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7 Corporation, as successor in interest to UZ Engineered Products

8
9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF SOUTH CAROLINA (CHARLESTON)**

11 THOMAS E. MCKINNON and
12 RENEE L. MCKINNON,

13
14 Plaintiffs,

15 v.

16 **APPLIED INDUSTRIAL**
17 **TECHNOLOGIES**, as successor in
18 interest to UZ Engineered Products, an
19 Ohio corporation; **COTTO-WAXO**
20 **COMPANY**, a Missouri corporation;
21 **ECLECTIC PRODUCTS LLC**, as
22 successor in interest to Eclectic
23 Products, Inc, an Oregon limited
24 liability, company; **HENRY**
25 **COMPANY LLC**, a California limited
26 liability company **KESTER LLC**, is an
27 Illinois limited liability company; **THE**
28 **LIGHTHOUSE FOR THE BLIND**
(**LHB INDUSTRIES**), a Missouri
corporation; **LSPS INC.**, as successor in
interest to Dymon, Inc, a Delaware
corporation; **MOMAR,**
INCORPORATED, as successor in
interest to Superco Specialty Products, a
Georgia corporation; **OMEGA**
INDUSTRIAL SUPPLY, INC., a
California corporation; **RUST-OLEUM**
CORPORATION, an Illinois
corporation; and **DOES 1 through 100,**
inclusive,

MDL No.: 2:18-mn-2873-RMG

Case No. 2:22-cv-04557-RMG
Honorable Richard M Gergel

DEFENDANT STATE INDUSTRIAL
PRODUCTS CORPORATION'S
APPLICATION FOR GOOD FAITH
SETTLEMENT DETERMINATION

*(Filed concurrently with Declaration of
Sena Hori In Support of Motion for
Determination of Good Faith Settlement)*

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Defendants.

TO THE COURT, AND TO ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Defendant State Industrial Products Corporation, an Ohio Corporation, as successor in interest to UZ Engineered Products ("State Industrial") hereby applies to this Court for an Order determining that the settlement entered into with Plaintiffs Thomas E. McKinnon and Renee L. McKinnon was made in good faith pursuant to Code of Civil Procedure section 877.6.

DATED: March 26, 2026

WOOD, SMITH, HENNING & BERMAN LLP

By: 

THOMAS F. VANDENBURG
SENA HORI

Attorneys for Defendant, State Industrial Products Corporation, an Ohio Corporation, as successor in interest to UZ Engineered Products

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1 **DEFENDANT STATE INDUSTRIAL PRODUCTS CORPORATION'S MEMORANDUM**
2 **IN SUPPORT OF MOTION FOR**
3 **DETERMINATION OF GOOD FAITH SETTLEMENT**

4 Defendant State Industrial Products Corporation, an Ohio Corporation, as successor in
5 interest to UZ Engineered Products ("State Industrial") and Plaintiffs Thomas E. McKinnon and
6 Renee L. McKinnon (together, "Plaintiffs") have entered a settlement agreement that resolves all
7 issues between them. For the reasons shown below, the Court should grant the motion and enter an
8 order (1) finding that the settlement between State Industrial and Plaintiffs is in good faith, (2)
9 dismissing with prejudice all claims against State Industrial, (3) barring any future claims against
10 State Industrial based on the allegations in this action; and (4) barring any present or future
11 requests for indemnity or contribution in any form by any party against State Industrial concerning
12 Plaintiffs' claims in this action.

13 **I. LITIGATION OVERVIEW**

14 On October 30, 2020, Plaintiffs Thomas E. McKinnon and his wife, Renee L. McKinnon,
15 initiated this action in California Superior Court for the County of Orange alleging causes of action
16 under California state law for (i) general negligence; (ii) strict liability (failure to warn); (iii) strict
17 liability (design defect); (iv) fraudulent concealment; (v) breach of implied warranties; and (vi) loss
18 of consortium. (See Complaint (Dkt. 1-1) at 11.) Plaintiffs allege that from 1977 through 2007 Mr.
19 McKinnon was employed by the California Military Department at a fire department located at the
20 Joint Forces Training Base at Los Alamitos in Orange County, California (a government-owned
21 facility). (Id. ¶ 15.) In the course of and throughout his employment at the California Military
22 Department base, Mr. McKinnon alleges that he was exposed to "various solvents, cleaners, and other
23 chemical products manufactured and supplied by defendants" and that such exposure resulted in his
24 contracting Non-Hodgkin's Lymphoma, kidney cancer and liver cancer. (Id. ¶ ¶ 16-17.) He allegedly
25 was exposed to the various solvents, cleaners, and other chemical products through "inhalation,"
26 "dermal contact" or "by way of the water supplied to his places of employment" at the military base.
27 (Id. ¶ ¶ 18-19.) Mr. McKinnon does not specifically allege the manner by which he was exposed to
28 any product. (Id.) For her part, Mrs. McKinnon alleges a loss of consortium claim, caused by Mr.

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1 McKinnon's alleged personal injuries. (Id. ¶¶ 117-18.)

2 Plaintiffs originally initiated the action against ten named defendants. Additional defendants
3 later were "added" by way of California state court's "DOE" defendant provision, which allows a
4 plaintiff to simply "replace" a DOE defendant with the name of a person or entity who could not
5 previously be identified using reasonable diligence. (See. id. ¶ 14.)

6 Mr. McKinnon alleges that he variously came into contact with unrelated and diverse products
7 such as electrical solder, asphalt primer and fluorescent spray paints (to name a few) that were
8 manufactured or sold by various defendants. (Id. ¶ 14) Mr. McKinnon alleges exposure to dozens of
9 chemicals and toxins that he asserts causes his injuries, including but not limited to Titanium Dioxide,
10 Hydrocarbon Propellant, Adepsine Oil, Lead, Tin, Silica Sand, Chlorinated Fatty Acid, Xylene,
11 Calcium Carbonate, and Stoddard Solvent. (See id.)

12 After nearly two years of litigation and discovery, on June 30, 2022, Plaintiffs amended their
13 complaint to add 3M Company and Tyco Fire Products, L.P. as DOE defendants, alleging in the
14 alternative that Mr. McKinnon's injuries were caused by 3M AFFF 3% and 6% and Ansul 6% AFFF.
15 (See Amend. Complaint Re: 3M (Dkt. 1-1) at 6); Amend. Complaint Re: Tyco (Dkt. 1-2) at 3.) On
16 July 28, 2022, 3M Company removed the action based on the federal government contractor defense
17 and filed a Notice of Potential Tag-Along Action in this MDL.

18 On December 20, 2022, the case was transferred into this MDL as a member case from the
19 Central District of California.

20 **II. SETTLING PARTIES**

21 The settling parties are Defendant State Industrial Products Corporation and Plaintiffs
22 Thomas E. McKinnon and Renee L. McKinnon. (Settlement Agreement, §1, Exhibit A to
23 Declaration of Sena Hori.)

24 **III. TERMS OF SETTLEMENT**

25 State Industrial Products Corporation has agreed to pay Plaintiffs the sum total of
26 \$35,000.00, subject to the determination by this Court that the settlement is a "good faith" settlement
27 pursuant to California Code of Civil Procedure section 877.6(a). (Settlement Agreement, §4(b),
28 Exhibit A to Declaration of Sena Hori.) State Industrial Products Corporation and Plaintiffs agree

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1 that such payment is in good faith as set forth in section 877.6, and shall serve as a full and final
2 settlement, along with a general release as between them. (Settlement Agreement, §§5-7, Exhibit A
3 to Declaration of Sena Hori.)

4 **IV. REQUEST FOR FINDING OF GOOD FAITH**

5 Pursuant to California Code of Civil Procedure section 877.6(a), State Industrial Products
6 Corporation requests that the Court determine that its settlement with Plaintiffs was in good faith.¹
7 As a matter of law, such a determination of good faith shall bar any claims by "any other joint
8 tortfeasors or co-obligor from any further claims against [State Industrial Products Corporation] for
9 equitable comparative contribution, or partial or comparative indemnity, based on comparative
10 negligence or comparative fault." Cal. Code Civ. Proc. section 877.6(c). This includes claims by
11 current defendants, future defendants and any other person who may become liable for Plaintiffs'
12 claimed injuries or based on facts alleged by them in this action. See Wilshire Ins. Co. v. Tuff Boy
13 Holdings, Inc., 86 Cal. App. 4th 627, 644 (2001) (good faith determination under section 877.6 bars
14 indemnity claims by current and later-named defendants).

15 The "good faith" of a settlement depends on what is known about potential liability at the
16 time of the settlement. Tech-Bilt, Inc. v. Woodward-Clyde & Assoc., 38 Cal. 3d 488, 499 (1985).
17 Where the liability against a defendant is speculative, what may appear to be a disproportionately
18 low settlement may be in good faith. See West v. Superior Ct., 27 Cal. App. 4th 1625, 1635-36
19 (1994). In Tech-Bilt,² the court set forth several factors that may be considered in determining
20 whether a settlement was in good faith:

- 21 (1) The settlement was within the reasonable range of the tortfeasor's proportional

22 _____
23 ¹ "California Code of Civil Procedure section 877 constitutes substantive law" and, as is the case
24 here, where "a district court sits in diversity, or hears state law claims based on supplemental
25 jurisdiction, the court applies state substantive law to the state law claims." Mason & Dixon
Intermodal, Inc. v. Lapmaster Int'l LLC, 632 F.3d 1056, 1060 (9th Cir. 2011).

26 ² Under California Code of Civil Procedure section 877.6(d), there is a presumption of good faith
27 and courts need not evaluate the settlement under the Tech-Bilt factors where no party to the
28 action files an opposition to the motion for a good faith determination. Leprino Foods Co.,
Leprino Foods Health & Welfare Plan v. Avanti Outpatient Surgical Center, Inc., 2024 WL
1640912, at *2 (C.D. Cal. Mar. 11, 2024).

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- 1 share of comparative liability for Plaintiff's injuries;
- 2 (2) The amount paid in settlements;
- 3 (3) The allocation of settlement proceeds among the plaintiffs;
- 4 (4) The recognition that a settlor should pay less in settlement than he would be
- 5 liable for at trial;
- 6 (5) The financial condition and insurance limits of the settlor;
- 7 (6) The presence of collusion, fraud or torturous conduct aimed to injure the interests
- 8 of the non-settling defendants; and
- 9 (7) That the evaluation be based on what was known at the time of the settlement.

10 Tech-Bilt, Inc., 38 Cal. 3d at 499.

11 All or some of the Tech-Bilt may not apply in every case, but in the end "[t]he ultimate
12 determinant of good faith is whether the settlement is grossly disproportionate to what a reasonable
13 person at the time of settlement would estimate the settlor's liability to be." PacifiCare of Cal. v.
14 Bright Med. Assocs., Inc., 198 Cal. App. 4th 1451, 1464-65 (2011).

15 **Factors 1,2,4,6 and 7.** The settlement agreement between State Industrial Products
16 Corporation and Plaintiffs was made in good faith. (Settlement Agreement, §§4-5, Exhibit to
17 Declaration of Sena Hori.) Plaintiff's theory of liability against State Industrial is premised on
18 allegations that products associated with UZ Engineered Products were present at Mr. McKinnon's
19 workplace, and that State Industrial bears liability based on its alleged relationship to those products.
20 (Complaint ¶ 16-19; Settlement Agreement, Recitals & §5, Exhibit A to Declaration of Sena Hori;
21 See Responses to Special Interrogatories Nos. 1-3, Exhibit B to Declaration of Sena Hori). Plaintiffs
22 do not allege that Mr. McKinnon specifically used any product manufactured by State Industrial
23 Products Corporation. (Complaint §§16-19).

24 Plaintiff's allegations against State Industrial are based on the assertion that products
25 allegedly associated with UZ Engineered Products may have been present at Mr. McKinnon's
26 workplace during the course of his employment with the California Military Department. (See
27 Responses to Special Interrogatories No. 1-3, Exhibit B to Declaration of Sena Hori.) Discovery
28 reflects Plaintiff's contention that State Industrial Products Corporation bears liability based on an

1 alleged asset-related relationship to Applied Industrial Technologies, which Plaintiffs contend
2 supplied products that may have been present at Mr. McKinnon's workplace. (See Responses to
3 Special Interrogatories Nos. 1-3, Exhibit B to Declaration of Sena Hori; also see Settlement
4 Agreement, Recitals, Exhibit A to Declaration of Sena Hori).

5 Mr. McKinnon has not identified any specific instances in which he personally used a
6 product manufactured by UZ Engineered Products or State Industrial Products Corporation, nor has
7 he identified any co-worker who used such a product in his presence. (See Response to Special
8 Interrogatories §§ Nos. 7-10, 11-15, Exhibit B to Declaration of Sena Hori). Mr. McKinnon does
9 not recall using any such product, and Plaintiffs have produced no evidence establishing direct use,
10 frequency, duration, or manner of exposure attributable to State Industrial Products Corporation.
11 (See Responses to Special Interrogatories § Nos. 7-18, Exhibit B to Declaration of Sena Hori.)

12 No deposition has been taken in this case, and Plaintiffs have produced no additional
13 evidence demonstrating that Mr. McKinnon was exposed to any product manufactured by UZ
14 Engineered Products or State Industrial Products Corporation. At most, Plaintiffs allege that Mr.
15 McKinnon worked at locations during his career where products supplied by various defendants,
16 including products allegedly associated with UZ Engineered Products, may have been present.

17 In short, there is no evidence that Mr. McKinnon was ever exposed to a product
18 manufactured by State Industrial Products Corporation or its alleged predecessor. Plaintiffs have not
19 produced evidence establishing that Mr. McKinnon used, worked in proximity to, or was otherwise
20 exposed to any such product while it was being used. Nor have Plaintiffs produced any causation
21 evidence linking Mr. McKinnon's alleged injuries to any product attributed to State Industrial
22 Products Corporation.

23 Plaintiffs assert claims against numerous defendants alleged to have supplied a wide range
24 of unrelated products over several decades, with no specific evidence establishing that any product
25 attributed to State Industrial Products Corporation was a substantial factor in causing Mr.
26 McKinnon's alleged injuries. Plaintiffs' claims against State Industrial are based, at most, on
27 generalized allegations that products allegedly associated with UZ Engineered Products or Applied
28 Industrial Technologies may have been present at locations where Mr. McKinnon worked.

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1 Considering the absence of product-specific exposure evidence, the lack of causation
2 evidence, and the purely successor-based nature of Plaintiff's allegations against State Industrial
3 Products Corporation, it is unlikely that State Industrial would bear any proportional share of
4 comparative liability for Plaintiff's alleged injuries.

5 The settlement amount of \$35,000.00 is reasonable. There is no suggestion of collusion,
6 fraud or tortious conduct aimed at injuring the interests of non-settling defendants. The settlement
7 not only limits State Industrial Products Corporation's potential exposure to liability in this action,
8 but also avoids the substantial costs associated with continued participation in this MDL, including
9 discovery, dispositive motion practice, and trial preparation in a case where Plaintiff's claims against
10 State Industrial are speculative at best.

11 State Industrial Products Corporation's cost to litigate in this action through summary
12 judgment or trial would exceed the negotiated settlement amount. Under these circumstances, the
13 settlement reflects a reasonable and good faith resolution of Plaintiff's claims against State
14 Industrial.

15 **Factor 3.** The settlement proceeds need not be allocated among Plaintiffs because Mr. and
16 Mrs. McKinnon are a married couple and reside in a common law state. (See Complaint (Dkt. 1-1)
17 at 12.); Alisu Invs., Ltd. v. TriMas Corp., 2021 WL 3290585, at *4 (C.D. Cal. Apr. 27, 2021)
18 (finding "no issue concerning inequitable allocation of settlement proceeds" where "the settlement
19 proceeds [were] to be shared equally amongst the two Plaintiffs").

20 **Factor 5.** State Industrial Products Corporation's financial condition does not affect the
21 settlement. State Industrial did not seek coverage from an insurer for its alleged liability in this
22 action. See Leprino Foods Co., 2024 WL 1640912, at *2 (that defendant was "funding the settlement
23 from his own funds instead of through insurance ... supports [the] contention that the settlement
24 was made in good faith"). Alisu Invs., Ltd., 2021 WL 3290585, at *4 (" This information is not
25 currently in the record. However, the Court is not concerned with the financial conditions or policy
26 limits of the settling Defendants under these circumstances because there is no assignment of
27 indemnity rights under the Settlement Agreements.")

28 Based on the evidence before the parties at the time of settlement, the settlement amount of

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1 \$35,000.00 is reasonable and all Tech-Bilt factors weigh in favor of a good faith determination.
2 Furthermore, considering the absence of products-specific exposure evidence and causation
3 evidence as to State Industrial Products Corporation, the settlement amount is not "grossly
4 disproportionate to what a reasonable person at the time of settlement would estimate [State's]
5 liability to be." PacifiCare of Cal., 198 Cal. App. 4th at 1464-65.

6 **V. LIAISON COUNSEL CONSENTS TO FILING OF THE MOTION**

7 On February 26, 2026, Liaison Counsel, Brian Duffy, Esq., informed the movant's counsel
8 that the leadership consents to the filing of the motion (Declaration of Sena Hori, Exhibit C.)

9 **VI. AFFECTED PARTIES**

10 The settlement affects the Complaint filed by Plaintiffs on October 30, 2020, and all
11 amendments thereto. (Complaint (Dkt. 101).)

12 **VII. CONCLUSION**

13 Based on the foregoing, State Industrial Products Corporation respectfully requests that the
14 Court grant the motion and enter an order: (1) finding that the settlement between State Industrial
15 Products Corporation and Plaintiffs was entered into in good faith; (2) dismissing with prejudice
16 all claims against State Industrial Products Corporation; (3) barring any future claims against State
17 Industrial Products Corporation based on the allegations in this action; and (4) barring any present
18 or future requests for indemnity or contribution in any form by any party against State Industrial
19 Products Corporation concerning Plaintiff's claims in this action. State Industrial Products
20 Corporation also request Oral Arguments in the event any opposition papers are filed.

22 DATED: March 26, 2026

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23
24 By: 

25 THOMAS F. VANDENBURG
26 SENA HORI

27 Attorneys for State Industrial Products Corporation, an
28 Ohio Corporation, as successor in interest to UZ
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