

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

JAN HARRISON, LEE RANALLI,  
MORGAN TANNER, SPENCER  
HATHAWAY, TODD TURLEY, DEBBIE  
HALE, KELI ANNO, JOHN ZULLO,  
CHRISTOPHER KUON TSEN LEE, JIM  
BUCKINGHAM, TANDA SAXTON, JOHN  
WOZNIAK, JEROME SHERMAN,  
BEVERLY JENKINS, DAVID PETERSEN,  
TOM STEVER, BRIAN BAWOL,  
RANSOME FOOSE and STACY  
FRANKLIN,

Plaintiffs,

vs.

E. I. DU PONT DE NEMOURS AND  
COMPANY, HUNTSMAN  
INTERNATIONAL LLC, KRONOS  
WORLDWIDE, INC., and MILLENNIUM  
INORGANIC CHEMICALS INC.,

Defendants.

Case No.: 5:13-cv-01180-BLF

**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017 (“Execution Date”) by and between E.I. du Pont de Nemours and Company; Huntsman International LLC; Kronos Worldwide, Inc.; and Cristal USA Inc., formerly known as Millennium Inorganic Chemicals Inc. (together, “Defendants”), and Plaintiffs Jan Harrison, Lee Ranalli, Morgan Tanner, Spencer Hathaway, Todd Turley, Debbie Hale, Keli Anno, John Zullo, Christopher Kuon-Tsen Lee, Jim Buckingham, Tanda Saxton, John Wozniak, Jerome Sherman, Beverly Jenkins, David Petersen, Tom Stever, Brian Bawol, Ransome Foose, and Stacy Franklin (collectively, “Plaintiffs”), both individually and on behalf of a class of all

purchasers in the United States of Architectural Paint for personal use and not for resale containing, in some form, Titanium Dioxide (“TiO2”) (“Injunctive Relief Settlement Class”) and all purchasers of Architectural Paint residing in the Damages States (defined in Paragraph 8 below) and purchasers of Architectural paint in the Damages States for personal use and not for resale containing, in some form, TiO2 (“Damages Settlement Class”) (collectively, the “Settlement Classes”), as more particularly defined in Paragraphs 7, 11, and 17 below.

WHEREAS, Plaintiffs are prosecuting the above Action, *Jan Harrison, et al. v. DuPont, et al.*, Case No. 5:13-cv-01180-BLF, pending in the United States District Court for the Northern District of California (“District Court”), on their own behalf and on behalf of the Settlement Classes against Defendants;

WHEREAS, Plaintiffs allege that they were injured as a result of a conspiracy to fix, raise, maintain, and stabilize the price for Titanium Dioxide in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 *et seq.* and various state antitrust, unfair competition, unjust enrichment, and consumer protection laws as set forth in Plaintiffs’ Third Amended Class Action Complaint (the “Complaint”);

WHEREAS, Defendants deny each and every allegation, have not conceded or admitted any liability, disclaim any and all liability whatsoever, and have asserted defenses and affirmative defenses to Plaintiffs’ claims;

WHEREAS, arm’s-length settlement negotiations have taken place between Settlement Class Counsel (as defined below) and counsel for Defendants and this Agreement has been reached as a result of those negotiations;

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving the claims against

Defendants, according to the terms set forth below, is fair, adequate, and reasonable, and in the best interest of the Plaintiffs and the Settlement Classes;

WHEREAS, Defendants, despite their belief that they are not liable for the claims asserted and their belief that they have good defenses thereto, have nevertheless agreed to enter into this Agreement without any admission of liability to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Defendants by the Settlement Classes with respect to TiO<sub>2</sub> based on the allegations in the Action, as more particularly set out below; and

WHEREAS, Plaintiffs and Defendants reached a settlement in principle based on the terms and conditions outlined in the Memorandum of Understanding, executed on December 13, 2016, the terms of which are incorporated and ratified herein:

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that this action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees (defined in Paragraph 14 below) and, except as hereinafter provided, without costs as to Plaintiffs, the Settlement Classes, or Defendants, subject to the approval of the District Court pursuant to Federal Rule of Civil Procedure 23(e) and following notice to the Settlement Classes, on the following terms and conditions:

A. Definitions.

1. "Action" means the matter captioned *Jan Harrison, et al. v. DuPont, et al.*, Case No. 5:13-cv-01180-BLF, pending in the United States District Court for the Northern District of California.

2. "Agreement" means this Settlement Agreement and Release.

3. “Alleged Co-conspirator” means any person or entity that Plaintiffs allege or identify as a co-conspirator in this Action, including, but not limited to, persons or entities identified as such in paragraphs 39-45 of the Complaint.

4. “Architectural Paint” means pigmented liquid, liquefiable, or mastic composition designed for application to a substrate in a thin layer which is converted to an opaque solid film after application.

5. “Claims Administrator” means that person or entity that is approved by the District Court and engaged by Settlement Class Counsel on behalf of Plaintiffs to administer the settlement, including but not limited to disseminating notice, establishing and administering the Settlement Fund Bank Account, receiving and processing claims, and disbursing the Settlement Fund.

6. “Class Period,” for purposes of this Settlement Agreement, means the period referenced in Paragraphs 7 and 11 herein, namely from and including February 1, 2002 up to and including the date notice of this Agreement is first distributed to the Settlement Class.

7. “Damages Settlement Class” means all purchasers who either (i) purchased Architectural Paint from a seller in a Damages State (defined in Paragraph 8 below), or (ii) who reside in a Damages State and purchased Architectural Paint in the United States, provided that in either case the Architectural Paint purchased was for personal use and not for resale containing, in some form, Titanium Dioxide manufactured by one or more of the Defendants or co-conspirators, or any predecessors, parents, subsidiaries, or affiliates thereof from January 1, 2002 until the date notice of this settlement is first distributed to the Damages Settlement Class, who do not timely opt out pursuant to Paragraphs 12 and 19 of this Agreement.

8. “Damages States” means Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota,

Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wisconsin.

9. “Defendants” means any party named as a defendant in the Action at any time up to and including the date when the District Court has entered a final order certifying the Settlement Classes described in Paragraphs 7, 11, and 17 and approving this Agreement under Federal Rule of Civil Procedure 23(e).

10. “Document” is defined to be synonymous in meaning and equal in scope to the usage of this term in Rule 34(a) of the Federal Rules of Civil Procedure, including without limitation, electronically stored information. A draft or non-identical copy is a separate document within the meaning of this term.

11. “Injunctive Relief Settlement Class” means all purchasers in the United States of Architectural Paint for personal use and not for resale containing, in some form, Titanium Dioxide manufactured by one or more of the Defendants or co-conspirators, or any predecessors, parents, subsidiaries, or affiliates thereof from January 1, 2002 until the date notice of this settlement is first distributed to the Injunctive Relief Settlement Class.

12. “Opt-Out Deadline” means the deadline set by the District Court for the timely submission of requests by Settlement Class Members to be excluded from the Settlement Classes.

13. “Settlement Class Representatives” means Jan Harrison, Lee Ranalli, Morgan Tanner, Spencer Hathaway, Todd Turley, Debbie Hale, Keli Anno, John Zullo, Christopher Kuon-Tsen Lee, Jim Buckingham, Tanda Saxton, John Wozniak, Jerome Sherman, Beverly Jenkins, David Petersen, Tom Stever, Brian Bawol, Ransome Foose, and Stacy Franklin, who are

named plaintiffs in the Complaint both individually and on behalf of a class, and are included as Settlement Class Members, as defined in Paragraphs 7, 11, and 17.

14. “Releasees” shall refer to Defendants and all of their respective past and present, direct and indirect, parents, subsidiaries, associates, members, and affiliates, including but not limited to the predecessors, successors, and assigns of each of the above, and each and all of the present and former principals, partners, officers, directors, supervisors, employees, agents, stockholders, members, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing. As used in this Paragraph, “affiliates” means entities directly or indirectly controlling, controlled by, or under common control with Defendants. For avoidance of doubt, The Chemours Company LLC; The Chemours Company FC, LLC; and The Chemours Company TT, LLC are all included within the definition of Releasees.

15. “Releasers” shall refer to Plaintiffs, Settlement Class Representatives and the members of the Settlement Classes, as defined in Paragraphs 7, 11, and 17 below, and to their past and present officers, directors, employees, agents, stockholders, members, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers, and all other persons, partnerships, or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executors, administrators, and assigns of any of the foregoing.

16. “Settlement Amount” shall be US \$3,500,000 as specified in Paragraph 34.

17. “Settlement Classes” means the Injunctive Relief Settlement Class and the Damages Class.

18. “Settlement Class Counsel” shall refer to the law firms stated in the October 18, 2013 Order Granting Plaintiffs’ Motion to Appoint Interim Lead Counsel:

Barrett Law Group  
P.O. Box 927  
404 Court Square  
Lexington, MS 39095

Cuneo Gilbert & LaDuca LLP  
4725 Wisconsin Avenue NW  
Suite 200  
Washington, D.C. 20016

19. “Settlement Class Member” means each member of the Settlement Classes who has not timely elected to be excluded from the Settlement Classes.

20. “Settlement Fund” means the fund constituted of payment by Defendants of the Settlement Amount into the Settlement Fund Bank Account in accordance with Paragraphs 16 and 21 herein, together with any interest earned on that amount that may accrue only after the Settlement Amount is paid by Defendants into the Settlement Fund Bank Account.

21. “Settlement Fund Bank Account” means the unique bank account opened by the Claims Administrator solely for purposes of the Settlement Fund, such bank account to be identified in and approved by the District Court as part of the Order of Final Approval.

22. “Titanium Dioxide” means titanium dioxide (“TiO<sub>2</sub>”), regardless of type, form, grade, product, or manufacturer.

B. Approval of this Agreement and Dismissal of Claims Against Defendants.

23. Plaintiffs and Defendants shall use their best efforts to effectuate this Agreement, including cooperating in seeking the District Court’s approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the complete and final dismissal with prejudice of the Action as to the Releasees.

24. Within five days after the execution of this Agreement, Plaintiffs shall submit to the District Court a motion seeking preliminary certification of the Settlement Classes and preliminary approval of this Agreement (the “Motion”). The Motion shall include (i) the

proposed form of an order preliminarily certifying the Settlement Classes and approving this Agreement, including appointment of the Claims Administrator and specifying the plan for distribution of notice, and (ii) a proposed form of order and final judgment that shall include language stating that Settlement Class Counsel, by submitting the settlement for final approval, ratifies all provisions of the Agreement, the District Court's order of preliminary approval of the settlement and the Settlement Classes, and the Memorandum of Understanding. The form of the Motion seeking preliminary approval, proposed form of order preliminarily approving the settlement, and proposed form of order and final judgment finally approving the settlement shall be substantially in the forms attached to the Settlement Agreement at Exhibits A, B and C.

25. The Notice Plan contained in the proposed order of preliminary approval shall include a proposed form of, method for, and date of dissemination of notice. Notice provided to the Settlement Class Members shall specifically state that the right to opt out is available to the Injunctive Relief Settlement Class and the Damages Settlement Class.

26. Plaintiffs and Defendants have agreed that a fixed fee to cover all costs of notice and administration of the Settlement Fund will be paid by the Settlement Fund, up to \$375,000. Plaintiffs and Defendants have received a firm proposal from, or a confirmed agreement with a Settlement Class Administrator approved by all parties, containing a fixed fee of \$375,000, or such lesser amount to be agreed to by the Parties, to cover all costs of notice and administration for claims up to and including 45,000. Plaintiffs and Defendants agree that, for claims exceeding 45,000 up to 100,000, any additional costs above the \$375,000 shall be paid as follows: 50% of any additional cost shall be paid out of the Settlement Fund and the remaining 50% shall be paid by Defendants at the rate of 12.5% by each of the four Defendants. If there are additional costs for claims in excess of 100,000 or otherwise, those costs shall be paid 100% from the Settlement Fund.

27. Plaintiffs and Defendants agree that the allocation of Settlement Fund to the Damages Settlement Class by the Settlement Class Administrator will be subject to the following terms: (i) a reimbursement of \$0.76 per gallon of paint for all claims (subject to (iii), (iv), and (v) below); (ii) permitting Damages Settlement Class Members to make claims against the Settlement Fund without proof of purchase for up to 10 gallons of paint; (iii) requiring claims made against the Settlement Fund for 11 or more gallons of paint to provide proof of purchase, provided, however, that no claim shall exceed 2,000 gallons of paint; (iv) in the event that monies remain as residue in the Settlement Fund following the completion of all distribution efforts approved by the District Court, all remaining funds shall be distributed to the Damages Settlement Class Members who made claims against the Settlement Fund on a pro rata basis; and (v) in the event that Damages Settlement Class Members make claims in excess of the Settlement Fund, the payment of such claims will be reduced on a pro rata basis, resulting in a reimbursement of less than \$0.76 per gallon of paint.

28. Plaintiffs shall seek, and Defendants will not object unreasonably to, the entry of an order and final judgment, the text of which is materially the same as that attached as Exhibit C hereto. The terms of that proposed order and final judgment will include, at a minimum, the substance of the following provisions:

(a) certifying the Settlement Classes described in Paragraphs 7, 11, and 17 pursuant to Rule 23 of the Federal Rules of Civil Procedure, solely for purposes of this Settlement;

(b) as to the Action, finally approving this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

(c) as to Defendants, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;

(d) reserving exclusive jurisdiction over the Agreement, including the administration and consummation of this Agreement, to the District Court; and

(e) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Defendants shall be final.

29. This Agreement shall become final when (i) the District Court has entered a final order certifying the Settlement Classes described in Paragraphs 7, 11, and 17 and approving this Agreement under Federal Rule of Civil Procedure 23(e); (ii) the District Court has entered a final judgment dismissing the Action with prejudice as to Defendants and without costs other than those provided for in this Agreement; and (iii) the time for appeal or to seek permission to appeal from the District Court's approval of this Agreement and entry of a final judgment as to Defendants described in (ii) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Defendants has been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into account in determining the above-stated times. On the date that Plaintiffs and Defendants have executed this Agreement, Plaintiffs and Defendants shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with Paragraphs 37(h) or 44 of this Agreement.

30. Neither this Agreement (whether or not it should become final); nor the final judgment; nor any negotiations, documents, or discussions associated with them shall be deemed or construed to be an admission by Defendants, or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants, or of the truth of any of the claims

or allegations contained in the Complaint, to be used against Defendants, and evidence thereof shall not be discoverable or used in any way, whether in arbitration, or proceeding, against Defendants. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Defendants shall be referred to, offered as evidence, or received in evidence in any pending or future civil, criminal, or administrative action, arbitration, or proceeding, except in a proceeding to enforce this Agreement, to defend against the assertion of Released Claims, or as otherwise required by law. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by Defendants shall be offered or received against Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Defendants that a class is appropriate to be certified other than for purposes of this Settlement Agreement.

C. Release, Discharge, and Covenant Not to Sue.

31. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final (as set out in Paragraph 29 of this Agreement), in consideration of payment of the Settlement Amount (as specified in Paragraph 34 of this Agreement) into the Settlement Fund, and for other valuable consideration, the Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands, actions, suits, and causes of action, whether class, individual, or otherwise in nature (whether or not any Settlement Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity), under any federal, state, or local law of any jurisdiction in the United States that Releasers, or each of them, ever had, now has, or hereafter can, shall, or may ever have, that now

exist or may exist in the future, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any conduct alleged in the controlling Complaint or any act or omission of the Releasees (or any of them) or the Alleged Co-Conspirators, concerning TiO<sub>2</sub>, including but not limited to any conduct and causes of action alleged or asserted, or that were or could have been alleged or asserted, in the Action (the “Released Claims”); provided however, that nothing herein shall release (1) any claims made by direct purchasers of TiO<sub>2</sub> as to such direct purchasers; (2) claims involving any negligence, personal injury, breach of contract, bailment, failure to deliver lost, damaged, or delayed goods, product defect, breach of warranty, securities, or any comparable claims relating to TiO<sub>2</sub>; or (3) damages claims asserted by or on behalf of citizens of states outside the Damages States arising out of purchases of Architectural Paint by purchasers outside of the Damages Settlement Class. Releasors shall not, after the date of this Agreement, seek to establish liability against any Releasee as to, in whole or in part, any of the Released Claims. Plaintiffs and Defendants understand that they may hereafter discover facts or documents other than or different from those which they know, are aware of, or believe to be true with respect to the Released Claims or the subject matter thereof, but Plaintiffs and Defendants hereby expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to each of the Released Claims and the subject matter thereof, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts or documents.

32. The Releasors agree that they shall not, after the Execution Date of this Settlement Agreement, assert any claim or commence or prosecute any proceeding seeking to recover against any of the Releasees for any of the Released Claims.

33. In addition to the provisions of Paragraph 31 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits, as to their claims concerning TiO<sub>2</sub> conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are released pursuant to the provisions of Paragraph 31 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim that Defendants and Plaintiffs have agreed to release pursuant to Paragraph 31, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

D. Settlement Amount.

34. Subject to the provisions hereof, and in full, complete, and final settlement of the Action as provided herein, Defendants shall pay the Settlement Amount. The Settlement Amount shall be paid into an escrow account in United States Dollars to be administered in accordance with the provisions of Paragraph 37 of this Agreement (the "Escrow Account")

within twenty (20) days following entry of an order preliminarily certifying the Settlement Classes and preliminarily approving this Agreement.

35. In no event shall Defendants have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, use, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such investment, distribution, or administration. Defendants shall likewise have no responsibility whatsoever for the allocation or distribution of the Settlement Fund and shall not be responsible or otherwise liable, including to or with Plaintiffs, Settlement Class Counsel, any Settlement Class Member or the Claims Administrator, for any disputes relating to the amount, allocation, or distribution of any fees, incentive awards, costs, or awards of any kind. After making payment of the Settlement Amount in accordance with Paragraph 34 herein, except as detailed in Paragraph 26, Defendants shall not be liable for any additional payments of any kind to Settlement Class Members, Settlement Class Counsel or to any other person or entity with respect to this settlement or this Agreement.

36. Once the Settlement Fund has been constituted, after the Effective Date, in accordance with Paragraph 20 herein, the Claims Administrator shall distribute the Settlement Fund in accordance with a Plan of Allocation consistent with the terms of this Settlement Agreement that Class Counsel shall submit at the appropriate time for approval by the District Court.

37. Escrow Account.

(a) The Escrow Account will be established at Eagle Bank, with such Bank serving as escrow agent (“Escrow Agent”) subject to escrow instructions mutually acceptable to Settlement Class Counsel and Defendants, such escrow to be administered by the Escrow Agent under the District Court’s continuing supervision and control.

(b) The Escrow Agent shall cause the Settlement Amount deposited in the Escrow Account, as well as the resulting Settlement Fund, to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody's Investor Services and Standard and Poor's, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.

(c) The Settlement Fund held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the District Court, and shall remain subject to the jurisdiction of the District Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the District Court.

(d) The Settlement Fund is, and shall be operated in a manner so that it qualifies as, a qualified settlement fund under section 468B of the Internal Revenue Code, as amended (the "Code"), and Treas. Reg. § 1.468B-1, *et seq.*, and Plaintiffs, Settlement Class Counsel, and Defendants agree to treat the Settlement Fund as being at all times a qualified settlement fund. In addition, Settlement Class Counsel shall timely take such actions as are necessary to create and maintain the Settlement Fund's status as a qualified settlement fund, including to timely make such elections as are necessary or advisable to carry out the provisions of this Paragraph 31, including the relation-back election (as defined in Treas. Reg. § 1.468B-1(j)(2)) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of Settlement Class Counsel to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

(e) For the purpose of section 468B of the Code, and Treasury Regulation § 1.468B-2(k)(3), the administrator shall be Settlement Class Counsel. Settlement Class Counsel, as administrator, shall be responsible for the timely and proper performance of the undertakings specified in the regulations promulgated under section 468B of the Code, including, but not limited to, filing all information and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the information and tax returns described in Treas. Reg. §§ 1.468B-2(k)-(l)). Such returns (as well as the election described in Paragraph 37(d)) shall be consistent with Paragraph 37(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest, or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 37(f) hereof.

(f) All (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes (“Taxes”); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 37(d) through 37(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in Paragraph 37(e) (“Tax Expenses”)), shall be timely paid out of the Settlement Fund, by the Escrow Agent.

(g) Neither Defendants nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses and shall be indemnified and held harmless for such amounts by the Settlement Fund. Further, Taxes and Tax

Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the District Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the District Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.4688-2(1)(2)). Neither Defendants nor any other Releasee nor their respective counsel shall be responsible or have any liability therefor. Plaintiffs and Defendants agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 37(d) through 37(g).

(h) If this Agreement does not receive final District Court approval, including final approval of the Settlement Classes as defined in Paragraphs 7, 11, and 17, or if the Action is not certified as a class action for settlement purposes, then all amounts paid by Defendants into the Settlement Fund (other than costs expended or incurred in accordance with Paragraph 39) shall be returned to Defendants from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days of the District Court's denial of final approval of the Agreement and/or Settlement Classes.

38. Exclusions. Within ten (10) business days after the Opt-Out Deadline, Settlement Class Counsel will cause copies of timely requests for exclusion from the Settlement Classes to be provided to counsel for Defendants. With respect to any potential Settlement Class Member who requests exclusion from the Settlement Classes Defendants reserve all of their legal rights and defenses, including, but not limited to, any defenses relating to whether the excluded Settlement Class Member is an indirect purchaser of any allegedly price-fixed TiO<sub>2</sub> and/or has standing to bring any claim.

39. Payment of Expenses.

(a) Defendants agree to permit use of a portion of the Settlement Fund towards the costs of notice to the Settlement Classes and the costs of administration of the Settlement Fund as specified in Paragraph 26. The notice and administration expenses are not recoverable if this Settlement does not become final or is terminated to the extent such funds have actually been expended or incurred for notice and administration costs. Other than as set forth in this Paragraph 39 and Paragraph 26, Defendants shall not be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the District Court or any Special Master, appeals, trials, the negotiation of other settlements, or for class administration and costs.

E. The Settlement Fund.

40. Except in the very limited circumstance described in Paragraph 26, Releasors' sole recourse for settlement and satisfaction against the Releasees of all Released Claims is against the Settlement Fund, and Releasors shall have no other recovery against Defendants or any other Releasee.

41. After this Agreement becomes final within the meaning of Paragraph 29, the Settlement Fund shall be distributed in accordance with a plan to be submitted to the District Court at the appropriate time by Settlement Class Counsel, subject to approval by the District Court. In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund, including, but not limited to, the costs and expenses of such distribution and administration except as expressly otherwise provided in Paragraphs 26 and 39 of this Agreement.

42. Plaintiffs and Settlement Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for any reimbursable expenses and costs, as provided by District Court Order. Defendants and the other Releasees shall not be liable for any costs, fees, or expenses of any of Plaintiffs or the Settlement Classes' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the District Court shall be paid out of the Settlement Fund.

43. Settlement Class Counsel's Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards for Settlement Class Representatives

(a) Settlement Class Counsel may submit an application or applications to the District Court (the "Fee and Expense Application") for: (i) an award of attorneys' fees not in excess of one-third of the settlement fund; (ii) reimbursement of expenses and costs incurred in connection with prosecuting the Action; and (iii) incentive awards, plus interest on such attorneys' fees, costs, and expenses at the same rate and for the same period as earned by the Settlement Fund (until paid) as may be awarded by the District Court (the "Fee and Expense Award"). Settlement Class Counsel reserve the right to make additional applications for District Court approval of fees and expenses incurred and reasonable incentive awards, but in no event shall Defendants or any other Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund.

(b) Subject to District Court approval, Plaintiffs and Settlement Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all expenses including, but not limited to, attorneys' fees and past, current, or future litigation expenses. Attorneys' fees and expenses awarded by the District Court shall be payable from the Settlement Fund upon award, notwithstanding the existence of any timely filed objections thereto, or potential appeal therefrom, or collateral attack on the settlement or any part thereof, subject to Settlement Class

Counsel's obligation to make appropriate refunds or repayments to the Settlement Fund with interest, if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or award of expenses is reduced or reversed, or in the event the Agreement is rescinded or terminated pursuant to Paragraph 37(h) or Paragraph 44.

(c) The procedure for and the allowance or disallowance by the District Court of the application by Settlement Class Counsel for attorneys' fees, costs and expenses, and incentive awards for Settlement Class Representatives to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the District Court separately from the District Court's consideration of the fairness, reasonableness and adequacy of the Settlement, and any order or proceeding relating to the Fee and Expense Application, or any appeal from any such order shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.

(d) Neither Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Settlement Class Counsel of any Fee and Expense Award in the Action.

(e) Neither Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Settlement Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the District Court may make in the Action.

G. Rescission if this Agreement is Not Approved or Final Judgment is Not Entered

44. If the District Court refuses to approve this Agreement or any part hereof (including if the District Court does not certify a settlement class in accordance with the specific Settlement Class definitions set forth in this Agreement), or if such approval is modified or set aside on appeal, or if the District Court does not enter the final judgment provided for in

Paragraph 29 of this Agreement, or if the District Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, then Defendants and Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraphs 44 and 59. A modification or reversal on appeal of any amount of Settlement Class Counsel's fees and expenses awarded by the District Court from the Settlement Fund shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

45. In the event that this Agreement does not become final as set forth in Paragraph 29 or this Agreement otherwise is terminated pursuant to Paragraph 44, then this Agreement shall be of no force or effect, and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned forthwith to Defendants, in four equal payments one made to each defendant, less only disbursements made in accordance with Paragraph 39 of this Agreement. Defendants expressly reserve all rights and defenses if this Agreement does not become final.

46. Further, and in any event, Plaintiffs and Defendants agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of (i) any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants, or the other Releasees, to be used against Defendants or of (ii) the truth of any of the claims or allegations contained in the Complaint, to be used against Defendants, and evidence thereof shall not be discoverable or used in any way against Defendants.

47. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

48. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 23-29 hereof, appropriate notice (1) of the settlement and (2) of a hearing at which the District Court will consider the approval of this Agreement will be given to Plaintiffs and Settlement Class Members.

H. Miscellaneous.

49. Defendants shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

50. Defendants, Plaintiffs, and Settlement Class Counsel agree not to disclose publicly or to any other person, other than potential Claims Administrators, the terms of this Agreement until this Agreement is fully executed by all parties and presented to the District Court for preliminary approval.

51. Upon filing of the Motion for Preliminary Approval of this settlement, Plaintiffs and Settlement Class Counsel may confirm the fact of the proposed settlement to the media and the consideration to be paid if the settlement is finally approved. Nothing herein shall preclude Settlement Class Counsel from identifying on their respective web sites, and in any other materials describing their respective law firms, the fact that they were one of the Class Counsel in the Action and referring to the relief obtained pursuant to this settlement upon its final approval. In no event shall Plaintiffs or Class Counsel, or Defendants or their Counsel, make any public statement that disparages the business or reputation of each other, or of any other Releasees, or that discloses any non-public information of Plaintiffs or Defendants that may have been acquired during pendency of the Action. Nothing in this provision prevents

Settlement Class Counsel from (a) describing their role in this litigation in conversations with Settlement Class Members in the course of giving legal advice regarding the terms of the settlement or (b) making statements about Defendants in proceedings before the District Court or any appellate court considering this Action. Nothing in this Agreement prohibits Plaintiffs or Settlement Class Counsel from providing information or cooperation to any law enforcement authority of the United States, any state, or any political subdivision thereof in response to a subpoena or court order requiring disclosure.

52. The District Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and the Settlement Classes and Defendants, including challenges to the reasonableness of any party's actions. This Agreement shall be governed by and interpreted according to the substantive laws of the State of California without regard to its choice of law or conflict of laws principles. Defendants will not object to complying with any of the provisions outlined in this Agreement on the basis of jurisdiction.

53. Defendants agree for a period of 24 months from the date of the entry of final judgment not to engage in conduct that constitutes a per se violation of Section 1 of the Sherman Act (whether characterized as price fixing, market allocation, bid rigging, or otherwise) with respect to the sale of TiO<sub>2</sub>.

54. This Agreement constitutes the entire, complete, and integrated agreement among Plaintiffs, the Settlement Classes, and Defendants pertaining to the settlement of the Action against Defendants and supersedes all prior and contemporaneous undertakings, communications, representations, understandings, negotiations, and discussions, either oral or

written, between Plaintiffs and Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and Defendants and approved by the District Court.

55. In the event any one or more of the provisions of this Settlement Agreement shall for any reason be held to be illegal, invalid, or unenforceable in any respect, such illegality, invalidity, or unenforceability shall not affect any other provision if, and only if, Defendants and Settlement Class Counsel mutually agree in writing to proceed as if such illegal, invalid, or unenforceable provision had never been included in the Settlement Agreement.

56. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Defendants. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs or Settlement Class Counsel shall be binding upon all Settlement Class Members and Releasers. The Releasees (other than Defendants' entities which are parties hereto) are third-party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.

57. This Agreement may be executed in counterparts by Plaintiffs and Defendants, and a facsimile signature shall be deemed an original signature for purposes of executing this Agreement.

58. Neither Plaintiffs nor Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

59. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice,

communication, or document shall be provided by facsimile, electronic mail (provided that the recipient acknowledges having received that email with an automatic “read receipt” or similar notice constituting an acknowledgement of an email receipt for purposes of this Paragraph), or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.

60. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement subject to District Court approval.

Dated: June 15, 2017



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Dated: June 14, 2017



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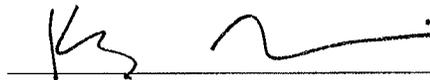
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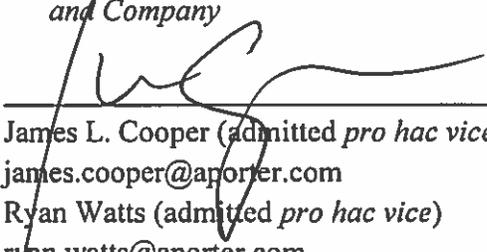
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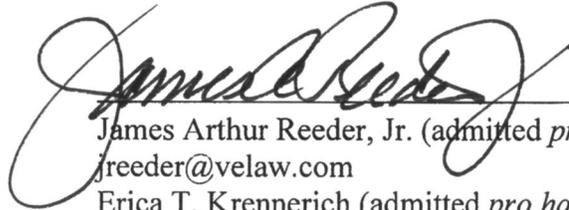
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