

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between: Michael DiPirro, (referred to herein as “DiPirro”) represented by his attorneys, Law Office of David R. Bush and Jeremy Fietz, Attorney-at-Law; and, Thomas Scientific, LLC (referred to herein as “Noticed Party”) represented by its attorneys Faegre Drinker Biddle & Reath LLP. DiPirro is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Noticed Party employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”). DiPirro and Noticed Party are each a “Party” and collectively are the “Parties”.

1.2 General Allegations

DiPirro alleges that the Noticed Party either manufactures, or imports, or sells, or distributes for sale, in the State of California products containing lead and lead compounds without first providing the clear and reasonable exposure warning required by Proposition 65. Lead and lead compounds are listed pursuant to Proposition 65 as chemicals known to the State of California to cause cancer and birth defects or other reproductive harm (hereinafter the “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are Density Cubes containing the Listed Chemical that are either manufactured, or sold, or distributed for sale in

California by the Noticed Party, including, but not limited to the:

Lead Metal Density Cube 99.95% 10mm (the “Products”).

1.4 Notice of Violation

On or about May 28, 2024, DiPirro served Noticed Party and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”), a document that informed the recipients of DiPirro’s allegation that Noticed Party violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to the Listed Chemical. To the best of the DiPirro’s knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

Noticed Party denies the material, factual, and legal allegations contained in the Notice and maintain that all of the products they have either manufactured, or sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by the Noticed Party of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by the Noticed Party. This section shall not, however, diminish or otherwise affect the Noticed Party’s obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean the day the final requisite signature is applied to the Settlement Agreement and both Parties have notice

of complete execution.

2. INJUNCTIVE RELIEF: PRODUCT WARNINGS

2.1 Product Warnings. Commencing within forty-five (45) days of the Effective Date for any of the Noticed Party's Products that the Notice Party ships directly to any California resident consumer, or the Notice Party ships directly to any agent, distributor, or affiliated company working on behalf of Noticed Party, for sale to California consumers, Noticed Party shall provide a clear and reasonable warning on the consumer-ready packaging or on the label of each Product as set forth in Section 2.3. Each warning shall 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. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

2.2 Internet Warnings. In addition to the warning specified in Section 2.1 above, for all Products that Noticed Parties offer for sale directly to consumers in California via its own proprietary internet site, Noticed Party shall provide a warning for such Products by including the warning set forth below in Section 2.3 on one or more of the following: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The internet warning described above can also be delivered through a hyperlink using the word "[California Prop 65] WARNING" (language in brackets optional) which then takes the user to a display of the warning set out in Paragraph 2.3.

2.3 Text of the Warning. The Noticed Party shall use one of the warning options set forth below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be

black or white if the color yellow is otherwise not used on the Product’s packaging and the yellow triangle also may be the same size as the “W” in the word “WARNING”):



WARNING: This product can expose you to chemicals including lead and lead compounds, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Foreign Language Requirement. Where a product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the Warning must also be provided in that language in addition to English.

Use of Safe Harbor Warnings. Noticed Party may elect to change the warning and to employ, or to require its suppliers to employ, any form of safe harbor regulatory warning in effect at the time a Product is manufactured or packaged, so long as Noticed Party and, on its behalf, its suppliers, follow the safe harbor regulations governing the content and manner of Proposition 65 warnings. Noticed Party or a supplier acting on its behalf also may insert “**CALIFORNIA PROPOSITION 65**” or “**PROPOSITION 65**” or “**California Prop 65**” (all in boldface font) prior to the word **WARNING** at its election.

3. PENALTIES & PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b). The Noticed Party shall make a civil penalty payment of \$1,250.00 as a component of this settlement. The penalty payment will be allocated by DiPirro’s counsel in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute

without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. The Noticed Party then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. The Noticed Party shall pay a total of \$38,500.00 for fees and costs incurred as a result of investigating, working with toxicology experts, bringing this matter to the Noticed Party's attention, document preparation, post-settlement compliance audit, and negotiating a settlement in the public interest.

5. PAYMENT AND FORM 1099

5.1 Payment. The complete settlement payment in the amount of \$39,750.00 shall be delivered within ten business days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law (via wire transfer, or ACH payment; number provided upon request) or by physical check to the office of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the latter option shall be in the form of a check made payable to: "Jeremy Fietz, Attorney at Law". For any payment that is returned for any reason, including insufficient funds, a payment must be made by Noticed Party in form of a cashier's check within three (3) calendar days of notification of insufficient funds, plus a 10% service fee paid to DiPirro's attorneys. Any payment that is not actually received by the due date, subject to a one business day grace period, will also be subject to a 10% late fee.

5.2 Issuance of 1099 Form. The Noticed Party shall provide DiPirro's counsel, Jeremy Fietz, Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the Form 1099 MISC with the amount reported in box 10 ("Gross

proceeds paid to an attorney”). The Noticed Party acknowledges that 1099 shall NOT be issued under form 1099 NEC. A Form W-9 shall be provided by Jeremy Fietz, Attorney-at-Law within one business day after the Effective Date.

6. CLAIMS COVERED AND RELEASED

6.1 DiPirro’s Release of Noticed and Related Parties

This Settlement Agreement is a full, final, and binding resolution between DiPirro and the Noticed Party of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against any of the Noticed Party, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom either Noticed Party directly or indirectly distributes or sells the Products or from whom the Noticed Party received any products, including any upstream manufacturers and suppliers, and including its downstream distributors and retailers including Amazon.com (“Releasees”), for unwarned exposures to the Listed Chemical from the Products either manufactured, or distributed, or sold or distributed for sale in California by or on behalf of the Noticed Party prior to and on the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against the Noticed Party and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for

exposures to the Listed Chemical from Products either manufactured or distributed, or sold, or distributed for sale in California by or on behalf of the Noticed Party prior to and on the Effective Date.

6.2 Noticed Party's Release of DiPirro

Noticed Party, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against DiPirro and his attorneys and other representatives, for any and all actions taken or statements made by DiPirro and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products, up through the Effective Date.

6.3 After the Effective Date the Parties agree that Noticed Party's compliance with this Settlement Agreement in all material respects (including the payment obligations hereunder) constitutes compliance with Proposition 65 with regard to warning obligations for the Products.

7. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then the Noticed Party may provide written notice to DiPirro of any asserted change in the law, and have

no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Noticed Party from any obligation to comply with any applicable state or federal toxics control laws. This Settlement Agreement does not govern Products which are not sold directly or indirectly by Noticed Party to California consumers.

9. NOTICES

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

For Thomas Scientific, LLC:

Judith M. Praitis
Faegre Drinker Biddle & Reath LLP
1800 Century Park East, Suite 1500
Los Angeles, CA, 90067

AND

For Michael DiPirro:

Jeremy Fietz, Attorney-at-Law
4241 Montgomery Drive, #123
Santa Rosa CA 95405

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

11. POST-EXECUTION ACTIVITIES

DiPirro agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f) and promptly to disburse the fraction of the civil penalty that is owed to the State of California. This Settlement Agreement is enforceable solely by the Parties hereto.

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties to this Settlement Agreement. This Settlement Agreement contains the entire agreement of the Parties and no oral, email or other understandings shall modify the agreements made herein.

13. BENEFICIARIES

This Settlement Agreement shall be binding upon and shall ensure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, servants, heirs, executors, predecessors, successors and assigns.

14. PUBLIC BENEFIT

It is the Parties' understanding that the commitments Notice Party has agreed to herein, and the actions to be taken by Notice Party under this Agreement, including payment of a Civil Penalty to the State of California, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to any failure to provide a warning concerning exposure to lead and lead compounds prior to use of the Products prior to the Effective Date, or with respect to Products subject to this Settlement Agreement on and after the Effective Date, such private party action would not confer a significant benefit on the general public as to those Products addressed in this

Agreement, provided that the Notice Party complies in all material respects with this Agreement.

15. AUTHORIZATION

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


AGREED TO:

AGREED TO:

Date: 08/21/24

Date: 08/ 20 /24

By: 
Michael DiPirro

By: 
Thomas Scientific, LLC
Print Name: Stanley L. Haas
Title: Chief Executive Officer