

1 David Bush, State Bar No. 154511
Jennifer Henry, State Bar No. 208221
2 BUSH & HENRY
ATTORNEYS AT LAW
3 4400 Keller Avenue, Suite 200
Oakland, CA 94605
4 Tel: (510) 577-0747

5 Clifford A. Chanler, State Bar No. 135534
CHANLER LAW GROUP
6 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
7 Tel: (203) 966-9911

8 Attorneys for Plaintiff
MICHAEL DIPIRRO

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

13 MICHAEL DIPIRRO,

14 Plaintiff

15 V

16 CENTURI CORPORATION; and DOES 1
17 through 1000,

18 Defendants.
19 _____

Case No: H218972-9

CONSENT JUDGMENT

21 **1. INTRODUCTION:**

22 1.1 Michael DiPirro ("DiPirro") is an individual residing in San
23 Francisco, California, who seeks to promote awareness of exposures to toxic chemicals
24 and improve human health by reducing or eliminating hazardous substances contained in
25 consumer and industrial products.

26 1.2 For purposes of this Consent Judgment, the term "CENTURI" or
27 "Centuri Corporation" shall mean Centuri Corporation, a Delaware corporation, and all of
28 its divisions, if any (hereafter collectively referred to as "CENTURI").

1.3 Since at least May 1998, CENTURI has distributed and/or sold in the

1 State of California certain fuel products containing nitromethane (hereafter referred to as
2 the "Products") that DiPirro contends contain or whose customary use and application is
3 likely to produce fumes, gases or exhaust which contain chemicals listed pursuant to the
4 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
5 Code §25249.5 et seq., also known as Proposition 65 including, but not limited to,
6 nitromethane (the "Listed Chemical").

7 1.4 On January 12, 2001, Michael DiPirro first served CENTURI and
8 other public enforcement agencies with a document entitled "60-Day Notice of Violation"
9 which provided CENTURI and such public enforcers with notice that CENTURI was
10 allegedly in violation of Health & Safety Code §25249.6 for allegedly failing to warn
11 purchasers that certain of its fuel products that it sells in California expose users to the
12 Listed Chemical.

13 1.5 On March 23, 2001, Michael DiPirro filed a complaint entitled
14 Michael DiPirro v. Centuri Corporation, et al. in the Alameda County Superior Court,
15 naming CENTURI as a defendant and alleging violations of Business & Professions Code
16 §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who
17 allegedly have been exposed to the Listed Chemical contained in certain CENTURI
18 products.

19 1.6 CENTURI denies the material factual and legal allegations contained
20 in DiPirro's above-mentioned 60-Day Notice of Violation and Complaint and maintains
21 that all products distributed or sold by CENTURI in California including, but not limited
22 to, the Products, have been and are in compliance with all laws.

23 1.7 Nothing in this Consent Judgment shall be construed as an admission
24 of CENTURI of any fact, finding, issue of law, or violation of law, nor shall compliance
25 with this Consent Judgment constitute or be construed as an admission by CENTURI of
26 any fact, finding, conclusion, issue of law or violation of law. However, this paragraph
27 shall not diminish or otherwise affect the obligations, responsibilities and duties of
28 CENTURI under this Agreement.

1.8 For purposes of this Consent Judgment, the term "Effective Date"

1 shall mean December 19, 2001.

2 **2. PRODUCT WARNINGS**

3 2.1 CENTURI asserts that has initiated revisions to its health hazard
4 warnings for its Products to provide the language set forth in sections 2.2 and 2.3 below.
5 CENTURI asserts that, as of December 2000, CENTURI implemented policies and
6 procedures to require that any sale in California of any Product that contained the Listed
7 Chemicals comply with sections 2.2 and 2.3 below. CENTURI agrees that it will
8 continue this effort and shall not, after December 19, 2001, knowingly distribute or sell in
9 the State of California any Products that contain or whose customary use and application
10 produce fumes, gases or exhaust that contain nitromethane unless such Products comply
11 with sections 2.2 and 2.3 below.

12 2.2 Products which contain nitromethane shall bear the following
13 warning:

14 **"WARNING: This product contains nitromethane, a chemical known
15 to the State of California to cause cancer";**

16 **OR**

17 **"WARNING: This product contains a chemical known to the State of
18 California to cause cancer";**

19 2.3 The warnings referenced in Section 2.2 shall be prominently placed
20 on or near the Products at the point of sale with such conspicuousness, as compared with
21 other words, statements, designs or devices in proximity of the location of the Products on
22 the stores shelf or on the label, as to render it likely to be read and understood by an
23 ordinary individual under customary conditions of purchase or use.

24 2.4 CENTURI acknowledges that each of the Products contain
25 nitromethane and DiPirro alleges that customary use or application of the Products is
26 likely to expose users to nitromethane. In the event that CENTURI obtains analytical,
27 risk assessment or other data ("Exposure Data") that shows an exposure to any or all
28 Products poses "no significant risk" as such standard is applicable and as each is defined
under Health & Safety Code §25249.10(c) and CENTURI seeks to limit or eliminate any
of the warning provisions required under this Consent Judgment, then CENTURI shall
provide DiPirro with ninety (90) days' prior written notice of its intent to limit or

1 eliminate the warning provisions under this Consent Judgment based on the Exposure
2 Data and shall provide DiPirro with all such supporting Exposure Data. Within ninety
3 (90) days of receipt of CENTURI's Exposure Data, DiPirro shall provide CENTURI with
4 written notice of his intent to challenge the Exposure Data (in the event that he chooses to
5 make such a challenge). If DiPirro fails to provide CENTURI written notice of his intent
6 to challenge the Exposure Data within ninety (90) days of receipt of CENTURI's notice
7 and the Exposure Data, DiPirro shall waive all rights to challenge the Exposure Data, and
8 CENTURI shall be entitled to limit or eliminate the warning provisions required under
9 this Agreement with respect to those Product(s) to which the Exposure Data applies. If
10 DiPirro timely notifies CENTURI of his intent to challenge the Exposure Data, DiPirro
11 and CENTURI (a) may stop its efforts to eliminate the warnings upon notice to DiPirro
12 with no further liability or obligations or (b) shall negotiate in good faith for a period not
13 to exceed thirty (30) days following receipt of CENTURI's notice to attempt to reach a
14 settlement of this issue. If a settlement is not reached, DiPirro and CENTURI agree to
15 submit such challenge to the Superior Court for determination, pursuant to the court's
16 continuing jurisdiction of this matter under C.C.P. §664.6 and this Consent
17 Judgment. The prevailing party shall be entitled to reasonable attorneys' fees and costs
18 associated with bringing a motion brought under this paragraph to the court for
19 determination. Should CENTURI so request, DiPirro shall not unreasonably withhold
20 his consent to modifying or eliminating the warning program set forth in Sections 2.2-2.3
21 herein to make it consistent with the warning program applicable to other nitromethane
22 fuel products substantially similar to the nitromethane Products.

23 3. MONETARY PAYMENTS

24 3.1 Payment Pursuant To Health & Safety Code §25249.7(b).

25 Pursuant to Health & Safety Code §25249.7(b), CENTURI shall pay a civil
26 penalty of \$2,000. The payment of \$2,000 shall be paid within five (5) calendar days of
27 the Effective Date and shall be held in trust by DiPirro's counsel until the Alameda
28 County Superior Court approves and enters the Consent Judgment. The penalty payment
is to be made payable to "Chanler Law Group In Trust For Michael DiPirro."

1 3.2 Any penalty monies received shall be apportioned by DiPirro in
2 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the
3 State of California's Department of Toxic Substances Control. DiPirro shall bear all
4 responsibility for apportioning and paying to the State of California the appropriate civil
5 penalties paid in accordance with this paragraph. In the event this Consent Judgment is
6 not entered, any payment made pursuant to this Section shall be returned to CENTURI,
7 with interest thereon at a rate of six percent (6%) per annum, within five (5) calendar days
8 of notice of the Court's rejection of this proposed Consent Judgment.

9 3.3 CENTURI understands that the payment schedule as stated in this
10 Consent Judgment is a material factor upon which DiPirro has relied in entering into this
11 Consent Judgment. CENTURI agrees that all payments will be made in a timely manner
12 in accordance with the payment due dates. CENTURI will be given a five (5) calendar
13 day grace period from the date payment is due. CENTURI agrees to pay Michael DiPirro
14 a \$250 per calendar day fee for each day the payment is received after the grace period
15 ends. For purposes of this paragraph, each new day (requiring an additional \$250
16 payment) will begin at 5 p.m. (PST).

17 4. **REIMBURSEMENT OF FEES AND COSTS**

18 4.1 **Reimbursement of Fees and Costs.** The parties acknowledge that
19 DiPirro offered to resolve the dispute without reaching terms on the amount of fees and
20 costs to be reimbursed, thereby leaving this open issue to be resolved after the material
21 terms of the agreement had been reached, and the matter settled. CENTURI then
22 expressed a desire to resolve the fee and cost issue concurrently with other settlement
23 terms, so the parties tried to reach an accord on the compensation due to DiPirro and his
24 counsel under the private attorney general doctrine codified at C.C.P. §1021.5.

25 4.2 CENTURI shall reimburse DiPirro and his counsel for his fees and
26 costs, incurred as a result of investigating, bringing this matter to CENTURI's attention,
27 litigating and negotiating a settlement in the public interest. CENTURI shall pay \$18,000
28 for all attorneys' fees, expert and investigation fees, and litigation costs. CENTURI
agrees to pay the total sum of \$18,000 within five (5) calendar days of the Effective Date.

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

6 4.3 CENTURI understands that the payment schedule as stated in this
7 Consent Judgment is a material factor upon which DiPirro and his counsel have relied in
8 entering into this Consent Judgment. CENTURI agrees that all payments will be made in
9 a timely manner in accordance with the payment due dates. CENTURI will be given a
10 five (5) calendar day grace period from the date payment is due. CENTURI agrees to pay
11 Michael DiPirro and his counsel a \$250 per calendar day fee for each day the payment is
12 received after the grace period ends. For purposes of this paragraph, each new day
13 (requiring an additional \$250 payment) will begin at 5 p.m. (PST).

14 4.4 **Additional Fees and Costs in Seeking Judicial Approval.** The
15 parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
16 may be required to obtain judicial approval of this Agreement. Accordingly, if one is
17 required, the parties have agreed to file a Joint Motion to Approve the Agreement shortly
18 after the California Attorney General's Office thirty-day review period has expired. (See
19 paragraph 14 below). Pursuant to CCP § 1021.5, Centuri agrees to reimburse DiPirro and
20 his counsel for their reasonable fees and costs incurred in seeking judicial approval of this
21 Agreement. Such additional fees or costs relating to achieving settlement approval for
22 this Agreement include, but are not limited to: drafting and filing a brief in support of
23 such a Motion to Approve Settlement; any appearance made before the Court related to
24 such approval; any further editing and finalizing of the Agreement to respond to any
25 concerns expressed by any public enforcer or the Court; corresponding or otherwise
26 communicating with opposing counsel on this subject; any retention of one or more
27 experts if scientific issues become a focal point during the approval process; and
28 presenting of the Agreement (or any modifications thereof) to the California Attorney
General's Office for further comment.

1 DiPirro and his counsel expressly agree that Centuri's liability for payment
2 due under this paragraph shall not exceed \$9,000. In the event that any public enforcer
3 (including the California Attorney General's Office) objects or otherwise comments to
4 one or more provisions of this Agreement, Centuri agrees to use its best efforts to support
5 each of the terms of the Agreement, as well as to seek judicial approval of this
6 Agreement.

7 Centuri's payment of DiPirro's legal fees and costs under this paragraph
8 shall be due within ten (10) calendar days after receipt of both notice of the Court's
9 approval of the Agreement and a billing statement from DiPirro ("Additional Fee
10 Claim"). Payment of the Additional Fee Claim shall be made payable to the "Chanler
11 Law Group." Centuri has the right to object to DiPirro's reimbursement request and may
12 submit the resolution of this issue to the American Arbitration Association (AAA) in
13 Northern California to determine the reasonableness of the additional fees and costs
14 sought, provided that an arbitration claim has been filed with AAA and served on DiPirro
15 within ten (10) calendar days following DiPirro's service of the Additional Fee Claim on
16 Centuri. If an arbitration notice is not filed with AAA in a timely manner, DiPirro may
17 file a motion, pursuant to CCP §1021.5, with the Court seeking the fees and costs
18 incurred as set forth in this paragraph.

19 5. RELEASE OF ALL CLAIMS

20 5.1 Michael DiPirro's Release Of CENTURI. In further consideration
21 of the promises and agreements herein contained, and for the payments to be made
22 pursuant to Sections 3 and 4, Michael DiPirro, on behalf of himself, his agents,
23 representatives, attorneys and/or assignees, and in the interest of the general public,
24 hereby waives all rights to institute or participate in, directly or indirectly, any form of
25 legal action, and releases all claims, including, without limitation, all actions, causes of
26 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
27 penalties, losses or expenses (including investigation fees, expert fees and attorneys' fees
28 and other costs, other than those stated herein) of any nature whatsoever, whether known
or unknown, fixed or contingent (collectively, "Claims"), against CENTURI and any of

1 its parent companies, divisions, subdivisions, subsidiaries (and the predecessors,
2 successors and assigns of any of them), and its respective officers, directors, attorneys,
3 representatives, shareholders, partners, agents and employees (collectively, CENTURI
4 Releasees"). This waiver and release shall pertain only to Claims arising under
5 Proposition 65 or Business & Professions Code section 17200, *et seq.*, related to the
6 CENTURI Releasees' alleged failure to warn about exposures on or before the Effective
7 Date to the Listed Chemical contained in or produced by the customary use of any of the
8 Products. It is specifically understood and agreed that CENTURI's compliance with the
9 terms of this Consent Judgment resolves all issues and liability, now and in the future,
10 concerning the CENTURI Releasees' compliance with the requirements of Proposition 65
11 or Business and Professions Code section 17200, *et seq.* as to the Products.

12 **5.2 DiPirro's Release of "Downstream Persons."** In further
13 consideration of the promises and agreements herein contained, and for the payments to
14 be made pursuant to Sections 3 and 4, Michael DiPirro, on behalf of himself, his agents,
15 representatives, attorneys and/or assignees, and in the interest of the general public,
16 further waives all rights to institute or participate in, directly or indirectly, any form of
17 legal action, and releases all Claims, as defined above, against each distributor,
18 wholesaler, auctioneer, retailer, dealer, customer, owner, operator, purchaser, lessor,
19 lessee, renter, or user of the Products, or any of their respective parents, divisions,
20 subdivisions, subsidiaries (and the predecessors, successors and assigns of any of them),
21 and their respective officers, directors, attorneys, representatives, shareholders, partners,
22 agents and employees (collectively, "Downstream Persons"). This waiver and release
23 shall pertain only to Claims arising under Proposition 65 or Business & Professions Code
24 section 17200, *et seq.*, related to the Downstream Persons' alleged failure to warn about
25 exposures on or before the Effective Date to the Listed Chemical contained in or
26 produced by the customary use of any of the Products. It is specifically understood and
27 agreed that this Consent Judgment resolves all issues and liability, now and in the future,
28 concerning the Downstream Persons' compliance with the requirements of Proposition 65
or Business and Professions Code section 17200, *et seq.* as to the Products.

1 **CENTURI's Release of Michael DiPirro.** CENTURI waives all
2 rights to institute any form of legal action against DiPirro and his attorneys or
3 representatives for all actions taken or statements made on or before the Effective Date by
4 Michael DiPirro and his attorneys or representatives, in the course of seeking
5 enforcement of Proposition 65 or Business & Professions Code section 17200, *et seq.*,
6 against CENTURI.

7 **6. CENTURI SALES DATA.**

8 CENTURI understands that the sales data provided to counsel for DiPirro
9 by CENTURI was a material factor upon which DiPirro has relied to determine the
10 amount of payments made pursuant to Health & Safety Code §25249.7(b) in this
11 Agreement. To the best of CENTURI's knowledge, the sales data provided is true and
12 accurate. In the event that, within sixty (60) days of the execution of this Agreement,
13 DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the
14 sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve
15 the matter within ten (10) days of Centuri's receipt of notice from DiPirro of his intent to
16 challenge the accuracy of the sales data. For purposes of this Agreement, sales data shall
17 not be considered materially inaccurate if that data either reports sales within five percent
18 (5%) under the actual sales or overstates actual sales in any amount. If this good faith
19 attempt fails to resolve the dispute, DiPirro shall have the right to vacate this Consent
20 Judgment and re-institute an enforcement action against CENTURI, provided that all
21 sums paid by CENTURI pursuant to paragraphs 2 and 3 are returned to CENTURI within
22 ten (10) days from the date on which DiPirro notifies CENTURI of his intent to rescind
23 this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled
24 for the period between the date DiPirro filed the instant action and the date DiPirro
25 notifies CENTURI that he is rescinding this Agreement pursuant to this Paragraph,
26 provided that in no event, shall any statute of limitations be tolled beyond four (4) years
27 from the date this action was filed.

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1 **6. COURT APPROVAL.**

2 If this Consent Judgment is not approved and entered by the Court with 120
3 days of the Effective Date, it shall be deemed null and void as of the one hundred twenty-
4 first (121st) day after the Effective Date and cannot be used in any proceeding.

5 **7. SEVERABILITY.**

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

9 **8. ATTORNEY'S FEES.**

10 In the event that a dispute arises with respect to any provision(s) of this
11 Agreement, (including, but not limited to, disputes arising from the late payments
12 provisions in paragraphs 3 and 4), the prevailing party shall be entitled to recover costs
13 and reasonable attorneys' fees.

14 **9. GOVERNING LAW.**

15 The terms of this Agreement shall be governed by the laws of the State of
16 California. In the event that Proposition 65 is repealed or is otherwise rendered
17 inapplicable by reason of law generally, or as to the Products specifically, CENTURI
18 shall have no further obligations pursuant to this Consent Judgment with respect to, and
19 to the extent that, those Products are so affected.

20 **10. NOTICES.**

21 Any requirement for notice to Michael DiPirro shall be satisfied by sending
22 correspondence via first class mail to:

23 David R. Bush or Jennifer Henry, Esq.
24 Bush & Henry
25 4400 Keller Ave., Suite 200
Oakland, CA 94605-4229
(510) 577-0747

26 All correspondence to CENTURI shall be sent via first class mail to:

27 Barry Tunick, President
28 CENTURI CORPORATION
1295 H Street
Penrose, Colorado 81240

With a copy to:

Thomas W. Pulliam, Jr.
Preuss Shanagher Zvoleff & Zimmer
225 Bush Street, 15th Floor
San Francisco, CA 94104
(415) 397-1730

It is the responsibility of each party to this Agreement to notify the other party of any changes to their respective addresses.

11. NO ADMISSIONS:

Nothing in this Consent Judgment shall constitute or be construed as an admission by CENTURI of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by CENTURI of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by CENTURI. CENTURI reserves all of its rights and defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or otherwise affect CENTURI's obligations, responsibilities and duties under this Consent Judgment.

12. ENTIRE AGREEMENT; MODIFICATION:

This Consent Judgment constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed, and supersedes all prior agreements and understandings between the parties. This Consent Judgment may be modified only upon the written agreement of the parties and upon entry of a modified or amended Consent Judgment by the Court, or upon motion by any party as provided by law and upon entry of an amended Consent Judgment by the court.

13. COUNTERPARTS; FACSIMILE SIGNATURES:

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

1 **14. COMP. ANCE WITH REPORTING REQ IREMENTS (HEALTH &**
2 **SAFETY CODE §25249.7(f).**

3 The parties acknowledge that the reporting provisions of Health & Safety
4 Code §25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with
5 that section by submitting the required reporting form to, and serving a copy of this
6 Consent Judgment on the California Attorney General's Office within two (2) business
7 days after the parties execute this Consent Judgment. Following the expiration of the
8 Attorney General's thirty day review period, counsel for DiPirro shall submit the Consent
9 Judgment to the Alameda County Superior Court in accordance with the requirements of
10 Health and Safety Code section 25249.7(f) and its implementing regulations, unless the
11 parties cannot agree that all of the Attorney General's objections, if any, cannot be
12 reasonably cured.

13 **15. AUTHORIZATION.**

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

17 **AGREED TO:**

AGREED TO:

18 DATE: _____

DATE: _____

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21 Michael DiPirro
PLAINTIFF

Centuri Corporation
DEFENDANT

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Thomas W. Pulliam, Jr.
Attorneys for Defendant
CENTURI CORPORATION

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December 19, 2001 - SFE

1 14. COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH &
2 SAFETY CODE §25249.7(D).

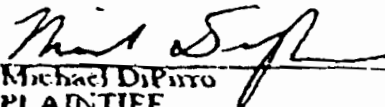
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11 parties cannot agree that all of the Attorney General's objections, if any, cannot be
12 reasonably cured.

13 15. AUTHORIZATION.

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

17 AGREED TO:
18 DATE: 12/20/01

AGREED TO:
DATE: _____

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20 Michael DiPiro
21 PLAINTIFF

Century Corporation
DEFENDANT

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Dennis E. Funderberg
225 Bush Street, 15th Floor
San Francisco, California 94104
Telephone: 415.397.1122

1 14. COMPLIANCE WITH REPORTING REQUIREMENTS (HEALTH &
2 SAFETY CODE §25249.7(f).

3 The parties acknowledge that the reporting provisions of Health & Safety
4 Code §25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with
5 that section by submitting the required reporting form to, and serving a copy of this
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7 days after the parties execute this Consent Judgment. Following the expiration of the
8 Attorney General's thirty day review period, counsel for DiPirro shall submit the Consent
9 Judgment to the Alameda County Superior Court in accordance with the requirements of
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11 parties cannot agree that all of the Attorney General's objections, if any, cannot be
12 reasonably cured.

13 15. AUTHORIZATION.

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

17 AGREED TO:
18 DATE: _____

AGREED TO:
DATE: 12/19/2001

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21 Michael DiPirro
PLAINTIFF

Benny T. ...
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28 Centuri Corporation
DEFENDANT

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APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: Dec 21 2001

DATE: _____

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

Thomas W. Pulliam, Jr.
Attorneys for Defendant
CENTURI CORPORATION

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December 19, 2001: SFE

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APPROVED AS TO FORM:

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DATE: _____

DATE December 25, 2001

David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO

THOMAS W. PULLIAM, JR.

Thomas W. Pulliam, Jr.
Attorneys for Defendant
CENT JRI CORPORATION

11-DOCS-50699-1001 Final Consent Judgment 12/19/01 wpd

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