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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA
7 COUNTY OF ALAMEDA
8 UNLIMITED CIVIL JURISDICTION
9

11 MICHAEL DIPIRRO.

12 Plaintiff.

13 v.

14 ISI NORTH AMERICA, INC., and DOES 1-
15 150, inclusive.

16 Defendants.
17

Case No. RG16841427

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

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CONSENT JUDGMENT



1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff, Michael DiPirro (“DiPirro”)
4 on the one hand, and Defendant ISI North America, Inc. (“ISI”) on the other hand, with DiPirro and
5 Defendant individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 DiPirro is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 For purposes of this Consent Judgment, Defendant does not dispute that it employs ten or
12 more persons and is a person in the course of doing business for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition
14 65”).

15 **1.4 General Allegations**

16 DiPirro alleges that Defendant manufactures, imports, sells, or distributes for sale, in the state
17 of California, nitrous oxide cartridges/chargers containing nitrous oxide without first providing the
18 clear and reasonable exposure warning required by Proposition 65. Nitrous oxide is listed pursuant to
19 Proposition 65 as a chemical that is known to the state of California to cause birth defects or other
20 reproductive harm (hereinafter “Listed Chemical”).

21 **1.5 Product Description**

22 The products covered by this Consent Judgment are nitrous oxide cartridges/chargers
23 containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by
24 Defendant (collectively, the “Products”).

25 **1.6 Notices of Violation**

26 On or about April 12, 2016, DiPirro served Defendant ISI North America, Inc. and certain
27 requisite public enforcement agencies with a “60-Day Notice of Violation,” a document that
28 informed the recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to



1 warn its customers and consumers in California that the Products expose users to the Listed
2 Chemical. On or about April 20, 2017, DiPirro served Defendant ISI North America, Inc., other
3 notice recipients, and certain requisite public enforcement agencies with a "60-Day Notice of
4 Violation," a document that informed the recipients of DiPirro's allegation that the recipients violated
5 Proposition 65 by failing to warn their customers and consumers in California that the Products
6 expose users to the Listed Chemical. On or about May 17, 2018, DiPirro served Defendant ISI North
7 America, Inc., other notice recipients, and certain requisite public enforcement agencies with a
8 "Supplemental 60-Day Notice of Violation," a document that informed the recipients of DiPirro's
9 allegation that the recipients violated Proposition 65 by failing to warn their customers and
10 consumers in California that the Products expose users to the Listed Chemical. The three notices
11 identified above are collectively referred to as the "Notices." To the best of the Parties' knowledge,
12 no public enforcer has commenced and is diligently prosecuting the allegations set forth in the
13 Notices.

14 **1.7 Complaint**

15 On or about December 6, 2016, DiPirro filed the instant action against Defendant ISI North
16 America, Inc. for the alleged violations of Health & Safety Code § 25249.6 that are the subject of the
17 Notices. On or about March 21, 2019, DiPirro filed a first amended complaint against Defendant ISI
18 North America, Inc., ISI GmbH, Amazon.com, Inc., and Amazon.com, LLC. On April 22, 2019,
19 Defendant ISI North America, Inc. answered the first amended complaint. No other entity has
20 appeared in this action.

21 **1.8 No Admission**

22 Defendant denies the material, factual, and legal allegations contained in the Notices and
23 maintains that all of the products it has manufactured, sold, or distributed for sale in California,
24 including the Products, have been, and are, in compliance with all laws. Defendant denies that any
25 alleged exposures to nitrous oxide occurred, are occurring, or will occur at levels requiring
26 Proposition 65 warnings and deny that it violated Proposition 65. Nothing in this Consent Judgment
27 shall be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law,
28 or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an



1 admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the
2 same being specifically denied by Defendant. This section shall not, however, diminish or otherwise
3 affect Defendant's obligations, responsibilities, and duties under this Consent Judgment.

4 **2. INJUNCTIVE RELIEF: PRODUCT WARNINGS**

5 **2.1 Definitions.**

6 (a) For purposes of this Consent Judgment, the term "culinary channel" is defined to mean
7 any operation that stores, prepares, packages, serves, vends, or otherwise provides or offers food for
8 human consumption at the retail level to consumers, including but not limited to an operation where
9 food is consumed on or off the premises, regardless of whether there is a charge for the food, such
10 as a restaurant, bar, coffee shop, or other hospitality or food service enterprise or organization,
11 cooking school or cooking training program, cottage food or catering operation, care facility, or
12 culinary hobbyist, enthusiast, or home chef, as well as brick-and-mortar, catalog, and internet stores
13 that sell or offer for sale nitrous oxide whippers (in addition to the Products) intended for use by
14 such operations and individuals. By way of example and not limitation, sales of the Products to
15 such retailers as Williams Sonoma, Sur La Table, and restaurant supply stores are within the
16 culinary channel whether these retailers offer the Products for sale to consumers in brick-and-mortar
17 stores, online, or via catalog; and sales of the Products to such retailers as Macy's, Target, or Kohl's
18 are within the culinary channel when these retailers offer the Products for sale to consumers in their
19 brick-and-mortar stores or via catalog in sections of their brick-and-mortar stores or catalogs that
20 are focused on culinary uses.

21 (b) For purposes of this Consent Judgment, the term "industrial channel" is defined to mean
22 any business that uses the Products for operating equipment that it uses in its own operations for
23 non-culinary purposes; any business that uses the Products as a component part of an item (other
24 than a cream whipper) that the business manufactures or has manufactured for it; any business that
25 sells or offers the Products for sale to end users of such items in order to be used with such items;
26 any business that uses the Products for manufacturing and distributing medical equipment; as well
27 as brick-and-mortar stores, catalogs, and internet stores that offer the Products for sale to such
28 businesses.



1 (c) For purposes of this Consent Judgment, the terms culinary channel and industrial channel
2 do not include any online store that is not focused on products for culinary uses and from which
3 consumers in California can purchase the Products as well as a multitude of other products that are
4 not primarily for culinary use. By way of example and not of limitation, any sales of the Products
5 to such general online retailers as Amazon.com, Inc. or Amazon.com, LLC are not within the
6 culinary channel or the industrial channel, and neither are sales of the Products to such department
7 store retailers as Macy's, Target, or Kohl's, when the Products are offered for sale to consumers in
8 California through the online stores of such retailers that are not focused on products for culinary
9 use. But sales of Products to such department store retailers as Macy's, Target, or Kohl's are within
10 the culinary channel if they are offered through brick-and-mortar stores or catalogs in sections
11 focused on culinary uses or any online store that is focused on culinary uses.

12 (d) For purposes of this Consent Judgment, the terms culinary channel and industrial
13 channel do not include any retailer or distributor that has failed to satisfy ISI's standards for vetting
14 and authorizing retailers and distributors for the culinary and industrial channels.

15 (e) The injunctive relief agreed to in this Consent Judgment is not intended to have
16 precedential value in future Proposition 65 cases.

17 **2.2 Warnings and Instructions.** Within 60 days following the Court's approval of this
18 Consent Judgment, Defendant will provide one warning sign, substantially as provided in Exhibit
19 A, to each of its current customers that is either (1) a reseller of the Products to individual
20 consumers in California outside of the culinary channel and/or the industrial channel, or (2) a
21 distributor who distributes the Products to a reseller who sells the Products to individual consumers
22 in California outside of the culinary channel and/or the industrial channel. In the future, when
23 Defendant obtains an order for the Products from a new customer in either of these two categories,
24 then Defendant will provide that new customer with the same warning sign in conjunction with the
25 first order to the new customer. The warning signs will be accompanied by a letter, substantially as
26 provided in Exhibit B, instructing the customer as to its obligations and informing the customer that
27 failure to provide the required warning may subject the customer to an enforcement action in which
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1 the reseller may be forced to post the sign and provide other warnings, pay civil penalties of up to
2 \$2,500 per violation per day, and reimburse the attorney's fees of the enforcer.

3 **2.3 Internet Warnings.** For all Products that Defendant offers for sale directly to
4 consumers in California outside the culinary channel and the industrial channel via an internet store
5 that it operates or controls, it shall provide a warning for such Products by including the warning on
6 one or more of the following: (a) on the product display page; (b) using a clearly marked hyperlink
7 using the word "WARNING" on the product display page, which will take the user to a page or
8 popup screen in which the warning will be prominently featured on the top of the page so that a
9 consumer will not have to search for it; (c) by otherwise displaying the warning to the consumer
10 prior to purchase; or (d) by including a warning in the shipment to the California consumer. The
11 warning shall read substantially as follows (with language in brackets considered optional):

12
13 **WARNING: [Do not use for any other than the expressly stated**
14 **purpose. Do not inhale! Misuse can be physically**
15 **harmful and dangerous to your health.]**
16 **Use of this product can expose you to nitrous oxide, a**
17 **chemical known to the State of California to cause birth**
18 **defects or other reproductive harm. For more**
19 **information go to www.P65Warnings.ca.gov.**



20 **2.4 Additional Warnings.** In order to waive the second civil penalty under Section 3.2,
21 Defendant shall provide to each of its current customers to whom it has provided a warning sign in
22 accordance with Section 2.2, one sheet of multiple adhesive labels (stickers) bearing the warning
23 language set out below along with instructions that such warnings are to be affixed to the exterior
24 packaging of each unit of Products sold or intended to be sold to individual consumers in California
25 when sold through brick-and-mortar stores. In the future, when Defendant obtains an order for the
26 Products from a new customer for whom warning signs must be provided under Section 2.2, then
27 Defendant will provide that new customer with one sheet of such adhesive labels and instructions in
28 conjunction with the first order to the new customer. The instructions will note that each warning
label needs to be prominently placed with such conspicuousness as compared with other words,
statements, designs, or devices as to render it likely to be read and understood by an ordinary
individual under customary conditions before purchase or use and that the warning label shall not be



1 placed so as to obscure other safety information and user instructions printed on the exterior of the
2 package for the Products. The text of the warning shall be printed in black ink on a light
3 background, in a font that is easy to read and legible, but in no case less than a size 6 font. The
4 warning shall read substantially as follows (with language in brackets considered optional):



[CALIFORNIA] [PROPOSITION 65] WARNING: [Do not use for any other than the expressly stated purpose.] [Do not inhale!] [Misuse can be physically harmful and dangerous to your health.] Reproductive Harm — www.P65Warnings.ca.gov

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10 **3. MONETARY PAYMENTS**

11 **3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).**

12 Defendant shall make an initial civil penalty payment totaling \$24,000, in accordance with this
13 section, within five (5) calendar days of court approval of the parties' consent judgment. The penalty
14 payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) &
15 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
16 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to DiPirro in accordance
17 with Section 3.2 below. The penalty payment shall be remitted in accordance with the procedure set
18 out in Section 3.3.

19 **3.2 Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** On or
20 before the date that is 120 days following the Court's approval of this Consent Judgment, Defendant
21 shall pay a second civil penalty totaling \$24,000. The second civil penalty shall be waived in its
22 entirety if an officer of Defendant certifies in writing that as of the date that is 120 days following the
23 Court's approval of this Consent Judgment, Defendant will be providing the Additional Warnings as
24 set forth in Section 2.4 above. Such certification must be received by the Law Offices of David Bush
25 on or before the date that is 90 days following the Court's approval of this Consent Judgment. The
26 second civil penalty payment, if any, shall be apportioned in accordance with California Health &
27 Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining
28 25% of the penalty remitted to DiPirro in accordance with the procedure set out in Section 3.3.



1 **3.3 Payments.** Payments shall be delivered to the Law Offices of David Bush, 6761
2 Sebastopol Avenue, Suite 111, Sebastopol, CA 95472, within five (5) calendar days of court approval
3 of the parties' consent judgment, and shall be in the form of three checks for the following amounts,
4 totaling \$150,000, made payable to:

- 5 (a) "Law Offices of David Bush" in the amount of \$18,000 for payment to
6 OEHHA. David Bush agrees to forward such funds to OEHHA in a timely
7 manner. Alternatively, at Defendant's option, it can choose to deliver to the
8 Law Offices of David Bush a certified or cashier's check made payable to
9 "Office of Environmental Health Hazard Assessment."
10 (b) "Law Offices of David Bush" in the amount of \$6,000 as payment to Michael
11 DiPirro. David Bush agrees to forward such funds in a timely manner.
12 Alternatively, at Defendant's option, it can choose to deliver to the Law
13 Offices of David Bush a certified or cashier's check made payable to
14 "Michael DiPirro."
15 (c) "Law Offices of David Bush" in the amount of \$126,000, as payment for
16 attorneys' fees and costs pursuant to Section 4 below.

17 For any payment that is returned for insufficient funds, payment must be made by a cashier's
18 check within ten (10) calendar days of notification of insufficient funds, plus a 10% service fee.

19 **3.4 Issuance of 1099 Forms.** Defendant shall provide DiPirro's counsel with a separate
20 1099 form for each of its payments under this Agreement to:

- 21 (a) "Office of Environmental Health Hazard Assessment", P.O. Box 4010,
22 Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
23 (b) "Michael DiPirro," whose address and tax identification number shall be
24 furnished upon request after this Agreement has been fully executed by the
25 Parties for his portion of the civil penalties paid; and
26 (c) "Law Offices of David Bush," for fees and costs reimbursed pursuant to
27 Section 4.
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1 **4. REIMBURSEMENT OF FEES AND COSTS**

2 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of the agreement had been settled. Defendant then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The parties then attempted to (and did) reach an accord on the compensation due to
7 DiPirro and his counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
9 execution of this agreement. Defendant shall pay \$126,000 for fees and costs incurred as a result of
10 investigating, bringing this matter to Defendant’s attention, and negotiating a settlement in the public
11 interest. Defendant shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the
12 check payable to “Law Offices of David Bush,” and shall deliver payment pursuant to Section 3.3
13 above.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Releasees**

16 For purposes of this Consent Judgment, the term “Releasees” is defined to mean the following
17 entities and each of their officers, directors, attorneys, representatives, shareholders, subsidiaries,
18 affiliates, and divisions: Defendant ISI North America, Inc. (including, but not limited to, ISI North
19 America, Inc., ISI GmbH, and ISI Deutschland GmbH); each retailer to whom Defendant directly or
20 indirectly distributed or sold, or distributes or sells the Products, now or in the future; Amazon.com,
21 Inc.; Amazon.com, LLC; and each authorized distributor to whom Defendant directly or indirectly
22 distributed or sold, or distributes or sells the Products, now or in the future.

23 **5.2 DiPirro’s Public Release of Proposition 65 Claims**

24 DiPirro, acting on his own behalf and in the public interest, releases the Releasees, from all
25 claims for violations of Proposition 65 up through the Effective Date based on exposures to nitrous
26 oxide from the manufacture, distribution, sale, or use of the Products, as set forth in the Notices and
27 the Complaint. Compliance with the terms of this Consent Judgment constitutes compliance with
28 Proposition 65 with respect to exposures to nitrous oxide from the use of the Products



1 manufactured, distributed, or sold by Defendant after the Effective Date, as set forth in the Notices.

2 **5.3 DiPirro's Individual Release of Claims**

3 DiPirro, in his individual capacity only and *not* in his representative capacity, agrees that this
4 Consent Judgment is a full, final, and binding resolution between DiPirro and Defendant of any
5 violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or
6 on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against
7 Releasees, their parents, subsidiaries, affiliated entities under common ownership, directors, officers,
8 employees, attorneys, for unwarned exposures to the Listed Chemical from the Products
9 manufactured, distributed, sold or distributed for sale in California by Defendant prior to the
10 execution of this Consent Judgment.

11 In further consideration of the promises and agreements herein contained, DiPirro, on his own
12 behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or
13 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action, and releases all claims that he may have against Defendant and Releasees, including,
15 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
16 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
17 fees, and attorneys' fees arising under Proposition 65 for exposures to the Listed Chemical from
18 Products distributed, sold, or distributed for sale in California by Defendant prior to the execution of
19 this Consent Judgment.

20 **5.4 Defendant's Release of DiPirro**

21 Defendant, on its own behalf and on behalf of its past and current agents, representatives,
22 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
23 DiPirro and his attorneys and other representatives, for any and all actions taken or statements made
24 (or those that could have been taken or made) by DiPirro and his attorneys and other
25 representatives, whether in the course of investigating claims, otherwise seeking to enforce
26 Proposition 65 against it in this matter, or with respect to the Products.

27 **6. COURT APPROVAL**

28 This Consent Judgment is not effective until it is approved and entered by the Court and shall



1 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
2 has been fully executed by all Parties.

3 **7. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
5 Judgment is held by a court to be unenforceable, the validity of the remaining provisions shall not be
6 adversely affected.

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the state of California
9 and apply within the state of California. In the event that Proposition 65 is repealed or is otherwise
10 rendered inapplicable by reason of law generally, or as to the Products, then Defendant may provide
11 written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant
12 to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.
13 Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to
14 comply with any pertinent state or federal toxics control laws.

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant to
17 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered
18 or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the
19 other party at the following addresses:

20 For Defendant ISI North America, Inc.:

21 Trenton H. Norris, Esq.
22 Arnold & Porter Kaye Scholer LLP
23 Three Embarcadero Center, 10th Floor
San Francisco, CA 94111

24 For DiPirro:

25 Law Offices of David Bush
26 6761 Sebastopol Avenue, Suite 111
Sebastopol, CA 95472

27 Any party may, from time to time, specify in writing to the other party a change of address to which
28 all notices and other communications shall be sent.



1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts, and by facsimile or portable
3 document format (PDF) signature, each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document.

5 **11. POST EXECUTION ACTIVITIES**

6 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
7 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
8 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
9 of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and
10 that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain
11 judicial approval of the settlement in a timely manner. DiPirro further agrees that, upon any such
12 judicial approval of the settlement and pursuant to the release of claims agreed to herein, he will
13 promptly file a request for voluntary dismissal with prejudice as to the claims asserted in his First
14 Amended Complaint against ISI GmbH; Amazon.com, Inc.; and Amazon.com, LLC.

15 **12. MODIFICATION AND DISPUTE RESOLUTION**

16 **12.1 Modification**

17 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
18 affected by the modification; or (ii) upon a successful motion or application of any Party to the Court.
19 Any modification to the Consent Judgment requires the approval of the Court and prior notice to the
20 Attorney General's Office. As applicable, any Party seeking to modify this Consent Judgment must
21 notify the other affected Party or Parties in writing, and the affected Parties shall thereafter attempt in
22 good faith to meet and confer concerning the proposed modification. If the affected Parties are
23 unable to resolve their dispute informally within sixty (60) days after the date of the written
24 notification, or such other period as the affected Parties shall agree in writing, the Party that issued
25 the written notification to seek the modification may bring a motion or proceeding to seek judicial
26 relief as to the requested modification. Notwithstanding the preceding sentence, Defendant may
27 move to modify this Consent Judgment to substitute any term that Plaintiff agrees to in a future
28 consent judgment applicable to nitrous oxide cartridges/chargers containing the Listed Chemical that



1 are manufactured, sold, or distributed for sale in California by any competitor of Defendant, and
2 Plaintiff agrees not to oppose any such motion except for good cause shown.

3 **12.2 Dispute Resolution**

4 This Consent Judgment may only be enforced by motion or application for an order to show
5 cause before this Court. Before bringing any such motion or application, the Party seeking to do so
6 shall provide written notice to the Party against which enforcement is sought, and the affected Parties
7 shall thereafter attempt in good faith to meet and confer in order to resolve the dispute. If the
8 affected Parties are unable to resolve the dispute informally within sixty (60) days after the date of
9 the written notification, or such other period as the affected Parties shall agree in writing, the Party
10 that issued the written notification may bring a motion or proceeding to seek judicial resolution of the
11 dispute.

12 **13. AUTHORIZATION**

13 Each of the undersigned is authorized to execute this Consent Judgment on behalf of his or
14 her respective Party and has read and understood, and agrees to all of the terms and conditions of this
15 Consent Judgment on behalf of such Party.

16 **AGREED TO:**

17

18 Date: 5/9/2019

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20 By: 

21 Michael DiPirro

22 **AGREED TO:**

23 Date: 5/10/19

24 By: 

25 Jeanette Brick, President
26 ISI North America, Inc.

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WARNING: Use of this product can expose you to nitrous oxide, a chemical known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.



A handwritten signature in blue ink, appearing to be the initials 'JB' with a stylized flourish.

Exhibit B

1
2 ISI North America, Inc. has entered into a settlement agreement with a citizen enforcer in the State of
3 California regarding the presence of nitrous oxide in cartridges (the "Products") sold by certain
4 retailers and distributors to individual consumers in California outside of defined culinary and
5 industrial channels. The settlement agreement, which has been approved by the Superior Court of
6 Alameda County, implements the requirements of the Safe Drinking Water and Toxic Enforcement
7 Act of 1986, Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"). Under the terms of
8 this settlement agreement, we are providing you with the following instructions and the enclosed
9 warning sign [and stickers].

6 **General Brick-and-Mortar Retailers:** If you are a retailer and you will be offering the Products for
7 sale to individual consumers in California through brick-and-mortar stores in sections of the stores
8 that are *not* focused on culinary uses, you must post the enclosed sign in close proximity to the
9 display of the Products or at the point of sale for the Products. (No sign is needed if the Products are
10 offered only in sections of the stores that are focused on culinary uses.)

9 **General Catalog Retailers:** If you are a retailer and you will be offering the Products for sale to
10 individual consumers in California through catalogs in sections of the catalogs that are *not* focused on
11 culinary uses, you must display the following warning in close proximity to the description or image
12 of the Products (language in brackets is optional):



**[CALIFORNIA] [PROPOSITION 65] WARNING: [Do
not use for any other than the expressly stated purpose.]
[Do not inhale!] [Misuse can be physically harmful and
dangerous to your health.]
Reproductive Harm — www.P65Warnings.ca.gov**

15 **General Online Retailers:** If you are a retailer and you will be offering the Products for sale to
16 individual consumers in California through an online store that is *not* focused on culinary uses, you
17 must include the warning above on one or more of the following: (a) on the product display page; (b)
18 using a clearly marked hyperlink using the word "WARNING" on the product display page, which
19 will take the user to a page or popup screen in which the warning will be prominently featured on the
20 top of the page so that a consumer will not have to search for it; (c) by otherwise displaying the
21 warning to the consumer prior to purchase; or (d) by including a warning in the shipment to the
22 California consumer. The warning shall read substantially as above.

20 **Distributors.** If you are a distributor, you must provide this sign [and stickers], along with these
21 instructions, to any retailer to whom you distribute the Products who will be offering them to
22 individual consumers in California outside the culinary and industrial channels described above.

22 Failure to post this sign or provide this warning or to provide these instructions as noted above may
23 subject you to an enforcement action under Proposition 65 in which you may be forced to post the
24 sign or provide other warnings, pay civil penalties of up to \$2,500 per violation per day, and
25 reimburse the attorney's fees of the enforcer.

24 Please note that the signage and warning requirements above do not apply to retail sales through the
25 culinary or industrial channel, as defined in the settlement agreement.

26 Please direct any questions concerning these requirements to the Director of Operations at
27 iSiNorthAmerica@isi.com. Thank you for your anticipated cooperation and compliance with
28 California's Proposition 65.

