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8 Attorneys for Plaintiff  
MICHAEL DIPIRRO

ENDORSED  
FILED  
ALAMEDA COUNTY

APR 26 2001

CLERK OF THE SUPERIOR COURT  
By NANCY REGAS  
Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF ALAMEDA

14 MICHAEL DIPIRRO, ) No. H216080-3  
15 )  
16 Plaintiff, )  
17 ) CONSENT JUDGMENT  
18 v. )  
19 )  
20 MULTIQUIP, INC.; ITOCHU )  
INTERNATIONAL, INC.; and DOES 1 )  
through 1000, )  
21 Defendants. )  
\_\_\_\_\_ )

22 This Consent Judgment ("Agreement") is entered into  
23 by and between Michael DiPirro, a California citizen, and  
24 Multiquip, Inc., a California corporation ("Multiquip"), as of  
25 April 18, 2001 (the "Effective Date"). The parties agree to  
26 the following terms and conditions:

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1     **WHEREAS:**

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

7             B.     Multiquip is a company that currently  
8     manufactures, distributes, rents and/or sells certain welding  
9     machines, power sources and other welding equipment in the  
10    State of California that contain, or whose customary use and  
11    application may produce fumes or gases which contain,  
12    chemicals listed pursuant to Proposition 65 (California Health  
13    & Safety Code §25249.5 et seq.) including nickel and nickel  
14    compounds, chromium (hexavalent compounds) and carbon monoxide  
15    (the "Listed Chemicals");

16            C.     The products that contain, or whose customary  
17    use and application may produce fumes or gases which contain,  
18    one or more of the "Listed Chemicals" and which are covered by  
19    this Agreement are set forth in Exhibit A (the "Products").  
20    The Products have been manufactured, distributed, rented  
21    and/or sold by Multiquip for use in California since at least  
22    August 4, 1996; and

23            D.     On August 4, 2000, Michael DiPirro first served  
24    Multiquip and other public enforcement agencies with a  
25    document entitled "60-Day Notice of Violation" which provided  
26    Multiquip and such public enforcers with notice that Multiquip  
27    was allegedly in violation of Health & Safety Code §25249.6

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1 for allegedly failing to warn purchasers that certain products  
2 it sells, rents or otherwise offers for use in California  
3 expose users to Proposition 65-listed chemicals; and

4 E. On or about October 20, 2000, Michael DiPirro  
5 filed a complaint entitled Michael DiPirro v. Multiquip, Inc.;  
6 et al. in the Alameda County Superior Court, naming Multiquip  
7 as a defendant and alleging violations of Business &  
8 Professions Code §17200 and Health & Safety Code §25249.6 on  
9 behalf of individuals in California who allegedly have been  
10 exposed to the "Listed Chemicals" contained in or produced by  
11 certain Multiquip products.

12 F. Nothing in this Agreement shall be construed as  
13 an admission by Multiquip of any fact, finding, issue of law,  
14 or violation of law, nor shall compliance with this Agreement  
15 constitute or be construed as an admission by Multiquip of any  
16 fact, finding, conclusion, issue of law, or violation of law.

17 However, this paragraph shall not diminish or otherwise  
18 affect the obligations, responsibilities, and duties of  
19 Multiquip under this Agreement.

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

22 **1. Product Warnings.** Multiquip shall begin to  
23 initiate revisions to its health hazard warnings for its  
24 Products to provide the language set forth in the section 1.1  
25 below. Beginning on April 30, 2001, Multiquip agrees that it  
26 will not knowingly rent or sell (or cause to be rented or  
27 sold) any Products that contain, or produce fumes or gases

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1 that contain, the Listed Chemicals for sale in the State of  
2 California unless such Products comply with section 1.1 below:

3 **1.1** For all Products that contain, or produce  
4 fumes or gases that contain, nickel (and nickel compounds),  
5 chromium (hexavalent compounds) and carbon monoxide, such  
6 Products shall bear the following warning statement:

7 **"WARNING: This product contains or produces**  
8 **nickel (and nickel compounds),**  
9 **chromium (hexavalent compounds) and**  
10 **carbon monoxide, chemicals known to**  
11 **the State of California to cause**  
12 **cancer and birth defects (or other**  
13 **reproductive harm)";**

14 or

15 **"WARNING: This product contains or produces**  
16 **chemicals known to the State of**  
17 **California to cause cancer and birth**  
18 **defects (or other reproductive**  
19 **harm)";**

20 **1.2** For all Products that contain, or produce  
21 fumes or gases that contain, only one of the Listed Chemicals,  
22 or any combination of the Listed Chemicals, such Products  
23 shall bear the following warning statement:

24 **"WARNING: This product contains or produces one**  
25 **or more chemicals known to the State**  
26 **of California to cause cancer and**  
27 **birth defects (or other reproductive**  
28 **harm)";**

The warning statement shall be prominently  
placed upon the Product's label with such conspicuousness, as  
compared with other words, statements, designs or devices on  
the label as to render it likely to be read and understood by  
an ordinary individual under customary conditions of purchase  
or use.

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

2     **\$25249.7 (b)**. Pursuant to Health & Safety Code §25249.7(b),  
3     Multiquip shall pay a civil penalty of \$5,000.00 (five  
4     thousand dollars). The payment of \$5,000 shall be paid within  
5     five (5) calendar days of the Effective Date. The penalty  
6     payment is to be made payable to "Chanler Law Group In Trust  
7     For Michael DiPirro". Penalty monies shall be apportioned by  
8     DiPirro in accordance with Health & Safety Code §25192, with  
9     75% of these funds remitted to the State of California's  
10    Department of Toxic Substances Control.

11                   **3.     Reimbursement Of Fees And Costs.** The parties

12    acknowledge that DiPirro offered to resolve the dispute  
13    without reaching terms on the amount of fees and costs to be  
14    reimbursed, thereby leaving this open issue to be resolved  
15    after the material terms of the agreement had been reached,  
16    and the matter settled. Multiquip then expressed a desire to  
17    resolve the fee and cost issue concurrently with other  
18    settlement terms, so the parties tried to reach an accord on  
19    the compensation due to DiPirro and his counsel under the  
20    private attorney general doctrine codified at C.C.P. §1021.5.

21                   Multiquip shall reimburse DiPirro for his fees and  
22    costs, incurred as a result of investigating, bringing this  
23    matter to Multiquip's attention, litigating and negotiating a  
24    settlement in the public interest. Multiquip shall pay  
25    \$19,945.00 for all attorneys' fees, expert and investigation  
26    fees, and litigation costs. Multiquip agrees to pay the sum  
27    of \$19,945.00 within five (5) calendar days of the Effective  
28

1 Date. Payment should be made payable to the "Chanler Law  
2 Group".

3 **4. Michael DiPirro's Release Of Multiquip.**

4 Michael DiPirro, by this Agreement, on behalf of himself, his  
5 agents, representatives, attorneys, assigns and the citizens  
6 of the State of California, waives all rights to institute or  
7 participate in, directly or indirectly, any form of legal  
8 action, and releases all claims, liabilities, obligations,  
9 losses, costs, expenses, fines and damages, against Multiquip  
10 and its directors, officers, employees, affiliates, successors  
11 and assigns, whether under Proposition 65 or the Business &  
12 Profession Code §17200 et seq. based on Multiquip's alleged  
13 failure to warn about exposure to the Listed Chemicals  
14 contained in or produced by any of the Products.

15 This paragraph expressly excludes any waiver or  
16 release of any entity that engages in the business of renting  
17 or leasing any Product(s) listed on Exhibit A to individuals  
18 residing in the State of California.

19 **5. Multiquip's Release Of Michael DiPirro.**

20 Multiquip, by this Agreement, waives all rights to institute  
21 any form of legal action against Michael DiPirro and his  
22 attorneys or representatives, for all actions or statements  
23 made by Michael DiPirro, and his attorneys or representatives,  
24 in the course of seeking enforcement of Proposition 65 or  
25 Business & Profession Code §17200 against Multiquip.

26 **6. Court Approval.** If, for any reason, this  
27 Consent Judgment is not approved by the Court, this Agreement

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1 shall be deemed null and void.

2           **7. Multiquip Sales Data.** Multiquip understands  
3 that the rental and/or sales data provided to counsel for  
4 DiPirro by Multiquip was a material factor upon which DiPirro  
5 has relied to determine the amount of payments made pursuant  
6 to Health & Safety Code §25249.7(b) in this Agreement. To the  
7 best of Multiquip's knowledge, the rental and/or sales data  
8 provided is true and accurate. In the event that DiPirro  
9 discovers facts which demonstrate to a reasonable degree of  
10 certainty that the rental and/or sales data is materially  
11 inaccurate, the parties shall meet in a good faith attempt to  
12 resolve the matter within ten (10) days of Multiquip's receipt  
13 of notice from DiPirro of his intent to challenge the accuracy  
14 of the rental and/or sales data. If this good faith attempt  
15 fails to resolve DiPirro's concerns, DiPirro shall have the  
16 right to rescind the Agreement and re-institute an enforcement  
17 action against Multiquip, provided that all sums paid by  
18 Multiquip pursuant to paragraphs 2 and 3 are returned to  
19 Multiquip within ten (10) days from the date on which DiPirro  
20 notifies Multiquip of his intent to rescind this Agreement.  
21 In such case, all applicable statutes of limitation shall be  
22 deemed tolled for the period between the date DiPirro filed  
23 the instant action and the date DiPirro notifies Multiquip  
24 that he is rescinding this Agreement pursuant to this  
25 Paragraph.

26           **8. Product Characterization.** Multiquip  
27 acknowledges that each of the Products listed in Exhibit A  
28

1 contains, or in the customary use or application of the  
2 Products may produce fumes or gases that contain, nickel (and  
3 nickel compounds), chromium (hexavalent compounds) and carbon  
4 monoxide and Plaintiff alleges that the customary use or  
5 application of the Products is likely to expose users to  
6 nickel (and nickel compounds), chromium (hexavalent compounds)  
7 and carbon monoxide, substances known to the State of  
8 California to cause cancer and/or birth defects (or other  
9 reproductive harm). In the event that Multiquip obtains  
10 analytical, risk assessment or other data ("Exposure Data")  
11 that shows an exposure to any or all Products poses "no  
12 significant risk" or will have "no observable effect," as each  
13 such standard is applicable and as each is defined under  
14 Health & Safety Code §25249.10(c) and Multiquip seeks to  
15 eliminate the warnings, then Multiquip shall provide DiPirro  
16 with ninety (90) days prior written notice of its intent to  
17 limit or eliminate the warning provisions under this Agreement  
18 based on the Exposure Data and shall provide DiPirro with all  
19 such supporting Exposure Data. Within ninety (90) days of  
20 receipt of Multiquip's Exposure Data, DiPirro shall provide  
21 Multiquip with written notice of his intent to challenge the  
22 Exposure Data (in the event that he chooses to make such a  
23 challenge). If DiPirro fails to provide Multiquip written  
24 notice of his intent to challenge the Exposure Data within  
25 ninety (90) days of receipt of Multiquip's notice and the  
26 Exposure Data, DiPirro shall waive all rights to challenge the  
27 Exposure Data, and Multiquip shall be entitled to limit or

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1 eliminate the warning provisions required under this Agreement  
2 with respect to those Product(s) to which the Exposure Data  
3 applies. If DiPirro timely notifies Multiquip of his intent  
4 to challenge the Exposure Data, DiPirro and Multiquip (a) may  
5 stop its efforts to eliminate the warnings upon notice to  
6 DiPirro with no further liability or obligations or (b) shall  
7 negotiate in good faith for a period not to exceed thirty (30)  
8 days following receipt of Multiquip's notice to attempt to  
9 reach a settlement of this issue. If a settlement is not  
10 reached, DiPirro and Multiquip agree to submit such challenge  
11 to the superior court for determination, pursuant to the  
12 court's continuing jurisdiction of this matter under C.C.P.  
13 §664.6 and this Agreement. The prevailing party shall be  
14 entitled to reasonable attorneys' fees and costs associated  
15 with bringing a motion brought under this paragraph to the  
16 court for determination.

17           **9. Severability.** In the event that any of the  
18 provisions of this Agreement are held by a court to be  
19 unenforceable, the validity of the enforceable provisions  
20 shall not be adversely affected.

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

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

27           **12. Notices.** All correspondence to Michael DiPirro  
28

1 shall be mailed to:

2 David R. Bush or Jennifer Henry, Esq.  
3 Bush & Henry  
4 4400 Keller Ave., Suite 200  
Oakland, CA 94605-4229  
(510) 577-0747

5 or

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

9  
10 All correspondence to Multiquip shall be mailed  
to:

11 Michael Harris, Esq.  
12 Rogers & Harris  
13 9200 Sunset Boulevard, Suite 404  
Los Angeles, CA 90069-3506  
(310) 278-3142

14 **13. Compliance With Reporting Requirements.** The  
15 parties agree to comply with the reporting form requirements  
16 referenced in Health & Safety Code §25249.7(f). As of the  
17 Effective Date, the California Attorney General's reporting  
18 forms are not available. Multiquip represents, however, that  
19 its counsel will send a copy of this Agreement to the  
20 California Attorney General's Office prior to or concurrently  
21 with the presentation of the Consent Judgment to the Alameda  
22 County Superior Court.

23 **14. Counterparts and Facsimile.** This Agreement may  
24 be executed in counterparts and facsimile, each of which shall  
25 be deemed an original, and all of which, when taken together,  
26 shall constitute one and the same document.

27 **15. Authorization.** The undersigned are authorized  
28

1 to execute this Agreement on behalf of their respective  
2 parties and have read, understood and agree to all of the  
3 terms and conditions of this Agreement.  
4  
5

6 **AGREED TO:**  
7 **DATE:** 4/24/01

**AGREED TO:**  
**DATE:** \_\_\_\_\_

8  
9 *Michael DiPirro*

\_\_\_\_\_

10 Michael DiPirro  
11 PLAINTIFF

Multiquip, Inc.  
DEFENDANT

12  
13 **APPROVED AS TO FORM:**  
14 **DATE:** \_\_\_\_\_

**APPROVED AS TO FORM:**  
**DATE:** \_\_\_\_\_

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17 David Bush  
18 Attorneys for Plaintiff  
MICHAEL DIPIRRO

Michael Harris  
Attorneys for Defendant  
MULTIQUIP, INC.

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1 to execute this Agreement on behalf of their respective  
2 parties and have read, understood and agree to all of the  
3 terms and conditions of this Agreement.

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**AGREED TO:**

DATE: \_\_\_\_\_

Michael DiPirro  
PLAINTIFF


**AGREED TO:**

DATE: April 23, 2001

  
Multiquip, Inc.  
DEFENDANT


**APPROVED AS TO FORM:**

DATE: April 24, 2001

  
David Bush  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

**APPROVED AS TO FORM:**

DATE: April 23, 2001

  
Michael Harris  
Attorneys for Defendant  
MULTIQUIP, INC.

# **Exhibit A**

**EXHIBIT A**

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Welding Machines

CONSENT JUDGMENT