

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is between the Center for Environmental Health (“CEH”) and Eccolo Ltd. (“Eccolo”) (together, the “Parties”).

1. INTRODUCTION

1.1. On May 9, 2011, CEH, a non-profit corporation acting in the public interest, provided a “Notice of Violation of Proposition 65” (the “Notice”) to Office Depot, Inc. and Swinton Avenue Trading Ltd., Inc. (collectively, “Office Depot”) and to the California Attorney General, the District Attorneys of every county in California, and the City Attorneys of every California city with a population greater than 750,000 regarding the presence of lead and lead compounds (collectively, “Lead”) in journals and planners (“Covered Products”). Subsequently, Eccolo was identified as the manufacturer, distributor and/or seller of certain Covered Products, including the Foray Faux Leather Journal in Red specifically referenced in the Notice.

1.2. The Notice alleges that the Covered Products contain Lead. The Notice alleges that the Covered Products expose people who touch, or otherwise handle the Covered Products, to Lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenic or reproductive toxicity of Lead. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65.

1.3. The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding Covered Products manufactured, distributed and/or sold by Eccolo. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that nothing in this Agreement shall be construed as an admission by the Parties of

any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in the Agreement shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. INJUNCTIVE RELIEF

2.1. Lead Limits. Upon execution of this Agreement, Eccolo shall not purchase, import, manufacture, ship, sell or offer for sale any Covered Product unless such Covered Product complies with the following lead limits:

2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R. § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”).

2.1.2 Leather: no more than .03 percent Lead by weight (300 ppm).

2.1.3 All other materials: no more than .01 percent Lead by weight (100 ppm).

2.2. Action Regarding Specific Products.

2.2.1 Eccolo has reformulated the Foray Faux Leather Journal in Red, UPC No. 7-35854-74670-4 to comply with Proposition 65. Upon execution of this Agreement, and to the extent not previously completed, Eccolo shall cease selling the pre-reformulation Foray Faux Leather Journal in Red, UPC No. 7-35854-74670-4 (the “Recall Product”) to customers who sell or offer for sale the Recall Product to California consumers. Upon execution of this Agreement, Eccolo shall also: (i) cease shipping the Recall Product to any of its customers that resell the Recall Product in California, and (ii) send instructions to its customers that resell the Recall Product in California instructing them to cease offering such Recall Product for sale in

California.

2.2.2 Eccolo shall instruct its California customers that resell the Recall Product either to (i) return the Recall Product to Eccolo for destruction; or (ii) directly destroy the Recall Product.

2.2.3 Any destruction of Recall Product shall be in compliance with all applicable laws.

2.2.4 Within sixty days of execution of this Agreement, Eccolo shall provide CEH with written certification from Eccolo confirming compliance with the requirements of this Section 2.

3. SETTLEMENT PAYMENTS

3.1. In consideration of the mutual covenants and releases provided in this Agreement, within thirty (30) days of the execution of this Agreement, Eccolo shall pay the sum of \$30,000. The \$30,000 settlement payment shall be paid in three separate checks made payable as follows: (a) \$3,930 payable to Center for Environmental Health; (b) \$5,900 payable to Center for Environmental Health; and (c) \$20,170 payable to Lexington Law Group. Any failure by Eccolo to comply with the payment terms herein shall be subject to a stipulated late fee in the amount of \$100 for each day after the delivery date the payment is received. The late fees required under this Section shall be recoverable, together with reasonable attorneys' fees, in an enforcement proceeding brought pursuant to Section 5.1 of this Agreement. All of the settlement payments shall be delivered to the address set forth in Section 10.1 and shall be allocated by CEH as set forth below to the following categories:

3.1.1 **Civil Penalty.** \$3,930 as a penalty pursuant to Health & Safety Code §

25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The civil penalty check shall be made payable to the Center for Environmental Health.

3.1.2 Monetary Payment in Lieu of Civil Penalty. \$5,900 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulation, Title 11 § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including heavy metals. In addition, CEH may use a portion of such funds to monitor compliance with the reformulation requirements of this Agreement. The payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

3.1.3 Attorneys' Fees and Costs. \$20,170 to reimburse CEH's attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to Eccolo's attention, and negotiating a settlement in the public interest. This payment shall be made payable to the Lexington Law Group.

4. MODIFICATION OF SETTLEMENT AGREEMENT

4.1. This Settlement Agreement may be modified only by written agreement of the Parties.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1. The Parties agree that any action based on violation of this Agreement shall be brought in the Superior Court of California in Marin County. For purposes of this Agreement, notwithstanding Section 1.3 above, 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. Any enforcement by CEH of Section 2 shall be limited to Covered Products sold in California. Should a party to this Agreement prevail on any action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

6. APPLICATION OF SETTLEMENT AGREEMENT

6.1. This 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.

7. CLAIMS COVERED

7.1. Except as otherwise provided herein, CEH hereby releases and discharges Eccolo and its parents, subsidiaries, directors, officers, employees, agents, and all entities to whom they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (including but not limited to Office Depot) with respect to any violation of Proposition 65 related to failure to warn about exposures to lead in the Covered Products that was or could have been asserted by CEH based on the Notice arising from Covered Products manufactured, distributed or sold by Eccolo on or before the execution of this Agreement. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 for the purposes of exposures to lead from the Covered Products.

8. SPECIFIC PERFORMANCE

8.1. The Parties expressly recognize that Eccolo's obligations under this Agreement are unique. In the event that Eccolo is found to be in breach of this Agreement for failure to comply with the provisions of Section 2 hereto, the Parties agree that it would be extremely

impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Eccolo expressly waives the defense that a remedy in damages will be adequate.

9. GOVERNING LAW

9.1. The terms of this Agreement shall be governed by the laws of the State of California.

10. PROVISIONS OF NOTICE

10.1. All notices required pursuant to this Agreement and correspondence shall be sent by first class and electronic mail to the following:

For CEH:

Howard Hirsch
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
hhirsch@lexlawgroup.com

For Eccolo, Inc:

Ivan Tether
Tether Law
860 Via de la Paz, Suite E-3d
Pacific Palisades, CA 90272
Ivantether@verison.net

11. ENTIRE AGREEMENT

11.1. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein

and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against any entity that is not Eccolo on terms that are different than those contained in this Agreement.

13. EXECUTION IN COUNTERPARTS

13.1. The stipulations to this Agreement may be executed in counterparts by electronic mail, which taken together shall be deemed to constitute one document.


14. AUTHORIZATION

14.1. Each signatory to this Agreement certifies that he or she is fully authorized by the party he or she represents to stipulate to this Agreement and to enter into and execute the 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 Agreement. Except as

explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

 Carmelo Pizzano
Name

Dated: 6/12/12

Associate Director
Title

ECCOLO, INC.

Dated: _____

Name

Title

explicitly provided herein, each party is to bear its own fees and costs.

AGREED TO:

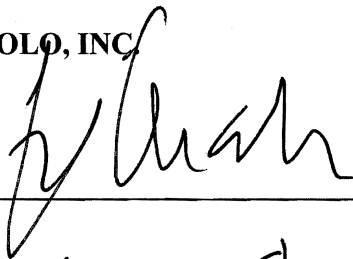
CENTER FOR ENVIRONMENTAL HEALTH

Name

Dated: _____

Title

ECCOLO, INC



Dated: JUNE 1, 2012

Steven Shamah

Name

Pres.

Title