

## SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and between Michael DiPirro, a California citizen, and Coloramics LLC, a Delaware limited liability company ("Coloramics"), as of February 2, 2000 (the "Effective Date"). The parties agree to the following terms and conditions:

### WHEREAS:

A. Michael DiPirro is an individual residing in San Francisco who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in (or produced by) consumer and industrial products; and

B. Coloramics is a company that manufactures, distributes and/or sells products in the State of California that allegedly contain chemicals listed pursuant to Proposition 65 (California Health & Safety Code §§ 25249.5 et seq.) ("listed chemicals"); and

C. This Agreement covers all: gloss art and clear art glaze; bisque glaze; crystal glaze; exotic or artique glaze; specialty glaze; speckled glaze and overglaze products manufactured, distributed and/or sold by Coloramics that contain one or more of the Proposition 65-listed chemicals, including lead, cadmium or any other Proposition 65-listed chemicals which are otherwise known to be present in an amount requiring a health warning under the Labeling of Hazardous Art Materials Act ("LHAMA") 15 U.S.C. § 1277 et seq. ("Products"). Some of Coloramics' Products have been manufactured, distributed and/or sold by Coloramics for use in California since at least August 4, 1995; and

D. On or about August 4, 1999 and thereafter, Michael DiPirro served Coloramics and the requisite public enforcement agencies with documents entitled "60-Day Notice" which provided Coloramics and such public enforcers with notice that Coloramics was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain products it manufactures or sells in California expose users to Proposition 65-listed chemicals ("Notice Letters"); and

E. On October 14, 1999, Michael DiPirro filed a complaint entitled Michael DiPirro v. Mayco Colors, (No. H209865-8) in the Alameda Superior Court, naming Mayco Colors as a defendant and alleging violations of Business & Professions Code § 17200 and Health & Safety Code § 25249.6 on behalf of individuals in California who allegedly have been exposed to listed chemicals contained in Coloramics' Products ("Complaint"); and

F. Coloramics at all times denied and denies the material factual and legal allegations contained in the 60-Day Notice Letters and the Actions. Nothing in this Agreement shall be construed as an admission by Coloramics of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Coloramics of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Coloramics under this Agreement.

NOW THEREFORE, MICHAEL DIPIRRO AND COLORAMICS AGREE AS FOLLOWS:

**1.0. Product Warnings.** Beginning immediately, Coloramics shall initiate efforts to revise its current product labels or packaging for the Products consistent with this Agreement and the language below ("Revised Labels"). Coloramics agrees to use reasonable efforts to ensure that all Products in its possession intended for distribution or sale in California are packaged or sold using revised labels by the end of the calendar year. Coloramics agrees that as of one year after the date of entry of a Stipulated Judgment in this matter, as described in paragraph 10 hereof, and subject to the provisions of paragraph 8 hereof, it shall not distribute or sell any of its Products for sale or use in the State of California, unless each such product is accompanied by a Revised Label on or affixed to the Product or its packaging with the appropriate following statement:

A. For Products that contain lead and/or cadmium, the warning shall state:

**"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)."**

B. For Products containing chemicals other than cadmium or lead, which are listed under Proposition 65 as carcinogens, the warning shall state:

**"WARNING: This product contains chemicals known to the State of California to cause cancer."**

C. For Products containing chemicals other than cadmium or lead, which are listed under Proposition 65 as reproductive toxicants, the warning shall state:

**"WARNING: This product contains chemicals known to the State of California to cause birth defects (or other reproductive harm)"**

D. For Products containing chemicals other than cadmium or lead, which either singly or in combination are listed under Proposition 65 as both carcinogens and reproductive toxicants, the warning shall state:

**"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm)"**

The warning statement shall be prominent and displayed with as much conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual.

**1.1 Warning Labels for Products Already in The Stream of Commerce.**

The parties agree and acknowledge that a substantial volume of Products were packaged and/or introduced into the "stream of commerce" before the Effective Date of this Agreement. In an

effort to reasonably ensure that persons who might use or be exposed to the listed chemicals in or from these "in commerce" Products, Coloramics has provided and will continue to provide Interim Warning Materials to its distributors which Coloramics knows or has reason to believe currently distribute or sell its Products in California ("California Distributors"). Such Interim Warning Materials included the following: (a) a total of 500 warning stickers to each distributor bearing the following language:

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

(b) a letter of instruction for the application of such warning stickers; and (c) delivery by certified mail/return receipt requested. Coloramics agrees to use reasonable efforts to ensure that its California Distributors are supplied with interim Warning Materials at least through the end of the calendar year.

**2. Payment Pursuant To Health & Safety Code § 25249.7(b).** Pursuant to Health & Safety Code § 25249.7(b), Coloramics shall pay a civil penalty of \$58,000 in three installments. The first payment of \$8,000 shall be made on or before February 4, 2000. A second payment of \$40,000 shall be due on December 15, 2000. However, \$10,000 of the second payment shall be waived for each glaze Product which is currently being offered for sale and sold in California that Coloramics reformulates so as to remove the lead from such product or cancels the manufacture of by November 1, 2000. Certification of the reformulation or cancellation of Coloramics's Products must be provided to DiPirro by December 8, 2000. A third payment of \$10,000 shall be due on December 15, 2001. However, \$5,000 of the third payment shall be waived for each glaze Product which is currently being offered for sale and sold in California that Coloramics reformulates so as to remove the lead from or cancels the manufacture of such product by December 1, 2001. Certification of the reformulation or cancellation of Coloramics' glaze Products must be provided to DiPirro by December 8, 2001. For each glaze Product Coloramics reformulates or discontinues, Coloramics may not introduce a new lead-containing glaze Product into California for one (1) year from the time Coloramics provides certification of the reformulation or cancellation. The penalty payments are to be made payable to "Chanler Law Group in Trust For Michael DiPirro". Penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Department of Toxic Substances Control ("DTSC"). DiPirro shall provide Coloramics proof that such funds were remitted to the DTSC with thirty (30) days of receipt by Chanler. In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to Coloramics within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**3. Reimbursement Of Fees And Costs.** The parties acknowledge that DiPirro offered to resolve the dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving this open issue to be resolved after the material terms of the agreement had been reached, and the matter settled. Coloramics then expressed a desire to resolve the fee and cost issue concurrently with the settlement terms, so the parties tried to reach an accord on the compensation due to DiPirro and his counsel under the private attorney general

doctrine codified at C.C.P. § 1021.5. Coloramics shall reimburse DiPirro for his investigation fees and costs, expert fees, attorneys fees and costs, and any other costs incurred as a result of investigating, bringing this matter to Coloramics' attention, litigation and negotiating a settlement in the public interest. Coloramics shall pay: \$6,000 on February 4, 2000; \$5,000 on March 1, 2000; \$5,000 on April 1, 2000; and, \$5,000 on May 1, 2000, in full reimbursement of such fees and costs. Payments shall be made payable to the "Chanler Law Group". In the event the Court rejects this settlement and fails to issue the Order as set forth in Paragraph 6, the payment made pursuant to this paragraph shall be returned to Coloramics within five (5) days of receipt of notice of the Court's rejection of the settlement and proposed Order.

**4. Release Of Claims.** This Settlement Agreement is a final and binding resolution between the plaintiff, acting in the public interest pursuant to Health and Safety Code section 25249.7(d) and on behalf of the general public pursuant to Business and Professions Code section 17204, and Coloramics and its respective subsidiaries; affiliates, employees, agents, distributors, retailers, and/or customers, and the successors and assigns of any of them, of their alleged failure to provide clear, reasonable, and lawful warning pursuant to Proposition 65 of consumer, occupational, and/or environmental exposures to chemicals listed under Proposition 65 contained in Products manufactured, distributed and/or sold by Coloramics. Compliance with the terms of this Settlement Agreement resolves any issue, now and in the future, concerning compliance by Coloramics, its subsidiaries, affiliates, divisions, subdivisions, brands, employees, agents, distributors, retailers, and/or customers, and the successors and assigns of any of them, concerning the requirements of Proposition 65 and the Unfair Competition Act with respect to any consumer, occupational, or environmental exposures associated with chemicals listed under Proposition 65 contained in Products manufactured, distributed, or sold by Coloramics.

**5. Coloramics Sales Data.** Coloramics understands that the sales data provided to counsel for DiPirro by Coloramics was a material factor upon which DiPirro has relied to determine the amount of payment made pursuant to Health & Safety Code § 25249.7(b) in this Agreement. To the best of Coloramics' knowledge, the sales data provided is true and accurate. In the event that DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Coloramics receipt of notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to rescind the Agreement and re-institute an enforcement action against Coloramics within ten (10) days from the date on which DiPirro notifies Coloramics of his intent to rescind this Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the period between the date DiPirro filed the instant action and the date DiPirro notifies Coloramics that he is rescinding this Agreement pursuant to this paragraph.

**6. Product Characterization.** In the event that Coloramics obtains analytical, risk assessment or other data ("Exposure Data") that shows an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c), Coloramics shall provide DiPirro with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under this Agreement based on the Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Any such modification of this Agreement shall be brought by

Coloramics to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. § 664.6 and this Agreement.

**7. Compliance With Reporting Requirements.** The parties agree to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). If, as of the Effective Date, an approved form is available for use, such form shall be promptly completed, and then sent to the California Attorney General's Office, along with this Agreement, by certified mail, return receipt requested. If, on the other hand, an approved form is not available for use, Coloramics shall promptly send this Agreement to the Attorney General's Office by certified mail, return receipt requested, along with a cover letter stating that: "The attached Agreement is provided to you pursuant to Health & Safety Code Section 25249.7(f)." Exhibit A contains a statement by counsel that consistent with this paragraph, the Agreement is being submitted concurrently to the California Attorney General's Office with its presentation to the superior court.

**8. Impracticability.** To the extent Coloramics determines that it is impracticable, either by reason of logistics, cost prohibitiveness or another reason, to re-label or repackage the Products in its possession that may be distributed for sale or use in the State of California by one year after the date of entry of a Stipulated Judgment in this matter, Coloramics may provide notice of such impracticability to DiPirro, stating the reasons therefor. Such notice shall be provided no later than ninety (90) days prior to the first anniversary of the date of entry of a Stipulated Judgment in this matter. Coloramics and DiPirro shall meet and confer in an attempt to resolve any such issue of impracticability. The compliance date set forth in paragraph 1.0 hereof may be extended by a period not to exceed 270 days, provided that an alternative warning mechanism, such as the mechanism set forth in paragraph 1.1 hereof, is provided. Any such modification of this Agreement shall be brought by Coloramics to the superior court for determination, pursuant to the court's continuing jurisdiction of this matter under C.C.P. § 664.6 and this Agreement.

**9. Coloramics' Release of Michael DiPirro.** Coloramics, by this Agreement, waives all rights to institute any form of legal action against DiPirro and his attorneys or representatives, for all actions or statements made by Michael DiPirro, and his attorneys or representatives, in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§ 17200 et seq. against Coloramics.

**10. Stipulated Judgment.** Concurrently with the execution of this Agreement, DiPirro and Coloramics shall execute and file a stipulated judgment to be approved pursuant to California Code of Civil Procedure § 664.6 by the Alameda Superior Court in accordance with the terms of this Agreement. If, for any reason, the stipulated judgment is not approved by the Court this Agreement shall be deemed null and void.

**11. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon, the Parties and their agents, employees, officers, directors, attorneys, representatives, successors, heirs, shareholders, representatives, alter egos, parent companies, partners, joint ventures, affiliates, subsidiaries, divisions, legal predecessors, licensees, assigns and any trustee or other officer appointed in the event of bankruptcy.

**12. No Previous Assignment.** Plaintiff expressly represents and warrants that he has not previously assigned, transferred, hypothecated, or purported to assign or transfer, to any third party any Claim released herein.

**13. Severability.** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**14. Attorneys' Fees In The Event Of A Dispute.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

**15. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

**16. Notices.** All correspondence to DiPirro shall be mailed to:

Clifford A. Chanler  
Chanler Law Group  
Magnolia Lane  
New Canaan, CT 06840-3801

All correspondence to Coloramics shall be mailed to:

Clifton J. McFarland  
Gibson, Dunn & Crutcher  
333 South Grand Avenue, 49th Floor  
Los Angeles, California 90071

James Twerdahl  
Coloramics, LLC  
4077 Weaver Court, South  
Hilliard, Ohio 43026

**17. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document. Signature pages transmitted by facsimile shall be deemed as effective execution of this Agreement.

**18. Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

DATE: \_\_\_\_\_

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

AGREED TO:

DATE: February 2, 2000

James Stuedahl, CEO  
Coloramics LLC  
DEFENDANT

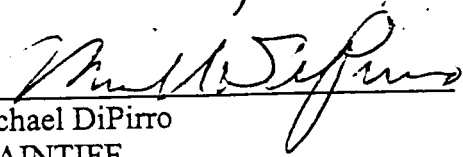
18. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AGREED TO:

DATE: 1/26/07

DATE: \_\_\_\_\_

  
Michael DiPirro  
PLAINTIFF

\_\_\_\_\_  
Coloramics LLC  
DEFENDANT



# **Exhibit A**

EXHIBIT A

I, Clifton J. McFarland as counsel for a party herein, hereby state that this Agreement was sent to the California Attorney General's Office by certified mail, return receipt requested, consistent with paragraph 7 hereof, on 2/7, 2000.

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

Executed in Los Angeles, this 7<sup>th</sup> day of February, 2000.

Clifton J. McFarland