SETTLEMENT AGREEMENT

AG Notice Nos. 2024-05262

1. INTRODUCTION

1.1 Epps and Jackson's Art Supplies Ltd.

This settlement agreement (Settlement Agreement) is entered into by and between Jay Epps and Jackson's Art Supplies Ltd., (Settling Entity) with Epps and the Settling Entity referred to as the "Parties." Epps is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Pursuant to California Health & Safety Code §§25249.5, et seq. (Proposition 65), Epps contends the Settling Entity is a responsible party selling the products at issue set forth in subsection 1.3 below to (a) California consumers or (b) downstream entities in the course of doing business which the Settling Entity has reason to believe sell into the California marketplace (customers).

1.2 General Allegations

Epps alleges that the Settling Entity distributes, retails and/or otherwise facilitates for sale in California the products defined below, and that it does so without providing the health hazard warning he contends is required by Proposition 65 for consumer exposures to lead. Lead is listed pursuant to Proposition 65 as chemicals known to the State of California to cause birth defects or other reproductive harm.

1.3 <u>Product Description</u>

The products covered by this Settlement Agreement are the products listed in the Notice described in subsection 1.4 below, which were offered for sale by the Settling Entity on jacksonsart.com (hereinafter the "Product" or "Products"). "Covered Product" or "Covered Products" shall mean artist paste paints containing lead, excluding those branded by Michael Harding, and artist paste paints containing cadmium, which were offered for sale by the Settling Entity on jacksonsart.com.

1.4 Notice of Violation

On December 16, 2024, Epps served the Settling Entity, and the requisite public enforcement agencies with a 60-Day Notice of Violation (Notice) dated December 13, 2024, alleging that the Settling Entity violated Proposition 65 when it failed to warn customers or consumers in California that the artist paste paints branded, supplied or made by Michael Harding Handmade Artist Oil Colours, expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

The Settling Entity denies the material, factual and legal allegations contained in the Notice and maintains that all Products that Settling Entity offered for sale, sold, and distributed in California have been and are in compliance with all laws, including but not limited to Proposition 65. Nothing in this Settlement Agreement shall be construed as either a waiver or admission by the Settling Entity of any fact, finding, issue of law or violation of law, in this or any other matter; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by the Settling Entity of any fact, finding, conclusion, issue of law or violation of law. This subsection shall not, however, diminish or otherwise affect the obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 14, 2025. The term "Compliance Date" shall refer to July 31, 2025.

2. <u>INJUNCTIVE RELIEF: WARNINGS</u>

2.1 <u>Injunctive Relief</u>

Pursuant to the terms set forth below, with respect to the Products and Covered Products sold in California, the Settling Entity, at its option, agrees to: (a) provide clear and reasonable Proposition 65 warnings for the Products and Covered Products as set forth in subsection 2.2; or (b) cease selling the Products and Covered Products to consumers in California, and/or delist the

Products and Covered Products offered for sale from jacksonsart.com as set forth in subsection 2.3. The Parties understand and agree that some Products and Covered Products may appear online that contain no warning, but are not available for sale to California consumers (sales cannot be completed) and that this complies with this subsection 2.1(b).

2.2 <u>Clear and Reasonable Warnings (Products Sold Online)</u>

Each warning for the Products and Covered Products shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

(a) Warning. The warning shall consist of the following statement as appropriate for any particular Product or Covered Product (Warning):

For Products or Covered Products containing only Lead

WARNING: This product can expose you to chemicals including lead, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

For Covered Products containing only Cadmium

⚠ WARNING: This product can expose you to chemicals including cadmium, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. The Settling Entity may use the following short-form warning as set forth in this subsection 2.2 (Short-Form Warning) so long as it is allowed under Proposition 65's implementing regulations. For any Short-Form Warning used online for the Products or Covered Products, the Settling Entity shall ensure compliance by utilizing the language prescribed in the legislation recently enacted and effective on and after January 1, 2028:

WARNING: Cancer and Reproductive Harm-<u>www.P65Warnings.ca.gov</u>

If any of the Products or Covered Products are offered for sale by the Settling Entity on jacksonsart.com to California consumers after the Compliance Date, such Product or Covered Product's listings shall contain a warning (as set forth above) which is displayed to the purchaser prior to completion of the transaction without requiring the potential buyer to use considerable effort to be made aware of the health hazard advisory. The warning (or a clearly and reasonably marked hyperlink to the warning using the signal word "A WARNING" or "A PRODUCT WARNING" or "A CA WARNING" or "A CALIFORNIA WARNING") given in conjunction with the online sale of the Products or Covered Products may appear either: (a) prominently placed on the Product or Covered Products' display page (i.e., a page in which the Product or Covered Product's image, price and add-to-basket are displayed); (b) on the same page as the order confirmation for the Products or Covered Products (e.g., review cart URL); or (c) on the page displayed to the purchaser during the checkout process for any shipment recipient with a California address.

2.3 Option to Delist

On or before the Compliance Date, the Settling Entity may, at its option, comply with the injunctive commitments set forth in subsection 2.1 above by delisting a Product or Covered Product such that the item is then unavailable for online sale for shipment to an address in California. If it does so, the previously delisted Product or Covered Product may be reinstated for sale online to California consumers if it complies with subsections 2.1 through 2.2 prior to the date of such relisting.

2.4 Right to Cure

As of the time of this Settlement Agreement, neither Epps nor his counsel have any specific knowledge of the presence of any other Products or Covered Products listed to be sold and to be shipped to an address in California that, in their opinion, fail to comply with Proposition 65's warning requirement. Epps represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any

claim or claims against the Settling Entity. Epps further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

To the extent Epps identifies any Products or Covered Products in the future, which he believes are not in compliance with Proposition 65 or this Settlement Agreement, Epps agrees to advise the Settling Entity of such potential violation in the manner set forth in Section 7, and provide the Settling Entity with 45 calendar days (calculated from the date notice is provided electronically) to either (a) cure any alleged violation, (b) provide a Proposition 65 warning in connection with the Product(s), or (c) take other action to ensure that the Product or Covered Product is not sold in California.

Such notice to the Settling Entity shall contain information sufficient for the Settling Entity to identify the Product or Covered Product such as the stock keeping unit (SKU) number, as well as a screenshot of the Product or Covered Product's online listing. If the alleged non-compliance is cured, Epps shall take no further action to enforce Proposition 65 or this Settlement Agreement with respect to the alleged failure to comply with Proposition 65 or the terms of this Settlement Agreement, and the matter shall be deemed to be resolved. Further, so long as the Settling Entity cures the alleged non-compliance relating to a Product or Covered Product subject to this Settlement Agreement within the 45 days, the Settling Entity shall not be in breach or violation of this Settlement Agreement in any respect. In the event Epps advises the Settling Entity of any alleged non-compliant Product or Covered Product as discussed herein, Epps shall not be entitled to financial remuneration, provided the Settling Entity timely remedies the non-compliant Product or Covered Product as discussed herein.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Fines

Pursuant to Health & Safety Code §25249.7(b), and in settlement of all claims alleged in the Notice, the Settling Entity agrees to pay a total of \$10,000.00 in civil fines. This payment will be allocated in accordance with Health & Safety Code §25249.12(c)(1) and (d), with 75% of

the penalty amount paid to the Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount paid to and retained by Epps.

The Settling Entity will deliver its civil penalty payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by Epps' counsel on or before the Effective Date, subject to Epps and Epps' counsel completing and/or providing to Settling Entity any reasonably necessary tax and compliance documentation to enable the Settling Entity to complete the payment. For non-electronic payments, the Settling Entity shall provide two checks made payable to: (a) "OEHHA" in the amount of \$7,500.00; and (b) "Jay Epps" in the amount of \$2,500.00. Thereafter, Epps' counsel shall send the portions of the penalties paid by the Settling Entity to OEHHA and Epps.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Epps and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, the Settling Entity expressed a desire to resolve Epps' fees and costs. The Parties then negotiated a resolution of the compensation due to Epps' counsel under general contract principles, Proposition 65 implementing regulation for fee awards at 11 California Code of Regulations §3201 and/or the private attorney general doctrine codified at California Code of Civil Procedure §1021.5. For all work performed in connection with the claims alleged in the Notice through the mutual execution of this agreement, the Settling Entity shall reimburse Epps' counsel \$35,000.00. The Settling Entity will deliver its payment to the address in subsection 3.3 by overnight courier, with a tracking number, or through an automatic electronic transfer such that payment is received by Epps' counsel on or before the Effective Date, in the form of a check payable to "Chanler, LLC," subject to Chanler, LLC completing and/or providing to Settling Entity any reasonably necessary tax and compliance documentation to enable the Settling Entity to complete the payment. The reimbursement shall cover all fees

and costs incurred by Epps and his counsel investigating, bringing this matter to the Settling Entity's attention and negotiating a settlement for the claims alleged in the Notice and as to the Products in furtherance of the public interest for the Products.

3.3 Payment Address

All non-electronic payments required by this Settlement Agreement shall be delivered to the following address:

Chanler, LLC Attn: Proposition 65 Controller 72 Huckleberry Hill Road New Canaan, CT 06840

4. CLAIMS COVERED AND RELEASED

4.1 Epps' Release of the Settling Entity

This Settlement Agreement is a full, final and binding resolution between Epps, as an individual (and not on behalf of the public yet furthers its health interest), and the Settling Entity, of any violation of Proposition 65 that was or could have been asserted by Epps on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against the Settling Entity and each of its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, as well as any distributors, retailers, or other downstream sellers of the Settling Entity's Products (together, "Releasees"), based on their failure to warn about alleged exposures to lead or cadmium contained in the Products and/or Covered Products that were sold and/or offered for sale in California on jacksonsart.com before the Effective Date.

In further consideration of the promises and agreements herein contained, Epps as an individual and not on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses

Including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the Products and/or Covered Products against the Settling Entity and the Releasees that were sold and/or offered for sale in California on jacksonsart.com.

Nothing in this subsection, therefore, shall affect Epps' right to commence an action under Proposition 65 against the Settling Entity and its Releasees that do not involve the Products and/or Covered Products. Epps represents and warrants neither he nor his agents or attorneys have assigned or otherwise transferred, or attempted to assign, or transfer, any claim or claims against the Settling Entity. Epps further warrants that neither he nor his agents or attorneys are aware of any other potential private enforcer or attorney who intends to bring litigation based on the subject matter of the Settlement Agreement.

4.2 The Settling Entity's Release of Epps

The Settling Entity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Epps and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Epps and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 in connection with the Notice or Products.

5. SEVERABILITY

If, subsequent to its execution, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. GOVERNING LAW & ENFORCEMENT

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. For purposes of this Settlement Agreement only, the Settling Entity stipulates that the Superior Court of California shall have personal jurisdiction over it for the limited and sole purpose of an action to enforce the terms of this Settlement Agreement, brought without joinder of other claims. Nothing in this Settlement

Agreement shall be interpreted to relieve the Settling Entity from any obligation to comply with any pertinent state or federal law.

The Parties agree that if the OEHHA changes its warning regulations affecting subsections 2.2 through 2.4 above, then the Settling Entity may either conform with the revised law or continue to conform with the terms provided in this Settlement Agreement if the new implementing regulations so allow. In doing so, the Settling Entity will be in compliance with this Settlement Agreement as long as it continues to fulfill any warning obligations unaffected by such new changes. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products or Covered Products, then the Settling Entity shall provide written notice to Epps of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products or Covered Products are so affected.

7. NOTICE

Unless specified herein, all correspondence, notices, and service of process required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first class (registered or certified mail) return receipt requested; or (c) sent by overnight courier; and (d) electronically transmitted to one party by the other party at the following addresses:

For the Settling Entity:

Gabriel J. Padilla, Esq. Edgcomb Law Group, LLP 2102 Business Center Drive, Suite 130, #651 Irvine, CA 92612 gpadilla@edgcomb-law.com

For Epps:

Proposition 65 Coordinator

Chanler, LLC 72 Huckleberry Hill Road New Canaan, CT 06840 clifford@chanlerLLC.com

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

8. <u>COUNTERPARTS</u>; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Epps agrees to comply with the reporting requirements referenced in Health & Safety Code §25249.7(f).

10. MODIFICATION

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

11. <u>AUTHORIZATION</u>

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agreed to all of the terms and conditions contained herein.

AGREED TO: AGREED TO:

Date: April 14, 2025 Date: April 10, 2025

Director
Jackson's Art Supplies Ltd.