

**SUPERIOR COURT  
(CLASS ACTION)**

**CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL**

**No.: 500-06-000599-122**

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**SAMUEL CHAGNON**  
Petitioner


v.  
**CRAYOLA PROPERTIES, INC.  
HALLMARK CARDS, INC.  
WILLIAM E. COUTTS COMPANY LIMITED**  
Respondents

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**SETTLEMENT AGREEMENT**

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1. **WHEREAS** this settlement agreement (the "**Agreement**") is entered into by and among (i) named petitioner Samuel Chagnon on behalf of himself and the Class defined below and (ii) Crayola Properties, Inc., Hallmark Cards, Inc. and William E. Cou tts Company Limited (collectively, "**Crayola**").
2. **WHEREAS** the Agreement shall be submitted to the Superior Court of Quebec for approval.
1. **Specifications and definitions:**
3. All amounts of money mentioned in the present Agreement are in Canadian dollars.
4. In this Agreement, in addition to the terms that are defined elsewhere herein, the following terms have the meanings specified below. The plural of any defined term includes the singular, and the singular of any defined term includes the plural, as the case may be.
  - (a) "**2011 Washable Colored Bubbles**" are products identified as: Coloured Bubbles Wand Set (Style no. 55-3412), Coloured Bubbles 20 Count Tray (consists of 5 colours, each sold separately - Purple Pizazz, Sunset Orange, Screamin' Green, Wild Blue Yonder and Pink Flamingo) (Style no. 55-3413), Coloured Bubbles Bubble Launcher (Style no. 55-3414) and Coloured Bubble Machine (Style no. 55-3458);

  
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- (b) “**2012 Colored Bubbles**” are the colored bubble products that Crayola distributes in 2012;
- (c) “**Agreement**” means the written settlement agreement set out herein, including its Schedules and any written executed amendments thereto;
- (d) “**Approval Hearing**” means court hearing held to determine whether the Agreement should be approved;
- (e) “**Approval Order**” means the court order approving the Agreement;
- (f) “**Claims Administrator**” means Crayola;
- (g) “**Claim Form**” means the form submitted by a Class Member in order to obtain Compensation;
- (h) “**Claims Program**” means the monetary and voucher relief available to Class Members as described in **Section V** of the Settlement Agreement
- (i) “**Class**” means the Class as set out more fully below;
- (j) “**Class Counsel**” means the lawyers of the Representative Plaintiff, specifically Consumer Law Group Inc.;
- (k) “**Class Member**” means a Person who resides in Canada and falls within the definition of the Class set out more fully below;
- (l) “**Compensation**” means either a Crayola Voucher or cash given to a Class Member pursuant to the terms of the Agreement;
- (m) “**Crayola Vouchers**” means certificates redeemable for any Crayola product, which will state on their face that they are: (a) freely transferable; (b) able to be added to any already-existing coupons or sales incentives; and (c) stackable (consumers may use more than one voucher in a single transaction).
- (n) “**Court**” means the Superior Court of Quebec;
- (o) “**Defence Counsel**” means McCarthy Tétrault LLP;
- (p) “**Effective Date**” means 30 days after the Approval Order has been signed and entered and no appeals have been taken therefrom, or if any appeals have been taken, the date upon which such appeals are finally resolved in such manner as to permit the consummation of the settlement in accordance with the terms and conditions of the Agreement;
- (q) “**Litigation**” means the Quebec Class Action;
- (r) “**Opt Out Deadline**” means 90 days following the publication of the Pre-Approval Notice;

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- (s) “**Opt Out Form**” means the form that enables a Class Member to exclude himself from the Agreement;
  - (t) “**Person**” means a physical person;
  - (u) “**Pre-Approval Notice**” means the notice that advises Class Members of the upcoming Approval Hearings of the Agreement;
  - (v) “**Pre-Approval Order**” means the court order rendered with respect to the proposed Pre-Approval Notice;
  - (w) “**Quebec Class Action**” means the class action commenced against Crayola Properties, Inc., Hallmark Cards, Inc. and William E. Cou tts Company Limited by Samuel Chagnon under docket number 500-06-000599-122;
  - (x) “**Released Persons**” means Crayola Properties, Inc., Hallmark Cards, Incorporated, Crayola LLC and William E. Cou tts Company Limited, and each of their present or past directors, officers, employees, agents, shareholders, attorneys, advisors, consultants, representatives, partners, affiliates, parents, subsidiaries, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, related companies, and divisions, and each of their predecessors, successors, heirs and assigns;
  - (y) “**Releasing Persons**” means the Representative Plaintiff, on behalf of himself, and the Class Members, as well as their respective heirs, executors, administrators, representatives, agents, partners, successors and assigns;
  - (z) “**Representative Plaintiff**” means the petitioner named in the Litigation, specifically, Samuel Chagnon;
  - (aa) “**Schedules**” means the schedules incorporated by reference into to the Agreement;
  - (bb) “**Settling Parties**” means the Representative Plaintiff and Crayola Properties, Inc., Hallmark Cards, Inc. and William E. Cou tts Company Limited.
- II. **The Class:**
- 5. The Class is composed of all Persons residing in Canada who have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through [DATE] (N.B. the date of Approval Hearing). Excluded from the Class are all Persons who timely and validly request exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Approval Order.
  - 6. The Approval Order, once issued, shall bind all those Class Members in Canada.
- III. **History of the Litigation:**

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7. Representative Plaintiff Samuel Chagnon filed a *Motion to Authorize the Bringing of a Class Action and To Ascribe the Status of Representative* (the “*Motion to Authorize*”) with the Superior Court of Quebec. The *Motion to Authorize* alleged, *inter alia*, that Crayola made misrepresentation about the capacity to stain and the washable nature of its 2011 Washable Colored Bubbles, and that the 2011 Washable Colored Bubbles caused stains and were not washable. The Representative Plaintiff sought leave to bring an action in damages, an injunction and an action in exemplary damages against Crayola pursuant to the *Civil Code of Quebec*, R.S.Q. 1991, c. 64, and to the *Consumer Protection Act (Quebec)*, R.S.Q., c. P-40.1.
8. Crayola has strenuously denied, and continues to deny, that it made any misrepresentations whatsoever with respect to its 2011 Washable Colored Bubbles, and that the 2011 Washable Colored Bubbles caused stains and were not washable. Crayola further holds that the Quebec Class Action does not meet the criteria for authorization specified in Article 1003 of the *Quebec Code of Civil Procedure* (the “*Code of Civil procedure*” or the “*C.C.P.*”), R.S.Q. c. C-25.

#### **IV. Settlement Negotiations:**

9. Class Counsel and Defence Counsel have engaged in good faith, constructive settlement discussions for several months. The Settling Parties knew about, approved and were kept informed of these ongoing discussions. On or about October 19, 2012, in conformity with the instructions provided by the Settling Parties, Class Counsel and Defence Counsel arrived at an agreement in principle to settle the Litigation.
10. The Representative Plaintiff and Class Counsel believe that the claims asserted in the Litigation have merit and that the evidence developed to date supports those claims. They recognize and acknowledge the expense and length of the complex proceedings that will be required to prosecute the Litigation. The Representative Plaintiff and Class Counsel have also taken into account the uncertain outcome and risks involved in continuing with the Litigation, as well as the difficulties and delays inherent to class action proceedings. Moreover, the Representative Plaintiff and Class Counsel have concluded that the Agreement provides Class Members with benefits and is fair, reasonable, appropriate and in their best interests.
11. Crayola has denied vigorously, and continues to deny, each and every allegation of liability and wrongdoing, and asserts that it has substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, Crayola has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, Crayola accepts the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.

#### **V. Claims Program and Compensation:**

##### **A. Direct Compensation**





12. Crayola will provide to each Class Member that qualifies Compensation in the following manner, via the Claims Program.
13. The Claims Program shall run through [DATE].
14. In order to qualify, Class Members must have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through to the date of the Approval Hearing.

**1. Compensation for 2011 Washable Colored Bubble Purchase Costs**

15. In administering the settlement, Crayola shall implement the terms of the Settlement Agreement and resolve consumer complaints regarding 2011 Washable Colored Bubbles through its Consumer Affairs Department. In so doing, Crayola may inquire into the circumstances of the purchase or acquisition to ensure class membership and the legitimacy of the claim.
16. Crayola will compensate Class Members for product purchase costs as follows:
  - a. *Category A (No Proof of Purchase):*
17. If a Class Member does not have proof(s) of purchase in the form of a receipt or UPC, Crayola will offer the Class Member the value of the 2011 Washable Colored Bubbles product(s) in the form of Crayola Vouchers in an amount not to exceed \$12.00, depending on the 2011 Washable Colored Bubbles product(s) purchased or acquired;
  - b. *Category B (Proof of Purchase or UPC):*
18. If a Class Member has proof of purchase or a UPC for 2011 Washable Colored Bubbles, Crayola will offer the Class Member his/her choice of:
  - (i) Cash Option
19. The cash value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) in the form of a check; or
  - (ii) Voucher Option
20. The value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) plus \$5.00, all in the form of Crayola Vouchers.
21. Under both Category A and Category B, compensation or vouchers will not be given to more than one person for the same product.

**2. Compensation for Cleaning Costs:**

22. For out-of-pocket costs for cleaning supplies or services to remediate stains caused by 2011 Washable Colored Bubbles, Crayola will provide the cash value of such costs provided that: (i) the Class Member has a receipt or other reliable

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documentation for a 2011 Washable Colored Bubble product; (ii) the Class Member attests that the stain resulted from the 2011 Washable Colored Bubble product; and (iii) upon request, the Class Member provides a receipt or other reliable documentation showing out-of-pocket cost for the cleaning supplies or services.

**3. Compensation for Property Damage:**

- 23. For out-of-pocket costs to remediate damage to real or personal property caused by 2011 Washable Colored Bubbles, Crayola will provide the reasonable cash value of such costs provided the Class Member has receipts or other reliable documentation. Crayola reserves the right to seek verification of such damage, including the possible use of a claims adjustor at Crayola's expense to personally view the damage. The claims adjustor shall be affiliated with the global organization Lindsey Group Limited, 3030 Rocky Point Drive, Suite 530, Tampa, Florida 33607.

**4. Compensation to Class Members who Received Some Compensation Prior to Implementation of the Claims Program:**

- 24. Class Members who received compensation from Crayola prior to the implementation of the Settlement Agreement and believe that the compensation they received was less than what they would have received under the terms of this Settlement Agreement may contact the Crayola Consumer Affairs Department to receive the difference in value.
- 25. Crayola reserves the right to a credit for any compensation, coupon or voucher already paid or given to the Class Member.

**The percentage of the Fonds d'aide aux recours collectifs**

- 26. For any Compensation in cash for the 4 categories above, it is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim a percentage of 2% (for claims under \$2,000), 5% (for claims between \$2,000 and \$5,000) OR 10% (for claims over \$5,000) on each individual amount of Compensation paid in money to Class Members residing in Quebec. This means that Class Members residing in Quebec will actually receive 98% or 95% or 90% of the amount that is applicable to them. For any voucher, no percentage will be given to the *Fonds d'aide aux recours collectifs*.

**B. Indirect Compensation**

- 27. Crayola has agreed that it shall, in addition to the relief provided above, perform the following within 60 days after the Effective Date:
  - 1. **2011 Washable Colored Bubbles**
    - (a) Discontinue the production of 2011 Washable Colored Bubbles, as originally formulated and labeled.
  - 2. **2012 Colored Bubbles**

Handwritten signature and initials in blue ink, located in the bottom right corner of the page.



- (a) Crayola will introduce 2012 Colored Bubbles with revised formulas;
- (b) Crayola will redesign the bottle for the 2012 Colored Bubbles so as to remove the plastic shield across the bottle neck;
- (c) Crayola will revise promotional materials for 2012 Colored Bubbles so as to remove all references or implications for indoor use;
- (d) Crayola will re-label the packaging for the 2012 Colored Bubbles so that it:
  - Does not state “Washable”;
  - Does not state “Spill Resistant”;
  - Increases prominence of direction for “Outdoor Use Only” and cautions against indoor use;
  - Increases visibility of additional guidance on product insert “Read before you play”;
  - Recommends use of “play clothes” on front of packaging and labels; and
  - Advises that the product provides “messy” fun.

**3. Stain Removal Guide**

- (a) Correct the stain guide on the Crayola Website to remove faulty instructions regarding the use of Tilex.

**C. Award for Representative Plaintiff**

- 28. Crayola will pay an award of \$500 to Representative Plaintiff Samuel Chagnon in consideration for the time and efforts he has put into the Litigation. Crayola shall pay this award to Defence Counsel in trust for Representative Plaintiff five business days after the Superior Court of Quebec has issued the Approval Order. This award deposited in trust shall be released to Class Counsel by Defence Counsel five business days after the Effective Date. Class Counsel shall then remit this award to Representative Plaintiff.

**VI. Claims Process and Administration:**

- 29. Crayola is designated as the claims administrator.

- 30. To obtain Compensation:

a) Class Members must make a claim by phone, by email to [xxxxx@crayola.ca](mailto:xxxxx@crayola.ca), or complete and submit by mail a timely Claim Form (Schedule A of the present Agreement),



- b) in which he/she solemnly declare under penalty of perjury that he/she has purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through the date of the Approval Hearing;
- c) AND, if applicable, provide one or more proof(s) of purchase, receipt and documentation, as described above in Section V.
31. All claims must be submitted no later than 60 days after the Effective Date (i.e. between 30 to 90 days after the Court has issued the Approval Order). In the case of a Claim Form, it is deemed submitted as of the date of the postmark.
32. Class Members are entitled to submit only one claim.
33. The Claims Administrator shall offer to Class Members the choice to communicate in French or in English.
34. If the Claims Administrator determines that a Claim meets the requirements specified above, the Claims Administrator shall send the Class Member, by mail, the applicable Compensation.
35. If the Class Member submits an incomplete Claim or Claim Form, the Claims Administrator shall give the Class Member written notice of the deficiencies and the Class Member shall have 60 days from the date of the written notice to cure the deficiencies. If, within the time provided, the Class Member cures these deficiencies and the Claims Administrator determines that the Claim or Claim Form complies with the requirements specified above, the Claims Administrator shall send the Class Member, by mail, the applicable Compensation. Class Member shall have only one opportunity to cure.

**VII. Dispute Resolution:**

36. Any dispute involving the right of a Class Member to participate in the Agreement or receive Compensation shall be dealt with first by the Crayola, which will try to settle it. If there is still a dispute, Class Counsel and Defence Counsel shall meet, confer and attempt to reach a resolution, and, if unable to resolve the issue, shall submit for decision any issue on which they disagree to the judge of the Superior Court of Quebec who will be seized with the approval of the Agreement.

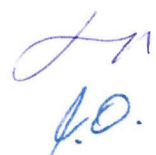
**VIII. Court approval of the Agreement:**

**(a) *Pre-Approval Notice***

37. Promptly following execution of the Agreement, Class Counsel shall file a motion with the Superior Court of Quebec for approval of the Pre-Approval Notice and shall seek to obtain the Pre-Approval Order.

**(b) *Motions for Approval***

38. Class Counsel shall file a motion with the Superior Court of Quebec for approval of the Agreement and shall seek to obtain the Approval Order.





39. Subject to judicial approval and only for purposes of the Agreement, Crayola shall consent to the authorization of the Quebec Class Action pursuant to Articles 1002 and 1006 C.C.P.
40. No later than 10 days before the Approval Hearing, Crayola shall provide Class Counsel with an affidavit or declaration, by a competent affiant or declarant, attesting that the Pre-Approval Notice has been disseminated in accordance with the Pre-Approval Order.
41. Objections to the Agreement can be formulated by Class Members before the Quebec Court. Objections, including all briefs or other papers or evidence in support thereof, shall be postmarked, served, filed and received by Class Counsel and Defence Counsel no later than 10 days prior to the Approval Hearing. Any Class Member who wishes to appear before the Court at the Approval Hearing must postmark, serve and file notice of such intent to be heard no later than 10 days prior to the Approval Hearing.
42. At the Approval Hearing, Class Counsel and Defence Counsel shall move for final approval of the Agreement and present their arguments in support thereof.

**(c) Failure to Obtain Approval Order**

43. If the Agreement is not approved by the Superior Court of Quebec, the Settling Parties shall be restored to their respective positions in the Litigation.

**IX. Notice Requirements and Opting Out:**

**(a) Pre-Approval Notice**

44. Crayola shall, at its sole expense, notify Class Members of the Agreement by way of a Pre-Approval Notice which states *inter alia*: (i) that the Agreement will be submitted to the Superior Court of Quebec for approval, specifying the date and place of such proceedings; (ii) the nature of the Agreement and the method of its execution; (iii) the procedure to be followed by the Class Members to prove their Claims; (iv) that the Class Members have the right to present their arguments to the Court as regards the Agreement; and (v) the procedure to be followed in order to file and Opt Out Form on or before the Opt Out Deadline. Attached as Schedule B is the proposed Pre-Approval Notice.
45. The Pre-Approval Notice shall be published as follows: a) publication in La Presse, The National Post and The Globe & Mail; b) posting on Crayola's website; c) posting on Class Counsel's website; d) notice the 2011 Crayola Washable Colored Bubbles Settlement tab on Crayola's Facebook page, [www.facebook.com/Crayola](http://www.facebook.com/Crayola), and on the website, [www.2011washablecoloredbubblessettlement.ca](http://www.2011washablecoloredbubblessettlement.ca).
46. Crayola will also issue a press release simultaneously with the publication mentioned in the preceding paragraph.
47. Prior to its dissemination, the Pre-Approval Notice shall be submitted to the Superior Court of Quebec for Pre-Approval Order, as indicated above.

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**(b) Settlement Notice**

48. Once the Approval Order has been issued, Crayola shall in French and in English, at its sole expense, on its website, *inter alia*, describe the Class, summarize the essential elements of the Agreement, advise Class Members of their right to opt out and provide for the electronic submission of the Claim Form.

**(c) Opting Out of the Agreement**

49. Class Members who do not wish to be bound by the Agreement may opt out of the Agreement. Class Members who want to opt out and who are residents of Quebec must do so by giving notice to the Clerk of the Superior Court of Quebec by the Opt Out Deadline and in the manner prescribed by the *Code of Civil Procedure*, as well as complete the Opt Out Form, attached as Schedule C, and file it with Crayola by the Opt Out Deadline. All other Class Members who want to opt out must complete the Opt Out Form, attached as Schedule C, and file it with Crayola by the Opt Out Deadline.
50. Crayola, within thirty (30) days following the Opt Out Deadline, must provide Class Counsel and Defence Counsel a list of all Opt Out Forms. Crayola must also cross reference the Class Members who have opted out against the filed claims to ensure that someone who has opted out cannot receive any benefit under the Agreement.

**X. Class Counsel fees:**

51. Class Counsel fees and expenditures shall be paid by Crayola pursuant to the terms and conditions specified below.
52. Within the Motion for leave to approve the Agreement, Class Counsel will be asking the Court to approve their global award of attorney fees and for reimbursement of their expenditures ("Class Counsel Fees") of \$ 145,000 plus the Goods and Services Tax ("GST") and Quebec Sales Tax ("QST").
53. Crayola shall pay the Class Counsel Fees to Defence Counsel in trust for Class Counsel five business days after the Superior Court of Quebec has issued the Approval Order. All amounts deposited in trust shall be released to Class Counsel by Defence Counsel five business days after the Effective Date.
54. The procedure for the grant or denial by the Superior Court of Quebec of Class Counsel Fees is to be considered separately from the judicial evaluation of the fairness, reasonableness and appropriateness of the Agreement. Any order or proceedings relating to the application for a Class Counsel Fees shall not operate to terminate or cancel the Agreement. Defence Counsel shall confirm to the Court at the Approval Hearing that they and Crayola believe the Class Counsel Fees to be fair, reasonable and appropriate in the present case and that Crayola has agreed to pay the said amount of Class Counsel Fees in this case.

**XI. Fonds d'aide aux recours collectifs :**

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55. For Quebec residents, as described at paragraph 26 above, it is understood that the *Fonds d'aide aux recours collectifs* will be entitled to claim a percentage of 2%, 5% or 10% on each individual Compensation paid in money to Class Members, as provided for at s. 1(3)(a) of the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux recours collectifs*, R.R.Q., c. R-2.1, r. 2.

## **XII. Releases:**

56. Upon the Effective Date, the Representative Plaintiffs on behalf of themselves and the Class Members hereby fully, finally, and forever release, relinquish, and discharge the Released Persons from any and all liabilities, claims, cross-claims, causes of action, rights, actions, suits, debts, liens, contracts, agreements, damages, restitution, disgorgement, costs, attorney fees, losses, expenses, obligations or demands, of any kind whatsoever that the Releasing Persons may have or may have had, whether in arbitration, administrative, or judicial proceedings, whether as individual claims or as claims asserted on a class basis or on behalf of the general public, whether known or unknown, suspected or unsuspected, threatened, asserted or unasserted, actual or contingent, liquidated or unliquidated, that were alleged or could have been alleged in the Litigation, regarding the representation about the capacity to stain and the washable nature of its 2011 Washable Colored Bubbles and the damages caused by its 2011 Washable Colored Bubble sold in Canada and bought or obtained by Representative Plaintiff or Class Members on or before the [Date of Approval Hearing], other than for bodily injury ("**Released Claims**").
57. Nothing in this Agreement shall constitute or shall be deemed to constitute a waiver by Crayola of any defence with respect to any Class Member who opts out of the Agreement, or in the event this Agreement is not approved by the Court.
58. Any Compensation paid or given pursuant to the Agreement is made without admission of liability. The Releasing Parties agree that the Agreement, the Pre-Approval Order and the Approval Order rendered in respect of the Agreement shall not constitute an admission or be used as evidence against Crayola. Nothing in the Agreement shall be used for any purpose in any legal proceeding unless expressly authorized herein.

## **XIII. Miscellaneous Provisions:**

59. The Agreement and its Schedules supersede all prior settlement agreements, whether oral or in writing, pertaining to the subject matter of the Litigation and constitute the entire agreement among the Settling Parties. No representations, warranties, or inducements have been made to any Settling Party concerning the Agreement or its Schedules other than the representations, warranties, and covenants covered and memorialized herein.
60. The Settling Parties acknowledge that it is their intent to consummate the Agreement, and they agree to co-operate to the extent reasonably necessary to effect and implement all terms and conditions of the Agreement.

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61. The Settling Parties intend the Agreement to be a final and complete resolution of all disputes between them with respect to the Litigation. The Agreement shall not be deemed an admission by any Settling Party as to the merits of any claim or defence. The Settling Parties agree that the consideration provided to the Class Members and the other terms of the Agreement were negotiated in good faith, and reflect a settlement that was reached voluntarily after consultation with competent legal counsel.
62. Neither the Agreement, nor any act performed or document executed pursuant to or in furtherance of the Agreement is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claims, or of any wrongdoing or liability of Crayola, or is or may be deemed to be or may be used as an admission of, or evidence of, any fault, omission, wrongdoing or liability of Crayola in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal. Crayola may file this Agreement and/or the Approval Order in any action that may be brought against it in order to support any defence or counterclaim, including without limitation those based on principles of *res judicata*, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defence or counterclaim.
63. Crayola has denied vigorously, and continues to deny, each and every allegation of liability and wrongdoing, and assert that they have substantial factual and legal defences to all the claims alleged and that such claims are without merit. Nevertheless, Crayola has concluded that further conduct of the Litigation would be protracted and expensive, and that it is desirable that the Litigation be fully and finally settled in the manner and upon the terms and conditions set out in the Agreement. Without admitting any wrongdoing or liability whatsoever, Crayola accepts the terms of the Agreement provided that all issues relating to the subject matter of the Litigation are hereby completely resolved.
64. All of the Schedules to this Agreement are material and integral parts hereof and are fully incorporated herein by this reference.
65. Unless otherwise ordered by the Court, the Settling Parties may jointly agree to reasonable extensions of time to carry out any of the provisions of this Agreement.
66. The captions contained in the Agreement are inserted only as a matter of convenience and in no way define, extend or describe the scope of the Agreement or the intent of any provision thereof.
67. Except as otherwise provided herein, the Settling Parties shall bear their own respective costs.
68. Class Counsel, on behalf of the Class Members, are expressly authorized by the Representative Plaintiff to take all appropriate action required or permitted to be taken by the Class pursuant to the Agreement to effect its terms, and are expressly authorized to enter into any modifications or amendments to the Agreement on behalf of the Class Members whom Class Counsel deems appropriate.



69. Each counsel or other Person executing the Agreement or any of its Schedules on behalf of any Settling Party hereby warrants that such Person has the full authority to do so.
70. The Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. A complete set of original counterparts shall be filed with the Superior Court of Quebec.
71. The Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties.
72. The Superior Court of Quebec shall retain jurisdiction with respect to implementation and enforcement of the terms of the Agreement and all parties hereto submit to the jurisdiction of this Court for purposes of implementing and enforcing the Agreement.
73. None of the Settling Parties, or their respective counsel, shall be deemed the drafter of this Agreement or its Schedules for purposes of construing the provisions thereof. The language in all parts of the Agreement and its Schedules shall be interpreted according to its fair meaning, and shall not be interpreted for or against any of the Settling Parties as the drafter thereof.
74. No Class Counsel, or anyone employed by Class Counsel, may, directly or indirectly, participate in or be involved in, or in any way assist with respect to any action related in any way to this Litigation. Moreover, no Class Counsel or anyone employed with Class Counsel may divulge any information obtained in the course of the Litigation to anyone for any purpose.
75. This Agreement and the Schedules hereto shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of Quebec.
76. The parties acknowledge that they have required and consented that the Agreement and all related documents be prepared in both French and English. Both versions are equally authoritative. *Les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en français et en anglais. Les deux versions ont la même valeur.*
77. The Agreement constitutes a transaction pursuant to Articles 2631 and following of the *Civil Code of Quebec* and the Settling Parties are hereby renouncing to any errors of fact, law and/or calculation.
78. Any and all notices, requests, directives or communications required by the Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by e-mail, by postage prepaid mail or by facsimile transmission followed by postage prepaid mail and shall be addressed as follows:

IF TO: **SAMUEL CHAGNON**  
Care of:  
Me Jeff Orenstein



**Consumer Law Group Inc.**  
4150, Ste.-Catherine St. W., Suite 330  
Montreal, Quebec H3Z 2Y5  
Phone 514-266-7863  
Fax 514-868-9690  
jorenstein@clg.org

IF TO: **CRAYOLA,  
CRAYOLA PROPERTIES, INC.,  
HALLMARK CARDS, INC.,  
WILLIAM E. COUTTS COMPANY LIMITED**

Care of:

Me Donald Bisson  
**McCathy Tétrault LLP**  
Suite 2500  
1000 de la Gauchetière Street West  
Montreal, Quebec H3B 0A2  
Phone 514-397-4261  
Fax : 514-875-6246  
dbisson@mccarthy.ca

SIGNED in Montreal on March 1, 2013



(s) Donald Bisson  
McCathy Tétrault LLP

On behalf of Crayola Properties, Inc., Hallmark Cards, Inc. and William E. Coutts  
Company Limited

SIGNED in Montreal on March 1, 2013



(s) Jeff Orenstein  
Consumer Law Group Inc.  
On behalf of Samuel Chagnon

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**SCHEDULE "A"**

**Claim Form for Direct compensation**

**Crayola 2011 Washable Colored Bubbles Settlement Program in Canada**

**INSTRUCTIONS – TERMS AND CONDITIONS**

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY TO DETERMINE IF YOU QUALIFY UNDER THIS PROGRAM.**

**I- WHO IS ELIGIBLE TO MAKE A CLAIM**

The following terms and conditions govern this Crayola 2011 Washable Colored Bubbles Settlement Program in Canada:

1. You must be a resident of Canada who has purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through [DATE] (N.B. the date of Approval Hearing).
2. Excluded from the Class are all Persons who timely and validly request exclusion from the Class.
3. You are entitled to submit only one claim for all your 2011 Washable Colored Bubbles purchased or acquired (including by gift) in Canada.

**II- THE SETTLEMENT**

4. The settlement provides for the following relief and compensation for the Class:

**(a) *Direct compensation***

5. Crayola will provide to each Class Member that qualifies Compensation in the following manner, via the Claims Program.
6. The Claims Program shall run through -.
7. In order to qualify, you must have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through the date of Approval Hearing.

**1. Compensation for 2011 Washable Colored Bubble Purchase Costs**

8. Crayola will compensate Class Members for product purchase costs as follows:

*a. Category A (No Proof of Purchase):*

9. If a Class Member does not have proof(s) of purchase in the form of a receipt or UPC, Crayola will offer the Class Member the value of the 2011 Washable Colored Bubbles product(s) in the form of Crayola Vouchers in an amount not to exceed \$12.00, depending on the 2011 Washable Colored Bubbles product(s) purchased or acquired;

*Mr  
J.G.*

*b. Category B (Proof of Purchase or UPC):*

10. If a Class Member has proof of purchase or a UPC for 2011 Washable Colored Bubbles, Crayola will offer the Class Member his/her choice of:

(i) Cash Option

11. The cash value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) in the form of a check; or

(ii) Voucher Option

12. The value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) plus \$5.00, all in the form of Crayola Vouchers.

13. Under both Category A and Category B, compensation or vouchers will not be given to more than one person for the same product.

**2. Compensation for Cleaning Costs:**

14. For out-of-pocket costs for cleaning supplies or services to remediate stains caused by 2011 Washable Colored Bubbles, Crayola will provide the cash value of such costs provided that: (i) the Class Member has a receipt or other reliable documentation for a 2011 Washable Colored Bubble product; (ii) the Class Member attests that the stain resulted from the 2011 Washable Colored Bubble product; and (iii) the Class Member provides a receipt or other reliable documentation showing out-of-pocket cost for the cleaning supplies or services.

**3. Compensation for Property Damage:**

15. For out-of-pocket costs to remediate damage to real or personal property caused by 2011 Washable Colored Bubbles, Crayola will provide the reasonable cash value of such costs provided the Class Member has receipts or other reliable documentation. Crayola reserves the right to seek verification of such damage, including the possible use of a claims adjustor at Crayola's expense to personally view the damage. The claims adjustor shall be affiliated with the global organization Lindsey Group Limited, 3030 Rocky Point Drive, Suite 530, Tampa, Florida 33607.

**4. Compensation to Class Members who Received Some Compensation Prior to Implementation of the Claims Program:**

16. Class Members who received compensation from Crayola prior to the implementation of the Settlement Agreement and believe that the compensation they received was less than what they would have received under the terms of this Settlement Agreement may contact the Claims Phone Number to receive the difference in value.





17. Crayola reserves the right to a credit for any compensation, coupon or voucher already paid or given to the Class Member.

**The percentage of the Fonds d'aide aux recours collectifs**

For any Compensation in cash for the 4 categories above, it is understood that the Fonds d'aide aux recours collectifs will be entitled to claim a percentage of 2% (for claims under \$2,000), 5% (for claims between \$2,000 and \$5,000) OR 10% (for claims over \$5,000) on each individual amount of Compensation paid in money to Class Members residing in Quebec. This means that Class Members residing in Quebec will actually receive 98% or 95% or 90% of the amount that is applicable to them. For any voucher, no percentage will be given to the Fonds d'aide aux recours collectifs.

**(b) Indirect compensation**

18. Crayola has agreed that it shall discontinue the production of 2011 Washable Colored Bubbles, as originally formulated and labeled, and that it shall introduce 2012 Colored Bubbles with revised formulas, revised bottle, revised packaging and revised labels.

**III- HOW TO MAKE A CLAIM**

19. To receive Compensation, you must make a claim in the following way.
20. To make a claim, you may call the Claims Phone Number, 1-866-436-6933, and provide details of your Claim, or complete and submit this Claim Form, along with any required documentation, in compliance with the instructions below, and under penalty of perjury.
21. To obtain Compensation by submitting this Claim Form:
- a) you must complete and submit by mail the present Claim Form to the following address ...;
  - b) in which you solemnly declare under penalty of perjury that you have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through the date of Approval Hearing;
  - c) AND, if applicable, provide one or more proof(s) of purchase, receipt and documentation, as described above.
  - (d) The Claim Form must be postmarked no later than [DATE] (i.e. 60 days after the Effective Date (i.e. between 30 to 90 days after the Court has issued the Approval Order)).
22. To obtain Compensation using the Claims Phone Number, you must call no later than 60 Days after the Effective Date and provide information regarding your Claim consistent with the information requested on the Claim Form.
23. Class Members are entitled to submit only one claim.

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24. Duplicate or incomplete claim forms will not be honoured.
25. Keep copies for your records.
26. Lost, late, or misdirected mail is not the responsibility of Crayola or its agents. Please allow four to six weeks from the date your claim is processed to receive your Compensation. Compensation can only be mailed to you at an address within Canada.

**IV- CLAIM FORM**

27. To request Compensation using the Claim Form, you must print, complete and sign the claim form below. If applicable, attach your proof(s) of purchase, receipt and documentation to the completed claim form and mail them to the address below. All requests must be postmarked on or before [DATE].

Received claim forms will be checked for validity, and qualifying purchasers should receive their Compensation in four to six weeks from the date your claim form is processed. For property damage claims, Crayola may contact the claimant for additional information, or to coordinate remediation or evaluation pursuant to Paragraph 15.

**[please see attached the additional claim form]**

Handwritten signature in blue ink, consisting of a stylized 'J' followed by a series of loops and a final flourish.



**SCHEDULE "B"**

**PRE-APPROVAL NOTICE**

**Crayola 2011 Washable Colored Bubbles Settlement Program in Canada**

**NOTICE OF UPCOMING COURT HEARING ON THE APPROVAL OF A CLASS ACTION SETTLEMENT AGREEMENT**

**PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS**

**THE CLASS:**

A proposed settlement has been reached with respect to the class action commenced against Crayola Properties, Inc., Hallmark Cards, Inc. and William E. Coultts Company Limited (collectively, "**Crayola**") by Samuel Chagnon before the Superior Court of Quebec under docket number 500-06-000599-122 on behalf of the Class defined as:

All Persons residing in Canada who have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through [DATE] (N.B. the date of Approval Hearing).

Excluded from the Class are all Persons who timely and validly request exclusion from the Class pursuant to the Pre-Approval Notice disseminated and published in accordance with the Approval Order.

**SUMMARY:**

Crayola has agreed to provide for three types of compensation, as follows:

**A. Direct Compensation**

Crayola will provide to each Class Member that qualifies Compensation in the following manner, via the Claims Program.

The Claims Program shall run through.

In order to qualify, Class Members must have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through the date of the Approval Hearing.

**1. Compensation for 2011 Washable Colored Bubble Purchase Costs**

In administering the settlement, Crayola shall implement the terms of the Settlement Agreement and resolve consumer complaints regarding 2011 Washable Colored Bubbles through its Consumer Affairs Department. In so doing, Crayola may inquire into the circumstances of the purchase or acquisition to ensure class membership and the legitimacy of the claim.

Crayola will compensate Class Members for product purchase costs as follows:

- a. *Category A (No Proof of Purchase):*



If a Class Member does not have proof(s) of purchase in the form of a receipt or UPC, Crayola will offer the Class Member the value of the 2011 Washable Colored Bubbles product(s) in the form of Crayola Vouchers in an amount not to exceed \$12.00, depending on the 2011 Washable Colored Bubbles product(s) purchased or acquired;

*b. Category B (Proof of Purchase or UPC):*

If a Class Member has proof of purchase or a UPC for 2011 Washable Colored Bubbles, Crayola will offer the Class Member his/her choice of:

(i) Cash Option

The cash value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) in the form of a check; or

(ii) Voucher Option

The value of the 2011 Washable Colored Bubbles product(s) (plus any shipping, handling and tax paid in connection with original purchase, as recorded on receipt) plus \$5.00, all in the form of Crayola Vouchers.

Under both Category A and Category B, compensation or vouchers will not be given to more than one person for the same product.

**2. Compensation for Cleaning Costs:**

For out-of-pocket costs for cleaning supplies or services to remediate stains caused by 2011 Washable Colored Bubbles, Crayola will provide the cash value of such costs provided that: (i) the Class Member has a receipt or other reliable documentation for a 2011 Washable Colored Bubble product; (ii) the Class Member attests that the stain resulted from the 2011 Washable Colored Bubble product; and (iii) the Class Member provides a receipt or other reliable documentation showing out-of-pocket cost for the cleaning supplies or services.

**3. Compensation for Property Damage:**

For out-of-pocket costs to remediate damage to real or personal property caused by 2011 Washable Colored Bubbles, Crayola will provide the reasonable cash value of such costs provided the Class Member has receipts or other reliable documentation. Crayola reserves the right to seek verification of such damage, including the possible use of a claims adjustor at Crayola's expense to personally view the damage. The claims adjustor shall be affiliated with the global organization Lindsey Group Limited, 3030 Rocky Point Drive, Suite 530, Tampa, Florida 33607.

**4. Compensation to Class Members who Received Some Compensation Prior to Implementation of the Claims Program:**

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Class Members who received compensation from Crayola prior to the implementation of the Settlement Agreement and believe that the compensation they received was less than what they would have received under the terms of this Settlement Agreement may contact the Crayola Consumer Affairs Department to receive the difference in value.

Crayola reserves the right to a credit for any compensation, coupon or voucher already paid or given to the Class Member.

**The percentage of the Fonds d'aide aux recours collectifs**

For any Compensation in cash for the 4 categories above, it is understood that the Fonds d'aide aux recours collectifs will be entitled to claim a percentage of 2% (for claims under \$2,000), 5% (for claims between \$2,000 and \$5,000) OR 10% (for claims over \$5,000) on each individual amount of Compensation paid in money to Class Members residing in Quebec. This means that Class Members residing in Quebec will actually receive 98% or 95% or 90% of the amount that is applicable to them. For any voucher, no percentage will be given to the Fonds d'aide aux recours collectifs.

**B. Indirect Compensation**

Crayola has agreed that it shall, in addition to the relief provided above, perform the following within 60 days after the Effective Date:

**1. 2011 Washable Colored Bubbles**

(a) Discontinue the production of 2011 Washable Colored Bubbles, as originally formulated and labeled.

**2. 2012 Colored Bubbles**

(a) Crayola will introduce 2012 Colored Bubbles with revised formulas;

(b) Crayola will redesign the bottle for the 2012 Colored Bubbles so as to remove the plastic shield across the bottle neck;

(c) Crayola will revise promotional materials for 2012 Colored Bubbles so as to remove all references or implications for indoor use;

(d) Crayola will re-label the packaging for the 2012 Colored Bubbles so that it:

- Does not state "Washable";
- Does not state "Spill Resistant";
- Increases prominence of direction for "Outdoor Use Only" and cautions against indoor use;
- Increases visibility of additional guidance on product insert "Read before you play";

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- o Recommends use of “play clothes” on front of packaging and labels; and
- o Advises that the product provides “messy” fun.

**3. Stain Removal Guide**

- (a) Correct the stain guide on the Crayola Website to remove faulty instructions regarding the use of Tilex.

**CLASS COUNSEL FEES:**

In addition, Crayola has agreed to pay the legal fees and disbursements of class counsel (plus taxes) as more described in the Settlement Agreement. This amount is paid over and above any compensation to Class Members and will not come out of or in any way reduce the settlement payments to Class Members under the proposed settlement.

**IMPORTANT DATES – APPROVAL, OPT OUT AND OBJECTION:**

A motion to approve the settlement will be heard by the Québec Superior Court, 1 Notre Dame Street East, Montréal, Québec on [DATE] in room 2.08.

If the proposed settlement is approved, it will be binding on all Class Members except those who timely and properly opt out.

If you wish to opt out, you must no later than [DATE – N.B. 90 days following the publication of the Pre-Approval Notice] complete and submit by mail the Opt Out Form. Class Members who want to opt out and who are residents of Quebec must IN ADDITION give notice to the Clerk of the Superior Court of Quebec. The Opt Out Form is available at [address].

If you wish to object to the proposed settlement, you must send a written notice of objection to Class Counsel and Defence Counsel by no later than [DATE- 10 days prior to the Approval Hearing]. Your written objection should include (a) your name, address, e-mail address and telephone number; (b) a brief statement of the reasons for your objection; and (c) whether you plan to attend at the hearing in person or through a lawyer, and if by lawyer, the name, address, e-mail address and telephone number of the lawyer. Class Members who do not oppose the proposed settlement need not appear at the settlement approval hearing or take any other action at this time.

**IMPORTANT DATES – WHEN TO MAKE A CLAIM:**

A Claim Form must be postmarked no later than 60 days after the date the Superior Court of Quebec has approved the settlement agreement. There will be no further notice in the newspapers of this settlement agreement.

**FURTHER INFORMATION:**

A complete copy of the Settlement Agreement, and detailed information on how to obtain or file a Claim are available on Class Counsel's website at [www.clg.org](http://www.clg.org), on Crayola's website [address]. To obtain a paper copy, please call Crayola at [PHONE].

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*A.O.*



The Class Counsel, or law firm representing the petitioner, is the following:

Jeff Orenstein, Esq.  
**Consumer Law Group Inc.**  
4150, Ste.-Catherine St. W., Suite 330  
Montreal, Quebec H3Z 2Y5  
Phone: 1-888-909-7863  
514-266-7863  
416-479-4493  
613-627-4894  
Fax: 514-868-9690  
jorenstein@clg.org

If there is a conflict between the provisions of this Notice and the Settlement Agreement and any of its Schedules, the terms of the Settlement Agreement shall prevail.

This notice has been approved by the Québec Superior Court.

**SCHEDULE “C”**

**Opting out from the Crayola 2011 Washable Colored Bubbles Settlement Program in Canada**

**OPT OUT FORM**

Class Members are bound by the terms of the Settlement Agreement, unless they opt out of the class action.

If you opt out, you will not be entitled to make a claim or to receive any Compensation. If you opt out, you should be aware that there are strictly enforced time limits within which you must take formal legal action to pursue your claim. By opting out, you will take full responsibility for taking all necessary legal steps to protect your claim.

If you wish to opt out, you must no later than [DATE – N.B. 90 days following the publication of the Pre-Approval Notice] complete and submit by mail the present Opt Out Form to the following address: [address].

Class Members who want to opt out and who are residents of Quebec must IN ADDITION give notice to the Clerk of the Superior Court of Quebec at:

Clerk of the Superior Court of Quebec  
 Palais de Justice  
 1, rue Notre-Dame Es  
 Montreal (Quebec) H2Y 1B6  
 Court file no. 500-06-000599-122

**OPTING OUT FORM**

Name:	
Address:	
City:	
Province:	
Postal Code:	
Phone number (optional):	
E-mail (if available - optional):	
If known, store(s) where Crayola 2011 Washable Colored Bubbles were purchased	

*JP*  
*LO.*



If known, date(s) of purchase(s) (MM / DD / YYYY)	

I wish to opt out of the Crayola 2011 Washable Colored Bubbles Settlement Program in Canada.

\_\_\_\_\_

Date

\_\_\_\_\_

Signature

*Jr*  
*J.O.*

**Consumer Affairs  
2011 Washable Colored Bubbles  
Canadian Class Action**

**A. CONTACT INFORMATION**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

Province: \_\_\_\_\_

Postal Code: \_\_\_\_\_

Phone Number (required): \_\_\_\_\_

Email (optional): \_\_\_\_\_

**B. PRODUCT INFORMATION**

1. Which 2011 Crayola Washable Colored Bubbles products did you acquire? \_\_\_\_\_

2. How many of each product did you acquire? \_\_\_\_\_

3. What colors did you have? \_\_\_\_\_

4. Please provide product code, style number or UPC (if available) \_\_\_\_\_

5. If known, date purchased (MM/DD/YYYY): \_\_\_\_\_

6. If known, store where purchased: \_\_\_\_\_

7. Do you currently have the product, product packaging or a receipt(s):      YES                      NO

8. If NO, go to Section D.

9. If YES, please forward a copy of receipt(s) or photo of product(s) with this form.

9A. Indicate your preferred form of compensation (upon verification of documentation).

[ ] A check for the cost of the product.

[ ] Crayola product vouchers for the cost of the product, plus an additional \$5 product voucher.



**Consumer Affairs  
2011 Washable Colored Bubbles  
Canadian Class Action**

**C. STAINING INFORMATION**

Did you experience any staining or damages as a result of using the Crayola Washable Colored Bubbles?    YES    NO

If NO, go to Section D.

If YES, please provide a detailed description of the staining. \_\_\_\_\_  
\_\_\_\_\_

Were you able to remove the stains?                      YES                      NO

If YES, did you purchase and retain receipts for any cleaning products to remediate the stain?    YES    NO

If YES, forward a copy of the receipt(s) with this form and a check will be processed for the cost of the cleaning supplies.

If you were not able to remove the stains, please expect a contact from a consumer affairs representative to assist in remediation. Go to Section D.

**D. ACKNOWLEDGEMENT, CERTIFICATION AND RELEASE:**

I am a Canadian resident and I solemnly declare under penalty of perjury that I have purchased or acquired (including by gift) in Canada 2011 Washable Colored Bubbles, through the date of Approval Hearing.

IF APPLICABLE: I attach a proof(s) of purchase, receipt and documentation.

By signing and dating this form below, I acknowledge that I have read the terms and conditions herein and am qualified to obtain Compensation under this Settlement Program. I also hereby fully, finally, and forever release Crayola Properties, Inc., Hallmark Cards, Incorporated, Crayola LLC. and William E. Cou tts Company Limited of all claims (other than bodily injury) related to 2011 Washable Colored Bubbles purchased or acquired (including by gift) in Canada through the date of Approval Hearing, as more described in the settlement agreement.

I state under penalty of perjury that the information provided above is true. All information is complete and accurate.

\_\_\_\_\_   
Date

\_\_\_\_\_   
Signature

**REMINDER**

✓ Please note the following deadline for postmarking your Claim Form and supporting documentation:

*J.P.O.*

**Consumer Affairs  
2011 Washable Colored Bubbles  
Canadian Class Action**

- ✓ The deadline for submitting a claim is [DATE].
- ✓ If you have any questions while completing the Claim Form please contact Crayola at [PHONE] ????? or at [e-mail or web address]????.

*JW*  
*Q.O.*