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Attorneys for Plaintiff  
Michael DiPirro

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

MICHAEL DIPIRRO,  
Plaintiff,

v.

THE INDIUM CORPORATION OF  
AMERICA, and DOES 1-150,

Defendants.

Case No. 25CV108621

**[PROPOSED] CONSENT JUDGMENT**

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

**1. INTRODUCTION**

**1.1 Parties**

This Consent Judgment (“Consent Judgment”) is entered into by and between plaintiff, Michael DiPirro (“DiPirro”), and The Indium Corporation of America (“Defendant”).

DiPirro and Defendant are individually referred to as a “Party” and collectively as the “Parties.”

**1.2 Plaintiff**

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

**1.3 Defendant**

Defendant 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”).

**1.4 General Allegations**

DiPirro alleges that Defendant manufactures or sells, Lead Solder made with Lead and lead compounds (“Lead”), without first providing the clear and reasonable exposure warnings required by Proposition 65. Lead was listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause reproductive toxicity on February 27, 1987, and has been subject to the warning requirements for reproductive harm since February 27, 1988. On October 1, 1992, California identified and listed Lead and lead compounds as a chemical known to cause cancer. Lead and lead compounds became subject to the “clear and reasonable warning” requirements of the act for cancer one year later on October 1, 1993.

**1.5 Product Description**

The products covered by this Consent Judgment are Lead Solder that are manufactured, sold, or distributed for sale in California by Defendant, including, but not limited to the Indium BAROT-06466 - Bar Solder, SN63/PB37; 1-2/3 LB (the “Products”).

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**1.6 Notice of Violation**

On or about July 11, 2024, DiPirro served Noticed Party and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that Defendant violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to Lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

**1.7 Complaint**

On or about January 28, 2025, DiPirro filed the instant action against Defendant alleging violations of Health & Safety Code § 25249.6 that are the subject of the Notice.

**1.8 No Admission**

Defendant denies the material, factual, and legal allegations contained in the Notice and contends that it manufactures, sells, and/or distributes Products to California residents in accordance with applicable state laws and regulations. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Defendant. This section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Consent to Jurisdiction**

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

**1.10 Effective Date**

For purposes of this Consent Judgment, the term “Effective Date” shall mean the date of entry of this Consent Judgment by this Court.

**2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS**

**2.1** Within 60 days of the Effective Date (a.k.a. the “Warning Date”), as to all Products that contain more than 0.009 percent (90 parts per million) of Lead and are intended for sale to consumers in

1 California, Defendant shall provide a clear and reasonable warning on the label of each Product as set  
2 forth herein. Each warning shall be prominently placed with such conspicuousness as compared with  
3 other words, statements, designs, or devices as to render it likely to be read and understood by an  
4 ordinary individual under customary conditions before purchase or use. Each warning shall be provided  
5 in a manner such that the consumer or user understands to which specific Product the warning applies,  
6 so as to minimize the risk of consumer confusion. Defendant's compliance with the warning  
7 requirements set forth herein or the warning requirements of Proposition 65 and related regulations, as  
8 may be amended from time to time, shall be deemed compliance with this Consent Judgment.

9 **2.2 Internet Warnings.** In addition to the warning specified in Section 2.3 below, for all  
10 Products that Defendant offers for sale directly to consumers in California via the internet on or after the  
11 Warning Date, Defendant shall provide a warning for such Products by including the warning set forth  
12 below in Section 2.3 on one or more of the following: (a) on the same web page on which a Product is  
13 displayed; (b) on the same web page as the order form for a Product; (c) on the same web page as the  
14 price for any Product; or (d) otherwise prominently displayed to the purchaser prior to completing the  
15 purchase. The internet warning described in this section can also be delivered through a hyperlink using  
16 the word "[CA or California] WARNING" (language in brackets optional).

17 **2.3 Text of the Warning.** Defendant shall use the warning language as set forth below in  
18 2.3(a) or 2.3(b) for Products containing Lead, which shall include a symbol consisting of a black  
19 exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol  
20 may be black or white if the color yellow is otherwise not used on the Product's packaging).


21 **a. Full Warning.**



23 **WARNING:** This product can expose you to chemicals including lead, which is  
24 known to the State of California to cause cancer and birth defects or other reproductive  
25 harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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**b. Short-Form Warning.**<sup>1</sup>

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://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.

**3. MONETARY SETTLEMENT TERMS**

Defendant shall pay fifty-five thousand dollars (\$52,500.00) in settlement and total satisfaction of all the claims referred to in the Notice, the Complaint, and this Consent Judgment. This includes civil penalties and attorneys' fees and costs, as set forth in this section.

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

Defendant shall make a civil penalty payment of \$2,500 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.

**3.2 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 Defendant 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

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<sup>1</sup> In the event that Defendant continues to distribute the Products on or after January 1, 2028, Defendant agrees to comply with 27 C.C.R. § 25603 on and after that date, and will utilize the Short-Form Warning language provided by 27 C.C.R. § 25603(b), one example of which is:

**a. Short-Form Warning.**

**WARNING: Risk of cancer and reproductive harm from exposure to Lead.**  
 See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

1 under general contract principles and the private attorney general doctrine codified at California Code of  
2 Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement.

3 The Defendant shall pay a total of \$50,000.00 for fees and costs incurred as a result of  
4 investigating, working with toxicology experts, bringing this matter to the Defendant's attention,  
5 document preparation, negotiating a settlement in the public interest, and post-settlement audit and  
6 compliance work.

7 **4. PAYMENT AND FORM 1099**

8 **4.1 Payment.** The complete settlement payment in the amount of \$52,500 shall be delivered  
9 within ten business days of the Effective Date, to the bank account of Jeremy Fietz, Attorney at Law  
10 (via wire transfer, or ACH payment; number provided upon request) or by physical check to the office  
11 of Jeremy Fietz, Attorney at Law, 4241 Montgomery Drive, #123, Santa Rosa CA 95405, and for the  
12 latter option shall be in the form of a check made payable to: "Jeremy Fietz, Attorney at Law".

13 **4.2 Issuance of 1099 Form.** Defendant shall provide DiPirro's counsel, Jeremy Fietz,  
14 Attorney-at-Law, with one 1099 form for the entire settlement amount. Such 1099 shall be made on the  
15 Form 1099 MISC with the amount reported in box 10 ("Gross proceeds paid to an attorney"). The  
16 Defendant acknowledges that 1099 shall NOT be issued under form 1099 NEC. A W9 shall be  
17 provided by Jeremy Fietz, Attorney-at-Law after this Agreement has been fully executed by the Parties  
18 to this agreement.

19 **5. CLAIMS COVERED AND RELEASED**

20 **5.1 DiPirro's Public Release of Proposition 65 Claims**

21 DiPirro, acting on his own behalf and in the public interest, releases Defendant, any persons or  
22 entities identified in the Notice as an alleged violator, retailer, manufacturer, or distributor (collectively,  
23 "Noticed Parties"), and each of the respective officers, directors, shareholders, employees, attorneys,  
24 representatives, shareholders, subsidiaries, affiliates, parents, divisions, successors, assigns, insurers,  
25 dealers, distributors, retailers, and customers of Defendant (collectively, "Affiliates"), and any other  
26 person or entity to whom Defendant directly or indirectly distributes or sells the Products collectively  
27 with Defendant, and Affiliates, (the "Releasees"), from all claims for violations of Proposition 65 based  
28 on failure to warn about alleged exposure to Lead contained in the Products that were manufactured for

sale by Releasees prior to the Warning Date. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from the use of the Products sold by Defendant manufactured after the Warning Date, as set forth in the Notice.

## 5.2 DiPirro's Individual Release of Claims

In further consideration of the promises and agreements herein contained, DiPirro, *not* in his representative capacity, but on behalf of himself and his past and current agents, representatives, attorneys, successors, and assigns, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases any and all actions, causes of action, obligations, costs, expenses, fees, attorneys' fees, fines, penalties, damages, losses, claims, suits, liabilities, and demands that he has or may have against Defendant and/or any other Releasee, of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposure to Lead contained in the Products that were manufactured for sale by Releasees prior to the Warning Date.

DiPirro, in his individual capacity and not in his representative capacity, waives and relinquishes all rights and benefits of California Civil Code section 1542 with respect to any and claims relating to the Products and/or the Notices, and does so understanding and acknowledging the significance and consequence of specifically waiving section 1542. California Civil Code § 1542 states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Thus, notwithstanding the provisions of section 1542, DiPirro expressly acknowledges this Consent Judgment is intended to include in its effect, without limitation, all claims relating to the Products and/or the Notices that DiPirro does not know or suspect to exist in his favor at the time of signing this Consent Judgment, and that this Consent Judgment contemplates the extinguishment of any such claims.

## 5.3 Defendant's Release of DiPirro

Defendant, 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 (or those

that could have been taken or 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.

**6. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties.

**7. SEVERABILITY**

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

**8. ENFORCEMENT**

In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

**9. GOVERNING LAW**

The terms of this Consent Judgment 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 Defendant may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent state or federal toxics control laws.

**10. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be both by email and in writing and sent by: electronic mail and (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 The Indium Corporation of America:



Will Wagner  
Greenberg Traurig, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA, 95814  
Will.Wagner@gtlaw.com

For Plaintiff DiPirro:

Jeremy Fietz, Attorney-at-Law  
4241 Montgomery Drive, #123  
Santa Rosa CA 95405  
jeremy@superawesomelawyer.com

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.

**11. ENTIRE AGREEMENT; COUNTERPARTS; FACSIMILE SIGNATURES**

This Consent Judgment contains the entire and only agreement between the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. There are no representations or terms of agreement made by any Party with respect to the subject matter hereof or the other Party except for those contained in this Consent Judgment. This Consent Judgment 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.

**12. POST EXECUTION ACTIVITIES**

DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and that of their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain judicial approval of the settlement in a timely manner.

**13. MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and upon entry of a modified consent judgment by the Court thereon; or (ii) upon a successful motion or application of any Party and the entry of a modified consent judgment by the Court.

1 **14. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their respective  
3 Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

4  
5 AGREED TO:

6 Date: 5/21/25

7 By: 

8 MICHAEL DIPIRETO

AGREED TO:

Date: 05/21/2025

By: 

The Indium Corporation of America

Print Name: Brian Reid

Title: VP of Global Operations

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12 **SO ORDERED:**

13 **DATED:**

14 **ALAMEDA COUNTY SUPERIOR COURT**  
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