

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and Speedball Art Products Company (Speedball) with its principal place of business at 2301 Speedball Road, Statesville, North Carolina, hereinafter referred to individually as a Party, or collectively as the Parties.

### RECITALS

1. The Consumer Products Regulations, title 17, California Code of Regulations (17 CCR) section 94500 et seq. applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in California.
2. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed volatile organic compounds (VOC) for the Paint Thinner: nonaerosol category manufactured after December 31, 2013. Nonaerosol paint thinners must meet the 3 percent by weight standard for VOC.
3. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed VOC for the General Purpose Adhesive category manufactured after January 1, 1995. General purpose adhesives must meet the 10 percent by weight standard for VOC.
4. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed VOC for the Multi-purpose Solvent: nonaerosol category manufactured after December 31, 2013. Nonaerosol multi-purpose solvents must meet the 3 percent by weight standard for VOC.
5. A manufacturer of a consumer product subject to 17 CCR section 94509 is required to display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date as set forth in 17 CCR section 94512(b).
6. The Aerosol Coating Products Regulation, 17 CCR section 94520 et seq. applies to any person who sells, supplies, offers for sale, applies, or manufactures any aerosol coating products for use in the State of California.
7. The Table of Reactivity Limits located in 17 CCR section 94522(a)(2) sets forth the maximum limits for Product-Weighted Maximum Incremental Reactivity (PWMIR) in aerosol coating products sold or manufactured after the specified effective date. Aerosol coating products in the Art Fixative or Sealant category must meet the Reactivity Limit of 1.75 grams of ozone formed per gram of product after January 1, 2015.

8. A manufacturer of an aerosol coating product subject to the Aerosol Coating Products Regulation is required to display on each product container: the applicable aerosol coating category as defined in 17 CCR section 94521, or an abbreviation of the coating category, and the corresponding Reactivity Limit for that category as specified in 17 CCR section 94522(a).
9. Failure to comply with the Consumer Products Regulations and the Aerosol Coating Products Regulation is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400-42403 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
10. CARB alleges that Speedball manufactured, sold, supplied, or offered for sale in California, Mona Lisa Odorless Paint Thinner (1-gallon) that is subject to a VOC limit for the Paint Thinner: nonaerosol category specified in 17 CCR section 94509(a).
11. CARB alleges that the Mona Lisa Odorless Paint Thinner (1-gallon) product referenced in Recitals paragraph 10 contained concentrations of VOC exceeding the 3 percent by weight VOC limit for the Paint Thinner: nonaerosol category specified in 17 CCR section 94509(a).
12. CARB alleges that Speedball manufactured, sold, supplied, or offered for sale in California, Best Test Rubber Cement, Best Test Paper Cement, and Best Test One Coat Cement that are subject to a VOC limit for the General Purpose Adhesive category specified in 17 CCR section 94509(a).
13. CARB alleges that the , Best Test Rubber Cement, Best Test Paper Cement, and Best Test One Coat Cement products referenced in Recitals paragraph 12 contained concentrations of VOC exceeding the 10 percent by weight VOC limit for the General Purpose Adhesive category specified in 17 CCR section 94509(a).
14. CARB alleges that Speedball manufactured, sold, supplied, or offered for sale in California, Bestine Solvent and Thinner for Thinning or Reducing Rubber Cement (1-gallon) that is subject to a VOC limit for the Multi-purpose Solvent: nonaerosol category specified in 17 CCR section 94509(a).
15. CARB alleges that the Bestine Solvent and Thinner for Thinning or Reducing Rubber Cement (1-gallon) product referenced in Recitals paragraph 14 contained concentrations of VOC exceeding the 3 percent by weight VOC limit for the Multi-purpose Solvent: nonaerosol category specified in 17 CCR section 94509(a).

16. CARB alleges that the Best Test Rubber Cement, Best Test Paper Cement, Best Test One Coat Cement, and Bestine Solvent and Thinner for Thinning or Reducing Rubber Cement (1-gallon) products referenced in Recitals paragraphs 12 and 14 did not display on each consumer product container or package, the day, month, and year on which the product was manufacture as specified in 17 CCR section 94512(b).
17. CARB alleges that Speedball manufactured, sold, supplied, or offered for sale in California, Mona Lisa Spray Sealer that is subject to the Reactivity Limit for the Art Fixative or Sealant category specified in 17 CCR section 94522(a)(2).
18. CARB alleges that the Mona Lisa Spray Sealer product referenced in Recitals paragraph 17 had a PWMIR value that exceeded the Reactivity Limit for the Art Fixative or Sealant category specified in 17 CCR section 94522(a)(2)
19. CARB alleges that the Mona Lisa Spray Sealer product referenced in Recitals paragraph 17 did not display on each product container, as required in 17 CCR section 94524(b)(1): the aerosol coating category as defined in section 94521, or an abbreviation of the coating category, and the applicable Reactivity Limit for the product that is specified in section 94522(a)
20. CARB alleges that if the allegations described in Recitals paragraphs 10 through 19 were proven, civil penalties could be imposed against Speedball as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.
21. Speedball admits the allegations described in Recitals paragraphs 10 through 19, but denies any liability resulting from said allegations.
22. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violation and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. Speedball has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against Speedball for the violations referred to above, CARB and Speedball agree as follows:

23. Speedball shall not manufacture, sell, supply, or offer for sale in California, any consumer products in violation of the California Consumer Products Regulations set forth in 17 CCR section 94500 et seq.; the terms and conditions set forth in

this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.

24. Speedball, in settlement of the above-described violations of 17 CCR section 94507 et seq., agrees to pay a penalty to CARB in the amount of sixty thousand six hundred dollars (\$60,600) payable to the California Air Pollution Control Fund on the schedule specified on the Payment Transmittal Form enclosed with this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
25. This Agreement shall apply to and be binding upon Speedball and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
26. The Parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by CARB against Speedball, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).
27. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
28. This Agreement constitutes the entire agreement and understanding between CARB and Speedball concerning the claims and settlement in this Agreement, and this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and Speedball concerning these claims.
29. The Effective Date of this Agreement shall be the date upon which it is fully executed.
30. This Agreement is deemed to have been drafted equally by CARB and Speedball; it will not be interpreted for or against either Party on the grounds that said Party drafted it.
31. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all Parties to this Agreement.

32. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
33. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).
34. **Penalty Determination**

H&SC section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. This Agreement includes this information, which is also summarized here.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied in this case is H&SC section 42402 et seq. because Speedball sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (17 CCR section 94507 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of H&SC section 41712, which is in Part 4 of Division 26.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

H&SC section 42402 et seq. provides strict liability penalties of up to \$10,000 per day for violations of the Consumer Product Regulations with each day being a separate violation. In cases like this, involving unintentional violations of the Consumer Products Regulations where the violator cooperates with the investigation, CARB has obtained penalties based on the excess emissions of VOC and ozone. Administrative penalties are also obtained in some cases.

In this case, the total penalty is \$60,600 for administrative and emission violations. The per-unit penalty was based on 2.73 tons excess VOC and ozone emissions and six days of administrative violations. Speedball made diligent efforts to cooperate with the investigation. To come into compliance, Speedball will modify their products to be compliant with the Consumer Product Regulations or has stopped selling noncompliant product in California.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and

the potential cost and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in quantifiable harm to the environment considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per ton basis.

The final penalty in this case was based in part on confidential financial information or confidential business information provided by Speedball that is not retained by CARB in the ordinary course of business. The penalty in this case was also based on confidential settlement communications between CARB and Speedball that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of its case against Speedball, the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that Speedball may have secured from its actions.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The Consumer Product Regulations do not prohibit emissions above a specified level, but they do limit the concentration of VOCs in regulated products. In this case, a quantification of the excess emissions attributable to the violations was practicable because Speedball made the product formulation and sales data necessary to make this quantification available to CARB. Based upon this information (which Speedball has designated as confidential), the violations were calculated to have 2.73 tons of excess VOC and ozone emissions emitted in California.

35. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
36. The Parties shall exchange signed copies of this Agreement. Facsimile, portable document format or photocopied signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall be provided for CARB records, and shall thereafter be appended to this Agreement.
37. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Ellen M. Peter

Title: Chief Counsel

Date: 4/13/2020

**Speedball Art Products Company**

By: \_\_\_\_\_ /S/ \_\_\_\_\_

Name: Bud Martin

Title: Director of R & D

Date: 3/26/2020