

1 Gregory M. Sheffer, State Bar No. 173124
2 Clifford A. Chanler, State Bar No. 135534
3 SHEFFER & CHANLER LLP
4 4400 Keller Avenue, Suite 200
5 Oakland, CA 94605
6 Tel: (510) 577-0747
7 Fax: (510) 577-0787

8 Attorneys for Plaintiff
9 MICHAEL DIPIRRO

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION

13 MICHAEL DIPIRRO,) No. 01-027270
14)
15 Plaintiff,) CONSENT JUDGMENT
16)
17 v.)
18)
19 WAHL CLIPPER CORPORATION; and)
20 DOES 1 through 1000,)
21)
22 Defendants.)
23 _____)

24 This Consent Judgment is entered into by and between Plaintiff Michael DiPirro
25 and Defendant Wahl Clipper Corporation (hereafter referred to as "Wahl Clipper") as of
26 October 11, 2002 (the "Effective Date"). The parties agree to the following:

27 **1. INTRODUCTION**

28 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 Plaintiff alleges that, since October 30, 1997, Wahl Clipper has

1 manufactured, distributed and sold, in the State of California, power tools whose
2 customary use and application produces fumes, gases or dust which are likely to contain
3 lead (or lead compounds), crystalline silica, arsenic and/or chromium (hexavalent
4 compounds). All such power tool products shall hereafter be referred to as the "Products"
5 and shall be defined more specifically in Exhibit A hereto. Such lead (or lead compounds),
6 crystalline silica, arsenic and/or chromium (hexavalent compounds) are chemicals listed
7 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health
8 & Safety Code §§25249.5 *et seq.*, also known as Proposition 65 (hereafter all such chemicals
9 shall be collectively referred to as the "Listed Chemicals").
10

11 1.3 On August 3, 2001, Michael DiPirro first served Wahl Clipper and other
12 public enforcement agencies with a document entitled "60-Day Notice of Violation" which
13 provided Wahl Clipper and such public enforcers with notice that Wahl Clipper was
14 allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that
15 the Products it sells in California expose users to one or more of the Listed Chemicals.
16

17 1.4 On October 15, 2001, Michael DiPirro filed a complaint entitled Michael
18 DiPirro v. Wahl Clipper Corporation et al. in the Alameda County Superior Court, naming
19 Wahl Clipper as a defendant and alleging violations of Business & Professions Code §17200
20 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly
21 have been exposed to one or more of the Listed Chemicals produced by Wahl Clipper
22 Products.
23

24 1.5 Wahl Clipper denies the material factual and legal allegations contained in
25 Michael DiPirro's above mentioned 60-Day Notice of Violation and Complaint and
26 maintains that all products manufactured, distributed or sold by Wahl Clipper in
27 California including, but not limited to, the Products, have been and are in compliance
28 with all laws.

1 1.6 Nothing in this Consent Judgment shall be construed as an admission by
2 Wahl Clipper of any fact, finding, issue of law or violation of law, nor shall compliance
3 with this Consent Judgment constitute or be construed as an admission by Wahl Clipper of
4 any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph
5 shall not diminish or otherwise affect the obligations, responsibilities and duties of Wahl
6 Clipper under this Agreement.

7
8 **2. PRODUCT WARNINGS**

9 2.0 Wahl Clipper shall not have any Proposition 65 warning obligations for the
10 Products that are: (1) manufactured before the Effective Date; (2) distributed or shipped for
11 sale outside the State of California; or (3) manufactured outside of the State of California,
12 within the meaning of the June 6, 1997 U.S. Department of Labor, Occupational Safety and
13 Health Administration, "Approval California State Standard on Hazard Communication
14 Incorporating Proposition 65", 62 Federal Register 31159-31181 (i.e. occupational exposures)
15 and not sold to consumers. Wahl Clipper shall also have no Proposition 65 warning
16 obligations for those products (accessories, building materials and hand tools) that Wahl
17 Clipper manufactures, distributes or sells in California, if any, and for which the Consent
18 Judgment in People v. Ace Hardware, et. al., San Francisco Superior Court No. 995893 (a
19 copy of the face page of this case is attached as Exhibit B) has determined that no
20 Proposition 65 warning is required.

21
22 2.1 Wahl Clipper shall not, after January 11, 2003, knowingly distribute or sell,
23 in the state of California, any Products that are likely to expose users to lead (or lead
24 compounds), crystalline silica, arsenic and/or chromium (hexavalent compounds) unless
25 such Products comply with either the warning requirements set forth in Section 2.2 or
26 those set forth in Section 2.3.

27 2.2 Wahl Clipper may satisfy the warning requirements of Section 2.1 by
28

- e. the Instructions Manual is intended by the manufacturer to be provided with the original packaging of the Product for the initial consumer
- f. at least one other safety warning appears in the Instructions Manual; and
- g. all or a substantial portion of the Product's operating instructions, if any, are contained in the Instructions Manual.

3. MONETARY PAYMENTS

3.1 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to Health & Safety Code §25249.7(b), Wahl Clipper shall pay a civil penalty of \$1,500.00. The payment of \$1,500.00 shall be paid within five (5) calendar days of the Effective Date and shall be held in trust by DiPirro's counsel until the Alameda County Superior Court approves and enters the Consent Judgment. 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 a rate of one and three quarters percent (1.75%) per annum, within ten (10) calendar days of notice of the Court's decision. Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control.

Wahl Clipper understands that the payment schedule as stated in this Consent Judgment is material factor upon which DiPirro has relied in entering into this Consent Judgment. Wahl Clipper agrees that all payments will be made in a timely manner in accordance with the payment due dates. Wahl Clipper will be given a five (5) calendar day grace period from the date payment is due. Wahl Clipper agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the payment is received after the grace period ends. For purposes of this paragraph, each new day (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

3.2 Reimbursement Of Fees And Costs. The parties acknowledge that DiPirro

1 and his counsel offered to resolve this dispute without reaching terms on the amount of
2 fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after
3 the material terms of the agreement had been settled. Wahl Clipper then expressed a
4 desire to resolve the fee and cost issue shortly after the other settlement terms had been
5 finalized. The parties then attempted to (and did) reach an accord on the compensation
6 due to DiPirro and his counsel under the private attorney general doctrine codified at CCP
7 §1021.5 for all work performed through the Effective Date of the Agreement.
8

9 Under the private attorney general doctrine codified at CCP §1021.5, Wahl Clipper
10 shall reimburse DiPirro and his counsel for his fees and costs, incurred as a result of
11 investigating, bringing this matter to Wahl Clipper's attention, litigating and negotiating a
12 settlement in the public interest. Wahl Clipper shall pay DiPirro and his counsel
13 \$10,000.00, except as provided for in paragraph 3.3 to 3.8 below, for all attorneys' fees,
14 expert and investigation fees and litigation costs, within five days of the Effective Date.
15 Payment should be made payable to "Sheffer & Chanler LLP". If the Consent Judgment is
16 not approved by the Court, DiPirro and Sheffer & Chanler LLP will return all funds, with
17 interest thereon at the rate of 1.75% per annum, simple interest, within five (5) calendar
18 days of effective written notice of the Court's decision.

19 **3.3 Additional Fees And Costs In Seeking Judicial Approval.** The parties
20 acknowledge that, pursuant to recent interpretations of Health & Safety Code §25249.7, a
21 noticed motion is required to obtain judicial approval of this Agreement. Accordingly, the
22 parties agree to use their best efforts to file a Joint Motion to Approve Proposition 65
23 Settlement Agreement within a reasonable period of time after execution of this
24 Agreement. Best efforts shall mean that Wahl Clipper shall return an initial draft of the
25 Motion To Approve within ten (10) days of receiving a motion template from plaintiff.
26 Best efforts shall also mean that Wahl Clipper agree to return any modifications or
27

1 comments on subsequent drafts received from plaintiff within five (5) days of their receipt.

2 Pursuant to CCP §1021.5, Wahl Clipper agrees to reimburse DiPirro and his counsel
3 for their reasonable fees and costs incurred in seeking judicial approval of this Agreement,
4 to the extent described in paragraphs 3.4 through 3.8.

5 3.4 If no opposition to the Motion to Approve (nor objection to the terms of the
6 agreement) is filed or otherwise transmitted by any third party, Wahl Clipper agrees to
7 reimburse DiPirro under Section 3.1, for additional reasonable fees and costs in an amount
8 not to exceed \$2,000.00.

9
10 3.5 In the event that any third party, including any public enforcer, objects or
11 otherwise comments to one or more provisions of this Agreement, Wahl Clipper agree to
12 use their best efforts to support each of the terms of the Agreement, as well as to seek
13 judicial approval of this Agreement.

14 3.6 In the event that such an objection or opposition is transmitted or filed by
15 any third party, Wahl Clipper agrees to reimburse DiPirro under Section 3.2, in addition to
16 any reasonable fees and costs due under Section 3.4, for his additional reasonable
17 attorneys' fees and costs incurred in securing approval of this Consent Judgment in an
18 amount not to exceed \$2,000.00.

19 3.7 In the event that defending this Agreement from such objection or
20 opposition from any third party requires a declaration from an expert, then Wahl Clipper
21 agrees to reimburse DiPirro, in addition to any attorney's fees and costs under section 3.1,
22 3.4 or 3.6, for such expert's reasonable fees and costs in an amount not to exceed \$2,000.00.

23
24 3.8 Wahl Clipper's payment of DiPirro's legal fees and costs pursuant to
25 sections 3.3-3.8 shall be due within ten (10) calendar days after receipt of a billing statement
26 from DiPirro ("Additional Fee Claim"). Payment of the Additional Fee Claim shall be
27 made payable to the "Sheffer & Chanler LLP". Wahl Clipper has the right to object to
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CONSENT JUDGMENT

1 DiPirro's reimbursement request and may submit the resolution of this issue to the
2 American Arbitration Association (AAA) in Northern California to determine the
3 reasonableness of the additional fees and costs sought. Any arbitration claim on this issue
4 of reimbursement for the Additional Fee Claim must be filed with AAA and served on
5 DiPirro within ten (10) calendar days following DiPirro's service of the Additional Fee
6 Claim on Wahl Clipper. If an arbitration notice is not filed with AAA in a timely manner,
7 Wahl Clipper's right to arbitrate this matter is waived. DiPirro may then file a motion,
8 pursuant to CCP §1021.5, with the Court for recovery of his (and his attorneys') fees and
9 costs incurred as set forth in this paragraph.
10

11 **4. RELEASE OF ALL CLAIMS**

12 4.1 **Michael DiPirro's Release Of Wahl Clipper.** In further consideration of the
13 promises and agreements herein contained, and for the payments to be made pursuant to
14 Section 3, Michael DiPirro, on behalf of himself, his agents, representatives, attorneys,
15 and/or assignees, and in the interest of the general public on whose behalf this action was
16 brought, hereby waives all rights to institute or participate in, directly or indirectly, any
17 form of legal action and releases all claims, including, without limitation, all actions, causes
18 of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
19 penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees
20 and other costs, other than those stated herein) of any nature whatsoever, whether known
21 or unknown, fixed or contingent (collectively, "Claims"), against Wahl Clipper and any of
22 its parent companies, divisions, subdivisions, subsidiaries (and the predecessors,
23 successors and assigns of any of them), and its respective officers, directors, attorneys,
24 representatives, shareholders, partners, agents, and employees (collectively, "Wahl Clipper
25 Releasees"). This waiver and release shall pertain only to Claims arising under Proposition
26 65 or Business & Professions Code §17200 *et seq.*, related to the Wahl Clipper Releasees
27
28

1 alleged failure to warn about exposures on or before the Effective Date to the Listed
2 Chemicals produced by any of the Products. It is specifically understood and agreed that
3 Wahl Clipper's compliance with the terms of this Release resolves all issues and liability,
4 now and in the future, concerning the Wahl Clipper Releasees' past and present
5 compliance with the requirements of Proposition 65 or Business and Professions Code
6 §17200 *et seq.*, as to the Products.

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

25
26 **4.3 Wahl Clipper's Release of Michael DiPirro** Wahl Clipper waives all rights
27 to institute any form of legal action against Michael DiPirro, and his attorneys or
28

1 representatives, for all actions taken or statements made, on or before the court approval of
2 this Consent Judgment, by Michael DiPirro and his attorneys or representatives, in the
3 course of seeking enforcement of Proposition 65 or Business & Professions Code §17200, *et*
4 *seq.* against Wahl Clipper.

5 **5.0 WAHL CLIPPER SALES DATA.** Wahl Clipper understands that the data
6 provided to counsel for DiPirro by Wahl Clipper was a material factor upon which DiPirro
7 has relied to determine the amount of payments made pursuant to Health & Safety Code
8 §25249.7(b) in this Agreement. To the best of Wahl Clipper's knowledge, the data
9 provided is true and accurate. In the event that DiPirro discovers facts that demonstrate to
10 a reasonable degree of certainty that the data is materially inaccurate, the parties shall meet
11 in a good faith attempt to resolve the matter within ten (10) days of Wahl Clipper's receipt
12 of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good
13 faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to re-institute
14 an enforcement action against Wahl Clipper, for those additional Products, based upon any
15 existing 60-Day Notices of Violation served on Wahl Clipper. In such case, all applicable
16 statutes of limitation shall be deemed tolled for the period between the date DiPirro filed
17 the instant action and the date DiPirro notifies Wahl Clipper that he is re-instituting the
18 action for the additional Products. Provided, however, that Wahl Clipper shall have no
19 additional liability, and DiPirro waives any claims that might otherwise be asserted, from
20 the Effective Date until the date that DiPirro provides notice under this Paragraph 7, so
21 long as Wahl Clipper have complied with the requirements of Section 2 for all of the
22 Products, including those numbers of Products additionally discovered.

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25 **6. COURT APPROVAL.** If this Consent Judgment is not approved and entered by
26 the Court within sixty (60) days of the Effective Date, it shall be deemed null and void as of
27 the sixty-first (61) day after the Effective Date and cannot be used in any proceeding.

1 7. **SEVERABILITY.** In the event that any of the provisions of this consent Judgment
2 are held by a court to be unenforceable, the validity of the enforceable provision remaining
3 shall not be adversely affected.

4 8. **ATTORNEY'S FEES.** In the event that a dispute arises with respect to any
5 provision(s) of the Consent Judgment (including, but not limited to, disputes arising from
6 the late payments provisions in Sections 3.1 and 3.2), the prevailing party shall be entitled
7 to recover costs and reasonable attorneys' fees.

8 9. **GOVERNING LAW.** The terms of this Consent Judgment shall be governed by the
9 laws of the State of California. In the event that Proposition 65 is repealed or is other wise
10 rendered inapplicable by reason of law generally, or as to the Products specifically, Wahl
11 Clipper shall have no further obligations pursuant to this Consent Judgment with respect
12 to, and to the extent that, those Products are so affected.

13 10. **NOTICES.** All correspondence and notices required to be provided pursuant to
14 this Consent Judgment shall be in writing and shall be personally delivered or sent by first-
15 class, registered, certified mail, overnight courier and/or via facsimile transmission (with
16 presentation of facsimile transmission confirmation) addressed as follows:
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18
19 If to DiPirro: Gregory M. Sheffer, Esq.
20 Sheffer & Chanler LLP
21 4400 Keller Avenue, Suite 200
Oakland, CA 94605-4229

22 If to Wahl Clipper: Mr. William Dempsey
23 Wahl Clipper Corporation
24 2900 N. Locust Street
Sterling, IL 61081

25 With a copy to: Chris Hillman, Esq.
26 Lee M. Baty, Esq.
27 Baty, Holm & Numrich, PC
28 210 Plaza West Building
4600 Madison Avenue

CONSENT JUDGMENT

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

5 **11. NO ADMISSIONS.** Nothing in this Consent Judgment shall constitute or be
6 construed as an admission by Wahl Clipper of any fact, finding, conclusion, issue of law, or
7 violation of law, nor shall compliance with this Consent Judgment constitute or be
8 construed as an admission by Wahl Clipper of any fact, finding, conclusion, issue of issue
9 of law, or violation of law, such being specifically denied by Wahl Clipper. Wahl Clipper
10 reserves all of its rights and defenses with regard to any claim by any party under
11 Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise
12 affect Wahl Clipper's obligations, responsibilities and duties under this Consent Judgment.

13 **12. ENTIRE AGREEMENT; MODIFICATION.** This Consent Judgment constitutes
14 the entire agreement between the parties relating to the rights and obligations herein
15 granted and assumed, and supersedes all prior agreements and understandings between
16 the parties. This Consent Judgment may be modified only upon the written agreement of
17 the parties or upon motion to the court.

18 **13. COUNTERPARTS; FAXSIMILE SIGNATURES.** This Consent Judgment may be
19 executed in counterparts and by facsimile, each of which shall be deemed an original, and
20 all of which, when taken together, shall constitute one and the same document.

21 **14. COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY**
22 **CODE §25249.7(f)).** This Consent Judgment may be executed in counterparts and by
23 facsimile, each of which shall be deemed an original, and all of which, when taken
24 together, shall constitute one and the same document.

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27 **15. COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH & SAFETY**
28 **CONSENT JUDGMENT**

1 CODE §25249.7(f)). The parties agree to comply with the reporting form requirements
2 referenced in Health & Safety Code §25249.7(f). DiPirro represents that his counsel will
3 send a copy of this Agreement to the California Attorney General's Office on the Effective
4 Date. Pursuant to the new regulations promulgated under Health & Safety Code
5 §25249.7(f), DiPirro shall present this Consent Judgment to the Alameda County Superior
6 Court thirty (30) days later, thereby allowing the Attorney General to serve any comments
7 to this Consent Judgment prior to the end of the thirty (30)-day period.
8


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

13 AGREED TO:

AGREED TO:

14 Date: 10/11/02

Date: _____

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16 
17 Plaintiff Michael DiPirro

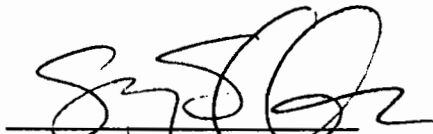
Defendant Wahl Clipper Corporation

18
19 AGREED AS TO FORM:

AGREED AS TO FORM:

20 Date: 10/11/02

Date: _____

21
22 
23 Gregory M. Sheffer
24 Attorneys for Plaintiff
Michael DiPirro

Lee M. Baty, Esq.
Attorneys for Defendant
Wahl Clipper Corporation

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CODE §25249.7(f)). The parties agree to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f). DiPirro represents that his counsel will send a copy of this Agreement to the California Attorney General's Office on the Effective Date. Pursuant to the new regulations promulgated under Health & Safety Code §25249.7(f), DiPirro shall present this Consent Judgment to the Alameda County Superior Court thirty (30) days later, thereby allowing the Attorney General to serve any comments to this Consent Judgment prior to the end of the thirty (30)-day period.

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

AGREED TO:

Date: _____

Plaintiff Michael DiPirro

AGREED TO:

Date: 10/17/02

Gregory S. Wahl
Defendant Wahl Clipper Corporation

AGREED AS TO FORM:

Date: _____

Gregory M. Sheffer
Attorneys for Plaintiff
Michael DiPirro

AGREED AS TO FORM:

Date: 10/21/02

Lee M. Baty
Lee M. Baty, Esq.
Attorneys for Defendant
Wahl Clipper Corporation

CONSENT JUDGMENT

EXHIBIT "A"

The following products are manufactured by defendant, Wahl Clipper Corporation, and are the "listed products" subject to the Consent Judgment entered into for Case No. 01-027270:

<u>Product Description</u>	<u>Product Number</u>
Corded Filer/Sander	6780
Corded Filer/Sander	6750