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Sebastopol, CA 95472
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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] AMENDED

CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

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

5 DiPirro and Defendant are 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 to
8 toxic chemicals and improve human health by reducing or eliminating hazardous substances contained
9 in consumer products.

10 **1.3 Defendant**

11 Defendant employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

23 **1.5 Product Description**

24 The products covered by this Consent Judgment are Lead Solder that are manufactured, sold, or
25 distributed for sale in California by Defendant, including, but not limited to the Indium BAROT-06466 -
26 Bar Solder, SN63/PB37; 1-2/3 LB (the “Products”).
27
28

1 **1.6 Notice of Violation**

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

7 **1.7 Complaint**

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

10 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

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

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


27 **2.1** Within 60 days of the Effective Date (a.k.a. the “Warning Date”), as to all Products that
28 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.**

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

25 /
26 /
27 /

1 **b. Short-Form Warning.**¹

2  **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

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

6 **3. MONETARY SETTLEMENT TERMS**

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

10 **3.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).** The

11 Defendant shall make a civil penalty payment of \$2,500 as a component of this settlement. The
12 penalty payment will be allocated by DiPirro's counsel in accordance with California Health & Safety
13 Code § 25249.12(c)(1) & (d), with 75% of the penalty funds remitted to the California Office of
14 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted
15 to DiPirro.

16 **3.2 Reimbursement of Fees and Costs**

17 The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue
19 to be resolved after the material terms of the agreement had been settled. The Defendant then expressed
20 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The
21 parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel
22

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

26 **a. Short-Form Warning.**

27  **WARNING: Risk of cancer and reproductive harm from exposure to Lead.**

28 See 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

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

4 **5.2 DiPirro's Individual Release of Claims**

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

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

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

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

27 **5.3 Defendant's Release of DiPirro**

28 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

1 that could have been taken or made) by DiPirro and his attorneys and other representatives, whether in
2 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter,
3 or with respect to the Products.

4 **6. COURT APPROVAL**

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

8 **7. SEVERABILITY**

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

12 **8. ENFORCEMENT**

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

15 **9. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the State of California and
17 apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered
18 inapplicable by reason of law generally, or as to the Products, then Defendant may apply to the Court for
19 recission of its duties hereunder and Plaintiff will cooperate with same. Nothing in this Consent
20 Judgment shall be interpreted to relieve Defendant from any obligation to comply with any pertinent
21 state or federal toxics control laws.

22 **10. NOTICES**

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

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1 For The Indium Corporation of America:

2 Will Wagner
3 Greenberg Traurig, LLP
4 400 Capitol Mall, Suite 2400
5 Sacramento, CA, 95814
6 Will.Wagner@gtlaw.com

7 For Plaintiff DiPirro:

8 Jeremy Fietz, Attorney-at-Law
9 4241 Montgomery Drive, #123
10 Santa Rosa CA 95405
11 jeremy@superawesomelawyer.com

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

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

15 This Consent Judgment contains the entire and only agreement between the Parties and any and
16 all prior negotiations and understandings related hereto shall be deemed to have been merged within it.
17 There are no representations or terms of agreement made by any Party with respect to the subject matter
18 hereof or the other Party except for those contained in this Consent Judgment. This Consent Judgment
19 may be executed in counterparts, and by facsimile or portable document format (PDF) signature, each of
20 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
21 same document.

22 **12. POST EXECUTION ACTIVITIES**

23 DiPirro agrees to comply with the reporting form requirements referenced in Health & Safety
24 Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health & Safety Code
25 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of
26 obtaining such approval, DiPirro and Defendant agree to mutually employ their best efforts, and that of
27 their counsel, to support the entry of this agreement as a Consent Judgment, and to obtain judicial
28 approval of the settlement in a timely manner.

1 **13. MODIFICATION**

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

5 **14. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
7 Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.
8


9 AGREED TO:

10 Date: May 30, 2025

11 By: 
12 MICHAEL DIPIRRO

AGREED TO:

Date: June 2, 2025

11 By: 
12 The Indium Corporation of America
13 Print Name: Brian Reid
14 Title: VP of Global Operations

16 **SO ORDERED:**

17 **DATED:**

18 **ALAMEDA COUNTY SUPERIOR COURT**
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