

SETTLEMENT AGREEMENT

WHEREAS, on or about September 23, 2010, the Center for Environmental Health (“CEH”), a non-profit corporation, served Chartpak, Inc. (“Chartpak”) and the appropriate public enforcement agencies with a 60-day notice (the “Notice”) alleging violations of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”) by Chartpak, Inc. (“Chartpak”), in accordance with the citizens’ suit provisions of Proposition 65;

WHEREAS, Chartpak is a corporation that employs 10 or more persons and manufactures, distributes and/or sells Grumbacher Artists’ Oil Colors paints containing cadmium and Grumbacher Artists’ Watercolor paints containing cadmium in California (collectively, the “Products”);

WHEREAS, Chartpak disputes the allegations in the Notice and asserts that all of its products comply with all applicable laws;

WHEREAS, Chartpak alleges that it at all times reasonably relied on the conclusions of its expert consultants with regard to its obligations under Proposition 65;

WHEREAS, CEH and Chartpak are entering into this Settlement Agreement as a full and final resolution of all claims which were alleged in the Notice or which could have been raised in a complaint under Proposition 65; and

WHEREAS, this is a settlement of disputed claims between CEH and Chartpak. By executing this Settlement Agreement, Chartpak does not admit any facts or conclusions of law. Nothing in this Settlement Agreement shall be construed as an admission by Chartpak of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Settlement Agreement constitute or be construed as an admission by Chartpak of any fact,

conclusion of law, issue of law, or violation of law. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense Chartpak may have in this or any other or future legal proceedings, other than as set forth herein in an action brought by CEH to enforce this settlement agreement.

NOW, THEREFORE, CEH and Chartpak agree as follows:

1. COMPLIANCE - WARNINGS. Sixty days after this Settlement Agreement is executed by the last party to have executed the Agreement (the “Compliance Date”), Chartpak shall not distribute, ship, or sell any Product that is shipped from any Chartpak facility into California unless such Product bears a label containing the following warning language:

“WARNING: This product contains cadmium, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.”

This statement shall be displayed on the outside of the packaging for such Product, and shall be displayed in a separate outlined box (to set it apart from any other print), which box shall contain no other language. The warning shall be prominently placed on the label of each Product with such conspicuousness, as compared with other words, statements, designs, or devices on the label as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The statement shall not be preceded, followed, or surrounded by words, symbols, or other matter that references the required text, such as “legal notice required by law.” CEH agrees that the sample labels attached hereto as Exhibit A meet the requirements of this paragraph.

2. USE OF NEW CONSULTANT. In the event Chartpak determines to sell a new Product, prior to selling such new Product in California, it will engage a new consultant to help it to determine its compliance obligations under Proposition 65 with

regard to any new Products containing heavy metals including, but not limited to cadmium, that it may sell in California. Chartpak will provide CEH with the name of such new consultant within thirty days of engaging such consultant.

3. SETTLEMENT PAYMENTS.

a. Total Payment. Within ten (10) days of the date that this Settlement Agreement is executed, Chartpak shall pay a total of \$27,500 as a settlement payment to be allocated as set forth below in subparagraphs 3 b.-e.

b. Civil Penalty. Chartpak shall pay \$2,200 as a civil penalty pursuant to Health and Safety Code § 25249.7(b). The penalty shall be made payable to Center for Environmental Health, which will apportion the penalty in accordance with Health and Safety Code § 25249.12.

c. Monetary Payment in Lieu of Additional Penalty. Chartpak shall pay to CEH \$8,300 in lieu of any additional civil penalty pursuant to Health and Safety Code § 25249.7(b) and 11 California Code of Regulations §3203(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. In addition, as part of its *Community Environmental Action and Justice Fund*, CEH may use some the funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of penalty check required under this section shall be made payable to the Center for Environmental Health.

d. Attorneys' Fees and Costs. Chartpak shall pay \$17,000 to reimburse

CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to SAS's attention, litigating and negotiating a settlement in the public interest. The payment required under this section shall be made payable to Lexington Law Group.

e. Delivery of payments. All payments made pursuant to this Section 3 shall be delivered to the Lexington Law Group at the address set forth in Section 9.1 and shall be delivered within 14 days of the Compliance Date.

4. CLAIMS COVERED AND RELEASE OF CLAIMS. This Settlement Agreement is a full, final and binding resolution between CEH and Chartpak of any violation of Proposition 65 that was asserted in the Notice or could have been asserted in a complaint against Chartpak (including any claims that could be asserted in connection with the Products covered by this Settlement Agreement) or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, customers or retailers (collectively, "Chartpak Releasees") based on the presence of cadmium in any Products manufactured by Defendant ("Covered Claims") on or prior to the Compliance Date. CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against Chartpak Releasees. Compliance with this Settlement Agreement constitutes compliance with Proposition 65 for purposes of cadmium exposures from the Products.

5. ENFORCEMENT.

a. Any action based on an alleged breach of this Agreement shall be brought in the Superior Court of California in Marin County. For purposes of this Agreement alone, the Parties agree that the Superior Court of California in Marin County has subject matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Marin. In any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs associated with such action provided such party has complied with Section 4(b) below.

b. Prior to bringing any action to enforce the terms of this Settlement Agreement, a party seeking to enforce shall provide the allegedly violating party thirty (30) days advanced written notice of the alleged violation and a 30-day opportunity to cure. In the event the allegedly violating party has failed to cure within the 30-day period, thereafter, the parties shall meet and confer for a subsequent 20-day period in an effort to try to reach agreement on an appropriate resolution for the alleged violation. After such twenty (20) day period, the party alleging the violation may seek to enforce the terms and conditions contained in this Settlement Agreement. Notwithstanding the foregoing, the parties may forego the opportunity to cure provisions of this section with regard to a subsequent violation of this Agreement that is of the same type as one previously addressed under this section. Should the party seeking to enforce prevail, such party shall be entitled to recover its reasonable attorneys' fees and costs associated with such action from the other party unless the

unsuccessful party has acted with substantial justification. For purposes of this Settlement Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

6. MISCELLANEOUS.

a. Modification. This Settlement Agreement may only be modified by written agreement of CEH and Chartpak.

b. Binding Effect. This Settlement Agreement shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

c. Governing Law. This Settlement Agreement shall be governed by the laws of the State of California.

d. Execution in Counterparts. This Settlement Agreement may be executed in counterparts.

e. Authorization. Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement on behalf of the party represented and legally bind that party. The undersigned have read, understand and agree to all of the terms and conditions of this Settlement Agreement. Except as explicitly provided herein, each party is to bear its own fees and costs.

7. PROVISION OF NOTICE. All notices required pursuant to this Settlement Agreement and correspondence shall be sent by regular first class mail and by email to the following:

For CEH: Mark N. Todzo
Lexington Law Group
1627 Irving Street
San Francisco, CA 94122
mtodzo@lexlawgroup.com

For Chartpak: Steven W. Roth
President
Chartpak, Inc.
510 Broad Hollow Road
Melville, NY 11747
sroth@chartpak.com

With a copy to: Gail S. Port
Proskauer Rose LLP
Eleven Times Square
New York, NY 10036
gport@proskauer.com

AGREED TO:

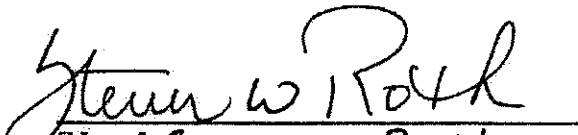
CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Assistant Director
Center for Environmental Health

Dated: 4/12/11

CHARTPAK, INC.



[Name] Steven W Roth
[Title] President

Dated: 4/6/11

EXHIBIT A

PMS 142 CVC

LAP 146G
1/8" NO UV AREA

WARNING: MAY BE HARMFUL IF SWALLOWED. EXPOSURE MAY CAUSE DAMAGE TO THE KIDNEYS, LIVER OR TESTES, OR HARM TO THE DEVELOPING FETUS. Contains CADMIUM. Avoid ingestion. Wash hands immediately after use. When using do not eat, drink or smoke. AVOID USING IF PREGNANT OR CONTEMPLATING PREGNANCY. FIRST AID TREATMENT: If swallowed, get prompt medical attention. For further information contact a poison control center or call 800-222-1222.

AVERTISSEMENT : PEUT ETRE DANGEREUX SI INGERE. L'EXPOSITION PEUT ENDOMMAGER LES REINS, LE FOIE OU LES TESTICULES OU ENDOMMAGER LE FETUS ENVOIE DE DEVELOPPEMENT. Contient : CADMIUM. Eviter d'ingerer. Se laver les mains immediatement apres l'utilisation. Durant l'utilisation, ne pas manger, boire ou fumer. EVITER L'UTILISATION DURANT LA GROSSESSE OU SI UNE GROSSESSE EST ENVISAGEE. PREMIERS SOINS : En cas d'ingestion, consulter immediatement un medecin. Pour en savoir plus sur les effets du produit sur la sante, contacter un centre antipoison.

ADVERTENCIA: PUEDE SER PELIGROSO SI SE INGERE. LA EXPOSICION PUEDE OCASIONAR DANOS A LOS RINONES, HIGADO O TESTICULOS, INCLUSO DANAR AL FETO EN DESARROLLO. Contiene: CADMIO. Evitar ingerir. Lave las manos inmediatamente despues de usarlo. Cuando se utiliza, no coma, beba o fume. EVITE SU USO SI ESTA EMBARAZADA O CONSIDERANDO EMBARAZARSE. TRATAMIENTO DE PRIMEROS AUXILIOS: Si lo ingiere, busque atencion medica inmediata. Para obtener mayor informacion, comuniquese con un centro de control para envenenamiento o llame al 800-222-1222.

WARNING: This product contains cadmium, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm.

AVERTISSEMENT : Ce produit contient du cadmium, une substance chimique déclarée responsable de cancer, de malformations congénitales et d'autres anomalies de la reproduction par l'État de Californie.

ADVERTENCIA: este producto contiene cadmio, un químico conocido en el Estado de California como la causa del cáncer, defectos de nacimiento y otros daños reproductivos.



REV. 2/11

GRUMBACHER

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CL
CONFORME AU TYPE D'USO
CONFERIDO POR EL INSTITUTO
DE CALIFORNIA CON PREVENCIÓN

NAPLES YELLOW PB:7
JAUNE DE NAPLES PRW8
AMARILLO NAPOLITANO PY35:1 PW4

Artists'
OIL COLORS
Pre-tested
P146G
Series 2 Série 2 Serie 2
COULEURS À L'HUILE
pour artistes
COIORES A ÓLEO
para artistas
1.25 fl oz (US) 37 ml

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Fabricado en Estados Unidos
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www.grumbacher.com

DIE LINE

PMS 155

1/8" NO UV AREA

LA-W146

0 1417336612

REV. 2/11

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CONFORME TO ASTM D 426
CONFORME A LA ASTM D 426

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GRUMBACHER®



NAPLES YELLOW
JAUNE DE NAPLES
AMARILLO NAPLES

FINEST™
ARTISTS' WATERCOLOR

AQUARELLES
POUR ARTISTES

.47 fl.oz. (US) 14 ml

W146
Series 1 Série 1

DIE LINE