay a civil penalty of \$7,400.00 (seven thousand four hundred
25 dollars). The payment of \$7,400.00 shall be paid within ten (10)
26 calendar days after the Effective Date of this Agreement. The
27 penalty payment is to be made payable to "Chanler Law Group In
28 Trust For Michael DiPirro". Penalty monies shall be apportioned by
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1 DiPirro in accordance with Health & Safety Code §25192, with 75% of
2 these funds remitted to the State of California.

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

13 UR shall reimburse DiPirro for his fees and costs
14 incurred as a result of investigating, bringing the matter to UR's
15 attention, litigating and negotiating a settlement in the public
16 interest. UR shall pay the total sum of \$35,600.00 (thirty five
17 thousand six hundred dollars) for investigation fees, attorneys'
18 fees and litigation costs. UR agrees to pay \$35,600.00 within ten
19 (10) calendar days of the Effective Date of the Agreement. Payment
20 should be made payable to the "Chanler Law Group".

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

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

10 **6. Court Approval.** If, for any reason, this Consent
11 Judgment is not approved by the Court, this Agreement shall be
12 deemed null and void. Within ten (10) calendar days of receiving
13 court approval of this Consent Judgment, DiPirro shall dismiss with
14 prejudice his second case against UR (Case No. H218474-2).

15 **7. Product Characterization.** UR acknowledges that each
16 of the Products listed in Exhibit A contains, or in the customary
17 use or application of the Products may produce fumes, gases,
18 vapors, or dust that contain, nickel (and nickel compounds),
19 chromium (hexavalent compounds) and carbon monoxide and Plaintiff
20 alleges that the customary use or application of the Products is
21 likely to expose users to nickel and nickel compounds, chromium
22 (hexavalent compounds), carbon monoxide, lead (or lead compounds),
23 crystalline silica, and/or arsenic, substances known to the State
24 of California to cause cancer and/or birth defects (or other
25 reproductive harm). In the event that UR obtains analytical, risk
26 assessment or other data ("Exposure Data") that shows an exposure
27 to any or all Products poses "no significant risk" or will have "no
28 observable effect," as each such standard is applicable and as each
CONSENT JUDGMENT

1 is defined under Health & Safety Code §25249.10(c) and UR seeks to
2 eliminate the warnings, then UR shall provide DiPirro with ninety
3 (90) days prior written notice of its intent to limit or eliminate
4 the warning provisions under this Agreement based on the Exposure
5 Data and shall provide DiPirro with all such supporting Exposure
6 Data. Within ninety (90) days of receipt of UR Exposure Data,
7 DiPirro shall provide UR with written notice of his intent to
8 challenge the Exposure Data (in the event that he chooses to make
9 such a challenge). If DiPirro fails to provide UR written notice
10 of his intent to challenge the Exposure Data within ninety (90)
11 days of receipt of UR's notice and the Exposure Data, DiPirro shall
12 waive all rights to challenge the Exposure Data, and UR shall be
13 entitled to limit or eliminate the warning provisions required
14 under this Agreement with respect to those Product(s) to which the
15 Exposure Data applies. If DiPirro timely notifies UR of his intent
16 to challenge the Exposure Data, DiPirro and UR (a) may stop its
17 efforts to eliminate the warnings upon notice to DiPirro with no
18 further liability or obligations or (b) shall negotiate in good
19 faith for a period not to exceed thirty (30) days following receipt
20 of UR's notice to attempt to reach a settlement of this issue. If a
21 settlement is not reached, DiPirro and UR agree to submit such
22 challenge to the superior court for determination, pursuant to the
23 court's continuing jurisdiction of this matter under C.C.P. §664.6
24 and this Agreement. The prevailing party shall be entitled to
25 reasonable attorneys' fees and costs associated with bringing a
26 motion brought under this paragraph to the court for determination.

27 **8. Severability.** In the event that any of the
28 provisions of this Agreement are held by a court to be

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

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

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

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

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

or

Clifford A. Chanler
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
(203) 966-9911

All correspondence to UR shall be mailed to:

R. Ernest Montanari, Esq.
Garrison, Musacchio & Montanari, P.C.
1501 North Broadway, Suite 450
Walnut Creek, CA 94596
(925) 934-9999

and

Grace M. Crickette
Vice President Risk Management
United Rentals, Inc.
P.O. Box 4366
Modesto, CA 95352-4366

12. Compliance With Reporting Requirements. The parties agree to comply with the reporting form requirements referenced in
CONSENT JUDGMENT

1 Health & Safety Code §25249.7(f). As of the Effective Date, the
2 California Attorney General's reporting forms are not available. UR
3 represents, however, that its counsel will send a copy of this
4 Agreement to the California Attorney General's Office prior to or
5 concurrently with the presentation of the Consent Judgment to the
6 Alameda County Superior Court.

7 13. Counterparts and Facsimile. This Agreement may be
8 executed in counterparts and facsimile, each of which shall be
9 deemed an original, and all of which, when taken together, shall
10 constitute one and the same document.

11 14. Authorization. The undersigned are authorized to
12 execute this Agreement on behalf of their respective parties and
13 have read, understood and agree to all of the terms and conditions
14 of this Agreement.

15
16 AGREED TO:

17 DATE: 5/19/01

18
19 Michael DiPirro
20 Michael DiPirro
21 PLAINTIFF

22 AGREED TO:

23 DATE: 5/16/01

24 United Rentals, Inc.
25 DEFENDANT

26 APPROVED AS TO FORM:

27 DATE: 5/18/01

28 David Bush
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

29 APPROVED AS TO FORM:

30 DATE: 5/16/01

31 H. Ernest Montanari
H. Ernest Montanari
Attorneys for Defendant
UNITED RENTALS, INC.

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EXHIBIT "A"

EXHIBIT A

1. Welding Machines, Power Sources and Other Welding Equipment
2. Welding Machines (such as MIG Welders, TIG Welders, Stick Welders, Arc Welders and Cutters, Plasma Cutters and Oxy-Fuel Welders)
3. Saws, electric and/or gasoline powersaws (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 Saws)
4. Power Shears and Cutters (such as Rotary Tile and Pipe Cutter, Trimmers)
5. Power Cutout Tools
6. Sanders, Polishers, Abrading Machines and Buffer
7. Grinders (such as Pavement, Right Angle, Die, Straight and Bench Grinders and Grooving Equipment)
8. Drills and Augers (such as General Purpose, Diamond Coring, Driver, Hammer, Drill Press and Drywall Drills)
9. Power Sharpeners and Files, Including Drill Bit Sharpeners
10. Power Screw Drivers
11. Power Hammers (such as Breaker, Chipper and Rotary Hammers)
12. Rotary Tools and Impact Wrenches
13. Edgers, Lathes, Planers, Shapers, Nibblers
14. Routers (such as General Purpose, Masonry, and Plunge Routers)
15. Joiners (such as General Purpose and Plate Joiners)
16. Paint Drying and Removing Tools, Including Sandblasters and Heat Guns
17. Drywall Cutters and Trimmers

EXHIBIT "B"

WARNING!

Some dust created by power sanding, sawing, grinding, drilling and other construction activities contains chemicals known to the State of California to cause cancer, birth defects or other reproductive harm. Some examples of these chemicals are:

- Lead, from lead-based paints
- Crystalline silica from bricks and cement and other masonry products, and
- 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.