

SETTLEMENT AGREEMENT

WHEREAS, on or about March 30, 2011, the Center for Environmental Health (“CEH”), a non-profit corporation, served Utrecht Manufacturing Corporation (“Utrecht”) (“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 certain artists paints in California that CEH alleges cause an exposure to cadmium as set forth in the Notice (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 Settling Defendant (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.

NOW, THEREFORE, the Parties agree as follows:

1. 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.

2. 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 any Settling Defendant's facility into California unless such Products bear 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 it agreed to in a Consent Judgment entered by the Superior Court of San Francisco between Settling Defendant and the Public Media Center in 1999, a copy of which is attached hereto as Exhibit A.

2. SETTLEMENT PAYMENTS.

a. Total Payment. Within fifteen (15) days of the date that this

Settlement Agreement is executed by the last party to have executed the Agreement, Settling Defendant shall pay a total settlement payment of \$15,000 to be paid in three separate checks delivered to the Lexington Law Group at the address set forth in Section 7.1, and made payable and allocated as set forth in Subparagraphs 3(b)-(e) below.

b. Civil Penalty. Settling Defendant shall pay \$1,000 as a civil penalty pursuant to Health & 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 & Safety Code § 25249.12.

c. Monetary Payment in Lieu of Additional Penalty. Settling Defendant shall pay to CEH \$4,000 in lieu of any additional 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 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. Settling Defendant shall pay \$10,000 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 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.

4. CLAIMS COVERED AND RELEASE OF CLAIMS.

4.1 This Consent Judgment is a full, final and binding resolution between CEH acting on behalf of itself and in the public interest, and Defendant and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates and their successors and assigns ("Defendant Releasees"), and those to whom Defendant Releasees distribute or sell the Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law claims that have been or could have been asserted in the public interest against Defendant, Defendant Releasees, and Downstream Defendant Releasees regarding the alleged failure to warn about alleged exposures to cadmium resulting from any Products manufactured, distributed or sold by Defendant on or prior to the Compliance Date ("Covered Claims").

4.2 CEH, its directors, officers, employees and attorneys, for themselves and acting on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby release, waive and forever discharge any and all Covered Claims that have been or could have been asserted in the public interest against Defendant, Defendant Releasees and Downstream Defendant Releasees.

4.3 Compliance with the terms of this settlement agreement by Defendant and Defendant Releasees shall constitute compliance by that Defendant, its Defendant Releasees and their Downstream Defendant Releasees with Proposition 65 for purposes of exposures to cadmium 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 San Francisco County. For purposes of this Agreement alone, the Parties agree that the Superior Court of California in San Francisco 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 San Francisco. 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 5(b) below. 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.*

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 with thirty (30) days advance written notice of the alleged violation and a 30-day opportunity to cure. In the event the alleged breaching party cures the alleged violation within 30 days of such notice, no further action to enforce the terms of this agreement shall be taken by the party giving notice of the alleged breach. 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 if the alleged breach is not

cured within such additional 20 day period. Provided that Settling Defendant cures any alleged violation as set forth herein, Plaintiff shall be entitled to no monetary payments or attorneys fees under this Settlement agreement or otherwise, and shall take no further enforcement action.

6. MISCELLANEOUS.

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

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

For Utrecht Manufacturing Corporation:

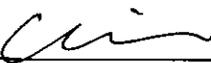
Mr. Tom Becker,
V.P. Finance & Administration
Utrecht Manufacturing Corporation
6 Corporate Drive
Cranbury, NJ 08512-3616

With Copy to:

James R. Maxwell
Rogers Joseph O'Donnell
311 California Street
San Francisco, CA 94104
jrm@rjo.com

AGREED TO:

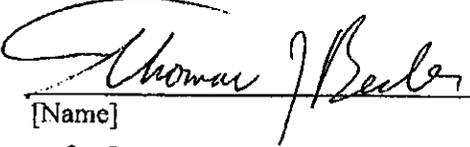
CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Associate Director
Center for Environmental Health

Dated: 5/10/12

UTRECHT MANUFACTURING CORPORATION



[Name]
VP Finance & Administration
[Title]

Dated: 5-3-12

Exhibit A

1 GOODMAN|KANG LLP
2 ROBERT C. GOODMAN (State Bar No. 111554)
3 HELEN H. KANG (State Bar No.124730)
4 177 Post Street, Suite 600
San Francisco, CA 94108
Telephone: (415) 777-2210

5 Attorneys for Plaintiff
6 PUBLIC MEDIA CENTER

ENDORSED
FILED
San Francisco County Superior Court

OCT - 8 1999

ALAN CARLSON, Clerk
BY: KEVIN R. DOUGHERTY
Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10
11 PUBLIC MEDIA CENTER, a non-profit
12 Corporation,

13 Plaintiff,

14 vs.

15 UTRECHT MANUFACTURING
16 CORPORATION; et al.,

17 Defendants.

) Case No. 306481

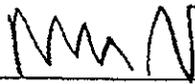
) NOTICE OF ENTRY OF CONSENT
JUDGMENT

18
19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 PLEASE TAKE NOTICE that the above-referenced court entered the attached Consent
21 Judgment on October 7, 1999.

22 Dated: October 7, 1999

GOODMAN|KANG LLP

23
24 By: 
25 ROBERT C. GOODMAN

26 Attorneys for Plaintiff
PUBLIC MEDIA CENTER

1 Robert C. Goodman (State Bar No. 111554)
2 Goodman/Kang LLP
3 177 Post Street, Suite 600
4 San Francisco, CA 94108
5 Telephone: (415) 777-2210
6
7 Attorneys for Plaintiff

ENDORSED
FILED
San Francisco County Superior Court

OCT - 7 1999

ALAN CARLSON, Clerk
BY: KEVIN R. DOUGHERTY
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

11 PUBLIC MEDIA CENTER,
12 Plaintiff,
13 vs.
14 UTRECHT MANUFACTURING
15 CORP., et al.,
16 Defendants.

) Case No. 306481
) [PROPOSED] CONSENT JUDGMENT
) Date: October 7, 1999
) Time: 11:00 a.m.
) Dept.: 301
) Judge: Hon. David A. Garcia
) Action Filed: September 16, 1999
) Trial Date: None Set

19 1. Introduction

20 1.1 On or about July 29, 1998, the Public Media Center ("PMC") served,
21 via certified mail, a notification to the California Attorney General, various
22 District and City Attorneys, and certain private businesses pursuant to Health and
23 Safety Code section 25249.7(d) alleging that such businesses were in violation of
24 California Health and Safety Code section 25249.6 because they, through
25 marketing of certain paint products allegedly exposed residents of the State to
26 chemicals listed under California Health and Safety Code section 25249.5 *et seq.*
27 ("Proposition 65") without first providing those residents with clear and
28 reasonable warnings ("Notice Letter"). PMC subsequently served several

1 additional and supplemental Notice Letters covering additional businesses and
2 additional allegations.

3 1.2 Utrecht Manufacturing Corporation, Utrecht Manufacturing
4 Corporation of California, Binney & Smith, Inc., Colart Americas, Inc. (aka
5 Winsor and Newton), Royal Talens, B.V., Canson-Talens, Inc., Koh-I-Noor, Inc.,
6 Jack Richeson & Co., Inc., Daler-Rowney Ltd., Golden Artist Colors, Creative Art
7 Products Co., Sennelier-Sauer, H. Schmincke & Co., HK Holbein Inc., Old
8 Holland Classic Colours, and Martin F. Weber Co., and certain of their respective
9 divisions and brands, are among the businesses that were named in and received
10 the Notice Letter, and are herein referred to as "Settling Defendants."

11 1.3 On September 16, 1999, PMC, acting in the public interest pursuant to
12 Health and Safety Code section 25249.7(d) and on behalf of the general public
13 pursuant to Business and Professions Code section 17204, filed a complaint in the
14 San Francisco County Superior Court containing Proposition 65 and Unfair
15 Competition Act claims against some of the Settling Defendants based on the
16 allegations contained in the Notice Letter. On October 4, 1999, the PMC amended
17 its complaint and named additional defendants who are Settling Defendants
18 hereunder.

19 1.4 For the purpose of avoiding protracted litigation, the parties have
20 exchanged information concerning the claims asserted and factual matters alleged
21 in the Notice Letters and the Complaint and now enter into this Consent Judgment
22 as a full and final settlement of all claims that were raised or which could have
23 been raised in the Complaint based on the facts alleged therein or in the Notice
24 Letters.

25 1.5 Nothing in this Consent Judgment shall be construed as an admission
26 by any party of any fact or issue of law; nor shall compliance with the Consent
27 Judgment constitute or be construed as an admission by any party of any fact or
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1 issue of law. Nothing in the Consent Judgment shall prejudice, waive or impair
2 any right, remedy or defense the Settling Defendants may have in any other or
3 future legal proceedings. However, this Paragraph shall not diminish or otherwise
4 affect the obligations, responsibilities and duties of the parties under this Consent
5 Judgment.

6 **2. Jurisdiction**

7 2.1 For purposes of this Consent Judgment only, the Parties agree that:

8 2.2 The Court has jurisdiction over the allegations of violations contained
9 in the Complaint and personal jurisdiction over each of the Settling Defendants.

10 2.3 The Court is the proper venue for resolution of this Action.

11 2.4 The Court has jurisdiction to enter this Consent Judgment as a full and
12 final judgment, resolving the claims which were or could have been raised in the
13 Complaint based on the facts alleged therein or in the Notice Letters.

14 **3. Injunctive Relief: Clear and Reasonable Warnings**

15 3.1 Settling Defendants shall provide Proposition 65 warnings in the
16 manner set forth in Paragraphs 3.2 through 3.10 below in conjunction with the sale
17 of any of "Covered Products" as defined herein. For purposes of this Agreement,
18 the term "Covered Products" shall mean any and all paints (including, without
19 limitation, acrylics, alkyds, gouaches, oils, and water colors) and pigments
20 manufactured, sold, and/or distributed by a Settling Defendant for use in
21 California which contain: 1) lead, 2) cadmium, 3) any other Proposition 65-listed
22 chemicals, including, but not limited to certain forms of cobalt and nickel, where
23 such are listed as ingredients on the product's Material Safety Data Sheet
24 ("MSDS") and/or label, or 4) any other Proposition 65-listed chemicals which are
25 otherwise known to be present in an amount requiring a health warning under the
26 Labeling of Hazardous Art Materials Act ("LHAMA"), 15 U.S.C. §§ 1277 *et seq.*

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1 3.2 Revisions to Permanent Labeling For Covered Products: By no later
2 than one year after entry of this Consent Judgment, Settling Defendants shall
3 revise the labeling for Covered Products manufactured for sale in the State of
4 California to include the warning language specified in Paragraphs 3.3 through 3.9
5 below (as respectively applicable to a particular Covered Product's formulation).
6 Settling Defendants shall not thereafter ship such Covered Products, or cause such
7 Covered Products to be shipped, into California without such revised labeling.
8 The applicable warning language shall be printed in a type size and style that is as
9 conspicuous as, but not necessarily any more prominent than, other health effects
10 information printed on the Covered Product's label. The type size requirements
11 specified in 16 C.F.R. § 1500.121 shall be deemed to satisfy the type size
12 requirements of the preceding sentence.

13 3.3 For Covered Products containing *cadmium* and which are paints, the
14 warning shall state:

15 **WARNING: DO NOT SPRAY APPLY** -- This product
16 contains cadmium, a chemical known to the State of
 California to cause cancer by means of inhalation.

17 If space limitations on containers holding less than 7.5 milliliters preclude use of
18 the warning language required by this Paragraph in the manner required by
19 Paragraph 3.2 above, a Settling Defendant may omit the word "This."

20 3.4 For Covered Products containing *cadmium* and which are pigments,
21 the warning shall state:

22 **WARNING:** This product contains cadmium, a chemical
23 known to the State of California to cause cancer.

24 3.5 For Covered Products containing *lead* and which are either paints or
25 pigments, the warning shall state:

26 **WARNING:** This product contains lead, a chemical
27 known to the State of California to cause cancer and birth
28 defects or other reproductive harm.

1 3.6 For Covered Products containing chemicals *other than cadmium or*
2 *lead* which are listed under Proposition 65 as carcinogens (including, but not
3 limited to certain forms of cobalt and nickel) and which are either paints or
4 pigments, the warning shall state:

5 **WARNING:** This product contains a chemical known to
6 the State of California to cause cancer.

7 3.7 For Covered Products containing chemicals *other than cadmium or*
8 *lead* which are listed under Proposition 65 as reproductive toxicants and which are
9 either paints or pigments, the warning shall state:

10 **WARNING:** This product contains a chemical known to
11 the State of California to cause birth defects or other
reproductive harm.

12 3.8 For Covered Products containing chemicals *other than cadmium or*
13 *lead* which either singly or in combination are listed under Proposition 65 as *both*
14 carcinogens and reproductive toxicants and which are either paints or pigments,
15 the warning shall state:

16 **WARNING:** This product contains chemicals known to
17 the State of California to cause cancer, and birth defects
or other reproductive harm.

18 3.9 Interim Signage for Covered Products in Inventory: To address
19 Covered Products in, or that may placed in, inventory in California prior to the
20 implementation of revisions to permanent labeling required by Paragraph 3.2,
21 Settling Defendants, or an entity acting on their behalf, shall, by no later than
22 sixty (60) days after receipt of notice of entry of this Consent Judgment, mail to
23 the central purchasing office for retail stores with whom they transact business for
24 sale of Covered Products in California: 1) at least five (5) copies of the sign
25 contained in Exhibit A (hereinafter "Warning Sign"), printed on 65 pound cover
26 stock and 2) a letter explaining the warning program and providing posting
27 instructions. The Warning Sign shall be 8½" by 11" in size and shall have the
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1 exact content, form, and print style as Exhibit A. The letter and posting
2 instructions referred to in this paragraph shall contain the text shown in Exhibit B,
3 and shall contain no further information or statements without the advance written
4 approval of the California Attorney General's Office. A Settling Defendant that
5 has complied with the terms of this paragraph in good faith, and which has not
6 advised a retailer to the contrary, shall not be found to have violated this Consent
7 Judgment where a retail store, distributor, or any other person required to post the
8 warning signs required by this paragraph fails to properly post such warnings.

9 3.10 Warnings for Occupational Exposures: A Settling Defendant shall, in
10 addition to complying with the warning provisions of Paragraphs 3.2 through 3.9
11 above, revise the Material Safety Data Sheet ("MSDS") pertaining to each Covered
12 Product to include the applicable warning language specified in Paragraphs 3.3
13 through 3.8 above. Settling Defendants shall distribute final MSDSs incorporating
14 applicable warning language in the normal course of business within one hundred
15 and eighty (180) days after receipt of notice of entry of this Consent Judgment

16 3.11 Alternative Warning Requirements. If any other Proposition 65
17 warning language or method is permitted by the courts or Attorney General of the
18 State of California with any person or entity which manufactures, distributes, or
19 sells Covered Products addressed by this Consent Judgment, then a Settling
20 Defendant, may at its sole option, give warnings on the same terms.

21 **4. Duties Limited to California**

22 The warning requirements contained in this Consent Judgment shall have no
23 effect on Covered Products sold by Settling Defendants for use outside of the State
24 of California.

25 **5. Statutory Penalty Payment**

26 5.1 Settling Defendants, or an entity acting on their behalf, shall, within
27 thirty (30) days after receipt of notice of entry of this Consent Judgment,
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1 collectively pay the sum of \$12,500 in statutory penalties pursuant to Health and
2 Safety Code Section 25249.7(b).

3 5.2 Seventy-Five (75) percent of the funds required by Paragraph 5.1 shall
4 be paid to the California Attorney General pursuant to Health and Safety Code
5 Sections 25192(a)(1) and (3).

6 5.3 The remaining twenty-five (25) percent of the funds required by
7 Paragraph 5.1 shall be paid to PMC pursuant to Health and Safety Code Sections
8 25192(a)(2).

9 **6. Restitutionary Relief/Cy Pres Remedy**

10 6.1 Settling Defendants, or an entity acting on their behalf, shall, within
11 thirty (30) days of receipt of notice of entry of this Consent Judgment, collectively
12 pay the sum of \$125,000 to be used for projects and programs designed to educate
13 artists on safe use and handling practices for art materials containing lead,
14 cadmium and/or other chemicals listed under Proposition 65. PMC shall design
15 and implement such programs and projects and, in so doing, will use its best
16 practicable efforts to obtain input from and consult with the Council For Art
17 Education and other non-profit organizations with knowledge in the field. The
18 PMC shall also, within two years of the date of entry of this Judgment by the
19 Court, provide the California Attorney General's office and the Settling
20 Defendants' counsel of record with a letter report briefly describing: 1) the
21 programs and projects it has undertaken pursuant to this Paragraph, 2) a general
22 evaluation of their effectiveness, and 3) an accounting of the funds it has
23 expended pursuant to this Paragraph.

24 **7. Attorneys' Fees**

25 Within thirty (30) days after receipt of notice of entry of this Consent
26 Judgment, Settling Defendants, or an entity acting on their behalf, shall
27 collectively pay the sum of \$36,250 to the law firm of Goodman/Kang LLP as
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1 reimbursement for Plaintiff's investigative and experts costs and attorneys' fees.
2 Except as specifically provided in this Consent Judgment, each side shall bear its
3 own costs and attorneys' fees.

4 **8. Modification of Consent Judgment**

5 This Consent Judgment may be modified by written stipulation of the
6 Plaintiff and the Settling Defendant(s) to whom the modification applies and upon
7 entry of a modified Consent Judgment by the Court thereon, or upon motion of the
8 Plaintiff, the Attorney General, or any Settling Defendant as provided by law and
9 upon entry of a modified Consent Judgment by the Court. The California Attorney
10 General's office shall be served with a copy of any stipulation or motion brought
11 before the Court by the Plaintiff and/or a Settling Defendant pursuant to this
12 paragraph.

13 **9. Enforcement of Consent Judgment**

14 The Plaintiff or the California Attorney General may, by motion or order to
15 show cause before the Superior Court of San Francisco, enforce the terms and
16 conditions contained in this Consent Judgment.

17 **10. Application of Consent Judgment**

18 10.1 The obligations of this Consent Judgment shall apply to and be
19 binding upon plaintiffs, acting in the public interest pursuant to Health and Safety
20 Code section 25249.7(d) and on behalf of the general public pursuant to Business
21 and Professions Code section 17204, and the Settling Defendants and the
22 successors or assigns of any of them. Pursuant to the recent decision in *American*
23 *International Industries v. Superior Court (Urbach)*, 72 Cal.App.4th 1384 (1999),
24 the terms of this Consent Judgment were submitted to and discussed with the
25 California Attorney General's office by the Settling Defendants prior to the entry
26 of this Consent Judgment by the Court. The final terms of this Consent Judgment
27 reflect various modifications of prior drafts made to address comments provided to
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1 the Settling Defendants by the Attorney General's office. A copy of this final
2 version of the Consent Judgment has been served on the Attorney General's office
3 together with advanced notice of the parties' intent to present it to the Court on
4 Thursday, October 7, 1999 (See Exhibit D).

5 10.2 In the event that Proposition 65 is repealed, declared unconstitutional,
6 or found to be preempted by federal law with respect to its application to the
7 Settling Defendants' and/or their competitors' or either of their Covered Products,
8 Settling Defendants shall have no further obligations pursuant to paragraphs 3.1
9 through 3.10 of this Consent Judgment.

10 **11. Retention of Jurisdiction**

11 This Court shall retain jurisdiction of this matter to implement the terms of
12 this Consent Judgment.

13 **12. Authority to Stipulate to Consent Judgment**

14 Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the party he or she represents to stipulate to this Consent Judgment
16 and to enter into and execute the Consent Judgment on behalf of the party
17 represented and legally to bind that party. Upon execution of this Consent
18 Judgment by all parties, Plaintiff and/or the Settling Defendants shall serve a copy
19 of it, together with all of its exhibits, on the California Attorney General.

20 **13. Claims Covered**

21 This Consent Judgment is a final and binding resolution between the
22 Plaintiff, acting in the public interest pursuant to Health and Safety Code
23 section 25249.7(d) and on behalf of the general public pursuant to Business and
24 Professions Code section 17204, and each Settling Defendant and their respective
25 parents, subsidiaries, affiliates, employees, agents, distributors, retailers, and/or
26 customers, and the successors and assigns of any of them, of any violation that has
27 or could have been asserted against any of them based on their alleged failure to
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1 provide clear, reasonable, and lawful warnings pursuant to Proposition 65 of
2 consumer, occupational, and/or environmental exposures to chemicals listed under
3 Proposition 65 contained in Covered Products manufactured, distributed and/or
4 sold by the Settling Defendants. Compliance with the terms of this Consent
5 Judgment resolves any issue, now and in the future, concerning compliance by any
6 Settling Defendant, its parent, subsidiaries, affiliates, divisions, subdivisions,
7 brands, employees, agents, distributors, retailers, and/or customers, and the
8 successors and assigns of any of them, concerning the requirements of Proposition
9 65 and the Unfair Competition Act with respect to any consumer, occupational, or
10 environmental exposures associated with chemicals listed under Proposition 65
11 contained in Covered Products manufactured, distributed, or sold by the Settling
12 Defendants.

13 **14. Entire Agreement**

14 The agreement reflected in this Consent Judgment contains the entire
15 understanding regarding the subject matter of this Consent Judgment and
16 supercedes all prior understandings and agreements, whether oral or in writing,
17 regarding the subject matter of this Consent Judgment.

18 **15. Use of Documents**

19 Unless otherwise required by subpoena or court order, the Plaintiff shall not
20 use or disseminate any documents that any Settling Defendant has provided to it in
21 the course of this Action or in the course of settlement discussions conducted prior
22 to or during the course of this Action. Plaintiff shall advise a Settling Defendant
23 of its receipt of any subpoena or court order requiring it to produce documents it
24 has received from the Settling Defendant within a reasonable time in advance of
25 their required production date so as to allow the Settling Defendant an opportunity
26 to attempt to obtain a protective order concerning the production and/or further
27 dissemination of such information.

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1 **16. Provision of Notice**

2 16.1 When any party is entitled to receive any notice or report under this
3 Consent Judgment, the notice or report shall be sent by U.S. mail or overnight
4 courier service to all of the persons and addresses set forth in Exhibit C. Any
5 party may modify the person and address to whom notice is to be sent by sending
6 each other party notice in accordance with this paragraph.

7 **17. Individual Obligations**

8 Except as otherwise provided herein, the obligations of the Settling
9 Defendants pursuant to this Consent Judgment are individual to each of them and
10 are in no way collective or joint. No Settling Defendant shall be held responsible
11 for the failure of any other Settling Defendant to comply with the terms hereof.

12 **18. Choice of Law**

13 This Consent Judgment shall be governed by and construed under the laws of
14 the State of California.

15 **19. Effective Date**

16 This Consent Judgment shall become effective when it is entered as a final
17 judgment by the Court and shall be of no force or effect if it is not so entered.

18 **20. Court Approval**

19 If this Consent Judgment is not approved by the Court, it shall, at the
20 Settling Defendants' sole option, be of no force or effect and cannot be used in
21 any proceeding for any purpose.

22 **21. Execution by Facsimile and/or in Counterparts**

23 The stipulations to this Consent Judgment may be executed together or in
24 counterparts and/or by facsimile, which taken together shall be deemed to
25 constitute one document.

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1 APPROVED AS TO FORM:

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3 DATE: 10/5/99

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7 DATE: October 5, 1999

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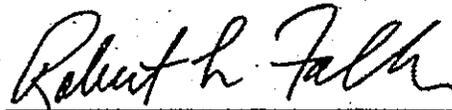
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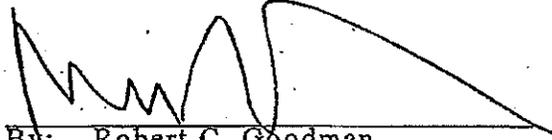
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By: Robert Falk

Counsel to Defendants



By: Robert C. Goodman

Counsel to Plaintiff, Public Media Center

1 IT IS SO STIPULATED:

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3 DATE: October 4, 1999

Edwin F. Bush, II
BY: Edwin F. Bush, II, Secretary

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For: Canson Talens, Inc.
(name of party)

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[PROPOSED] ART MATERIALS CONSENT JUDGMENT

sf-695774

1 IT IS SO STIPULATED:

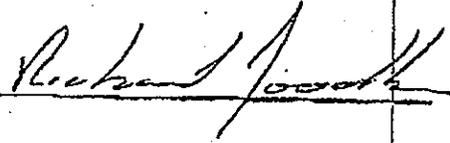
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3 DATE: OCTOBER 4TH 1999

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By:



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For: COLAAT AMERICAS INC.
(name of party)

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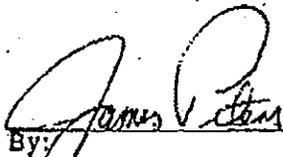
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1 IT IS SO STIPULATED:

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3 DATE: 10/4/99

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By: 

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For: UTRECHT Mfg. Co. *
(name of party)

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* Includes Utrecht Manufacturing Corporation of California

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DATE: OCTOBER 5, 1999

By: *Douglas Hopper*

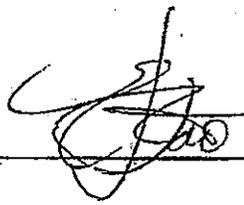
For: HK HERBEN INC.
(name of party)

1 IT IS SO STIPULATED:

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3 DATE: 4 October 1999

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By:  E.J. Feax, V.P.

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For: Martin F. Weber Co.
(name of party)

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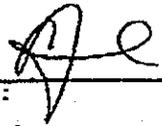
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1 IT IS SO STIPULATED:

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3 DATE: 5th October 1999

By:  (A.R. FRENCH)

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For: Daler - Rowney Ltd.
(name of party)

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1 IT IS SO STIPULATED:

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3 DATE: October 6, 1999

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Nils Knappe
By: _____
(Nils Knappe)

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For: H.Schmincke & Co. - GmbH & Co.KG -
(name of party)

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DATE: OCT 6, 1999

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30 SEP. 1999

By: ERIC SAUER

For: SENHELIER / SAUER
(name of party)

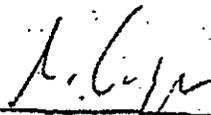
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1 IT IS SO STIPULATED;

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3 DATE: October 6, 1999

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By: (Nils Knappe)

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For: H. Schmincke & Co. - GmbH & Co. KG -
(name of party)

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1 REVIEWED AND APPROVED AS A JUDGMENT OF THE SUPERIOR
2 COURT:

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4 DATE: OCT - 7 1999

DAVID A. GARCIA
By: Judge of the Superior Court

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WARNING:

Some artists' paints and pigments contain lead and/or cadmium which are chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

Some artists' paints and pigments contain cobalt or nickel which are chemicals known to the State of California to cause cancer.

*Check label to see if any of these are present.
Do not spray apply these products.*

30 SEP. 1999

EXHIBIT C

(Notice Form)

Party Name: SENNELIER - SAUER
Attention: Eric SAUER
Address: 2, rue Lomard
22000 - ST BIEUC FRANCE
Telephone: 33-2-96-68-20-00
Fax: 33-2-96-61-77-19

1
2 **Exhibit B**

3 **RETAILER INSTRUCTIONS**

4 **RE: Court-Ordered Proposition 65 Warnings for Sale of Certain Art**
5 **Materials in California**

6 Dear Retailer:

7 This letter contains important information and materials concerning the need
8 to provide court-ordered warnings for the sale of certain art materials in California
9 containing chemicals listed under Proposition 65. It is very important that you
10 read and comply with the following instructions.

11 Enclosed are signs for posting in your store if, and only if, you currently
12 sell artists' paints or pigments in California. If you do not post these signs as
13 required, you risk further legal action by the Attorney General, District of
14 City Attorneys, or other private prosecutors, in which substantial monetary
15 penalties and recovery of the prosecutor's attorneys' fees and expenses could be
16 sought.

17 These signs are being provided by art material manufacturers and
18 distributors as part of a court-approved settlement of a legal action brought under
19 "Proposition 65." In this legal action, the plaintiff claimed that certain artists'
20 prints and pigments containing chemicals listed by the State under Proposition 65
21 require a warning under Proposition 65 in certain circumstances, such as when
22 these artists' paints or pigments are applied by artists contrary to their directions
23 for use. The companies sued vigorously dispute the plaintiff's claims, but have
24 agreed to take various actions to settle the case.

25 Under the settlement, artists' paints and pigments containing lead, cadmium,
26 cobalt and/or nickel, or other chemicals listed under Proposition 65 may continue
27 to be sold legally in California. Manufacturers of these art materials that are
28 parties to the settlement will be revising their labeling over the next year to

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EXHIBIT C

(Notice Form)

Party Name: UTRECHT MANUFACTURING Co. *
Attention: JAMES PETERS
Address: 6 CORPORATE DRIVE
CRANBURY NJ 08512
Telephone: (609) (800) 276-2205
Fax: (609) 655-4367

*Includes Utrecht Manufacturing Corporation of California

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EXHIBIT C

(Notice Form)

Party Name: Martin J. Weber Co.
 Attention: Edward J. Flax, Vice Pres.
 Address: 2727 Southampton Rd.
Philadelphia PA 19154-1293
 Telephone: 215-677-5600 x.304
 Fax: 215-677-3336

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EXHIBIT C

(Notice Form)

Party Name: HW HOLBEIN INC.
 Attention: DOUGLAS HOPPER
 Address: P.O. BOX 555, 20 BATHGATE ST.
WILLISTON, VT 05495
 Telephone: 800 - 682 - 6686
 Fax: 802 - 658 - 5889

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5 **EXHIBIT C**
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9 **(Notice Form)**
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12 Party Name: CANSON TALENS, INC.
13 Attention: KEVIN KELLEY
14 Address: 21 INDUSTRIAL DRIVE
15 SOUTH HADLEY, MA 01075
16 Telephone: (800) 628 9283
17 Fax: (413) 538-7301
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EXHIBIT C

(Notice Form)

Party Name: COLART AMERICAS, INC.
Attention: RICHARD GOODBAN
Address: 11 CONSTITUTION AVENUE
PISCATAWAY, NJ 08853
Telephone: (732) 562-0770
Fax: (732) 562-0941

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EXHIBIT C

(Notice Form)

Party Name: JACK RICHESON & Co. Inc.
 Attention: D.J. RICHESON
 Address: 557 MARCELLA DR
KIMBERLY, WI. 54136
 Telephone: 920 738 0744
 Fax: 920 738 9156

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EXHIBIT C

(Notice Form)

Party Name: Golden Artist Colors, Inc.
 Attention: Ben Gavett
 Address: 188 Bell Rd
New Berlin NY 13460
 Telephone: 607 847 6154
 Fax: 607 847 8162

1 include Proposition 65 warnings on the products in question. In the mean time,
2 they are asking you to post the enclosed warning signs in your California retail
3 stores as an interim measure. If artists' paints or pigments are sold in your
4 California stores, then your must post these signs. Please make sure the
5 warning sign is placed in a location that is visible to the consumer prior to
6 purchase, such as at the cash register or adjacent to the area in which these
7 products are displayed.

8 YOU WILL BE PROTECTED BY THE TERMS OF THE SETTLEMENT AS
9 LONG AS YOU POST THESE SIGNS IN YOUR CALIFORNIA STORES BY
10 JANUARY 31, 2000 AND ENSURE THAT THEY REMAIN IN PLACE FOR AT
11 LEAST A YEAR.

12 Not all suppliers are participating in this court-ordered warning program.
13 Suppliers that are not participating in this program may not be updating the labels
14 of their art materials with a Proposition 65 warning. Therefore, before you
15 remove the enclosed warning sign from your California stores, you should
16 check your inventory to ensure that labels with Proposition 65 warnings are in
17 place and/or contact your suppliers to determine if they are in compliance with
18 Proposition 65, since failure to comply could subject you to the legal actions
19 referred to above.

20 If you need additional signs for your store(s), please contact [name of
21 person or entity distributing signs] at [telephone number and/or e-mail
22 address] to request an additional supply.
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1 **EXHIBIT D**

2 **PROOF OF SERVICE BY MAIL**

3 I am employed with the law firm of Morrison & Foerster LLP, whose address
4 is 425 Market Street, San Francisco, California, 94105; I am not a party to the
5 within cause; I am over the age of eighteen years and I am readily familiar with
6 Morrison & Foerster's practice for collection and processing of correspondence for
7 hand delivery and/or for mailing with the United States Postal Service and know
8 that in the ordinary course of Morrison & Foerster's business practice the
9 document described below will be hand delivered and/or deposited with the United
10 States Postal Service on the same date that it is placed at Morrison & Foerster
11 with postage thereon fully prepaid for collection and mailing.

12 I further declare that on the date hereof I served a copy of:

13 **NOTICE OF EX PARTE MOTION RE: ENTRY OF [PROPOSED]
14 CONSENT JUDGMENT**

15 **[PROPOSED] CONSENT JUDGMENT**

16 on the following by placing a true copy thereof enclosed in a sealed envelope
17 addressed as follows for collection and hand delivery by messenger (as
18 specifically designated below) and/or for mailing at Morrison & Foerster LLP, 425
19 Market Street, San Francisco, California 94105, in accordance with Morrison &
20 Foerster's ordinary business practices:

21 Edward G. Weil
22 Deputy Attorney General
23 State of California Department of Justice
24 1515 Clay Street
25 Oakland, CA 94612-1413

26 I declare under penalty of perjury under the laws of the State of California
27 that the above is true and correct.

28 Executed at San Francisco, California, this 5th day of October, 1999.

29 Millie Calvo
30 (typed)

31 *Millie Calvo*
32 (signature)

33 **[PROPOSED] ART MATERIALS CONSENT JUDGMENT**

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PROOF OF SERVICE

Emily C. Paukert certifies and declares as follows:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action. My business address is 177 Post Street, Suite 600, San Francisco, California 94108, which is located in the county where the mailing described below took place.

I am readily familiar with the regular collection and processing practices at my place of business for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 7, 1999, at San Francisco, California, the following document:

NOTICE OF ENTRY OF CONSENT JUDGMENT

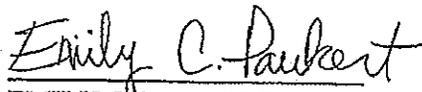
was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid, addressed to:

Edward G. Weil,
Deputy Attorney General
State of California Department of Justice
1515 Clay Street
Oakland, CA 94612-1413

Robert L. Falk, Esq.
Morrison & Foerester, LLP
425 Market Street
San Francisco, CA 94105-2482

and that envelope was placed for collection and mailing on that date following ordinary business practices.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California, October 7, 1999.


EMILY C. PAUKERT