

1 Gregory M. Sheffer, State Bar No. 173124
Mia Mattis, State Bar No. 191027
2 SHEFFER & CHANLER LLP
160 Sansome Street, 2nd Floor
3 San Francisco, CA 94104-3706
Tel: (415) 434-9111
4 Fax: (415) 434-9115

5 Attorneys for Plaintiff
MICHAEL DIPIRRO

6 Gregory M. Bergman, Esq., State Bar No. 065196
7 Daphne M. Anneet, Esq., State Bar No. 175414
BERGMAN & DACEY, INC.
8 10880 Wilshire Boulevard, Suite 900
Los Angeles, CA 90024-4101
9 Tel: (310) 470-6110
Fax: (310) 474-0931

10 Attorneys for Defendant
11 LOCTITE CORPORATION, Now Known as
HENKEL-LOCTITE CORPORATION
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
15 UNLIMITED CIVIL JURISDICTION
16

17 MICHAEL DIPIRRO,) No. 01-035170
18)
Plaintiff,)
19)
v.) CONSENT JUDGMENT
20)
LOCTITE COPORATION; and DOES 1)
through 1000,)
21)
Defendants.)
22)

23 This Consent Judgment ("Agreement" or "Consent Judgment")
24 is entered into by and between Michael DiPirro and Loctite
25 Corporation, now known as Henkel- Loctite Corporation,
26 (hereinafter "LOCTITE"), as of March 7, 2003 (the "Effective
27 Date"). The parties agree to the following terms and
28 conditions:

1
2 **WHEREAS :**

3 A. Michael DiPirro is an individual residing in
4 San Francisco, California;

5 B. LOCTITE is a company that currently
6 manufactures, distributes and sells certain specialty
7 products;

8 C. Michael DiPirro alleges that LOCTITE
9 manufactures, distributes and sells certain lubricant products
10 that contain mineral oils and that such mineral oils contain
11 chemicals listed as carcinogens by the State of California
12 ("the Listed Chemical");

13 D. LOCTITE asserts that the mineral oils it
14 utilizes in its lubricant products do not contain chemicals
15 that are listed as carcinogens by the State of California
16 because LOCTITE'S lubricant products have been either severely
17 hydrotreated or refined utilizing methodologies that are
18 generally accepted in the scientific community to remove any
19 potential carcinogens;

20 E. A list of the lubricant products manufactured,
21 distributed or sold by LOCTITE that contain mineral oils
22 bearing CAS No. 64742-52-5 ("PRODUCTS") that are the subject
23 to this Consent Judgment is set forth in Exhibit "A";

24 F. On October 5, 2001, Michael DiPirro first
25 served LOCTITE and other public enforcement agencies with a
26 document entitled "60-Day Notice of Violation" which provided
27 LOCTITE and such public enforcers with notice that LOCTITE was
28 purportedly in violation of Health & Safety Code §25249.6 for

1 allegedly failing to warn purchasers that certain products it
2 sells in California expose users to the Listed Chemical; and

3 G. On December 20, 2001, Michael DiPirro filed a
4 complaint entitled Michael DiPirro v. Loctite Corporation et
5 al. in the Alameda County Superior Court, naming LOCTITE as a
6 defendant and alleging violations of Business & Professions
7 Code §17200, Business and Professions Code §17500 and Health &
8 Safety Code §25249.6 in the interest of the general public in
9 California who have been exposed to the Listed Chemical
10 contained in certain products that LOCTITE manufactures,
11 distributes and sells.

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

20 **NOW THEREFORE, MICHAEL DIPIRRO AND LOCTITE AGREE AS FOLLOWS:**

21 1.0 LOCTITE agrees that, beginning on April 30,
22 2003, it shall not knowingly ship any PRODUCT bearing CAS No.
23 64742-52-5 into a consumer market channel in the State of
24 California that contains mineral oils listed as carcinogens by
25 the State of California unless such products bear one of the
26 following two health hazard warnings, or as the state of
27 California shall prescribe:

28 **"WARNING: This product contains mineral oil, a
substance known to the State of**

1 **California to cause cancer.";**

2 or

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

6 1.1 The warning statement shall be placed on
7 the Product label with such conspicuousness (as compared with
8 other words, statements, designs or devices), as to render it
9 likely to be read and understood by an ordinary individual
under customary conditions of purchase or use.

10 1.2 It is expressly understood by the parties
11 that the phrase "mineral oils listed as a carcinogen by the
12 State of California" shall mean any mineral oil that is
13 tested: (1) by a third party laboratory (which is certified or
14 meets appropriate criteria to ensure the QA/QC of the
15 laboratory) using the IP-346 method of detection for which the
16 IP-346 value is 3.0% or more by weight, or such other
17 scientifically acceptable test which may be devised from time
18 to time (the "threshold level".)

19 1.3 If LOCTITE intends to demonstrate that one
20 or more of the PRODUCTS that it presently sells does not
21 contain mineral oils that are considered carcinogens by the
22 State of California above the threshold level, on or before
23 April 30, 2003, for each PRODUCT for which LOCTITE seeks an
24 exemption, LOCTITE shall provide DiPirro with a declaration
25 attesting that it has received written representations from
26 the pertinent suppliers that the mineral oils in each PRODUCT
27 (1) fall below the threshold level utilizing the IP-346 test
28 methodology; (2) have been severely hydrotreated; (3) have been

1 severely refined; and/or(4)do not contain carcinogenic
2 components.

3 1.4 If it is determined that any of the
4 PRODUCTS contain mineral oils that are considered carcinogens
5 by the State of California, LOCTITE agrees to voluntarily and
6 in good faith evaluate the feasibility of substituting the
7 mineral oil constituent with a mineral oil that falls below
8 the threshold level.

9 2. Payment Pursuant To Health & Safety Code
10 §25249.7(b). The parties believe that no penalties are
11 warranted in this case because Loctite relied on written
12 information from its raw material suppliers that the oils were
13 adequately hydrotreated or refined to remove the carcinogenic
14 materials from the ingredient. In light of this (and other)
15 factors enumerated in Health & Safety Code §25249.7(b),
16 LOCTITE shall not be responsible for any civil fines.

17 3. Reimbursement Of Fees And Costs. The parties
18 acknowledge that, once the injunctive relief provisions and
19 other monetary terms had been resolved, DiPirro and his
20 counsel offered to resolve the issue of reimbursement of
21 attorneys' fees and costs through a noticed motion pursuant to
22 C.C.P. §1021.5. LOCTITE then expressed a desire to resolve
23 the fee and cost issue shortly after the other settlement
24 terms had been finalized. The parties then attempted to (and
25 did) reach an accord on the compensation due to DiPirro and
26 his counsel under the private attorney general doctrine
27 codified at C.C.P. §1021.5 for all work performed through the
28 Effective Date of the Agreement.

1 Pursuant to C.C.P. §1021.5, LOCTITE agrees to reimburse
2 DiPirro and his counsel for their reasonable attorneys' fees
3 and costs incurred as a result of investigating, litigating
4 and negotiating a settlement in the public interest in the
5 amount of \$7,250.00. LOCTITE agrees to pay the total sum of
6 \$7,250.00 within five (5) calendar days of the Effective Date.

7 Payment should be made payable to the "Sheffer & Chanler
8 LLP". If the Agreement is not approved by the Court, DiPirro
9 will return all funds, with interest thereon at the prevailing
10 federal funds rate (currently set at 1.25%), within ten (10)
11 calendar days of notice of the Court's final decision.

12 3.1 Additional Fees and Costs in Seeking Judicial
13 Approval. The parties acknowledge that, pursuant to recent
14 interpretations of Health & Safety Code §25249.7, a noticed
15 motion is required to obtain judicial approval of this
16 Agreement. Accordingly, the parties agree to use their best
17 efforts to file a *Joint Motion to Approve the Agreement* within
18 a reasonable period of time after execution of this Agreement.
19 As part of its best efforts commitment, LOCTITE agrees to
20 transmit a draft of the moving papers for the approval within
21 ten (10) calendar days of the Effective Date of this
22 Agreement. It is understood that DiPirro may, in his sole
23 discretion, file the *Motion to Approve* on his own. Pursuant
24 to C.C.P. §1021.5, LOCTITE agrees to reimburse DiPirro and his
25 counsel for their reasonable fees and costs incurred in
26 seeking judicial approval of this Agreement, to the extent
27 described in paragraph 3.2, below.

28 3.2 If no opposition to the motion to approve (nor

1 objection to the terms of the agreement) is filed or otherwise
2 transmitted by any third party, LOCTITE agrees to reimburse
3 DiPirro under Paragraph 3.1, for additional reasonable fees
4 and costs in an amount not to exceed \$2,750.00.

5 3.3 In the event that any third party, including
6 any public enforcer, objects or otherwise comments to one or
7 more provisions of this Agreement, LOCTITE agrees to use its
8 best efforts to support each of the terms of the Agreement, as
9 well as to seek judicial approval of this Agreement.

10 4. Michael DiPirro's Release Of LOCTITE. Michael
11 DiPirro, by this Agreement, on behalf of himself, his agents,
12 representatives, attorneys, assigns and in the interest of the
13 general public, waives all rights to institute or participate
14 in, directly or indirectly, any form of legal action, and
15 releases all claims, liabilities, obligations, losses, costs,
16 expenses, fines and damages, against LOCTITE and its
17 distributors, customers, directors, officers, employees,
18 successors and assigns, whether under Proposition 65 or the
19 Business & Profession Code §17200 and §17500 based on
20 LOCTITE's alleged failure to warn about exposure to (and
21 identify the presence of) of mineral oil contained in any of
22 LOCTITE'S PRODUCTS or formaldehyde in any of LOCTITE'S
23 silicone sealant products.

24 5. LOCTITE's Release Of Michael DiPirro. LOCTITE,
25 by this Agreement, waives all rights to institute any form of
26 legal action against Michael DiPirro or his attorneys or
27 representatives, for all actions or statements made by Michael
28 DiPirro, and his attorneys or representatives, in the course

1 of seeking enforcement of Proposition 65, Business &
2 Profession Code §17200 and Business & Professions Code §17500
3 against LOCTITE.

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

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

25 8. Severability. In the event that any of the
26 provisions of this Agreement are ultimately held by a court to
27 be unenforceable, the validity of the enforceable provisions
28 shall not be adversely affected.

1 9. Attorney's Fees. In the event that a dispute
2 arises with respect to any provision(s) of this Agreement
3 (including, but not limited to, disputes arising from the
4 payments to be made under this Agreement), the prevailing
5 party shall be entitled to recover costs and reasonable
6 attorneys' fees. This provision, however, shall not apply to
7 DiPirro and his counsel's additional fees set forth in
8 paragraph 3 which are governed by the principles codified at
9 C.C.P. § 1021.5.

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

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

14 Gregory M. Sheffer
15 Sheffer & Chanler LLP
16 160 Sansome Street, 2nd Floor
 San Francisco, CA 94104
 (415) 434-9111

17 All correspondence to LOCTITE shall be mailed
18 to:

19 Gregory M. Bergman or
20 Daphne M. Anneet
 BERGMAN & DACEY, INC.
21 10880 Wilshire Boulevard, Suite 900
 Los Angeles, CA 90024-4101
22 Tel: (310) 470-6110

23 12. Compliance With Reporting Requirements (Health
24 & Safety Code §25249.7(f)). The parties acknowledge that the
25 reporting provisions of Health & Safety Code §25249.7(f) apply
26 to this Consent Judgment. Counsel for DiPirro shall comply
27 with that section by submitting the required reporting form
28 to, and serving a copy of this Agreement on, the California

1 Attorney General's Office when noticing the Motion to Approve
2 hearing.

3 13. Counterparts and Facsimile. This Agreement may
4 be executed in counterparts and facsimile, each of which shall
5 be deemed an original, and all of which, when taken together,
6 shall constitute one and the same document.

7 14. Authorization. The undersigned are authorized
8 to execute this Agreement on behalf of their respective
9 parties and have read, understood and agree to all of the
10 terms and conditions of this Agreement.

11
12 **AGREED TO:**

13 DATE: 4/7/03

14 
15 _____
16 Michael DiPirro
PLAINTIFF

12 **AGREED TO:**

13 DATE: March 24, 2003

14 
15 _____
16 Henkel-Loctite Corporation
DEFENDANT

17 **APPROVED AS TO FORM:**

18
19 DATE: April 7 2003

20 
21 _____
22 Gregory Sheffer, Esq.
23 Attorneys for Plaintiff
MICHEAL DIPIRRO

17 **APPROVED AS TO FORM:**

18
19 DATE: March 21, 2003

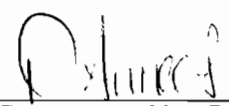
20 
21 _____
22 Gregory M. Bergman, Esq.
23 Daphne M. Anneet, Esq.
24 Attorneys for Defendant
25 HENKEL-LOCTITE CORPORATION

EXHIBIT A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gear, Chain and Cable Lubricant
Heavy Duty Antiseize
Caterpillar Antiseize
Graphite 50 Antiseize
Marine Grade Antiseize
Aerosol Nickel Antiseize
Nickel Antiseize
Silver Grade Antiseize
Lubricant C-200
White Antiseize
C5A Copper Grade Antiseize stick
Product 705
Silver Antiseize Aerosol
Silver Grade Antiseize stick
Antiseize 767
C5A Antiseize
Silver Antiseize