

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among **Michael DiPirro**, a California citizen; **Indium Corporation of America**, a New York corporation ("Indium") as of June 21, 1999 (the "Effective Date"). The parties agree to the following terms and conditions:

WHEREAS:

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

B. Indium is a company that manufactures and distributes solder alloys and other products containing lead, a substance known to the State of California to cause cancer and birth defects (or other reproductive harm).

C. A list of the products which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products, or some of them, have been manufactured, distributed or sold by Indium for use in California since at least September 15, 1994.

D. On September 15, 1998, DiPirro first served Indium and certain public enforcement agencies with a document entitled "60-Day Notice" which provided such public enforcers with notice that Indium was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals.

E. On December 17, 1998, Michael DiPirro filed a complaint entitled Michael DiPirro v. Indium Corporation of America et al. (No. H204950-4) in the Alameda Superior Court, naming Indium as defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly have been exposed without adequate warnings to lead contained in certain solder products.

F. Indium at all times has denied the material factual and legal allegations contained in the 60-Day Notice and the Complaint. Nothing in this Agreement shall be construed as an admission by Indium of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Indium of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Indium under this Agreement.

NOW THEREFORE, DiPIRRO AND INDIUM AGREE, AS FOLLOWS:

1. Product Warnings. Indium shall begin to revise its health hazard warnings for its Products to provide the language set forth in the section 1.1 below. Subject to section 12 below, beginning on August 15, 1999, Indium agrees that it will not knowingly ship (or cause to be shipped) any Products containing lead for sale in the State of California unless such Products comply with section 1.1 or 1.2 below, whichever provision is applicable:

1.1 All Products containing lead (other than those referenced in section 1.2) shall bear the following warning statement on the Product and/or the immediate container for the Product:

“WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”;

or

“WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)”

The display of the warning statement shall be reasonably calculated, considering the alternative methods available under the circumstances, to make the warning message available to an individual prior to exposure.

1.2 For solder bars containing lead and any other Product containing lead for which it is essentially impracticable to place a warning on the Product and/or the immediate container for the Product, the Products shall contain warning language identical to section 1.1 above, on the outside and inside of each package containing one or more solder bars.

Indium also agrees to send a certified letter to each of its customers that advises Indium’s customers to transfer the appropriate toxic warnings to their students or customers.

For the next two months following the Effective Date of this agreement, Indium also agrees to include an insert into every package containing solder bars sold in California which advises Indium’s customer to transfer the requisite toxic warnings to downstream users of the bars, if any.

2. MSDS Revisions. Indium agrees to revise the “Health Hazard” section on each Material Safety Data Sheet (“MSDS”) pertaining to each of the Products as follows: if any such MSDS includes a section or line item on “Proposition 65” or “California Proposition 65,” that section or line item shall include the applicable warning language set forth in section 1.1 of this Agreement. Indium agrees to distribute any accordingly revised MSDSs in the normal course of business on or before August 15, 1999.

3. Payment Pursuant To Health & Safety Code 525249.7(b). Pursuant to Health & Safety Code §25249.7(b), Indium shall pay a civil penalty of \$12,500 within 10 calendar days after the Effective Date of the agreement.

Payment of the penalties shall be made payable to the "Chanler Law Group In Trust For Michael DiPirro. Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California.

4. Reimbursement Of Fees And Costs. Within 10 calendar days of the Effective Date of the Agreement, Indium shall reimburse DiPirro for his investigation fees and costs, expert fees and costs, attorneys' fees and costs, and any other costs incurred as a result of investigating, bringing this matter to the parties' attention, litigating and negotiating a settlement in the public interest. Indium shall pay: \$9,000 for pre-notice investigation fees; \$2,750 in costs; and \$19,000 in attorneys' and post-notice investigation fees. Payment should be made payable to the "Chanler Law Group".

5. DiPirro's Release. DiPirro, by this Agreement, on behalf of himself, his agents, representatives, attorneys, assigns and the citizens of the State of California, waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against Indium and its distributors, wholesalers, retailers, customers, owners, operators, lessors, lessees, or users of the Products, as well as any of its or their directors, officers, employees, affiliates, successors and assigns, arising from any matters, acts, omissions, events, conduct, or occurrences at any time prior to the date of this Agreement, including without limitation any and all causes of action arising under Proposition 65 or the Business & Profession Code §17200 et seq. regarding any alleged failure to warn about exposure to lead.

6. Indium's Release. Indium, by this Agreement, on behalf of itself, its agents, representatives, attorneys, and assigns, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against DiPirro arising from any matters, acts, omissions, events, conduct, or occurrences at any time prior to the date of this Agreement, including without limitation any and all causes of action arising from DiPirro's seeking enforcement of Proposition 65 or Business & Profession Code §17200 et seq. against Indium.

7. Stipulated Judgment. Concurrently with the execution of this Agreement, DiPirro and Indium shall execute and file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not approved by the Court, this Agreement shall be deemed null and void and all settlement monies paid by Indium pursuant to sections 3 and 4 of this Agreement shall be returned to the companies within 5 business day.

8. Indium Sales Data. Indium understands that the sales data provided to counsel for DiPirro by Indium was a material factor upon which DiPirro has relied to determine the

amount (and potential waiver) of penalties in this Agreement. To the best of Indium's knowledge, the sales data provided is true and accurate. In the event DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, DiPirro shall have the right to rescind this Agreement and re-institute an enforcement action against Indium, provided that all sums paid by Indium pursuant to sections 3 and 4 are returned to Indium within five (5) days from the date on which DiPirro notifies Indium of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Indium that he is rescinding this Agreement pursuant to this paragraph, provided that, in no event shall any statute of limitation be tolled beyond two (2) years from the date this action was filed.

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

10. Attorney's Fees. In the event that a dispute arises with respect to any provision of this Agreement which would be required under Proposition 65, namely, sections 1, 3, and 4, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees in enforcing such provision(s).

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

12. Changed Circumstances.

12.1 The Parties acknowledge that the warning-statement language of section 1.1 above is based upon the regulatory "safe harbor" language, set out in the California Code of Regulations, Title 22, Article 6. In the event that such safe-harbor requirements are amended or otherwise changed, and if the language of section 1.1 above no longer satisfy any such new requirements, language substantially similar to such new safe-harbor requirements shall be used in lieu of that of section 1.1; and Indium shall not be in breach of this Agreement or in violation of Proposition 65 unless it fails to comport with such new language within one hundred and twenty (120) days of the effective date of such new safe-harbor requirements.

12.2 In the event that Proposition 65 is repealed altogether or is otherwise rendered inapplicable by reason of law generally, or as to Indium and/or the Products specifically, Indium shall have no further obligations under this Agreement with respect to, and to the extent that, it and/or the Products are so affected.

13. Notices. All correspondence to Michael DiPirro shall be mailed to:

Clifford A. Chanler
Chanler Law Group
Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801

All correspondence to Indium shall be mailed to:

Greg Evans
Indium Corporation of America
1676 Lincoln Avenue
P.O. Box 269
Utica, NY 13503-0269

with copies to:

Michael Stephens, Esq.
Kernan and Kernan, P.C.
Suite 600
258 Genesee Street #10
Utica, NY 13502-4691

Andrew G. Giacomini, Esq.
Garner K. Weng, Esq.
Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP
333 Market Street, 23rd Floor
San Francisco, CA 94105-2173

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

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

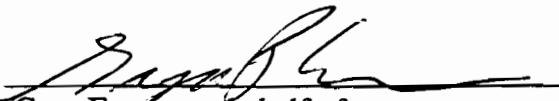
AGREED TO:

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DATE: _____

DATE: 21 Jun '99

Michael DiPirro



Greg Evans, on behalf of
Indium Corporation of America

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Indium Corporation of America
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with copies to:

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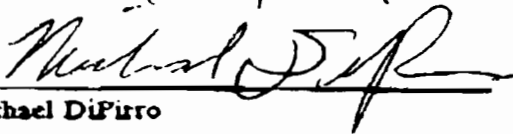
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DATE:

6/22/99



Michael DiPirro

AGREED TO:

DATE:

Greg Evans, on behalf of
Indium Corporation of America