

## **SETTLEMENT AGREEMENT**

**WHEREAS**, on or about March 30, 2011, the Center for Environmental Health (“CEH”), a non-profit corporation, served Chroma Acrylics, Inc. (“Settling Defendant”) 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 Settling Defendant in accordance with the citizens’ suit provisions of Proposition 65;

**WHEREAS**, Settling Defendant is a corporation that manufactures, distributes and/or sells artists paints containing cadmium in California (collectively, the “Products”);

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

**WHEREAS**, CEH and Chroma Acrylics, Inc. (collectively, the “Parties”) 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 the Parties. By executing this Settlement Agreement, Settling Defendant does not admit any facts or conclusions of law. Nothing in this Settlement Agreement shall be construed as an admission by Settling Defendant 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 Settling Defendant 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 Settling Defendant 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**, the Parties 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”), Settling Defendant shall not distribute, ship, or sell any Product that is shipped from a Settling Defendant 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.” As an alternative, Settling Defendant may use the warnings approved by the court in the Consent Judgment entered into by Utrecht Manufacturing Corporation and the Public Media Center in the action *Public Media Center v. Utrecht Manufacturing Corporation, et al.*, San Francisco Superior Court Case No. 306481 (entered on October 7, 1999).

2. SETTLEMENT PAYMENTS.

a. Total Payment. Within ten (10) days of the Compliance Date, Settling Defendant shall pay a total settlement payment of \$9,500 to be paid in two separate checks delivered to the Lexington Law Group at the address set forth in Section 6.1,

and made payable and allocated as set forth in Subparagraphs 2(b) & (c) below.

b. Monetary Payment in Lieu of Civil Penalty. Settling Defendant shall pay to CEH \$3,000 in lieu of any civil penalty pursuant to Health & Safety Code § 25249.7(b) and 11 Cal. 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 CEH's website [www.ceh.org/justicefund](http://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.

c. Attorneys' Fees and Costs. Settling Defendant shall pay \$6,500 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 Settling Defendant'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.

3. CLAIMS COVERED AND RELEASE OF CLAIMS. This Settlement Agreement is a full, final and binding resolution between CEH and Settling Defendant of any violation of Proposition 65 that was asserted in the Notice or could have been asserted in a complaint against Settling Defendant (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, “Defendant Releasees”) based on the presence of cadmium in any Products manufactured by Settling Defendant (“Covered Claims”) on or prior to the Compliance Date. CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with this Settlement Agreement constitutes compliance with Proposition 65 for purposes of cadmium exposures from the Products.

4. 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. In the event the violating party has cured either within the initial 30-day period or as a result of a subsequent resolution agreed upon during the aforementioned meet and confer process, the party that sought to enforce shall take no further action.

To the extent the foregoing procedure has been exercised previously pursuant to this Agreement, 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.*

5. MISCELLANEOUS.

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

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.

6. 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  
503 Divisadero Street  
San Francisco, CA 94117  
mtodzo@lexlawgroup.com

For Chroma Acrylics, Inc.:

Robert Falk  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105  
RFalk@mof.com

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**



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Charlie Pizarro, Associate Director

Dated: April 20, 2012

CHROMA ACRYLICS, INC.



[Name]

Dated: April 18, 2012

Vice President

[Title]