

## Complaint

## IN THE MATTER OF

**OREGON LITHOPRINT, INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4645; File No. 161 0230*  
*Complaint, April 24, 2018 – Decision, April 24, 2018*

This consent order addresses Oregon Lithoprint Inc.'s email inviting the parent company of *The Newberg Graphic* to join the *News-Register* in instructing mutual clients that they should place foreclosure notices in the newspaper dominant in the area of the foreclosed property. The complaint alleges that the respondent violated Section 5 of the Federal Trade Commission Act by inviting a competitor in the publication of foreclosure notices to divide clients by geographic market. The consent order requires Oregon Lithoprint to cease and desist from communicating with its competitors about the placement of foreclosure notices.

*Participants*

For the *Commission*: *Michael Turner*.

For the *Respondent*: *Jon E. Bladine, President, pro se*.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission (“Commission”), having reason to believe that Oregon Lithoprint, Inc., has violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges as follows:

**NATURE OF THE CASE**

1. Oregon Lithoprint, Inc. (“OLI”) publishes a newspaper, the *News-Register*, which is distributed principally in Yamhill County, Oregon. OLI invited its closest rival in Yamhill County to divide geographic markets for printing foreclosure notices. By

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inviting collusion, OLI endangered competition and violated Section 5 of the FTC Act.

**RESPONDENT**

2. OLI is a corporation organized, existing, and doing business under and by virtue of the laws of Oregon, with its principal place of business in McMinnville, Oregon 97128.

3. OLI publishes a twice-weekly community newspaper—the *News-Register*. The publisher of the *News-Register*, as well as co-owner of OLI, is Jeb Bladine.

4. The *News-Register* has a circulation of approximately 7000 subscribers in Yamhill County, Oregon. In addition to its paid subscribers, *News-Register* is available for purchase in newsstands in Yamhill County, and it is available for viewing on its website.

**JURISDICTION**

5. At all times relevant herein, OLI has been, and is now, a corporation as “corporation” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. The business practices of OLI, including the acts and practices alleged herein, are in commerce or affect commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

**INVITATION TO COLLUDE**

7. Oregon law requires that certain legal actions, including the impending foreclosure of real property, be announced in qualifying newspapers. Foreclosure notices provide significant income for qualifying newspapers.

8. *The Newberg Graphic* (“*The Graphic*”), a community newspaper, is the main competitor to OLI for the publication of foreclosure notices in Yamhill County. *The Graphic* is owned by

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Pamplin Media Group, which manages its various newspapers through its subsidiary, Oregon Publishing.

9. Clear Recon Corporation is a business that places foreclosure notices on behalf of lenders. From 2014 through 2016, Mr. Bladine sought to convince employees of Clear Recon Corporation that Clear Recon should place in the *News-Register* all foreclosure notices for properties located in zip codes where the *News-Register* has the largest circulation among qualifying newspapers.

10. On August 17, 2016, Mr. Bladine learned that Clear Recon intended to place all future foreclosure notices for Yamhill County in *The Graphic* because it charged less for its services than the *News-Register*.

11. On August 29, 2016, Mr. Bladine emailed the president of Oregon Publishing. Mr. Bladine wrote that *News-Register* was “pursuing efforts to convince Clear Recon Corp that foreclosure notices involving properties in our marketplace should be placed in the *News-Register*.”

12. In the August 29 email, Mr. Bladine further explained that “[o]ur efforts are based on the belief that Oregon’s ‘best suited’ law creates a responsibility to consider actual notice to interested parties,” and thus he has “maintained that the belief [sic] that foreclosures should be published in the newspaper predominantly circulated in the community of the property.”

13. Finally, Mr. Bladine used the August 29 email to invite Mr. Garber to divide foreclosure notice orders by geographic area:

As we continue our efforts, I would invite Pamplin Media Group to join *News-Register Publishing Co.* in a formal request to parties placing foreclosure notices – including private attorney firms – that the notices be placed using the “best suited” language concept as we understand the intent of that legal phrase.

## Complaint

14. On August 31, 2016, through counsel, Pamplin Media repudiated the invitation and stated its disagreement with Mr. Bladine's interpretation of Oregon law related to the placement of foreclosure notices.

15. On October 25, 2016, Mr. Bladine sent another email to the president of Oregon Publishing explaining that *The Graphic* was getting a new client and thousands of dollars in new revenue because of Mr. Bladine's efforts:

A new client, no doubt representing many thousands of dollars in future revenue, is headed to the Newberg Graphic because we are aggressively pursuing our interpretation of Oregon law – wherever the chips may fall. As we urge publication in the Graphic of related to properties in Dundee, Newberg and St. Paul, we will be equally or more aggressive in responding to situations we believe violate the intent of the law. It is probably too much to expect that others would do likewise.

16. Pamplin Media interpreted this communication as another invitation to allocate customers based on the location of the property, with the newspaper that has the greatest circulation in the zip code where the property is located receiving the foreclosure notice. On November 11, 2016, Pamplin Media explicitly rejected the second invitation.

**VIOLATION CHARGED**

17. As set forth in Paragraphs 9 through 17 above, OLI invited its competitor to agree to divide the market for publishing foreclosure notices by zip code in violation of Section 5 of the Federal Trade Commission Act, as amended.

18. The acts and practices of OLI, as alleged herein, constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended. Such acts and practices of OLI will continue or recur in the absence of appropriate relief.

## Decision and Order

**WHEREFORE, THE PREMISES CONSIDERED**, the Federal Trade Commission on this twenty-fourth day of April, 2018, issues its complaint against OLI.

By the Commission.

**DECISION AND ORDER**

The Federal Trade Commission (“Commission”), having initiated an investigation of certain acts and practices of Oregon Lithoprint, Inc. (“Respondent”), and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition proposed to present to the Commission for its consideration, and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”) containing an admission by Respondent of all the jurisdictional facts set forth in the draft Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent had violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested person, now

## Decision and Order

in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent Oregon Lithoprint, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Oregon with its principal place of business at 611 NE 3<sup>rd</sup> Street, McMinnville, Oregon 97128.
2. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and over Respondent, and the proceeding is in the public interest.

**ORDER****I.**

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “Respondent” means Oregon Lithoprint, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the joint ventures, subsidiaries, partnerships, divisions, groups, and affiliates controlled by Oregon Lithoprint, Inc., including the News-Register Publishing Co., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Commission” means the Federal Trade Commission.
- C. “Communicating” means transmitting, exchanging, transferring, or disseminating information by or through any means, and includes all communications, whether written or oral, and all discussions, meetings, telephone communications, and email.

## Decision and Order

- D. “Competing Newspaper” means any Newspaper that is distributed on a more than *de minimis* basis in Yamhill County or at least one other county in which Respondent distributes a Newspaper on a more than *de minimis* basis. For clarity, a Newspaper is distributed in any county in which physical copies of the Newspaper are offered for sale, delivered to subscribers, or circulated to readers.
- E. “Competitor” means any Person who owns, publishes, or distributes a Competing Newspaper.
- F. “Foreclosure Notice” means any notice of the foreclosure of real property required by Oregon law to be placed for publication in a qualifying Newspaper.
- G. “Legal Notice” means any notice required by Oregon law to be placed for publication in a qualifying Newspaper and includes Foreclosure Notices.
- H. “Newspaper” means a publication that meets the definition of Newspaper under Oregon Revised Statute 193.010, or its successor.
- I. “Person” includes Respondent and means natural persons and artificial persons, including, but not limited to, corporations, partnerships, and unincorporated entities.
- J. “Relating to” or “related to” means in whole or in part, addressing, analyzing, concerning, constituting, containing, commenting on, describing, discussing, embodying, explaining, identifying, referring to, reflecting, reporting on, stating, dealing with, or in any way pertaining to.

**II.**

**IT IS FURTHER ORDERED** that in connection with the publication of any Legal Notice in or affecting commerce, as “commerce” is defined by the Federal Trade Commission Act,

## Decision and Order

Respondent shall cease and desist from, either directly or indirectly, or through any corporate or other device:

- A. Entering into, attempting to enter into, or participating in any express or implied agreement or understanding, between or among Respondent and one or more Competitors:
  1. To refuse to publish a Legal Notice; or
  2. To allocate or divide the market(s) for publishing Legal Notices by types of customers, transactions, types of notices, geographic area, or any other means.
- B. Communicating with any Competitor, either publicly or privately, that such Competitor:
  1. Should advise customers to place Foreclosure Notices in the local Newspaper with the widest circulation in the zip code or other geographic area where the property is located; or
  2. Should refuse to publish Foreclosure Notices for properties located in a zip code or other geographic area where the Competitor has a smaller distribution than Respondent.
- C. Nothing in the Order shall prohibit Respondent from:
  1. Communicating with any governmental body regarding the interpretation of statutes and rules related to Legal Notices or the promulgation of new statutes or rules relating to Legal Notices;
  2. Promoting, planning, or participating in any effort by the Oregon Newspaper Publishers Association to communicate with or lobby any governmental body regarding the interpretation of statutes and rules related to Legal Notices or the promulgation



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of new statutes or rules relating to Legal Notices;  
and

3. If acting alone, disseminating information regarding Legal Notices through signage, broadly distributed direct mail, or media widely available to the public, including websites, Newspapers, television, and social media.

**III.**

**IT IS FURTHER ORDERED** that for five (5) years after the Commission issues this Order:

- A. Respondent will appoint a compliance officer who is responsible for promoting compliance with the terms of this Order. The compliance officer must be an employee, officer or antitrust counsel of Respondent.
- B. Respondent will distribute a copy of this Order to Respondent's officers and directors, and any employee with responsibilities related to Legal Notices:
  1. Within thirty (30) days after the Commission issues the Order; and
  2. At least once a year thereafter.

**IV.**

**IT IS FURTHER ORDERED** that:

- A. Respondent will file a verified written report to the Commission ("compliance report"):
  1. Thirty (30) days after the date this Order is issued; and
  2. One (1) year after the date this Order is issued, and annually for the next four (4) years on the anniversary of that date, and

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3. At such other times as the Commission may require.
- B. In each compliance report, Respondent shall describe the manner and form in which Respondent intends to comply, is complying, and has complied with this Order, including by:
1. Providing the name and title of the compliance officer appointed under Paragraph III.A.;
  2. Describing how Respondent complied with Paragraph III.B., including the date Respondent distributed copies of the Order and the name and title of each person who was provided a copy of the Order; and
  3. Providing a summary of activities that fall within Paragraph II.C. of the Order that were undertaken since submission of the most recent prior compliance report.

**V.**

**IT IS FURTHER ORDERED** that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. Any proposed dissolution of Oregon Lithoprint, Inc.;
- B. Any proposed acquisition of, or merger or consolidation involving, Oregon Lithoprint, Inc.; or
- C. Any other change in Respondent, including assignment or the creation, sale, or dissolution of subsidiaries, including any Newspapers or the News-Register Publishing Co., if such change may affect compliance obligations arising out of this Order.

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**VI.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and five (5) days' notice to Respondent, made to its principal place of business as identified in this Order, Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Section 2.7(a)(1) and (2) of the Commission's Rules, 16 C.F.R. § 2.7(a)(1),(2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; and
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

**VII.**

**IT IS FURTHER ORDERED** that this Order shall terminate on April 24, 2028.

By the Commission.

## Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing consent order (“Consent Agreement”) from Oregon Lithoprint Inc. (“OLI”). The Commission’s Complaint alleges that OLI violated Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by inviting a competitor in the publication of foreclosure notices to divide clients by geographic market.

Under the terms of the proposed Consent Agreement, OLI is required to cease and desist from communicating with its competitors about the placement of foreclosure notices. It is also barred from entering into, participating in, inviting, or soliciting an agreement with any competitor to divide markets or to allocate customers.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order (“Proposed Order”).

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

**I. The Complaint**

The allegations of the Complaint are summarized below:

OLI owns the *News-Register*, a twice-weekly community newspaper based in Yamhill, Oregon. Among other things, the *News-Register* charges clients to publish a type of legal notice

## Analysis to Aid Public Comment

known as a foreclosure notice. Under Oregon law, parties foreclosing on real property must place a notice of foreclosure in a qualifying newspaper in the county within which the property is located.

The *News-Register*'s only competitor in Yamhill County is *The Newberg Graphic*, a weekly community newspaper. *The Newberg Graphic* also publishes foreclosure notices, and it charges considerably less than the *News-Register* for the service. The *News-Register* has more subscribers and a wider circulation within Yamhill County than *The Newberg Graphic*.

In August 2016, the publisher of the *News-Register* learned that a client intended to place foreclosure notices only in *The Newberg Graphic* from that point on because *The Newberg Graphic* was less expensive than the *News-Register*. In response, on August 29, 2016, the publisher emailed a manager at the parent company of *The Newberg Graphic* and explained the publisher's view that, under state law, foreclosure notices should be placed in the newspaper with the largest circulation in the area that the property is located. The publisher concluded his email by inviting the competitor to join the *News-Register* in instructing mutual clients that they should place foreclosure notices in the newspaper dominant in the area of the foreclosed property. The parent company of the *The Newberg Graphic* rejected the invitation and reported it to the Federal Trade Commission.

Several months later, in October 2016, the publisher of the *News-Register* emailed the competitor again to state that the *News-Register* had told a client to use *The Newberg Graphic* because the property in question was located in its area, and that the client was in fact going to use *The Newberg Graphic* to publish the notice. He ended the email stating "[i]t is probably too much to expect that others would do likewise."

The parent company of the *The Newberg Graphic* interpreted this second email as another invitation to collude, rejected the invitation, and reported it to the Federal Trade Commission.

## Analysis to Aid Public Comment

**II. Analysis**

OLI's August 29, 2016, email to its competitor is an explicit attempt to arrange an agreement between the two companies to divide foreclosure notices by geography. It is an invitation to collude. The October 2016 email is also an invitation to collude: OLI proposed a market allocation scheme and expressed a hope that its competitor would join that conduct. The Commission has long held that invitations to collude violate Section 5 of the FTC Act.

In a 2015 statement, the Commission explained that unfair methods of competition under Section 5 “must cause, or be likely to cause, harm to competition or the competitive process, taking into account any associated cognizable efficiencies and business justifications.”<sup>1</sup> Potential violations are evaluated under a “framework similar to the rule of reason.”<sup>2</sup> Competitive effects analysis under the rule of reason depends upon the nature of the conduct that is under review.<sup>3</sup>

An invitation to collude is “potentially harmful and . . . serves no legitimate business purpose.”<sup>4</sup> For this reason, the Commission

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<sup>1</sup> Fed. Trade Comm'n, Statement of Enforcement Principles Regarding “Unfair Methods of Competition” Under Section 5 of the FTC Act (Aug. 13, 2015) (Section 5 Unfair Methods of Competition Policy Statement), *available at* [https://www.ftc.gov/system/files/documents/public\\_statements/735201/150813\\_section5enforcement.pdf](https://www.ftc.gov/system/files/documents/public_statements/735201/150813_section5enforcement.pdf). Acting Chairman Ohlhausen dissented from the issuance of the Section 5 Unfair Methods of Competition Policy Statement. *See* <https://www.ftc.gov/public-statements/2015/08/dissenting-statement-commissioner-ohlhausen-ftc-act-section-5-policy>.

<sup>2</sup> Section 5 Unfair Methods of Competition Policy Statement.

<sup>3</sup> *See, e.g., California Dental Ass'n v. FTC*, 526 U.S. 756, 781 (1999) (“What is required . . . is an inquiry meet for the case, looking to the circumstances, details, and logic of a restraint.”).

<sup>4</sup> *In re Valassis Commc'ns., Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment); *see also* Address by FTC Chairwoman Edith Ramirez, Section 5 Enforcement Principles, George Washington University Law School at 5 (Aug. 13, 2015), *available at* [https://www.ftc.gov/system/files/documents/public\\_statements/735411/150813section5speech.pdf](https://www.ftc.gov/system/files/documents/public_statements/735411/150813section5speech.pdf).

## Analysis to Aid Public Comment

treats such conduct as “inherently suspect” (that is, presumptively anticompetitive).<sup>5</sup> Accordingly, an invitation to collude can be condemned under Section 5 without a showing that the respondent possesses market power.<sup>6</sup>

The Commission has long held that an invitation to collude violates Section 5 of the FTC Act even where there is no proof that the competitor accepted the invitation.<sup>7</sup> This is for several reasons. First, unaccepted solicitations may facilitate coordination between competitors because they reveal information about the solicitor’s intentions or preferences. Second, it can be difficult to discern whether a competitor has accepted a solicitation. Third, finding a violation may deter conduct that has no legitimate business purpose.<sup>8</sup>

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<sup>5</sup> See, e.g., *In re North Carolina Bd. of Dental Examiners*, 152 F.T.C. 640, 668 (2011) (noting that conduct is inherently suspect if it can be “reasonably characterized as ‘giv[ing] rise to an intuitively obviously inference of anticompetitive effect.’” (citation omitted)).

<sup>6</sup> See, e.g., *In re Realcomp II, Ltd.*, 148 F.T.C. \_\_\_\_, No. 9320, 2009 FTC LEXIS 250 at \*51 (Oct. 30, 2009) (Comm’n Op.) (explaining that if conduct is “inherently suspect” in nature, and there are no cognizable procompetitive justifications, the Commission can condemn it “without proof of market power or actual effects”).

<sup>7</sup> See, e.g., *In re Valassis Commc’ns, Inc.*, 141 F.T.C. 247 (2006); *In re Stone Container*, 125 F.T.C. 853 (1998); *In re Precision Moulding*, 122 F.T.C. 104 (1996). See also *In re McWane, Inc.*, Docket No. 9351, *Opinion of the Commission on Motions for Summary Decision* at 20–21 (F.T.C. Aug. 9, 2012) (“an invitation to collude is ‘the quintessential example of the kind of conduct that should be . . . challenged as a violation of Section 5’”) (citing the Statement of Chairman Liebowitz and Commissioners Kovacic and Rosch, *In re U-Haul Int’l, Inc.*, 150 F.T.C. 1, 53 (2010)). This conclusion has been endorsed by leading antitrust scholars. See P. Areeda & H. Hovenkamp, VI ANTITRUST LAW ¶ 1419 (2003); Stephen Calkins, *Counterpoint: The Legal Foundation of the Commission’s Use of Section 5 to Challenge Invitations to Collude is Secure*, ANTITRUST Spring 2000, at 69. In a case brought under a state’s version of Section 5, the First Circuit expressed support for the Commission’s application of Section 5 to invitations to collude. *Liu v. Amerco*, 677 F.3d 489 (1st Cir. 2012).

<sup>8</sup> *In re Valassis Comm’c, Inc.*, 141 F.T.C. 247, 283 (2006) (Analysis of Agreement Containing Consent Order to Aid Public Comment).

## Analysis to Aid Public Comment

**III. The Proposed Consent Order**

The Proposed Order contains the following substantive provisions:

Section II, Paragraph A of the Proposed Order enjoins OLI from entering or attempting to enter any agreement to refuse to publish legal notices or allocate customers for the publication of legal notices.

Section II, Paragraph B prohibits OLI from publically or privately communicating with a competitor that the competitor should advise customers to place foreclosure notices in the newspaper with the widest circulation in the area in which the property is located, or refuse to publish notices for properties located in a competitor's primary distribution area.

Section II, Paragraph C, contains three provisos. The first allows OLI to communicate with any governmental body regarding the proper interpretation of state law related to legal notices. The second allows OLI to participate with any effort of the Oregon newspaper association to lobby any governmental body regarding legal notices. The third allows OLI to disseminate information regarding legal notices to the public.

Sections III-VI of the Proposed Order impose certain standard reporting and compliance requirements on OLI.

The Proposed Order will expire in 10 years.



## Complaint

## IN THE MATTER OF

**BENJAMIN MOORE & CO., INC.**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4646; File No. 162 3079*  
*Complaint, April 24, 2018 – Decision, April 24, 2018*

This consent order addresses Benjamin Moore & Co., Inc.'s marketing, sale, and distribution of purportedly "emission-free" paints. The complaint alleges that respondent made unsubstantiated representations that Natura paints: (1) are emission-free; (2) are emission-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers. The consent order prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace levels.

*Participants*

For the *Commission*: Robert M. Frisby, Megan Gray, Katherine Johnson, and Alejandro Rosenberg.

For the *Respondent*: Mark Godler, Kaye Scholer LLP.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Benjamin Moore & Co., Inc., a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Benjamin Moore & Co., Inc. is a New Jersey corporation, with its principal office or place of business at 101 Paragon Drive, Montvale, New Jersey 07645.
2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including Natura paints.

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3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

**Benjamin Moore’s Natura Paints**

4. Respondent distributes Natura paints through a network of authorized, independent retailers, as well as through its own stores and website.

5. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for Natura paints to consumers, including the attached Exhibits A-G. These materials include the following statements and depictions:

a.

**ON SCREEN**

A group of painters enter quietly into a room filled with cribs. While a baby sleeps in a crib, they begin to paint a mural on a wall.

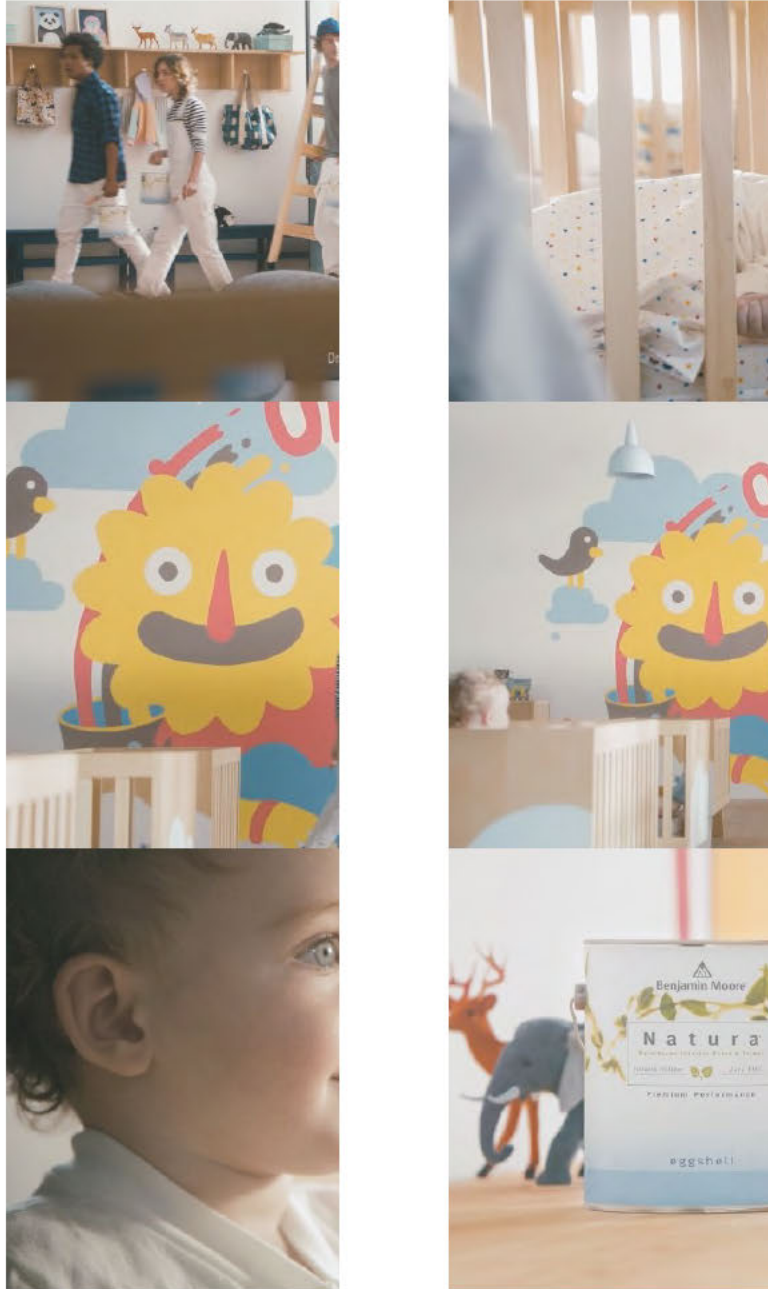
Painters exit and the baby wakes up, smiling and standing in the crib.

**VOICEOVER**

If you want a paint with no harsh fumes; if you want a paint without harmful chemicals; if you want a paint that is safer for your family and the environment, only this can. Natura by Benjamin Moore.

(Exhibit A, Benjamin Moore Natura 30-second advertisement).

Complaint



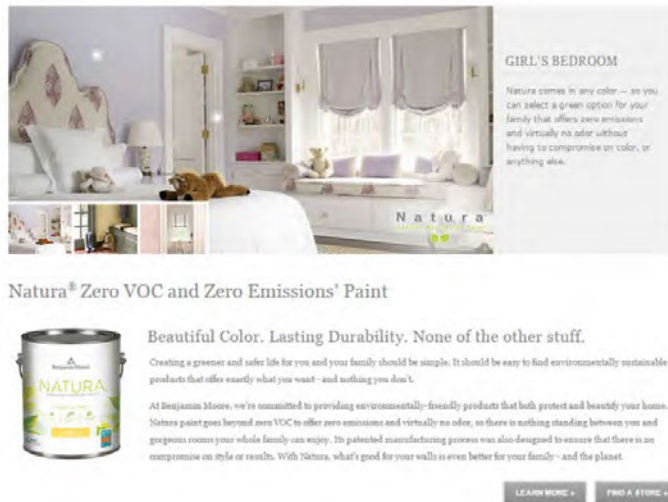
(Exhibit A, screenshots from Benjamin Moore Natura 30-second advertisement).

Complaint



(Exhibit B, print brochure).

b.



(Exhibit C, [www.benjaminmoore.com/natura](http://www.benjaminmoore.com/natura)).

**Benjamin Moore’s Green Promise Seal**

6. Respondent distributes paint products bearing the “Green Promise” seal, including Natura paints. These products contain the following depictions:

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a.



(Exhibit D, [www.benjaminmoore.com](http://www.benjaminmoore.com)).

b.



(Exhibit E, Natura paint can label).

**Count I**  
**Unsubstantiated Claims**

7. In connection with the advertising, promotion, offering for sale, or sale of Natura paints, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Natura paints are emission-free.
- b. Natura paints are emission-free during or immediately after painting.

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- c. Natura paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies, asthmatics, and allergy sufferers.
- d. Natura paints will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies, asthmatics, and allergy sufferers.

8. The representations set forth in Paragraph 7 were not substantiated at the time the representations were made.

**Count II**  
**Deceptive Failure to Disclose—Material Connection with**  
**Green Promise**

9. In connection with the advertising, promotion, offering for sale, or sale of its paints, such as through the use of its Green Promise seal, Respondent has represented, directly or indirectly, expressly or by implication, that these paints have been endorsed or certified by an independent third party.

10. Respondent has failed to disclose or adequately disclose that Respondent has a material connection to Green Promise, such as the fact the Green Promise seal is Respondent's own designation. This fact would be material to consumers in their purchase or use decisions regarding Respondent's paints.

11. Respondent's failure to disclose or adequately disclose the material information described in Paragraph 10, in light of the representation set forth in Paragraph 9, is a deceptive act or practice.

**Count III**  
**Means and Instrumentalities**

12. Respondent has distributed promotional materials, including the statements and depictions contained in Exhibits A through G to independent distributors and retailers. In so doing,

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Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

**Violations of Section 5**

13. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission this twenty-fourth day of April, 2018, has issued this Complaint against Respondent.

By the Commission.

**Exhibit A**

**CD Containing Benjamin Moore 30-Second Natura  
Commercial**

Complaint

Exhibit B



**AVAILABLE FINISHES**



**FEATURES**

- Zero VOCs
- Zero emissions with no harsh fumes
- Self-priming on most surfaces
- Stays flat for splatter stains to remove
- Excellent adhesion with a durable finish
- Available in over 2000 colors

**TECHNICAL DATA**

Finish	VOCs (g/L)	APPLIED RATE (lb/100 sq ft)	COVERAGE (sq ft/gal)	COV (1 coat)	COV (2 coats)
Flat	0.01	100% Arylic Latex	40.2	375-425	750-850
Eggshell	0.01	100% Arylic Latex	40.0	375-425	750-850
Matte Gloss	0.01	100% Arylic Latex	37.6	375-425	750-850

**green SOURCE**

The Green Source program is a voluntary program that identifies products that are made with environmentally responsible materials and processes.

For more information on the Green Source program, visit [www.benjaminmoore.com/green-source](http://www.benjaminmoore.com/green-source).

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**NATURA**  
PERFORMANCE INTERIOR PAINT



**SAFER FOR HOMES, BUILDINGS AND THE ENVIRONMENT.**

**Benjamin Moore**  
Paint by the artist

**GOING BEYOND JUST GREEN**



**NATURA IS GREEN WITHOUT COMPROMISE®**

With zero VOCs, zero emissions and no harsh fumes™, Natura can have a positive impact on air quality. This is a truly environmentally friendly paint without sacrifice to performance or color integrity.



**INDEPENDENTLY TESTED & CERTIFIED**

Natura is Benjamin Moore's most decorated product.

Whether you are painting a home, school or a building, you can be confident in knowing you've used the best for your environmentally sensitive project needs.





**2015 Product of the Year award**

This award seeks to guide consumers to products for their quality and innovation by category. It is a consumer award based on a survey of 40,000 consumers conducted by TNS, a global consumer research company. Natura was selected in the Interior Paint category.



**asthma & allergy friendly™**

Recognized by the American and Allergy Foundation of America, this program seeks to identify low and zero VOC consumer products that are most suitable for people with asthma and allergies. For more information, visit [www.aafp.org/certified](http://www.aafp.org/certified).



**Cradle to Cradle Certified™ Silver**

Cradle to Cradle Certified™ is a multi-attribute certification program. Products are evaluated for material health, material reutilization, renewable energy use and carbon management, water stewardship, and social fairness. For more information about the Cradle to Cradle Program, visit [www.c2ccertified.org](http://www.c2ccertified.org).



**Qualifies for LEED® & LEED v4 Credits**

The U.S. Green Building Council's rating system for green building, awarding credit for certified prerequisites in design, construction and maintenance for their interiors. Visit [www.usgbc.org](http://www.usgbc.org).



**MPI Green Performance™**

Monterey Peninsula Institute certifies professionals or products based on performance based standards and ISO testing. Natura meets multiple specifications including those under MPI Green Performance™.



**CES® Collaborative for High Performance Schools**

Provides the adoption criteria for products that help schools meet their green building criteria and deliver environmental benefits to their occupants.



Complaint

Exhibit C



GIRL'S BEDROOM

Natura comes in any color - so you can select a neutral option for your family that offers zero emissions and virtually no odor without having to compromise on color or anything else.

Natura® Zero VOC and Zero Emissions\* Paint



Beautiful Color. Lasting Durability. None of the other stuff.

Creating a greener and safer life for you and your family should be simple. It should be easy to find environmentally sustainable products that offer exactly what you want - and nothing you don't.

At Benjamin Moore, we're committed to providing environmentally-friendly products that both protect and beautify your home. Natura paint goes beyond zero VOC, to offer zero emissions and virtually no odor, so there is nothing standing between you and gorgeous rooms your whole family can enjoy. Its patented manufacturing process was also designed to ensure that there is no compromise on style or results. With Natura, what's good for your walls is even better for your family - and the planet.

[LEARN MORE >](#) [FIND A STORE >](#)

"Green Without Compromise"® - what Natura offers

- Patented manufacturing process - Natura is produced on a dedicated manufacturing line to ensure virtually no odor and low emissions.
- Zero VOCs, zero emissions & virtually odorless - allows you to return to using your space quickly.
- Unlimited color selection - going green doesn't mean giving up your options - you can get any Benjamin Moore color in Natura paint.
- Paint and primer together - in fact, any application that requires less product overall.
- Provides a durable, washable film - so you can wash and scrub it as needed, and your walls will still look beautiful for years to come.



The Green Good Housekeeping Seal helps consumers choose products that demonstrate environmental responsibility on a wide range of criteria.

In order for a product to earn the Green Good Housekeeping Seal, the product must first earn the primary Good Housekeeping Seal, which signifies that the product has been reviewed by the experts at the Good Housekeeping Institute. It is then evaluated on a wide range of environmental criteria, including reduction of energy and water use in manufacturing, ingredient and product safety, packaging, distribution and the brand's corporate social responsibility. Natura was the first and is currently the only paint to earn the Green Good Housekeeping Seal in the Paints and Coatings category.

Among the features of Natura that stood out in the evaluation process was the absence of VOCs in Natura's base paint and the rollers and its patented manufacturing process - requiring less energy usage and producing less waste.



Products carrying the Green Promise designation indicate the Benjamin Moore assurance that the product is environmentally friendly and meets - and even exceeds - the strictest industry standards and regulations, while maintaining the premium level of performance you expect from Benjamin Moore.

Complaint

**Exhibit D**

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 1 of 4

customer service: 855-734-6882 [Log In](#) [William B](#)

[For Architects & Designers](#) [For Contractors](#)

[For Your Home](#) [Painting Ideas](#) [Mix and Color](#) [Find Products](#) [Learn More](#) [Retailer Locator](#) [Shop Now](#) [Store Locator](#) [Register Now](#)

**Natura® Zero-VOC and Zero Emissions\*  
Paint**

Natura Waterborne Interior Paint continues Benjamin Moore's commitment to providing the most environmentally friendly paint. Natura goes beyond zero VOC to offer zero emissions, making it a safer paint for your family and the environment, all without compromise to performance or color selection. Natura is truly "Green Without Compromises."

[SAVE](#) | [PRINT](#) | [SHARE](#)

**AVAILABLE IN**

**Natura Waterborne Interior  
Paint - Flat Finish**

Flat(512)

[DOWNLOAD \(PDF\) :](#)  
MSDS 512 (English) | MSDS 512 (Español)  
TDS 512 (English)

Flat

**FEATURES :**

- Virtually odorless
- Zero VOC and zero emissions\*
- Quick return to service
- Now Certified **asthma & allergy friendly**\*
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,500 people by TRS  
Interior Paint Category: Natura

\* Zero VOC according to EPA Method 24. No VOC emissions detected according to CRI's/DRI's standard method v1.1, 2010.

**ADDITIONAL INFO :**

<http://www.benjaminmoore.com/en-us/for-your-home/paint-prod...> 10/9/2015

Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 2 of 4

Available Colors : All Colors, Ready Mix White

Sheen (or Gloss) : Flat

Cleanup : Soap and Water

Resin Type : Acrylic Latex

Recommended Use : Interior



Natura Waterborne Interior Paint - Eggshell Finish

Eggshell(513)

DOWNLOAD (PDF) :

SDS 513-01 (English)	SDS 513-02 (English)	SDS 513-03 (English)	SDS 513-04 (English)
SDS 513-05 (English)	SDS 513-06 (English)	SDS 513-07 (English)	SDS 513-08 (English)
SDS 513-09 (English)	SDS 513-10 (English)	SDS 513-11 (English)	SDS 513-12 (English)
SDS 513-13 (English)	SDS 513-14 (English)	SDS 513-15 (English)	SDS 513-16 (English)
SDS 513-17 (English)	SDS 513-18 (English)	SDS 513-19 (English)	SDS 513-20 (English)
SDS 513-21 (English)	SDS 513-22 (English)	SDS 513-23 (English)	SDS 513-24 (English)
SDS 513-25 (English)	SDS 513-26 (English)	SDS 513-27 (English)	SDS 513-28 (English)
SDS 513-29 (English)	SDS 513-30 (English)	SDS 513-31 (English)	SDS 513-32 (English)
SDS 513-33 (English)	SDS 513-34 (English)	SDS 513-35 (English)	SDS 513-36 (English)
SDS 513-37 (English)	SDS 513-38 (English)	SDS 513-39 (English)	SDS 513-40 (English)
SDS 513-41 (English)	SDS 513-42 (English)	SDS 513-43 (English)	SDS 513-44 (English)
SDS 513-45 (English)	SDS 513-46 (English)	SDS 513-47 (English)	SDS 513-48 (English)
SDS 513-49 (English)	SDS 513-50 (English)	SDS 513-51 (English)	SDS 513-52 (English)
SDS 513-53 (English)	SDS 513-54 (English)	SDS 513-55 (English)	SDS 513-56 (English)
SDS 513-57 (English)	SDS 513-58 (English)	SDS 513-59 (English)	SDS 513-60 (English)
SDS 513-61 (English)	SDS 513-62 (English)	SDS 513-63 (English)	SDS 513-64 (English)
SDS 513-65 (English)	SDS 513-66 (English)	SDS 513-67 (English)	SDS 513-68 (English)
SDS 513-69 (English)	SDS 513-70 (English)	SDS 513-71 (English)	SDS 513-72 (English)
SDS 513-73 (English)	SDS 513-74 (English)	SDS 513-75 (English)	SDS 513-76 (English)
SDS 513-77 (English)	SDS 513-78 (English)	SDS 513-79 (English)	SDS 513-80 (English)
SDS 513-81 (English)	SDS 513-82 (English)	SDS 513-83 (English)	SDS 513-84 (English)
SDS 513-85 (English)	SDS 513-86 (English)	SDS 513-87 (English)	SDS 513-88 (English)
SDS 513-89 (English)	SDS 513-90 (English)	SDS 513-91 (English)	SDS 513-92 (English)
SDS 513-93 (English)	SDS 513-94 (English)	SDS 513-95 (English)	SDS 513-96 (English)
SDS 513-97 (English)	SDS 513-98 (English)	SDS 513-99 (English)	SDS 513-100 (English)

TDS 513 (English)

Eggshell

FEATURES :

- Virtually odorless
- Zero VOC and zero emissions\*
- Quick return to service
- Now Certified **asthma & allergy friendly**\*\*
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation.
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,000 people by TRS

Interior Paint Category: Natura

\* Zero VOC according to EPA Method 24. No VOC emissions detected according to CDPH/DHS/standard method v1.1, 2010.

ADDITIONAL INFO :

Available Colors : All Colors, Ready Mix White

Sheen (or Gloss) : Eggshell

Cleanup : Soap and Water

Resin Type : Acrylic Latex

Recommended Use : Interior

## Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 3 of 4


**Natura Waterborne Interior  
Paint - Semi-Gloss Finish**

Semi-Gloss(514)

**DOWNLOAD (PDF) :**
[MSDS 514 \(English\) | MSDS 514 \(Español\)](#)
[TDS 514 \(English\)](#)

## Semi-Gloss

**FEATURES :**

- Virtually odorless
- Zero VOC and zero emissions\*
- Quick return to service
- Now Certified **asthma & allergy friendly**\*\*
- 100% Acrylic
- Provides a durable, washable film
- Spatter-resistant
- Unlimited color selection
- One hour recoat for quick return to service
- Carries the Green Promise designation.
- Self-priming on most surfaces.
- Voted 2015 Product of the Year

Survey of 40,000 people by TRS

Interior Paint Category: Natura

\* Zero VOC according to EPA Method 24. No VOC emissions detected according to CDRH/DHL standard method v1.1, 2012.

**ADDITIONAL INFO :**

Available Colors : All Colors, Easy 60, White

Sheen (or Gloss) : Semi-Gloss

Cleanup : Soap and Water

Resin Type : Acrylic Latex

Recommended Use : Interior

Complaint

Benjamin Moore Natura Paint - No VOC Paint - Odorless, Zero... Page 4 of 4

INNOVATIONS LIKE NO OTHER

**OUR PHILOSOPHY OF CAN**

**PROBLEM SOLVING PAINT**

**PUT TO THE TEST**

Sign up for exclusive offers, promotions and news:

<p>Company Info</p> <ul style="list-style-type: none"> <li>About Us</li> <li>Contact Us</li> <li>Careers</li> <li>Press</li> <li>Site Help</li> <li>Site Map</li> <li>For Dealers</li> <li>FAQs</li> <li>Become a Dealer</li> </ul>	<p>Tools</p> <ul style="list-style-type: none"> <li>Search</li> <li>Color Gallery</li> <li>Personal Color Viewer®</li> <li>Paint Calculator</li> <li>Store Locator</li> <li>My Favorites</li> </ul>	<p>Dealer Info</p> <ul style="list-style-type: none"> <li>Shipping Policy</li> <li>Returns Policy</li> <li>Track My Order</li> <li>Shop Now</li> <li>Store Help</li> </ul>	<p>Product</p> <ul style="list-style-type: none"> <li>Product Catalog</li> <li>Interior Paint Chooser</li> <li>Green Primers®</li> <li>Paint Calculator</li> </ul>	<p>Connect With Us</p> <ul style="list-style-type: none"> <li>Facebook</li> <li>Twitter</li> <li>Pinterest</li> <li>YouTube</li> <li>Google+</li> <li>Instagram</li> </ul>
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101 Pentagon Drive, Northvale, NJ 07645 | Privacy | Terms and Conditions | Best Viewed | Unsubscribe | CA Supply Chain Act

Complaint

Exhibit E



Complaint

**Exhibit F**

# NATURA

PREMIUM INTERIOR PAINT

GREEN WITHOUT COMPROMISE™

Natura® continues Benjamin Moore's commitment to innovation by providing our most decorated and environmentally friendly paint. Natura® is safer for your family and the environment while still providing a durable, beautiful finish.

- Zero VOCs\* and zero emissions\*\* with no harsh fumes\*\*\*
- Self-priming on most surfaces
- Dries fast for quicker return to service
- Excellent adhesion with a durable finish

**Customer Profile:**

- Consumers who seek an environmentally-friendly paint, and are unwilling to compromise on performance or color integrity
- Consumers looking for a paint that is more suitable for people with allergies
- Residential contractors needing a high performing green, zero VOC\* paint to meet their clients' needs
- Architects, designers, and specifiers seeking a premium quality product which meets LEED®, MPI and CHPS standards

**Available Sheens:** Flat, Eggshell and Semi-Gloss  
**Available Colors:** Available in four bases. Can be tinted in thousands of colors.  
**Cleanup:** Soap and water  
**Recommended Use:** Natura® is ideal for residential or commercial applications where a zero-VOC\* paint with low emissions is desired. It's perfect for residential homes, hospitals, healthcare facilities, LEED® certified facilities and green buildings.  
**Competitive Advantage:** "Certified asthma & allergy friendly"™ now joins Natura's® other recognitions and accolades; Natura® is truly Green Without Compromise®.

**Awards and Certifications:**



\*Zero VOC according to EPA Method 24  
 \*\*Zero emissions detected according to CARB's 1.0 Standard Method V11, 2010  
 \*\*\*No harsh fumes - Zero emissions detected according to LEED's 99.15/Standard Method V1.1, 2010  
 ©2015 Benjamin Moore & Co. All trademarks are registered trademarks of their respective owners. The CERTIFIED ASTHMA & ALLERGY FRIENDLY Mark is a Registered Certification Mark of the ASTHMA AND ALLERGY FOUNDATION OF AMERICA



## Complaint

**Exhibit G**


# Natura<sup>®</sup>

## Waterborne Interior Paint

### The Program

The Natura advertising program will build consumer awareness and drive foot traffic to local retailers, ultimately supporting sales of Natura. There are several new programs and initiatives that will establish Natura's long term growth so that it continues to be our flagship green product, especially in light of the growing demand for green products.

**Why Natura?**  
Natura was one of the first products in the industry to be a true zero VOC product. However, Natura is more than just zero VOCs.

Natura also offers unique benefits including:

- Patented manufacturing, odor and emission technology
- Low emissions
- Lowest odors – No harsh chemical smell
- Segregated and proprietary manufacturing process that uses exclusive resin
- Meets or exceeds the most comprehensive environmental testing standards in the industry
- The first paint to earn the Green Good Housekeeping seal

### National Advertising

Benjamin Moore will be leveraging multiple media outlets to gain visibility and provide consumer education about Natura, Benjamin Moore's greenest product.

- Shades of Green – an educational TV program devoted to the advancement of renewable energy and sustainable living
  - 4-6 minute feature on Discovery (Dish/Direct TV) and CNN Airport
  - 30 second commercial spots
- Good Housekeeping print and digital advertising
- Digital Experience
  - Natura landing page
  - Expanded keyword search buy
  - Display ads
- PR outreach behind patent
- Trade shows



### Retail Support

- Print, digital and social media assets
- 100% co-op reimbursement when select Natura ad slicks are utilized
- Free Natura 2013 POP KIT
  - Window Poster, End Cap Kit, Color Preview Studio Graphic, Bail Hangers and Shelf Talker
  - Available for order to all Natura dealers on [www.mybenjaminmoore.com](http://www.mybenjaminmoore.com)
- Please note that coupons cannot be utilized on these ads

\*VOC < 5 g/L  
© 2013 Benjamin Moore & Co. Benjamin Moore, Green Promise, Natura and the triangle "M" symbol are registered trademarks and For everything that matters is a trademark of Benjamin Moore & Co. Printed in USA.



**Benjamin Moore**  
In everything that matters.



## Decision and Order

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order, and that only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered any comments received from interested persons pursuant to Section 2.34 of its Rules, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. The Respondent is Benjamin Moore & Co., Inc, a New Jersey corporation with its principal office or place of business at 101 Paragon Drive, Montvale, New Jersey 07645.

## Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

**ORDER****Definitions**

For purposes of this Order, the following definitions apply:

- A. “Clearly and conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made through only one means.
  2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

## Decision and Order

5. On a product label, the disclosure must be presented on the principal display panel.
  6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
  7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. “Close proximity” means that the disclosure is very near the triggering representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation. A disclosure made on a different printed page than the triggering representation is not in close proximity.
- C. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- D. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric

## Decision and Order

photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. Section 51.100(s).

- E. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- F. “Trace” level of emission means:
1. A VOC has not been intentionally added to the covered product;
  2. Emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and
  3. Emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating.
- G. “Certification” means any seal, logo, emblem, shield, or other insignia that expresses or implies approval or endorsement of any product, package, service, practice, or program, or any attribute thereof.
- H. “Respondent” means Benjamin Moore & Co., Inc. and its successor and assigns.

**I. Prohibited Misleading and Unsubstantiated  
Representations Regarding Emission and VOC  
Level of Covered Product**

**IT IS ORDERED** that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in

## Decision and Order

active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, that the emission level of a covered product is zero, or that the VOC level of a covered product is zero, unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that:

- A. The covered product's emission is zero micrograms per meter cubed and the covered product's VOC content is zero grams per liter; or
- B. The covered product does not emit or produce more than a trace level of emission.

For purposes of this Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

## **II. Prohibited Misleading and Unsubstantiated Representations Regarding Environmental and Health Claims**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

## Decision and Order

- A. The emission of the covered product;
- B. The VOC level of the covered product;
- C. The odor of the covered product;
- D. Any other health benefit or attribute of, or risk associated with exposure to, the covered product, including those related to VOC, emission, or chemical composition; or
- E. Any other environmental benefit or attribute of the covered product, including those related to VOC, emission, or chemical composition,

unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

### **III. Notice to Dealers and Distributors**

**IT IS FURTHER ORDERED** that Respondent deliver as soon as practicable, but in no event later than 60 days after the effective date of this Order, a notice in the form shown in Attachment A to all of Respondent’s dealers and distributors, and all other entities to which Respondent provided point-of-sale advertising, including product labels, for any covered product identified in Attachment A. The notice required by this paragraph must not include any document or other enclosures other than those referenced in Attachment A.

## Decision and Order

**IV. Prohibited Misleading Certification Marks**

**IT IS FURTHER ORDERED** that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any misrepresentation, expressly or by implication, regarding certifications, including:

- A. The fact that, or degree to which, a third party has, evaluated a product, package, service, practice, or program based on its environmental benefits or attributes; or
- B. That a certification is endorsed by an independent person or organization.

**V. Disclosure of Material Connection**

**IT IS FURTHER ORDERED** that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any product, package, certification, service, practice, or program, must not make any representation, in any manner, expressly or by implication, about any user or endorser of such product, package, certification, service, practice, or program unless Respondent discloses, clearly and conspicuously, and in close proximity to the representation, any unexpected material connection, when one exists, between such user or endorser and (1) the Respondent or (2) any other individual or entity affiliated with the product or service. For purposes of this Provision, "unexpected material connection" means any relationship that might materially affect the weight or credibility of the testimonial or endorsement and that would not reasonably be expected by consumers.

## Decision and Order

**VI. Means and Instrumentalities**

**IT IS FURTHER ORDERED** that Respondent, and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product, must not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact, including but not limited to any representation prohibited by Provisions I, II, IV, or V, above. For purposes of this Provision, “means and instrumentalities” shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product, in or affecting commerce.

**VII. Acknowledgments of the Order**

**IT IS FURTHER ORDERED** that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.
- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.



## Decision and Order

- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days after delivery, a signed and dated acknowledgment of receipt of this Order.

**VIII. Compliance Report and Notices**

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. Sixty days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order and a copy of the notice sent to dealers and distributors; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in any designated point of contact or the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

## Decision and Order

- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Benjamin Moore, Docket No. C-4646.

**IX. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

## Decision and Order

- C. Records of all consumer complaints concerning the subject matter of the Order , including complaints involving representations covered by Parts I, II, IV, or V of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. For 5 years from the date of the last dissemination of any representation covered by this Order:
  - 1. All materials that were relied upon in making the representation; and
  - 2. All tests, analyses, research, studies, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

**X. Compliance Monitoring**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.

## Decision and Order

- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XI. Order Effective Dates**

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate 20 years from the date of its issuance (which is stated at the end of this Order, next to the Commission's seal), or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this provision.

If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the

## Decision and Order

dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Decision and Order

**Attachment A***Attachment A: Notice to Dealers and Distributors*

[on Respondent letterhead]

[insert date]

IMPORTANT NOTICE ABOUT \_\_\_\_\_  
ADVERTISING AND MARKETING MATERIALS

[insert addressee name]

[insert addressee address used in the ordinary course of business]

Dear Dealer or Distributor,

In response to a complaint from the Federal Trade Commission, Benjamin Moore & Co., Inc. has agreed not to make claims that its paints contain zero VOCs (volatile organic compounds) or other harmful emissions, unless we can substantiate that the level is actually zero or otherwise comply with the settlement terms. We request that you immediately stop using existing \_\_\_\_\_ advertising and marketing materials that represent the emission level of any paint is zero, or that the VOC level of any paint is zero.

In addition, our in-house Green Promise certification mark did not adequately identify it as a self-certification or the specific characteristics of the certification.

We have included placards that you must display clearly and prominently next to the paint containers and at each point of sale to eliminate any misrepresentation to consumers. Enclosed are illustrations of how to properly place the placards. The placards must be displayed until you have sold all paint containers bearing the problematic claims.

We will make revised marketing materials available to you shortly. Should you have any questions about compliance with this notice, please contact [insert contact person]. In addition, you can obtain further information about the settlement by visiting [www.ftc.gov](http://www.ftc.gov) and searching for "Benjamin Moore."

Sincerely,

[name]

Analysis to Aid Public Comment

**LABEL UPDATE:  
Benjamin Moore's "Zero Emission"  
and "Zero VOC" Paints**

Benjamin Moore Natura® Waterborne Interior "Zero Emission" paints emit chemicals during the painting process and while drying. Some of these chemicals can be harmful to sensitive groups such as babies and those suffering from asthma or allergies.

**LABEL UPDATE:  
Benjamin Moore's "Green Promise" Certification**

Benjamin Moore's Green Promise® designation is the Company's assurance that this product meets—and often exceeds—rigorous environmental and performance criteria regarding VOCs, emissions, application, washability, scrubbability, and packaging, while also delivering the premium levels of performance you expect from Benjamin Moore.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from Benjamin Moore & Co., Inc. ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing, sale, and distribution of purportedly "emission-free" paints. Emission is any compound emitted from paint during application or thereafter and includes volatile organic compounds (or VOCs). According

## Analysis to Aid Public Comment

to the FTC complaint, respondent made unsubstantiated representations that Natura paints: (1) are emission-free; (2) are emission-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies and allergy and asthma sufferers. The FTC also alleges that respondent used its Green Promise seal without adequately disclosing that respondent awarded the seal to its own product. Consumers likely interpret such seals as a claim that an independent third party certified the product. The FTC further alleges that respondent provided independent retailers with promotional materials containing the same claims it made to consumers. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains five provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace levels. The orders define “emission” to include all emissions (not just VOCs that cause smog). This definition reflects the Commission’s Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. The order defines “trace level of emission” to mean (1) no intentionally added VOC, (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health, and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating. Part II prohibits misleading representations regarding emission, VOC levels, odor, and any general environmental and health benefit of paints. The order requires competent and reliable scientific evidence to substantiate these representations. Parts IV and V prohibit



## Analysis to Aid Public Comment

respondent from misrepresenting third-party certifications and failing to adequately disclose a material connection. Part VI prohibits respondent from providing third parties with the means and instrumentalities to make false, unsubstantiated, or otherwise misleading representations of material fact regarding paints, including any representation prohibited by Parts I, II, IV or V.

To correct allegedly existing unsubstantiated zero emission and VOC claims and deceptive certification claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to place placards next to paint cans and at point of sale.

Parts VII through XI are reporting and compliance provisions. Part VII mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VIII requires that respondent submit compliance reports to the FTC within sixty (60) days of the order's issuance and submit additional reports when certain events occur. Part IX requires that respondent must create and retain certain records for five (5) years. Part X provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part XI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

If the Commission finalizes the agreement's proposed order, it plans to propose harmonizing with this order the consent orders issued in the PPG Architectural Finishes, Inc. (Docket No. C-4385) and The Sherwin-Williams Company (Docket No. C-4386) matters. Specifically, the Commission plans to issue orders to show cause why those matters should not be modified pursuant to Section 3.72(b) of the Commission Rules of Practice, 16 C.F.R. § 3.72(b).

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**IMPERIAL PAINTS, LLC**  
**D/B/A**  
**LULLABY PAINTS AND ECOS PAINTS**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket No. C-4647; File No. 162 3080*  
*Complaint, April 24, 2018 – Decision, April 24, 2018*

This consent order addresses Imperial Paints, LLC's marketing, sale, and distribution of purportedly "VOC-free" paints. The complaint alleges that respondent made unsubstantiated representations that its paints: (1) are free of volatile organic compounds ("VOCs"); (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies, pregnant women, and allergy and asthma sufferers; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies, pregnant women, and allergy and asthma sufferers. The consent order prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels.

*Participants*

For the *Commission*: Robert M. Frisby, Megan Gray, Katherine Johnson, and Alejandro Rosenberg.

For the *Respondent*: Ryan Clark and Joan Long, Barnes & Thornburg LLP.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that Imperial Paints, LLC, a limited liability company, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Imperial Paints, LLC ("Imperial"), also doing business as, *inter alia*, Lullaby Paints and ECOS Paints is a South Carolina limited liability company with its principal office or

Complaint

place of business at 350 East St. John Street, Spartanburg, South Carolina 29302.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including Lullaby Paints and ECOS Paints.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

**Imperial's Lullaby Paints**

4. Respondent distributes Lullaby Paints directly to consumers through its websites, including <http://imperialpaintsllc.com/> and <http://lullabypaints.com/>, and through independent retailers.

5. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for Lullaby Paints to consumers, including the attached Exhibits A-M. These materials contain the following statements and depictions:

a.

**How can I safely paint my nursery?**

**What's harmful about paint?**  
PAINT CAN CONTAIN HIGHLY TOXIC CHEMICALS, such as phthalates, solvents, tars, and formaldehyde which are released into the air for up to five years.

**Are all paints harmful?**  
OVER 95% OF PAINTS, INCLUDING MANY LABELED AS ZERO-VOC, LOW-VOC, or GREEN carry the following disclaimer:  
**WARNING:** This product contains chemicals known to cause cancer and birth defects or other reproductive harm.  
In contrast, Lullaby Paints does not contain these toxic chemicals.

**What are the health issues caused by paint chemicals?**  
ASTHMA & ALLERGIES, COGNITIVE, SOCIAL AND DEVELOPMENTAL ISSUES. Pregnant moms, unborn and newborn babies are particularly at risk from these chemicals.

**Why is Lullaby Paints safe?**  
NO TOXINS, NO SOLVENTS, NO ODORS. Lullaby Paints have been formulated to provide pregnant moms and their babies with a safe alternative.

**How is Lullaby Paints safe?**  
NO TOXINS, NO SOLVENTS, NO ODORS. Lullaby Paints have been formulated to provide pregnant moms and their babies with a safe alternative.

**How is Lullaby Paints safe?**  
NO TOXINS, NO SOLVENTS, NO ODORS. Lullaby Paints have been formulated to provide pregnant moms and their babies with a safe alternative.

Lullaby Paints is committed to making beautiful, safe, non-toxic paints for mothers, babies and their nurseries. We believe our level of safety exceeds the highest industry standards.

Made in the USA

Safe for use on baby's walls, cribs, and toys. Safe for pregnant mothers

UK Allergy Seal of Approval

EN 71 Certification for use in children's toys

Green Wellcome and Ford Conservation Awards

Paint So Fresh It Feels Like Outdoors

**lullaby PAINTS**

**lullaby PAINTS**

(Exhibit G, Brochure.)

## Complaint

b.

**Why Lullaby Paints?**  
*For your baby's health, yours, & the environment.*

**Safe for baby and mom**  
SAFE TO APPLY AND BE AROUND our specially formulated paints provide the highest safety standards without compromising quality.

**Non-toxic, no odor, no VOCs**  
ZERO VOC FORMULA. No toxic chemicals, no odors, no VOC's. We are an environmentally responsible paint company, providing the highest standards for your baby.

**Helps reduce asthma, allergy, MCS**  
PREVENTIVE REASONS. Developed without chemicals which have been shown to cause asthma, allergies and/or irritate children.

Proven and verified quality standards for your baby and family. To learn more visit [www.lullabypaints.com](http://www.lullabypaints.com)

**Paint Coverage Per Gallon**

1 Gallon Lullaby Paints	1.5 Gallons Traditional Paints
1 Gallon Lullaby Paints	560 sq. ft.
1 Gallon Traditional Paints	375 sq. ft.

\*Our proprietary technology has been developed to improve coverage and reduce emissions.

**32 Designer Colors & Color Matching**

- 4 Collections Each with 8 Colors  
Designer colors coordinated into perfectly matched collections
- Match Color Strips™/swatches  
We match other paint samples and color swatches.
- Furniture, Bedding and Fabric  
Have a furniture piece that needs to be matched? We can help.

**Safety comes first**

"It's wonderful to be able to use a safe, premium paint to surround my baby. It gives me peace of mind."

(Exhibit F, Brochure.)

- c. The World's Finest Baby Safe Paint! (Exhibit J, [www.lullabypaints.com/](http://www.lullabypaints.com/)).
- d. There's no good reason why a premium quality, hard wearing, beautiful paint needs to contain toxic chemicals. Know how we know that? At Lullaby Paints, after years of development, we have proven it. We are pioneers in paint-making and extremely proud of our final product: the safest paint available. Newborn baby-safe. Pregnant mom-safe. Safe enough for kids to paint with. (Exhibit I, [www.lullabypaints.com/safety](http://www.lullabypaints.com/safety)).
- e. Safe for baby. And the environment. Our award-winning paint is praised as much for its color, coverage and durability, as it is for its safety. Attaining the highest certifications for product purity, Lullaby Paints is known in the industry as the safest paint available. Recognized by consumer advocacy groups and leading environmental organizations, used by hospitals and maternity facilities, lauded by magazines, designers and bloggers and, most of all, enjoyed by moms as pregnancy safe paints. We've

## Complaint

revolutionized how safe and eco-friendly paints can be, for mom, baby, everybody. (Exhibit L, [www.lullabypaints.com/how-it-works](http://www.lullabypaints.com/how-it-works)).

- f. Why Lullaby paints? . . . Tested and proven for over 20 years. These products are safe. (Exhibit G, brochure).

**Imperial's ECOS Paints**

6. Respondent distributes ECOS Paints directly to consumers through its websites, including <http://imperialpaintsllc.com/> and <http://ecospaints.net/>, and through independent retailers.

7. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for ECOS Paints to consumers, including the attached Exhibits N-Q. These materials contain the following statements and depictions:

- a. WHAT IS SO DIFFERENT ABOUT ECOS PAINTS?  
Unlike traditional paints, even those labeled as “environmentally friendly”, ECOS Paints are non-toxic and have no odor. Developed twenty five years ago with a unique formulation, our products were originally designed for people with multiple chemical sensitivities, asthma, allergies, and issues with everyday chemicals.

For over two decades, we have provided world class, high quality paints and relief from noxious chemicals to discerning individuals around the world. Today our customers also include people who are focused on the environment and sustainability; healthcare providers; mothers concerned about their baby's health, and companies seeking to protect the health of their employees, guests and visitors. Our paints are zero VOC and do not contain harmful solvents that off gas into the air. Safer for you, your family and the environment. (Exhibit P, [www.ecospaints.net/mcs.html](http://www.ecospaints.net/mcs.html).)

## Complaint

- b. Proven Technology
- 25 Years of Successful Use
  - Award Winning
  - Tested and Certified.

For twenty five years, ECOS and Air Pure Paints have been sought out by people with multiple chemical sensitivities, concerned pregnant mothers, the environmentally conscious, corporations committed to sustainability, and the general public who care. Now manufactured in the US, these products are available for discerning customers who are equally committed to the health of the environment. (Exhibit N, Print Ad.)

**Count I**  
**Unsubstantiated Claims**

8. In connection with the advertising, promotion, offering for sale, or sale of Lullaby and ECOS Paints, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Lullaby and ECOS Paints are VOC-free.
- b. Lullaby and ECOS Paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies, pregnant women, and allergy and asthma sufferers.
- c. Lullaby and ECOS Paints have been tested and proven to be safe.

9. The representations set forth in Paragraph 8 were not substantiated at the time the representations were made.

**Count II**  
**Means and Instrumentalities**

10. Respondent has distributed promotional materials, including the statements and depictions contained in Exhibits A

## Complaint

through Q to independent retailers. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

**Violations of Section 5**

11. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission this twenty-fourth day of April, 2018, has issued this Complaint against Respondent.

By the Commission.

## Complaint

**Exhibit A**

Imperial Paints LLC

IMPERIAL PAINTS

Imperial Paints LLC is a holding company for highly engineered and innovative brands of paint.

Sharing a common technology, these products have been proven over a twenty year period, thoroughly tested and accredited. Each brand has been refined to meet the specific needs of a target consumer base, delivering precise performance and aesthetic qualities.

We will continue to expand our portfolio with new technologies over the next twenty years.

**lullaby**  
PAINTS  
Baby Safe

**clinical paints**

**ECOS**  
PAINTS

**WOOD-SHIELD**

**AIR PURE PAINTS**  
CLEAR AIR TECHNOLOGY

**lullaby**  
PAINTS  
chalkboard paint

© 2013 Imperial Paints LLC | PO Box 489 Fairforest, SC 29336 | tel 864.595.3840 | [info@imperialpaintsllc.com](mailto:info@imperialpaintsllc.com)



Complaint

**Exhibit B**



## What is Baby Safe?

Lullaby Paints is committed to making beautiful, safe, non-toxic paints for mothers, babies and their nurseries. We believe our safety levels exceed the highest industry standards.



**100% NON-TOXIC & NO ODOR**  
No Harmful Chemicals



**20 YEARS OF CUSTOMER SATISFACTION**  
Proven Technology and Performance



**INTERNATIONAL RECOGNITION**  
Multiple Awards and Accreditations



**SAFE FOR TOYS AND CRIBS**  
Ideal for Contact




Complaint

Exhibit C

## HIDDEN DANGERS IN YOUR BABY'S NURSERY

**DID YOU KNOW THE AIR IN A NEWLY FURNISHED AND PAINTED NURSERY MAY CONTAIN MORE THAN 100 TOXIC CHEMICALS?** Parents take baby-proofing steps every day to prevent harm to their children. We use car seats, child gates, outlet covers. The list goes on and on, but what about the invisible risks? Wondering what other hidden dangers are lurking in your baby's room? Read on to find out what they are and how to avoid them.



**CRIB**  
Formaldehyde, a known carcinogen and asthmaogen, is often used in the pressed/composite woods that many cribs and furnishings are made of.  
**FIX IT:** Choose solid wood furniture or gently used furniture that's already had a chance to off-gas. (Be sure cribs meet current safety standards.)

**CRIB MATTRESS**  
72% of crib mattresses are made with potentially dangerous chemicals like formaldehyde, antimicrobials, and waterproofing finishes.  
**FIX IT:** Look for all-organic and/or Greenguard Certified mattresses.

**PAINT**  
Conventional paint can off-gas toxic volatile organic compounds (VOC) for up to 5 years or more.  
**FIX IT:** Use zero-VOC, water-based, solvent-free paint (one-step) instead of oil paint.

**CHANGING STATION**  
70% of foam baby products such as changing pads, car seats, and cradle cushions contain toxic flame-retardants.  
**FIX IT:** Choose products with wool- or cotton-filled seats with PVC-free waterproof linings.


**TOYS**  
Polyvinyl chloride (PVC) is used in everything from teething rings to baby bibs, often contains dangerous toxic additives such as phthalates, lead, and cadmium.  
**FIX IT:** Choose PVC-free (BPA-free) baby products with BPA-free labels.

**BABY CARE PRODUCTS**  
In 2009, the Campaign for Safe Cosmetics found 14-dioxane, a chemical linked to cancer, in 87% of products tested.  
82% contained formaldehyde, though they were marketed as "gentle" and "pure" on the label.  
**FIX IT:** Look for organic care products or try making your own.

Knowledge is power. With it, you can create a healthier home for your family. Start out by choosing a few easy steps and, when they become habit, move on to a few more. No one can do everything, but everyone can do something. Learn more at [HealthyChild.org](http://HealthyChild.org).


Marking: MUMUKHOO, SWISONS, THEBALYSHERN.COM, CHEJ.COM, CLEARHEALTHYNY.COM, ABC.COM, NICE.COM, GOMESTY.COM

This information and make yourself an informed choice. Consider comparing with leading baby products for the home.

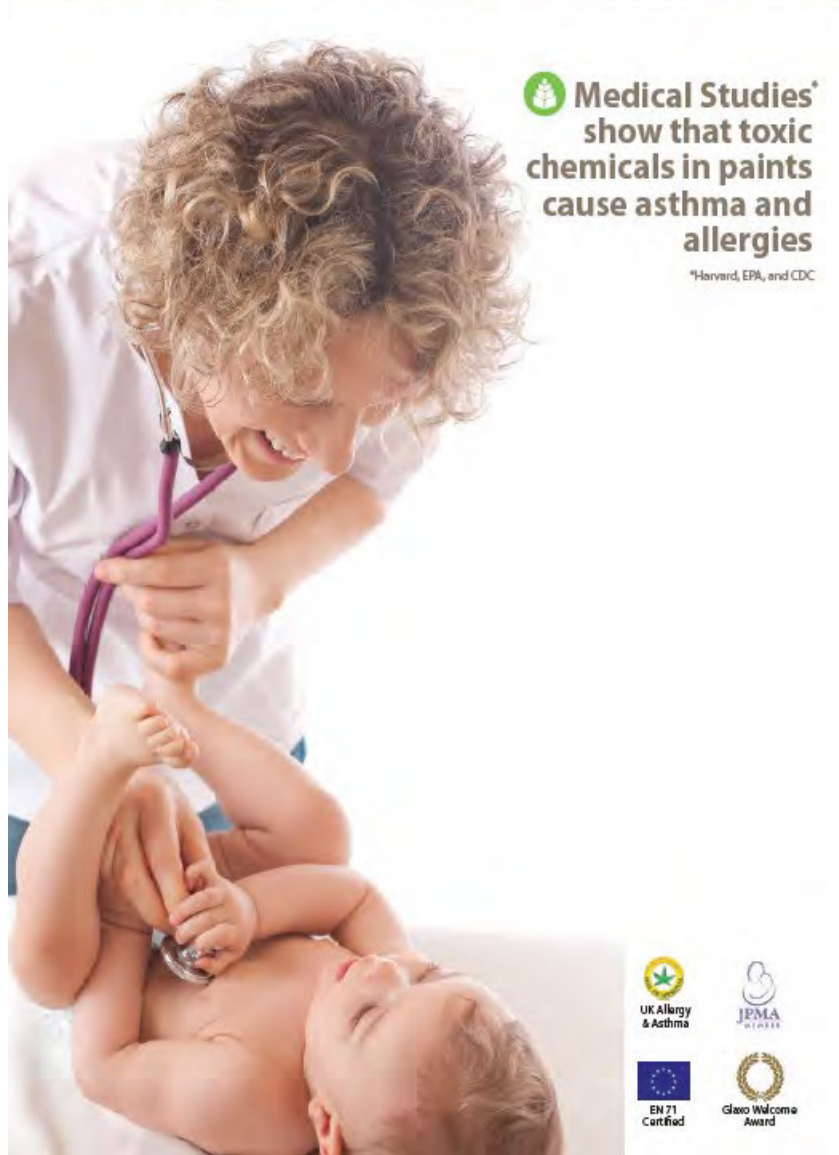


Complaint

**Exhibit D**




**lullaby**  
PAINTS




**Medical Studies\***  
show that toxic  
chemicals in paints  
cause asthma and  
allergies


\*Harvard, EPA, and CDC




UK Allergy  
& Asthma



JEMA



EN 71  
Certified



Glaxo Wellcome  
Award

Complaint

**Exhibit E**



Complaint

Exhibit F

Featured By





Lullaby Paints is committed to making beautiful, safe, non-toxic paints for mothers, babies and their nurseries. We believe our level of safety exceeds the highest industry standards.

-  Made in the USA
-  Safe for use on baby's walls, cribs, and toys. Safe for pregnant mothers.
-  UK Allergy Seal of Approval
-  EN 71 Certification for use in children's toys
-  Glaxo Wellcome and Ford Conservation Awards



lullaby safe | premium finishes | interior paints | designer colorlines

© 2013 Lullaby Paints, LLC. All rights reserved. 1-877-866-4466, 1-800-233-2333  
© 2013 Lullaby Paints, LLC. COLORISTS AND COLORS






### Why Lullaby Paints?

For your baby's health, safety & well-being.



**Safe for baby and mom**  
SAFE TO APPLY AND BE AROUND. Our specially formulated paints provide the highest safety standards without compromising quality.



**Non-toxic, no odor, no VOCs**  
THERE'S GOOD STUFF INSIDE. No toxic chemicals, no odor, no VOCs. We are an environmentally responsible paint company, providing the highest standards for your baby.



**Help reduce asthma, allergy, MCS**  
HYPOTHENSIVE USA CURE. Developed without chemicals which have been shown to cause asthma, allergies and eczema in children.

Paints and finishes don't affect health for your baby and family. To Learn More Ask a Sales Associate about Lullaby Paints Today.

**Paint Coverage Per Gallon**

 1 Gallon Lullaby Paints	 1.5 Gallons Traditional Paints
1 Gallon Lullaby Paints	560 sq. ft.
1 Gallon Traditional Paints	375 sq. ft.

\*Our proprietary technology has been developed to improve coverage and reduce emissions.

**32 Designer Colors & Color Matching**

-  **8 Collections Each with 4 Colors**  
Designer colors coordinated into perfectly matched collections.
-  **Match Color Strips/Swatches**  
We match other paint samples and color swatches.
-  **Furniture, Bedding and Fabric**  
Have a furniture piece that needs to be matched? We can help.



**"It's wonderful to be able to use a safe, premium paint to surround my baby. It gives me peace of mind."**



Complaint

Exhibit G



How can I safely paint my nursery?

**Q What's harmful about paint?**  
PAINT CAN CONTAIN HIGHLY TOXIC CHEMICALS, such as phthalates, solvents, texanol, and formaldehydes which are released into the air for up to five years.

**Q Are all paints harmful?**  
OVER 95% OF PAINTS, INCLUDING MANY LABELED AS ZERO-VOC, LOW-VOC, or GREEN carry the following disclaimer:  
**WARNING:** This product contains chemicals known to cause cancer and birth defects or other reproductive harm.

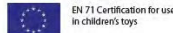
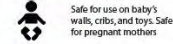
In contrast, Lullaby Paints does not contain these toxic chemicals.

**Q What are the health issues caused by paint chemicals?**  
ASTHMA & ALLERGIES, COGNITIVE, SOCIAL AND DEVELOPMENTAL ISSUES. Pregnant moms, unborn and newborn babies are particularly at risk from these chemicals.

**Q Why is Lullaby Paints safe?**  
NO TOXINS, NO SOLVENTS, NO ODOR. Lullaby Paints have been formulated to provide pregnant moms and their babies with a safe alternative.

**Want to Learn More?**  
See the Harvard, EPA and ATSDR-CDC Studies.  
Go to <http://www.lullabypaints.com/learnmore>

Lullaby Paints is committed to making beautiful, safe, non-toxic paints for mothers, babies and their nurseries. We believe our level of safety exceeds the highest industry standards.



baby safe | premium finishes | interior paints | designer collections

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© 2012 Lullaby Paints, LLC. Colors and Colors



"It's wonderful to be able to use a safe, premium paint to surround my baby. It gives me peace of mind."

as featured on:



Why Lullaby Paints?  
for your baby's health, safety & wellbeing

**Safe for baby and mom**  
SAFE TO APPLY AND BE AROUND. Our specially formulated paints provide the highest safety standards without compromising quality.

**Tested and proven for over 20 years**  
THESE PRODUCTS ARE SAFE. Our products have over 20 years of usage around the world and are manufactured to the most stringent standards.

**Non-toxic, no odor, no VOCs**  
THERE'S GOOD STUFF INSIDE. No toxic chemicals, no odor, no VOCs. We are an environmentally responsible paint company, providing the highest standards for your baby.

**Help reduce asthma, allergy, MCS**  
PREVENTIVE MEASURES. Developed without chemicals which have been shown to cause asthma, allergies and eczema in children.

**Industry leader in coverage**  
LEAD THE MARKET IN COVERAGE. Our paints can cover 560 sq. ft. per gallon, that's 40% more than the industry average.

**Complete line of colors and finishes**  
DISCOVER OUR WIDE SELECTION. 32 colors in 8 designer collections and the ability to color match any shade.

Promote and nurture healthy environments for your baby and family. To Learn More Ask a Sales Associate about Lullaby Paints Today.

Paint Coverage Per Gallon



1 Gallon Lullaby Paints	560 sq. ft.
1 Gallon Traditional Paints	375 sq. ft.

\*Our proprietary technology has been developed to improve coverage and reduce emissions.

Premium Finishes  
Durable and long-lasting finishes

Mills/Colony		Five Star	
Matt	Eggshell	Soft Sheen	Satin
✓	✓	✓	✓

32 Designer Colors & Color Matching

**8 Collections Each with 4 Colors**  
Designer colors coordinated into perfectly matched collections

**Match Color Strips/Swatches**  
We match other paint samples and color swatches

**Furniture, Bedding and Fabric**  
Have a furniture piece that needs to be matched? We can help.

Complaint

**Exhibit H**



Complaint



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## Complaint

### About Us

For twenty five years we have been making paints for the chemically sensitive. People who have a hard time coping with everyday chemicals, or those who suffer from common medical conditions like asthma and allergies. We have given them respite, the ability to enjoy their own homes, or a good night's rest.

Today we are bringing our technology to an equally deserving group - everybody else.

There is no good reason why paint needs to contain harmful chemicals. Ingredients that cause asthma and allergies in children, that are carcinogenic, or can cause cognitive development issues. We make durable, colorful, premium paints, that have been used and accredited around the world for over two decades - without the need for toxic ingredients. We invite you to explore our safe world of color.

### Why Lullaby Paints fits in a nursery store?

- Unique nursery décor item
- Designer chic pouches
- New product channel
- Superior value proposition - quality and safety
- Complements existing design services
- No inventory
- No technical expertise needed
- Manufacturer support for all technical, support and paint inquiries

### What's unique about Lullaby Paints?

- Made specifically for pregnant moms and their babies
- Safe (no toxins, no harmful chemicals, no off-gasses, no VOCs)
- No odor
- No compromise - easy to apply, scrubable, durable, vibrant colors, just like you'd expect from a premium paint



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## Our Program

### What do I receive as a retailer upon joining the program?

We offer:

- 1) Designer, ohio sample pouches for sale in the store
- 2) Retail stand for display purposes (if needed)
- 3) Retailer Pack - includes merchandizing & collateral materials

### Do I need to hold any inventory or paint cans?

Your retail store will hold no inventory or paint cans.

### How do I get my store setup to take orders?

We take care of creating your retailer account. You simply get a username and password. From that point, you can send orders via Lullaby Paints Retailer site.

### How do I get paid?

Three ways:

- 1) Selling designer, sample pouches
- 2) Store orders – When a customer purchases paint, the retailer will take payment directly from them and then place/pay for the order through our website using the retailer discount account.
- 3) Online Orders – For orders that are placed online by your customers, they are required to refer the retail store on checkout process. From that point, your retail store will get the appropriate credit for the sale.



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### How does my customer receive the paint?

We will arrange for delivery of the paint either to the store or directly to the customer – according to the retailer's preference. The retailer does not have to stock any paint - other than the sample pouches.

### What if we have technical questions, customer concerns?

We handle the painting and technical support for your customer. They can reach us via email ([info@lullabypaints.com](mailto:info@lullabypaints.com)), phone (1-866-587-3586) or fax (1-864-595-3841).

### What if my customer purchases directly on the website?

Should a customer decide to purchase paint directly through our website, they will be presented with an required option during "Checkout" to refer the retail store where they viewed the product. When they select a store, that retailer will get the appropriate credit for the sales and receive a commission check in the mail the following month.

### When do I get the commission paid to my retailer account?

Payment for the retailer, if earned as a commission, is earned at the point of purchase. The retailer receives the full price of the paint from the consumer and remits only the wholesale price to Lullaby Paints.

### What is the retail and commission pricing for the product?

Sample Pouch:  
Quart Pouch:  
Gallon Pouch:



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## What are the merchandizing options for my retail store?

### Included free as retailer signup:

Starter Pack: (5) Five Posters, Buyer's Guide, Press Kit, USB Drive, Four Sample Pouches, Three Large Pouches (Gallon, Quart, Pint) Trifold Brochures

### Choose a merchandizing option:

Full Sample Set:	32 Sample Pouches
Partial Sample Set:	24 Sample Pouches
Small Sample Set:	6 Sample Pouches
Retail Stand:	96 Sample Pouches



### How does ordering product work?

All orders will be shipped by Lullaby Paints either directly to the customer, or to the retail store, in accordance with Imperial Paints standard delivery terms. Sample pouches for the retail store must be ordered with a minimum quantity of six pouches.

### What are the payment terms?

Orders paid for in full, by credit card, at the time of purchase.



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## Investing In Your Child

### Why is Paint Important?

- Your child will spend up to 16 hours a day in their nursery for the next 3 years.
- Paint fumes from traditional paints include benzene, antimony trioxide, toluene, xylene, ethylene glycol, and texanol. All of these are hazardous to the health of your child.
- Paint offgases for up to 5 years after application. Fumes do not stop when the noxious smell of paint solvents ends.
- Children do not possess an adult's ability to absorb, metabolize and excrete contaminants. They are at risk of developing cognitive and respiratory disorders like asthma and allergies.

### Why should you buy Lullaby Paints?

- Lullaby Paints is the safe paint for a baby's nursery. No chemicals that cause asthma and allergies.

### Why take the risk?

- It only takes 1-100 PPB (parts per billion) of toxic paint chemicals to cause harm in pregnant mothers and babies.
- Paint manufacturers are regulated by third party certifiers, not the EPA or another governmental organization.
- US regulations ban only 11 chemicals used in personal care products, compared with 1,328 chemicals, which are banned in the EU.
- According to the Harvard School of Public Health, paint fumes have been directly linked to the development of asthma and allergies in children.



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## What's Included



### Nursery Wall Paint Eggshell

- Baby Safe - specially formulated for babies' nurseries
- Non-toxic, Zero-VOC, no solvents
- No odor
- No mess packaging



### Sample Pouches

- 2 oz
- No odor, non-toxic, zero VOC
- Try before you buy



### Retailer Kit

- USB, Product Brochures
- 4 In store Posters



### Retail Stand

- Holds 96 Sample Pouches
- Elegant wood construction
- Elegant construction
- Pricing available upon request



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## It's our LULLABY GUARANTEE!

Lullaby Paints 100% baby safe formula are the safe option for you and your child's rooms.

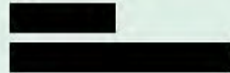
They contain none of the harmful chemicals found in other paints, without compromising quality or longevity of the paint. There are no solvents, turpentine or terpenes, benzene, toluene, xylene, VOCs, essential oils, glycols (even PEG), texanol, coalescents, heavy metals (including lead, cadmium, mercury), formaldehyde, acrolein, vinyl chloride, phthalates, alkylphenol ethoxylates (APEOs), or acrylic softeners. In addition, Lullaby Paints do not contain casein or other animal products. In fact, there is nothing toxic, carcinogenic, or even allergenic in them!

Lullaby Paints are simply the safest paint available. Newborn baby-safe. Pregnant mom-safe. Safe enough for kids to paint with. And, our award winning paints are praised as much for their color, coverage and durability, as they are for their safety. Check out our designer collections today!

Company Inquiries

Julian Crawford

CEO



## Complaint

## Features

<b>SAFETY</b>	<b>INGREDIENTS</b>	Safe paint - there are no toxins, no solvents, no glycols, no phthalates, and no VOCs in our paint
	<b>INDUSTRY</b>	Traditional paints contain toxic chemicals which have been shown to be carcinogenic, cause birth defects and other reproductive harm
	<b>STANDARDS</b>	Current industry standards for paint are no guarantee of product safety, as they allow for the use of harmful chemicals
	<b>TIME FRAME</b>	Harmful chemicals (VOCs) offgas from paints for up to five years after application
	<b>EFFECTS</b>	Chemicals in paints have been directly linked to asthma, allergy and cognitive issues in children
<b>QUALITY</b>	<b>YEARS IN USE</b>	Our paint has been used successfully around the world for over 20 years
	<b>INDUSTRY LEADING</b>	Industry leading performance for color and durability
<b>PERFORMANCE</b>	<b>COVERAGE</b>	1.5x the industry average, with 560 sq. ft. (single coat) per gallon vs 375 sq. ft. industry average
	<b>ODOR</b>	None
	<b>COLORS</b>	32 Designer Colors, 8 Collections
	<b>COLOR MATCHING</b>	Yes. From color swatches, paint samples or fabric. We match all major paint brand colors
	<b>DRY TIME</b>	20 to 30 minutes to touch, generally 1 to 2 hours between applications
	<b>FINISHES</b>	WALL: Eggshell, Soft Sheen, Matt, Semi Gloss TRIM: Satin, Gloss
<b>SHIPPING</b>	<b>SHIPPING COST</b>	Included in the price
	<b>SHIPPING TIME</b>	USPS - typically 2 to 3 business days



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## Paint Comparison

	TRADITIONAL PAINTS		Lullaby Paints
	Zero-VOC	Low-VOC	
VOCs (g/L)	10-50	50-150	None
Solvents	Yes	Yes	No
Odor	Yes	Yes	No
Coverage per gallon	375 sq. ft.	375 sq. ft.	680 sq. ft.
Toxic Chemicals	formaldehyde, benzene, antimony trioxide, toluene, xylene, ethylene glycol, and texanol		No toxic chemicals
Off-Gas Duration	3 years	3 years	None
Color Matching	Yes	Yes	Yes
Paint Required for Typical Nursery*	3 gallons	3 gallons	2 gallons

\*Based on 10' x 12" nursery, two coat coverage



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**ZERO VOC**  
**NO ODOR**  
**SCRUBBABLE & WASHABLE**  
**FAST DRYING**  
**BABY SAFE**  
**PREGNANT MOM SAFE**  
**HUNDREDS OF COLORS**

At Lullaby paints, we are parents and future parents who are genuinely concerned about the health and safety of babies. We're creating the next evolution of an industry and transforming nurseries across the country into spaces where babies can truly thrive.

**Nursery Wall Paint Eggshell**

**USAGE**

A zero VOC , water based, no odor, eggshell finish for interior use.

**AVAILABILITY**

Quart and Gallon pouches

**COVERAGE**

Purchase the needed amount; 560 sq. ft. per gallon (one coat).

**DRY TIME**

At 77°F and 50% dry time to touch is 30 min. and dry time to re-coat is 2 hours.

**THINNING**

Thinning is *not* recommended.

**HANDLING**

No special precautions necessary. This product contains Titanium Dioxide and Calcium Carbonate in suspension, posing no hazard. Sanding or crushing when dried may produce small quantities of dust.

**SURFACE PREPARATION**

Surfaces should be clean, dry, sound and free from grease. If unsure, clean first with sugar soap and rinse well. Remove all soft, dusty and loose material and abrade

lightly to a feathered edge to provide a key. On bare plaster & plasterboard, prime first with ECOS Plaster Sealer\* Fillers - seal with ECOS Filler Sealer\*

**APPLICATION**

Mix paint thoroughly before use. Keep lid on pouch of unused portion to prevent skinning. Apply with brush to out-in edges and roller to roll wall surfaces. For brushing, use a high-quality brush. For rolling, use 3/8" to 9/16" nap roller cover. For airless sprayer — no thinning is recommended, 2000 – 2500 PSI, tip — .015"–.021". For conventional sprayer and HVLP, reduce up to one half pint per gallon with clean water. Provide adequate ventilation during application and drying time.

**\*\*\* WARNING:** Older buildings may contain lead-based paint, which requires professional remediation if it is disturbed. If in doubt, consult with a professional from a Lead-Safe Certified Firm.

**INGREDIENTS**

Water, acrylic dispersion, vinyl acetate dispersions, titanium dioxide, pigments (various), thickeners – cellulose and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various).

**HAZARDOUS COMPONENTS**

None

**VOCs/SOLVENTS**

None

**CLEAN UP**

Remove excess paint from equipment before washing with water.

**TOXICOLOGICAL INFORMATION**

Long term experience of this product type indicates no danger to health when properly handled under normal conditions.

**DISPOSAL**

Waste product should not be discharged directly into drains or

waterways without treatment. Disposal of product and packaging should always comply with local and national regulations. Waste water containing product should be treated in a separation and biological treatment plant.

**PHYSICAL PROPERTIES**

Physical form: Liquid – paste

Color: Variable

Odor: Faint – none

Flash point: Not applicable

Vapor pressure: 23hPa @ 20°C

Relative density: 1.0 – 1.4

Solubility in water: Insoluble but

miscible in all proportion

PH: 8 – 11

Viscosity: Variable

Flammability: Non-flammable

**ECO INFORMATION**

Degradation/elimination:

The product can be virtually eliminated from water by abiotic processes, e.g. adsorption onto activated sludge.

Eco-Toxic Effects:

No long term effects.

Bioaccumulation:

No evidence for bioaccumulation.

**STORAGE**

Store between +5°C and 20°C protected from frost and direct sunlight. Do not use storage vessels or pipe work made of aluminum, copper or their alloys. Detailed advice on storage systems can be provided.

[www.lullabypaints.com](http://www.lullabypaints.com)

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PO Box 489

Fairforest, SC 29336

864.595.3840



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## Paint Coverage

### Room Coverage Calculator:

- **Industry Leading** coverage at 560 sq. ft. per gallon. Dry time - 20-30 minutes to touch, 2 to 3 hours between applications

- **Two Coat Estimates:**

	CEILING HEIGHT	10' Length	12' Length	14' Length	16' Length	
10' Width	8'	1.2 gal	1.4 gal	1.4 gal	1.6 gal	
	10'	1.6 gal	1.6 gal	1.8 gal	2.0 gal	
12' Width	8'	1.4 gal	1.4 gal	1.6 gal	1.6 gal	
	10'	1.6 gal	1.8 gal	2.0 gal	2.0 gal	
14' Width	8'	1.4 gal	1.6 gal	1.6 gal	1.8 gal	
	10'	1.8 gal	2.0 gal	2.0 gal	2.4 gal	
16' Width	8'	1.6 gal	1.6 gal	1.8 gal	2.0 gal	
	10'	2.0 gal	2.0 gal	2.4 gal	2.4 gal	

Typical Nursery Size

#### How much paint do I need?

Standard nursery 10' X 12', 8' ceiling. Two coats coverage.

Traditional Paint	375 sq. ft./gallon	3 gallons
Lullaby Paints	560 sq. ft./gallon	2 gallons





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# Color Collection

TWINKLE COLLECTION	GOLDEN SLUMBERS
 STARLIGHT	 MOONSTONE
 ALABASTER	 LUMINOUS
 COTTON CANDY	 SNOWY FLEECE
 CELADON	 HYDRANGEA
 SHEEP'S WOOL	 PORTOBELLO
 PAVOTTI	 THATCH
 WAKE	 EQUINE
 SABINO	 BLAZE
	 BENGT
	 STRAW SACK
	 ANTIQUE WHITE
	 FRENCH BLUE
	 ROYAL BLUE
	 KING'S RED
	 ARMY BLANKET
	 SALTIRE
	 CITRON
	 BLACK
	 AZURE SEA
	 TANGERINE
	 WICKER CRIB
	 DAWN MIST
	 FLAX
	 LILAC

### Color Matching:

We can color match color samples, color cards, fabric samples, bedding, etc. at no extra charge.



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### Safety

**What are VOCs?**

This process does not just occur when the paint is applied ("the new paint smell"), but continues to release for up to three years.

**What's in the paint fumes?**

Chemicals released include known carcinogens (cancer causing chemicals) and toxic chemicals such as glycols, toluenes, formaldehyde, texanol or phthalates.

**Do all paints contain these chemicals?**

Over 99% of paints, including many labeled as Zero-VOC, Low-VOC, and green contain these chemicals.

**Doesn't the Government regulate paint and these chemicals?**

The EPA does not provide standards for paints, but leaves the responsibility up to paint manufacturers or third party certifiers.

**What do paint companies provide as a warning?**

Paint manufacturers provide an MSDS sheet with their paint, similar to a Nutrition Information Label. The EPA allows paints manufacturers to call their product zero-VOC even if it contains off-gasing chemicals.

**What about the third party certifications?**

All third party certifications including the highest levels of certification allow for at least 2 teaspoons (~50 g/L) of these chemicals as part of their standards in their testing guidelines.

**What amount of chemicals can cause damage?**

1-5 ppm (parts per million) cause damage ranging from acute skin and eye irritation to long-term damage to the kidney, neural, respiratory, and cognitive functions.

**Who is most at risk?**

Unborn babies, newborn babies and children are at the greatest risk due to their ongoing cognitive, neural and respiratory development.



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## Complaint

**EGGSHELL WALL PAINT APPLICATION NOTES****Description**

- Lullaby Paints Eggshell gives a washable low-sheen finish

**Storage**

- Protect from frost/freezing

**Where to Use**

- Interior walls and ceilings
- Particularly kitchens, bathrooms, and other areas where steam and condensation are a problem.
- Not ideally suited for use directly on lining paper. A coat of soft sheen to seal first is needed.

**Preparation**

- Surfaces should be clean, dry, sound and free from grease. If unsure, clean first with sugar soap and rinse well.
- Remove all soft, dusty and loose material and abrade lightly to a feathered edge to provide a key.
- On bare plaster/plasterboard, prime first with ECOS Plaster Sealer.\*
- Fillers - seal with ECOS Filler Sealer\* Interior walls and ceilings.

**Application**

- DO NOT THIN
- Stir gently and thoroughly before use.
- Apply where possible using narrow (6 to 7 inch) foam or fine pile "gloss" roller.
- Do not layoff. Do not go back over painted areas. Do not spread.
- May be sprayed using an airless spray system.
- Best results are normally achieved with two coats.
- Allow six hours between coats.

- Avoid applying below 41°F (5°C) and above 88°F (20°C).
- Clean equipment with water, as soon as you have finished painting.
- At 77°F and 50% dry time to touch is 30 min. and dry time to re-coat is 2 hours.

**Coverage**

Varies with surface porosity, but on hard non-porous surfaces estimate:

- 140 sq. ft. per quart (single coat)
- 560 sq. ft. per gallon (single coat)

**Health and Safety**

Avoid contact with skin and eyes. Wash off splashes with water. Do not ingest. WARNING: Older buildings may contain lead-based paint, which requires professional remediation if it is disturbed. If in doubt, consult with a professional from a Lead-Safe Certified Firm.

**Getting the Most Out of Your Pouch**

Twist and squeeze pouch for full use. In addition, the pouch can be cut open using scissors. Squeeze out air before resealing.

**Discarding Paint Pouches**

Let dry in an air cooled place and discard in accordance with local ordinance.

Help us to provide a healthy, safe environment for moms and babies.

\*Where to Find ECOS Paints <http://www.ecospaints.net>



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## Accreditations

**Facts:**

- \* Our product is defined by what it doesn't contain, rather than what it does. Lullaby Paints contain no toxins, no glycols, and no harmful chemicals. There is no current industry standard which measures this level of purity sufficiently to adequately differentiate our product.

**Accreditations:**



**Awards:**



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Notes:





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Notes:



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Exhibit I

The screenshot shows the Lullaby Paints website with a navigation menu at the top. The main content area is titled 'SAFETY' and features a central image of a baby playing with toys. Below the image, there are several sections, each with a red circular icon containing a white symbol:

- NEW LULLABY PAINTS**: A new standard in safety and quality. Unlike any other product, Lullaby Paints truly is the world's finest paint.
- WHAT MAKES LULLABY PAINTS THE BEST?**
  - No Toxic Chemicals**: Lullaby Paints is formulated to be free of toxic, often-toxic, and/or hazardous chemicals. Unlike other paints, Lullaby Paints is free of lead, mercury, formaldehyde, and other harmful chemicals. Lullaby Paints is also free of heavy metals, phthalates, and other harmful chemicals. Lullaby Paints is also free of VOCs, which are harmful to the environment and to your health.
  - Asthma & Allergy Safe**: Lullaby Paints is formulated to be free of allergens and irritants. Lullaby Paints is also free of heavy metals, phthalates, and other harmful chemicals. Lullaby Paints is also free of VOCs, which are harmful to the environment and to your health.
  - Tried & Tested**: Lullaby Paints has been tested by independent third-party organizations. Lullaby Paints has been tested for lead, mercury, formaldehyde, and other harmful chemicals. Lullaby Paints has also been tested for VOCs, which are harmful to the environment and to your health.
  - Awards and Accreditations**: Lullaby Paints has been awarded several awards and accreditations. Lullaby Paints has been awarded the GreenSource award for being the most sustainable paint in the world. Lullaby Paints has also been accredited by the GreenSource organization.
  - Eco-Friendly Packaging**: Lullaby Paints uses eco-friendly packaging. Lullaby Paints uses 100% recycled cardboard for its paint cans. Lullaby Paints also uses 100% recycled paper for its paint cans.
  - Lullaby Paints MSDS, Registration, and Product Note**: Lullaby Paints has a full MSDS, registration, and product note available on its website.

At the bottom of the page, there is a green footer with the text 'LULLABY PAINTS' and 'Lullaby Paints is a registered trademark of Imperial Paints, LLC. All rights reserved.' There are also social media icons for Facebook, Twitter, and YouTube.

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**Exhibit J**



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Exhibit K

The screenshot shows the Lullaby Paints website with a Q&A section featuring Dr. Elizabeth A. McLeod, M.D., a Pediatric Allergist/Immunologist at Children's Hospital of Orange County. The page lists several questions and answers regarding mold, asthma, and indoor air quality. At the bottom, there is a sign-up form for a newsletter and a navigation menu.

**lullaby PAINTS** home shop why lullaby free color chips custom colors blog

Q&A WITH ELIZABETH A. MCLEOD, M.D.

**Dr. Elizabeth A. McLeod, M.D.**  
 Pediatric Allergist/Immunologist  
 Children's Hospital of Orange County

Here's a series of questions we asked Dr. McLeod:

- Q: What are the health risks with mold and mildew?
 

A: Many studies link mold and VOCs from products like paint with health problems like asthma, allergies, cognitive impacts and even cancer. It should really come as no surprise that conventional paints with volatile chemicals such as formaldehyde (carcinogen), benzene (carcinogen), 7-nitrotoluene (carcinogen), toluene (noncarcinogen), and xylene (noncarcinogen), when inhaled commonly affect both less serious impacts, such as respiratory issues, irritation and hives, and potentially an array of other symptoms that affect a baby's well-being.
- Q: Why are babies more at risk?
 

A: Babies and toddlers babies are going through critical stages of development that make them uniquely vulnerable to air exposure. In fact, some data indicates that they are exposed to 10x the volume, but could have 10x the impact for your kid. (Consider what a car's (example) child program can do in a vehicle, especially in the first months of life, babies' respiratory systems are especially less capable of dealing with that exposure. And, because babies have more years of life to live, that ability may have more time to develop those diseases that they are triggered by over exposure.
- Q: Why is this so scary for a parent or pregnant?
 

A: Babies spend up to 16 hours a day in their family (and/or) of living. As you can guess, during that time they're breathing in any airborne molecules, such as mold spores.
- Q: Are there any health issues in particular that I should watch?
 

A: Here's, they all concern me but, as a pediatrician, I'm seeing a very concerning one in asthma. And if it's not as obvious to a parent or a doctor, I have a strong effect and can potentially cause many other issues of just psychological impact. Over the next years, the incidence of asthma in the US has increased significantly and it may affect 25 million people (1/3 of the population) before their life cycle. There's a growing body of evidence linking asthma to a variety of environmental factors. For example, a child raised in a home of lead paint (lead dust) has been shown to have a higher risk of developing asthma. There's a lot of research that's been done on the link between lead paint and asthma. There's a lot of research that's been done on the link between lead paint and asthma.
- Q: What can parents do?
 

A: There's a lot of research that's been done on the link between lead paint and asthma. There's a lot of research that's been done on the link between lead paint and asthma. There's a lot of research that's been done on the link between lead paint and asthma. There's a lot of research that's been done on the link between lead paint and asthma.

WANT MORE INFO? VISIT US AT [WWW.LULLABYPAINTS.COM](#)

Enter your email


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[Add Your Question](#)


## Complaint

**Exhibit L**

Why Lullaby

log in | sign up |  cart  
live toll-free (866) 587-3588 | help


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home shop  why lullaby free color chips custom colors blog

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**NEW! LULLABY PAINTS**  
Shop for paint from the convenience of your own home. Browse, sample, choose, relax...

**FREE SAMPLE CARDS**  
**DELIVERY TO YOUR DOOR**  
**ALL-IN-ONE PAINTING KITS**



1 → 2 → 3 → done.


**Get Inspired**  
Browse our designer collections and inspiration boards to find the perfect colors for your baby's nursery. From whimsical, to chic, to elegant - and everything in between.

**Try Before You Buy**  
Order free paint chips, color cards, or 2 oz. sample pouches - all from the comfort of your own home. Perfect for reviewing your color choices on your nursery walls.

**Fast Shipping**  
Order your favorite colors using our easy-to-use website and we'll drop ship your paint right to your doorstep. Delightful design delivered directly!

**It Couldn't Be Easier**  
Try the All-In-One-Kit for extreme convenience. It comes with everything you'll need to get the job done right. Relax, we've got you covered.

## Features



**The World's Best Nursery Paint**  
Made from the finest ingredients, our baby safe paints are carefully selected for their safety and performance. In fact, our paints are so safe they include food grade ingredients. Our rich, deep pigments are imported from Europe and meet the highest environmental and safety standards. And because our resins are not diluted with cheap solvents, they're thicker and cover your walls with ease.

**SHOP NOW**

Safe for baby. And the environment.

<http://lullabypaints.com/how-it-works.html>[4/12/2016 11:54:43 AM]

## Complaint

Why Lullaby



Our award-winning paint is praised as much for its color, coverage and durability, as it is for its safety. Attaining the highest certifications for product purity, Lullaby Paints is known in the industry as the safest paint available. Recognized by consumer advocacy groups and leading environmental organizations, used by hospitals and maternity facilities, lauded by magazines, designers and bloggers and, most of all, enjoyed by moms as pregnancy safe paints. We've revolutionized how safe and eco-friendly paints can be, for mom, baby, everybody.

[SHOP NOW](#)



### Expert Help

Colors for your baby's nursery are nearly as important as what you put in it. That's why we have a whole team of experts standing by to guide you as you design, decide, and create. View our collections of how-to posts, DIY articles, inspirational nurseries, and safety advice so you can choose the very best paint for your baby's room. Let us help you with technical questions that you might have concerning coverage, finish, application, or maintenance. Give us a call, send us an email - we're here for you!

[SHOP NOW](#)



### Designer Inspiration

Trend-setting designers, world class brands, boutique retailers and inspired moms all lend their creative expertise to the development of our nursery color collections and design inspiration. Browse our site for DIY ideas, expert advice, and recommendations for accessories and furniture to complete the perfect baby's room and create a beautiful home. LullabyPaints.com is the canvas that brings it all together.

[SHOP NOW](#)



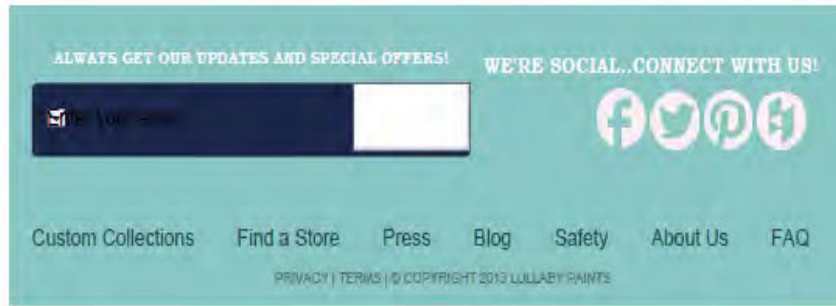
### Shop From Home

Create the perfect nursery with our sensational nursery colors! Browse our website for the perfect colors for your baby's nursery and have samples shipped to your door. Want something different? We can even match a color of your choice. Then order Lullaby Paints through our simple check out process. For the complete "shop from home experience" buy an All-In-One-Kit, which comes with everything that you will need to paint your room, including a brush, roller, tray tape and more. Painting has never been easier or safer.

[SHOP NOW](#)

Complaint

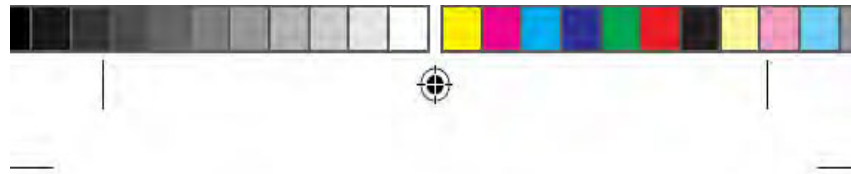
Why Lullaby





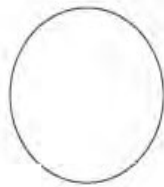
Complaint

**Exhibit M**



**lullaby**  
PAINTS

**PREGNANCY & NEWBORN**  
Baby Safe Paints



1/2 US GAL (64 Fl. Oz.)



## Complaint

**Nursery Wall Paint**

Pouch Size 1/2 Gallon (64 Fl. Oz.)  
Coverage Area 280 Sq. Ft.

VOCs	None
Solvents	None
Odor	None
Flammability	None
Hazardous Ingredients	None

**INGREDIENTS:** Water, acrylic dispersion, vinyl acetate dispersion, titanium dioxide, pigments (various), thickeners cellulosic and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various).

**FIRST AID:** Eye contact: May cause temporary irritation. Flush with water for fifteen minutes, holding eyelid open. Skin contact: Prolonged contact may cause irritation. Wash thoroughly with soap and water. Do not ingest.

Lullaby Paints offers the world's only decorator's grade, non-toxic wall paint. Traditional paints contain harmful chemicals, and alternative eco-friendly paints do not match the durability and coverage of Lullaby Paints. Used successfully around the world for over twenty years, Lullaby Paints promises performance, without environmental compromise.

**lullaby**  
PAINTS

Questions or Comments?

1-866-587-3586 • [www.lullabypaints.com](http://www.lullabypaints.com)

**Nursery Wall Paint**

• Eggshell Finish, Scrubbable,  
Premium, Hard Wearing

• Safe for Mom, Baby + Kids

• Always Non-Allergenic &  
Asthma Friendly

• Zero-VOC, No Odor, Fast Drying

• Non-Toxic

**DRY TIME:** At 77° F and 50% humidity, dry to touch in 20 minutes, recoat in 2 hours.

**THINNING:** Thinning is not recommended.

**SURFACE PREPARATION:** Surfaces should be clean, dry, sound and free from grease, dust and dirt. If unsure, clean first with mild detergent and rinse well.

**APPLICATION:** Shake paint thoroughly before use. Intermix pouches first to ensure uniform color. Apply with a brush to cut-in edges and a roller for wall surfaces. We recommend two coats.

**BRUSHING:** Use a high-quality synthetic brush.

**ROLLING:** Use a 3/8" to 1/2" tight woven, shed resistant cover.

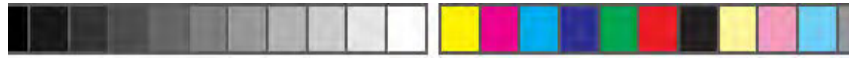
**STORAGE:** Store between 41° F and 77° F, protected from frost and direct sunlight. To keep touch-up paint, force excess air out of a pouch containing any unused paint and screw cap back on to avoid skimming.

**Dispose of in accordance with local ordinance.**

Please Recycle 



Complaint



**Nursery Trim/Door /Furniture Paint**

Pouch Size 1/2 Gallon (64 Fl. Oz.)  
Coverage Area 215 Sq. Ft.

VOCs	None
Solvents	None
Odor	None
Flammability	None
Hazardous Ingredients	None

**INGREDIENTS:** Water, acrylic dispersion, vinyl acetate dispersion, titanium dioxide, pigments (various), thickeners cellulosic and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various), and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various).

**FIRST AID:** Eye contact: May cause temporary irritation. Flush with water for fifteen minutes, holding eyelid open. Skin contact: Prolonged contact may cause irritation. Wash thoroughly with soap and water. Do not ingest.

Lullaby Paints offers the world's only decorator's grade, non-toxic paint. Traditional paints contain harmful chemicals, and alternative eco-friendly paints do not match the durability and coverage of Lullaby Paints. Used successfully around the world for over twenty years, Lullaby Paints promises performance, without environmental compromise.



Questions or Comments?  
1-866-587-3586 • www.lullabypaints.com

**Nursery Trim/Door / Furniture Paint**

• Premium, Hard Wearing Finish

• Safe for Mom, Baby + Kids

- Always Non-Allergenic & Asthma Friendly
- Zero-VOC, No Odor, Fast Drying
- Non-Toxic

**DRY TIME:** At 77° F and 50% humidity; dry to touch in 20 minutes, recoat in 2 hours.

**THINNING:** Thinning is not recommended.

**SURFACE PREPARATION:** Surfaces should be clean, dry, sound and free from grease, dust and dirt. If unsure, clean first with mild detergent and rinse well.

**APPLICATION:** Shake paint thoroughly before use. Intermix pouches first to ensure uniform color. Apply with a brush. We recommend two coats.

**BRUSHING:** Use a high-quality synthetic brush.

**STORAGE:** Store between 41° F and 77° F, protected from frost and direct sunlight. To keep touch-up paint, force excess air out of a pouch containing any unused paint and screw cap back on to avoid skimming.

**Dispose of in accordance with local ordinance.**



## Complaint

**Nursery Wall Primer**

Pouch Size 1/2 Gallon (64 Fl. Oz.)  
Coverage Area 215 Sq. Ft.

VOCs	None
Solvents	None
Odor	None
Flammability	None
Hazardous Ingredients	None

**INGREDIENTS:** Water, acrylic dispersion, vinyl acetate dispersion, titanium dioxide, pigments (various), thickeners cellulosic and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various).

**FIRST AID:** Eye contact: May cause temporary irritation. Flush with water for fifteen minutes, holding eyelid open. Skin contact: Prolonged contact may cause irritation. Wash thoroughly with soap and water. Do not ingest.

Lullaby Paints offers the world's only decorator's grade, non-toxic wall primer. Traditional primers contain harmful chemicals, and alternative eco-friendly primers do not match the durability and coverage of Lullaby Paints. Used successfully around the world for over twenty years, Lullaby Paints promises performance, without environmental compromise.

**lullaby**  
PAINTS

Questions or Comments?

1-866-587-3586 • www.lullabypaints.com

**Nursery Wall Primer**

For bare, hard plaster and drywall

Safe for Mom, Baby + Kids

- Always Non-Allergenic & Asthma Friendly
- Zero-VOC, No Odor, Fast Drying
- Non-Toxic

**DRY TIME:** At 77° F and 50% humidity; dry to touch in one hour, paint after four hours.

**THINNING:** Thinning is not recommended.

**SURFACE PREPARATION:** Surfaces should be clean, dry, sound and free from grease, dust and dirt. If unsure, clean first with mild detergent and rinse well.

**APPLICATION:** Shake primer thoroughly before use. Apply with a brush to cut-in edges and a roller for wall surfaces. Ensure primer is completely dry before painting.

**BRUSHING:** Use a high-quality synthetic brush.

**ROLLING:** Use a 3/8" to 1/2" tight woven, shed resistant cover.

**STORAGE:** Store between 41° F and 77° F, protected from frost and direct sunlight. To keep excess primer, force excess air out of a pouch containing any unused primer and screw cap back on to avoid skimming.

**Dispose of in accordance with local ordinance.**

Please Recycle 



Complaint



**Nursery Wood Primer**

Pouch Size 1/2 Gallon (64 Fl. Oz.)  
Coverage Area 260 Sq. Ft.

VOCs	None
Solvents	None
Odor	None
Flammability	None
Hazardous Ingredients	None

**INGREDIENTS:** Water, acrylic dispersion, vinyl acetate dispersion, titanium dioxide, pigments (various), thickeners cellulosic and polymeric, barytes, limestone, clay, synthetic wax, dispersing aids (various).

**FIRST AID:** Eye contact: May cause temporary irritation. Flush with water for fifteen minutes, holding eyelid open. Skin contact: Prolonged contact may cause irritation. Wash thoroughly with soap and water. Do not ingest.

Lullaby Paints offers the world's only decorator's grade, non-toxic wood primer. Traditional primers contain harmful chemicals, and alternative eco-friendly primers do not match the durability and coverage of Lullaby Paints. Used successfully around the world for over twenty years, Lullaby Paints promises performance, without environmental compromise.



Questions or Comments?  
1-866-587-3586 • www.lullabypaints.com

**Nursery Wood Primer**

- For dry, bare wood
- Safe for Mom, Baby + Kids
- Always Non-Allergenic & Asthma Friendly
- Zero-VOC, No Odor, Fast Drying
- Non-Toxic

**DRY TIME:** At 77° F and 50% humidity; dry to touch in one hour, paint after four hours.

**THINNING:** Thinning is not recommended.

**SURFACE PREPARATION:** Surfaces should be clean, dry, sound and free from grease, dust and dirt. If unsure, clean first with mild detergent and rinse well.

**APPLICATION:** Shake primer thoroughly before use. Apply with a brush. Ensure primer is completely dry before painting.

**BRUSHING:** Use a high-quality synthetic brush.

**STORAGE:** Store between 41° F and 77° F, protected from frost and direct sunlight. To keep excess primer, force excess air out of a pouch containing any unused primer and screw cap back on to avoid skimming.

**Dispose of in accordance with local ordinance.**



Complaint

**Exhibit N****Proven Technology**

- 25 Years of Successful Use
- Award Winning
- Tested and Certified



For twenty five years, ECOS and Air Pure Paints have been sought out by people with multiple chemical sensitivities, concerned pregnant mothers, the environmentally conscious, corporations committed to sustainability, and the general public who care.

Now manufactured in the US, these products are available for discerning customers who are equally committed to the health of the environment.

**IMPERIAL PAINTS**ECOS PAINTS  
AIR PURE PAINTS

Complaint

**Exhibit O**

# ECOS Organic Paints



The World's best selling water based, VOC Free paint

- **ULTIMATE PURITY, ABSOLUTELY NO**  
VOCs, glycol, solvent, pesticides, and herbicides.
- **7000x PURER THAN THE LATEST EUROPEAN STANDARDS**
- **ALL INGREDIENTS DECLARED**
- **QUALITY WITHOUT COMPROMISE**  
Odorless, non-yellowing, non-toxic, and non-allergenic

## Complaint

OUR STORY

*ECOS Paints were created in England in the early 1980s. Originally, they were formulated for two groups of people: primarily for those with allergies and conditions like MCS (Multiple Chemical Sensitivity). Secondly, for those at risk of developing these conditions.*

Naturally, this means our paints have to be completely safe for everyone, so that's our benchmark - nothing gets an ECOS Paints logo unless it is truly zero VOC, zero solvent, zero glycol, and non-allergenic!

Every paint manufacturer now realizes that they have to stop selling products that are killing people. What they are finding though is that they cannot do this by simply "improving" their traditional products. You can only go so far with that approach before the paint stops working as a paint! Long before you get that far, quality also drops dramatically. ECOS Paints are proud to have a world-unique range of formulations that are both safe and top quality.

Of course when a product is 100% safe for your indoor environment, it is inherently safe for the wider environment. We are not going to jump on the green bandwagon, but we might brag a little about having been safe for the environment before anyone was even thinking about it.

There is no substitute for time to ensure a product is tested and developed properly. We are years ahead of anyone in the world and are using our experience to educate people of the dangers they face from traditional paints and finishes. We also strive to change the way the industry works and encourage every manufacturer to stop poisoning the world. That's where you come in and we can work together - as a team, we can make a difference! Don't settle for anything less than the health and safety of yourself and your family.

Old fashioned values are important to us and we think that shows in the relationships we build with you over time. Thank you for taking the time to find out a little about ECOS Paints. We look forward to helping you with your next project but, more importantly, to serving you right.

Thank you!

*The ECOS Paints Family*



## Complaint

## PAINTS FOR STANDARD APPLICATIONS

*ECOS Paints offer a completely unique range of decorative finishes. It's the only range of totally solvent-free paints available anywhere in the world today and has been independently tested to reveal zero VOCs (Volatile Organic Compounds), even when colored.*

VOCs are a major contributor to atmospheric pollution and lead to global warming. In addition, the use of solvent-based paints is a major cause of Sick Building Syndrome, Danish Painter's Syndrome, Asthma, Allergies, Chemical Sensitivities and the general Flu-like symptoms reported by many people using conventional paints, including flat and silk wall paints!

Most paints currently on sale, contain solvents and VOCs. ECOS Paints contain none. As a result they are ideal for children's bedrooms, nurseries, kitchens and anywhere in the home, especially if you or a member of your family is chemically sensitive or suffers from asthma or allergies.

Using ECOS paints means that rooms are safe and pleasant to live in, play in, sleep in, and eat in!

We have a full range of finishes for walls and trim, including all the primers you might need for the perfect finish. For walls, we have the traditional Matt finish as well as a more contemporary Soft Sheen. For humid areas (like bathrooms) and places that might need more frequent cleaning (kitchens, for example), our Eggshell is ideal. It is less glossy than a semi-gloss, so far more attractive.

For woodwork and trim, we have Gloss or Satin (semi-gloss) finishes.

Our floor paints will revive old floors, and protect them for years to come. Tough enough for factory floors (we run a fork-lift truck over it!).

All our paints are available in our wide range of standard colors, or can be matched to a color of your choosing if you have something very specific in mind. Call or email us for a free color chart, or to ask about our color-matching service.

PAINTS FOR STANDARD APPLICATIONS



## Complaint

## AIR PURE PAINTS

*The air in your home can be 70x more polluted than outdoors - a cocktail of solvents and chemicals like formaldehyde\* from sources such as carpets, furnishings, MDF, some paints and lacquers, cleaning products, personal products, aerosols etc.*

### Better than Zero-VOC

These allow ultimate air purity and are ideal for asthmatics and those with ME, allergies or chemical sensitivities. They go beyond simply not adding harmful chemicals to the environment - they actually remove them. By a unique application of molecular sieve technology, we actively remove VOCs like formaldehyde from the environment. This is perfect if you have existing paints that are off-gassing as it is stopped before it even reaches the air in your building. It also catches them from the air in your room, provided air-flow carries them to the surface of the paint. We currently have four products in this range for specific applications.

### Air Purifying Paint (APP)

This revolutionary Matt-finish wall paint absorbs 98-99% of volatile pollutants, chemicals, solvents and VOCs from the atmosphere in your home down to around one part per million. The air purifier ingredient in APP neutralizes those pollutants permanently.

### MDF Passivating Primer (MDFP)

For interior MDF, chipboard, particle board, and plywood, all of which can outgas formaldehyde\* and other VOCs into the indoor atmosphere for many months or years. This can be one of the main causes of poor indoor air quality and a variety of medical problems, as well as affecting allergies and conditions such as asthma.

### Anti-Formaldehyde Radiator Paint (AFR)

Conventional hot-water radiators can off-gas large amounts of formaldehyde\* and can easily be the largest source of formaldehyde in the home! The active ingredient in AFR paint absorbs approx 98-99% formaldehyde before it can off-gas into your home or office environment.

### Deodorizing Satin Paint for Wood (DSP)

This does for woodwork and trim, what APP does for walls. It neutralizes smells, solvents, VOCs, etc. where other (smelly) paints have been used. Suitable for interior woodwork and previously painted metal, MDF, radiators, etc.

\*Formaldehyde is a carcinogen with mutagenic effects (causes birth defects). Other solvents have many effects including brain, liver, nerve and kidney damage, and respiratory problems.

## Complaint

## VARNISHES

*Not every surface needs to be painted. The beauty of wood can be preserved with a protective coating of Clear Varnish, or enhanced with a woodstain varnish.*

Get creative and try a Woodwash, to accentuate the grain and create a whole new look.

For exterior woodwork, you need protection from the sun too, so our Exterior Woodstain Varnish includes an effective UV inhibitor to prevent the wood being bleached/grayed and damaged by the sun's rays.

Like everything with an ECOS Paints label, these are all completely non-toxic and non-allergenic, and have none of that offensive chemical smell you associate with traditional clear and colored finishes.

## CHALKBOARD - IN ANY COLOR

*The days of chalkboards in school are all but gone, but the wonderful character of them remains and is seeing a huge resurgence in interest.*

A surface you can write or draw on and wipe clean as often as you like is still an opportunity to expand your mind.

Chalkboard paint can be applied to almost any hard surface so don't limit yourself. Try a notice door, customizable office storage, a children's desk-top, a shopping list side to your refrigerator, or a whole wall in a child's room!

Better yet, you are no longer limited to black. Make the chalkboard any color that fits your room or application. We've seen it used for office walls in all sorts of shades, and white produce-boards in supermarkets, with colored chalk. This is not your old school chalkboard but, naturally, it's 100% safe.



## Complaint

## SPECIALIST PAINTS

*Some applications need something special. We have developed a wide range of very specialized finishes and treatments, whilst adhering to our stringent standards of safety. These are some of the most unique finishes available in the world!*

### Nursery Paints

Some of the most vulnerable people to chemicals are babies and expectant mothers. At the same time, when we find out there's a new addition to the family on the way, it's only natural to want to prepare a space for them. Our Nursery Paint has been certified to the EN71:3 standard for use on children's toys, and is fully washable, so it will stay looking great until long after they've decided they want their own color scheme.

### Firewall Paints

This matt flame-retardant paint attains a Class 1(A) rating to ASTM E-84. This is the best possible rating achievable and makes this paint suitable for the most demanding applications including use in enclosed vertical exit-ways.

### ANTI-EMR (radiation shielding) Paint

This permanent wall treatment uses non-toxic nickel flake to give up to 99% shielding\* against electro-magnetic radiations and needs no special equipment or expertise to apply. It is perfect for home use, or industrial applications such as computer rooms, hospital IC units and other facilities where EMR from mobile phones etc. is problematic. (\*Independently tested to give 99% shielding of microwave energy on mobile phone bands frequencies)

### Insulating Paints

This energy-saving super-matt paint insulates the walls and ceilings in your home, saving you money on energy bills - year on year, every day, 24 hours per day. Cooler in summer and warmer in winter!

### Radiator Paints

Our Radiator Paints are designed for previously painted or primed domestic central heating hot-water radiators.

### Designer Paints

You're looking for a particular style but why should you have to compromise on safety or quality? Super-Chalky wall paint recreates the Mediterranean feel, and Feng Shui is a multi-surface coating which lends a uniquely harmonious feel to the home.

Complaint

## ACCESORIES & FINISHING TOUCHES

*Any craftsman will tell you that preparation is the key to a good finish. When you need to complete the job properly, you need primers, fillers, and sealers too, but not at the expense of safety and your health. So, of course, we have these too, all meeting our exacting standards.*

Clay Paint	A super-dry, soft and mellow chalky clay paint for interior walls
Concrete Sealer	Anti-dusting, consolidating, washable interior sealer for concrete floors
Cover-up Paint	An ultra-flat paint to hide minor to moderate surface imperfections, by eradicating reflectance
Distemper	Super-matt, non-dusting wipeable resin-bound Distemper for Interior Walls & Ceilings
Filler Sealer	Prevents cracking and peeling on fillers that normally reject painting
Knotting Compound	A white, solvent-free, solution for sealing resinous knots on bare wood
Masonry Paint	Superior quality smooth paint for exterior walls
Multi-Purpose Filler	Super-quality filler for cracks, joints, and holes • even deep holes up to 1" in a single application
Plaster Sealer	A non-toxic, odorless sealer for new/bare plaster
Shed & Fence	Decorative treatment for exterior woodwork
Stabilizing Solution	Reduces crumbling and flaking on concrete, masonry, brick, mortar, etc.
Stainblock	Highly concealing primer for difficult stains
Stone & Tile Sealer	Protect stone and tile floors, and similar surfaces, from staining
Stormseal	Solvent-free silicone water repellent for porous exterior concrete, etc.
Undercoat	VOC-free undercoat for primed bare wood and previously painted metal
Wall Primer	For sealing interior bare plaster and drywall, prior to painting
Wood Glue	Multi-purpose glue, free of solvents, VOCs, formaldehyde, ideal for priming bare wood, ply and wood fiber products
Wood Primer	Decorative limed-style interior wood finish for an antique/designer look
Woodwash	

This list is not exhaustive • space will not allow that. In a brief form such as this brochure, we cannot cover all the possible scenarios and problems you may need to deal with. So, if you don't see what you need, or want advice, we're here to help. Email or call us and we'll do all we can to solve your problem.

ACCESORIES & FINISHING TOUCHES



## Complaint

## Contact Info

ECOS Paints  
PO Box 489  
Fairforest SC 29336  
Tel: 864.595.3840

For general information or for help with ordering, you can email us at:  
[enquiries@ecospaints.net](mailto:enquiries@ecospaints.net)

For more technical queries, contact our technical team at:  
[technical@ecospaints.net](mailto:technical@ecospaints.net)

We look forward to your call, and to serving you!

## Office Hours

Monday - Friday  
9:00 am - 5:00 pm (EST)

## Shipping Terms

We have partnered with FedEx for our general shipping needs. Because of the volume we ship, they give us an excellent rate which we pass straight on to you.

There are no hidden costs and we do not mark-up on shipping. The standard rate is for Ground shipping but, if you have a rush job, we can also ship using express methods - ask us for details.

If you place your order by 2:00pm (EST), we will almost always ship it to you the same day. After that, we will strive to do so but, in order to maintain quality control, we would rather ship it the next day, than rush something to you without following our QC procedures. Our reputation is founded on quality!



## A Note about Our Packaging & the Environment

### A note about our packaging and the environment:

We use containers which are 100% post-consumer recycled, and 100% recyclable. Our shipping boxes are also recycled and recyclable.



We use recycled materials wherever possible and recycle whatever we can.

We strongly encourage everyone, including you, our friends and neighbors, to do the same.

Complaint

**Exhibit P**

MCS Safe Paint | Chemical Sensitivity Safe Paint | ECOS Paints

The header features the ECOS PAINTS logo on the left, a search bar, and utility links for My Account, Cart, and Checkout on the right. A toll-free number (866 587 3586) and links for Contact and FAQ are also present. Below the header is a dark navigation bar with the following menu items: SHOP, BROWSE, LEARN, BLOG, and PROFESSIONAL.

Home / Discussion Papers / Chemical Sensitivity Safe

WHY ECOS

- Air Purifying Paint
- Architects & Contractors
- Chalkboard Paint
- Concrete Stain & Sealer
- Eco Friendly Paints
- Floor Paints
- Free Samples
- Green Lodging
- Houzz
- Healthcare
- Latex Free
- MCS Safe
- No VOC Paints
- Organic Paints
- Pet Paints
- Poly Varnish
- Self Priming Paint
- Shop By color
- Sustainable Materials
- The ECOS Color Experience
- What's in it?
- WoodShield Stain

## Why do many people need special paint?

Everybody knows that some people are much more sensitive to smells, chemicals and pollutants than others. With paint, while we all notice the fumes and strong odors (which often cause headaches, breathing issues and nausea) for certain individuals the reaction is so severe it can lead to hospitalization.

What to do? A freshly painted home looks wonderful, but if the consequence is having to leave it for days, or weeks until the worst of the fumes pass, then this simply is not an option. There is a solution – ECOS Paints. Imagine having multiple chemical sensitivities and being able to paint a room yourself. We have many customers who have experienced just this, sending us comments like “I have never been able to be around liquid paint before and now, here I am painting my own house”.

**BUY NOW**  
Doorstep Delivery



## WHAT IS SO

## Complaint

MCS Safe Paint | Chemical Sensitivity Safe Paint | ECOS Paints

**DIFFERENT ABOUT  
ECOS PAINTS?**

Unlike traditional paints, even those labeled as "environmentally friendly", ECOS Paints are non-toxic and have no odor. Developed twenty five years ago with a unique formulation, our products were originally designed for people with multiple chemical sensitivities, asthma, allergies, and issues with everyday chemicals.

For over two decades, we have provided world class, high quality paints and relief from noxious chemicals to discerning individuals around the world. Today our customers also include people who are focused on the environment and sustainability; healthcare providers; mothers concerned about their baby's health, and companies seeking to protect the health of their employees, guests and visitors. Our paints are zero VOC and do not contain harmful solvents that off gas into the air. Safer for you, your family and the environment.

If you care about the planet, ECOS Paints are the best choice for all your design and renovation needs! Check out all of our environmentally friendly paints, coatings, and products.



SHOP NOW &gt;

BROWSE &gt;

COLOR SAMPLES &gt;

Newsletter

Enter email for updates & news 



## Complaint

[MCS Safe Print](#) | [Chemical Sensitivity Safe Print](#) | [ECOS Prints](#)

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### ECOS

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[UPS Access Point](#)

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### Safety

[Testing and Certifications](#)

[FAQ](#)

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## Complaint

**Exhibit Q**

VOC Free Paint | Low VOC Paint | No VOC Paint | ECOS Paints



ECOS PAINTS

My Account Cart

Toll-free 866 587 3586 Contact FAQ

Checkout

SHOP BROWSE LEARN BLOG PROFESSIONAL

Home / Discussion Papers / No VOC Paints

## WHY ECOS

Air Purifying Paint  
Architects & Contractors  
Chalkboard Paint  
Concrete Stain & Sealer  
Eco Friendly Paints  
Floor Paints  
Free Samples  
Green Lodging  
Houzz  
Healthcare  
Latex Free  
MCS Safe  
No VOC Paints  
Organic Paints  
Pet Paints  
Poly Varnish  
Self Priming Paint  
Shop By color  
Sustainable Materials  
The ECOS Color Experience  
What's in it?  
WoodShield Stain

## What is zero VOC paint?

Zero VOC paint does not necessarily mean non-toxic, healthy, or safe.

Also, the EPA allows paint to be called Zero VOC\* even if the VOC content in it is not actually zero.

In addition, zero VOC paints can contain harmful chemicals, like highly toxic formaldehyde, which is not always required to be identified on the label.

Finally, the Zero VOC certification may only refer to the base paint - not the color tint.

## WHAT THIS MEANS

Painting a single room with a "Zero VOC" product (containing five grams per liter of VOCs) will produce about the same mass of volatiles as if you sprayed out the entire contents of a can of deodorant. (There would be ten times this amount with low VOC paints).

**BUY NOW**  
Doorstep Delivery



### Complaint

VOC Free Paint | Low VOC Paint | No VOC Paint | ECOS Paints

The problem is that VOCs from paint can cause serious health effects including skin and eye irritation, kidney damage, cancer, reproductive disruption, respiratory issues and impaired cognitive functions.

At ECOS, we have striven to go above and beyond common industry standards and green certifications to create the best Zero VOC paint. Our products do not contain the solvents, white spirit, turpentine, terpenes, etheral oils, glycols, coalescents, vinyl chloride, acrolein, formaldehyde and formaldehyde donors, heavy metals, phthalates, APEOs and acrylic softeners found in many traditional paints. Instead, we offer a water based, zero VOC, glycol free, toxic solvent free, and odor free alternative.

So, whether you're looking for zero VOC paint, zero VOC varnish, zero VOC primer, or zero VOC stain - consider going one step further with ECOS Paints.

\*EPA Method 24 allows for up to 5g/L of VOCs



[SHOP NOW](#) [BROWSE](#) [COLOR SAMPLES](#)

Newsletter

[f](#) [t](#) [g+](#) [p+](#)

Complaint

VOC Free Paint | Low VOC Paint | No VOC Paint | ECOS Paints

<a href="#">ECOS</a>	<a href="#">Shipping</a>	<a href="#">Help</a>	<a href="#">Safety</a>
<a href="#">Contact us</a>	<a href="#">Shipping Information</a>	<a href="#">Hints &amp; Tips</a>	<a href="#">Testing and Certifications</a>
<a href="#">Terms</a>	<a href="#">UPS Access Point</a>	<a href="#">Site Map</a>	<a href="#">FAQ</a>
<a href="#">Privacy Policy</a>	<a href="#">Return Policy</a>	<a href="#">About Us</a>	

© 2016 Imperial Paints, LLC

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## Decision and Order

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order (“Order”), and that only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. The Respondent is Imperial Paints, LLC, d/b/a Lullaby Paints and ECOS Paints, a South Carolina limited liability company with its principal office or place of business at 350 East St. John Street, Spartanburg, South Carolina 29302.

## Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

**ORDER****Definitions**

For purposes of this Order, the following definitions apply:

- A. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- B. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. Section 51.100(s).
- C. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- D. “Trace” level of emission means:
  1. A VOC has not been intentionally added to the covered product;
  2. Emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and
  3. Emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under

## Decision and Order

normal conditions in the typical residential home without interior architectural coating.

- E. “Respondent” means Imperial Paints, LLC, d/b/a Lullaby Paints and ECOS Paints, and its successor and assigns.

**I. Prohibited Misleading and Unsubstantiated Representations Regarding Emission and VOC Level of Covered Product**

**IT IS ORDERED** that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, that the emission level of a covered product is zero, or that the VOC level of a covered product is zero, unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that:

- A. The covered product’s emission is zero micrograms per meter cubed and the covered product’s VOC content is zero grams per liter; or
- B. The covered product does not emit or produce more than a trace level of emission.

For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

## Decision and Order

**II. Prohibited Misleading and Unsubstantiated Representations Regarding Environmental and Health Claims**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

- A. The emission of the covered product;
- B. The VOC level of the covered product;
- C. The odor of the covered product;
- D. Any other health benefit or attribute of, or risk associated with exposure to, the covered product, including those related to VOC, emission, or chemical composition; or
- E. Any other environmental benefit or attribute of the covered product, including those related to VOC, emission, or chemical composition,

unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.



## Decision and Order

**III. Notice to Dealers and Distributors**

**IT IS FURTHER ORDERED** that Respondent deliver as soon as practicable, but in no event later than 60 days after the effective date of this Order, a notice in the form shown in Attachment A to all of Respondent's dealers and distributors, and all other entities to which Respondent provided point-of-sale advertising, including product labels, for any covered product identified in Attachment A. The notice required by this paragraph must not include any document or other enclosures other than those referenced in Attachment A.

**IV. Means and Instrumentalities**

**IT IS FURTHER ORDERED** that Respondent, and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product, must not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact, including but not limited to any representation prohibited by Provision I or by Provision II above. For purposes of this Provision, "means and instrumentalities" shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product, in or affecting commerce.

**V. Acknowledgments of the Order**

**IT IS FURTHER ORDERED** that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.

## Decision and Order

- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days after delivery, a signed and dated acknowledgment of receipt of this Order.

**VI. Compliance Report and Notices**

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. Sixty days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order and a copy of the notice sent to dealers and distributors; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

## Decision and Order

- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in any designated point of contact or the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re Imperial Paints, Docket No. C-4647.

**VII. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

## Decision and Order

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints concerning the subject matter of the Order, including complaints involving representations covered by Parts I or II of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. For 5 years from the date of the last dissemination of any representation covered by this Order:
  - 1. All materials that were relied upon in making the representation; and
  - 2. All tests, analyses, research, studies, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

## Decision and Order

**VIII. Compliance Monitoring**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**IX. Order Effective Dates**

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on April 24, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

## Decision and Order

- A. Any provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this provision.

If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Decision and Order

**Attachment A: Notice to Dealers and Distributors**

[on Respondent letterhead]

[insert date]

**IMPORTANT NOTICE ABOUT \_\_\_\_\_  
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name] [insert addressee address used in the ordinary course of business]

Dear Dealer or Distributor,

In response to a complaint from the Federal Trade Commission, Imperial Paints, LLC, d/b/a Lullaby Paints and ECOS Paints, has agreed to qualify its claims that its paints contain zero VOCs (volatile organic compounds) or other harmful emissions, to ensure that retailers and dealers avoid misleading consumers. We request that you immediately replace existing \_\_\_\_\_ advertising and marketing materials with revised versions which include these qualifications. We have included appropriate materials for this purpose to affix to each can of \_\_\_\_\_ paint in your possession. Enclosed are illustrations of how to properly place the stickers.

The requirement to affix stickers is only needed if you currently have our product in your inventory. Please note that you will not have to add any stickers to any paint ordered or shipped after the date of this letter.

We will make revised marketing materials available to you shortly. Should you have any questions about compliance with this notice, please contact [insert contact person]. In addition, you can obtain further information about the settlement by visiting [www.ftc.gov](http://www.ftc.gov) and searching for "Imperial Paints."

Sincerely, [name]

[title]

## Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from Imperial Paints, LLC, a limited liability company (“respondent”), doing business as Lullaby Paints and Ecos Paints.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves respondent’s marketing, sale, and distribution of purportedly “VOC-free” paints. “VOC” is the abbreviation for volatile organic compounds. VOC-free includes claims such as “zero VOCs,” “0 VOCs,” and “No VOCs.” According to the FTC complaint, respondent made unsubstantiated representations that its paints: (1) are VOC-free; (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies, pregnant women, and allergy and asthma sufferers; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies, pregnant women, and allergy and asthma sufferers. The FTC further alleges that respondent provided independent retailers with promotional materials containing the same claims it made to consumers. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels. The orders define “emission” to include all



## Analysis to Aid Public Comment

emissions (not just VOCs that cause smog). This definition reflects the Commission's Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. The order defines "trace level of emission" to mean (1) no intentionally added VOC, (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health, and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating. Part II prohibits misleading representations regarding emission, VOC levels, odor, and any general environmental and health benefit of paints. The order requires competent and reliable scientific evidence to substantiate these representations. Part IV prohibits respondent from providing third parties with the means and instrumentalities to make false, unsubstantiated, or otherwise misleading representations of material fact regarding paints, including any representation prohibited by Parts I or II.

To correct existing unsubstantiated zero emission and VOC claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to put stickers on paint cans to obscure allegedly unsubstantiated emission and VOC claims.

Part V through IX are reporting and compliance provisions. Part V mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VI requires that respondent submit compliance reports to the FTC within sixty (60) days of the order's issuance and submit additional reports when certain events occur. Part VII requires that respondent must create and retain certain records for five (5) years. Part VIII provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part IX is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

## Analysis to Aid Public Comment

If the Commission finalizes the agreement's proposed order, it plans to propose harmonizing with this order the consent orders issued in the PPG Architectural Finishes, Inc. (Docket No. C-4385) and The Sherwin-Williams Company (Docket No. C-4386) matters. Specifically, the Commission plans to issue orders to show cause why those matters should not be modified pursuant to Section 3.72(b) of the Commission Rules of Practice, 16 C.F.R. § 3.72(b).

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**ICP CONSTRUCTION INC.  
F/K/A  
CALIFORNIA PRODUCTS CORP.  
D/B/A  
MURALO PAINTS**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4648; File No. 162 3081  
Complaint, April 24, 2018 – Decision, April 24, 2018*

This consent order addresses ICP Construction Inc.’s marketing, sale, and distribution of purportedly “VOC-free” paints. The complaint alleges that respondent made unsubstantiated representations that its paints: (1) are free of volatile organic compounds (“VOCs”); (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies. The consent order prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace level, and requires the respondent to send letters to its dealers and distributors, instructing them to post placards next to paint cans and at point of sale.

*Participants*

For the *Commission*: Robert M. Frisby, Megan Gray, Katherine Johnson, and Alejandro Rosenberg.

For the *Respondent*: Christopher Cole and Peter Miller, Crowell & Moring LLP.

**COMPLAINT**

The Federal Trade Commission, having reason to believe that ICP Construction, Inc., formerly known as California Products Corporation, doing business as Muralo Paints, (ICP or “Respondent”) has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

## Complaint

1. Respondent ICP Construction, Inc., formerly known as California Products Corp., doing business as Muralo Paints, is a Massachusetts corporation with its principal office or place of business at 150 Dascomb Road, Andover, Massachusetts 01810-5873.

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including BreatheSafe paints.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

**Respondent’s BreatheSafe Paints**

4. Respondent distributes BreatheSafe paints to consumers through a network of authorized, independent retailers.

5. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for BreatheSafe Paints to consumers, including the attached Exhibits A-F. These materials contain the following statements and depictions:

a.



(Exhibit D, Brochure.)

## Complaint

- b. Muralo BreatheSafe is a virtually odorless high-performance water-based latex, formulated with no harmful solvents and based on a sustainable chemistry technology, for interior use. Ideal for nursing homes, schools, babies' rooms and health care facilities.... Specified for space that is occupied during painting.

(Exhibit A, [www.muralo.com/products/breathesafematte.php](http://www.muralo.com/products/breathesafematte.php)).

**Respondent's Eco Assurance Logo**

6. Respondent distributes, or has caused its independent retailers to distribute several paint products bearing the following "Eco Assurance" logo, including BreatheSafe paints.

a.



(Exhibit E, paint can label).

**Count I  
Unsubstantiated Claims**

7. In connection with the advertising, promotion, offering for sale, or sale of BreatheSafe Paints, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. BreatheSafe Paints are VOC-free;

## Complaint

- b. BreatheSafe Paints are VOC-free during or immediately after painting;
- c. BreatheSafe Paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as babies; and
- d. BreatheSafe Paints will not emit any chemical or substance including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies.

8. The representations set forth in Paragraph 7 were not substantiated at the time the representations were made.

**Count II****Deceptive Failure to Disclose—Material Connection with Eco Assurance**

9. In connection with the advertising, promotion, offering for sale, or sale of its paints, such as through the use of its Eco Assurance seal, Respondent has represented, directly or indirectly, expressly or by implication, that these paints have been endorsed or certified by an independent third party.

10. Respondent has failed to disclose or adequately disclose that Respondent has a material connection to Eco Assurance, such as the fact the Eco Assurance seal is Respondent's own designation. This fact would be material to consumers in their purchase or use decisions regarding Respondent's paints.

11. Respondent's failure to disclose or adequately disclose the material information described in Paragraph 10, in light of the representation set forth in Paragraph 9, is a deceptive act or practice.

Complaint

**Count III**  
**Means and Instrumentalities**

12. Respondent distributed promotional materials, including the statements and depictions contained in Exhibits A through G to independent retailers. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

**Violations of Section 5**

13. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission this twenty-fourth day of April, 2018, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

The screenshot shows a web browser window displaying the Muroto Paint website. The browser's address bar shows 'murotopaint.com'. The website header includes the Muroto Paint logo and navigation links: Home, About, Products, and Color Substrs. The main content area is titled 'Interior Paint: BreathSafe™' and features a large image of a paint can labeled 'BreathSafe'. Below the can are two smaller images: 'Terminal Care Wood' and 'Sinks, Cans, Tiles'. To the right of the can is a text block with the heading 'BreathSafe INTERIOR WATER-BASED ZERO VOC MATTE FINISH' and a sub-heading 'ZERO VOC'. The text describes the product as a high-performance water-based finish with no harmful solvents, suitable for use in schools, daycares, and homes. A list of features includes: 'Paint & Primer in one', 'Virtually odorless', 'Crystalline silica free', 'Clean sweeping', 'Available in many colors', and 'Available white and bases'. At the bottom right, there is a small image of a woman's face.



Complaint

**Exhibit B**

**Good for the environment & Great for your walls**

**Breathe Safe™ Finishes**



- ZERO VOC formula, based on a sustainable chemistry technology
- Meet or exceed LEED green building requirements
- High hide
- Virtually odorless
- Clean spraying
- Superior touch-up
- Fast drying with easy water clean-up
- Crystalline Silica free
- Available in Interior White Primer, Ceiling White Paint and in Flat, Eggshell, Semi-Gloss finishes (in over 1200 colors)

**Ideal for:**

- Health care facilities
- Business offices, conference centers
- Retail stores, malls
- Hotels, motels
- Restaurants
- Schools, libraries, universities

**MOHAWK**  
Manufactured with windpower

Printed on Mohawk Via Smooth, which is manufactured entirely with Green-e certified renewable wind-generated electricity.



Printed on 100% post consumer use recycled paper.

The Muralo Company Inc.  
Bayonne, NJ Chicago, IL  
simplygreenpaint.com  
muralo.com elderandjenks.com  
1-800-631-3440

10/11 M99400

Complaint

**Exhibit C**

# BreatheSafe™

INTERIOR WATER-BASED  
ZERO VOC FINISHES



## Good for the environment & Great for your walls



**Breathe Safe™ Finishes**

- ZERO VOC formula, based on a sustainable chemistry technology
- Meet or exceed LEED green building requirements
- High hide
- Paint & Primer in one
- Virtually odorless
- Clean spraying
- Superior touch-up
- Fast drying with easy water clean-up
- Crystalline Silica free
- Available in Interior White Primer, Ceiling White Paint and in Matte, Flat, Eggshell, Semi-Gloss finishes (in over 1200 colors)

FINISH	PRODUCT #	RECOMMENDED USES	VOC*	GREEN SEAL COMPLIANT	LEED COMPLIANT
 Matte	60XX	Higher traffic areas, where durability is required	0		
 Flat	20XX	Low traffic areas, walls & ceilings	0		
 Eggshell	40XX	Higher traffic areas, where durability is required	0		
 Semi-Gloss	70XX	High traffic areas, cabinets, doors, trim	0		
 Ceiling Paint	2048	Ceilings	0		
 Primer	2235	Walls & Ceilings	0		

\* Calculated

Complaint

**Exhibit D**






Complaint

**Exhibit F**



For over 115 years, Muralo Paints has engineered innovative products to satisfy the most discriminating customers. Muralo's Breathe Safe™ line is no different. It is virtually odorless and free of VOC's, while still keeping the high performance properties you've come to expect from a Muralo product.

*Simply green*

FINISH	PRODUCT #	RECOMMENDED USES	VOC*	GREEN SEAL COMPLIANT	LEED COMPLIANT
 Matte	60XX	Higher traffic areas, where durability is required	0		
 Flat	20XX	Low traffic areas, walls & ceilings	0		
 Eggshell	40XX	Higher traffic areas, where durability is required	0		
 Semi-Gloss	70XX	High traffic areas, cabinets, doors, trim	0		
 Ceiling Paint	2048	Ceilings	0		
 Primer	2235	Walls & Ceilings	0		

## Decision and Order

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order (“Order”), and that only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. The Respondent is ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, a Massachusetts corporation with its principal office or place of business at 150 Dascomb Road, Andover, Massachusetts 01810-5873.

## Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

**ORDER****Definitions**

For purposes of this Order, the following definitions apply:

- A. “Clearly and conspicuously” means that a required disclosure is difficult to miss (i.e., easily noticeable) and easily understandable by ordinary consumers, including in all of the following ways:
  1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made through only one means.
  2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
  3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
  4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.

## Decision and Order

5. On a product label, the disclosure must be presented on the principal display panel.
  6. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
  7. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
  8. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
  9. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.
- B. “Close proximity” means that the disclosure is very near the triggering representation. In an interactive electronic medium (such as a mobile app or other computer program), a visual disclosure that cannot be viewed at the same time and in the same viewable area as the triggering representation, on the technology used by ordinary consumers, is not in close proximity. A disclosure made through a hyperlink, pop-up, interstitial, or other similar technique is not in close proximity to the triggering representation. A disclosure made on a different printed page than the triggering representation is not in close proximity.
- C. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- D. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric



## Decision and Order

photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. Section 51.100(s).

- E. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- F. “Trace” level of emission means:
  - 1. A VOC has not been intentionally added to the covered product;
  - 2. Emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and
  - 3. Emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating.
- G. “Certification” means any seal, logo, emblem, shield, or other insignia that expresses or implies approval or endorsement of any product, package, service, practice, or program, or any attribute thereof.
- H. “Respondent” means ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, and its successors and assigns.

## Decision and Order

**I. Prohibited Misleading and Unsubstantiated Representations  
Regarding Emission and VOC Level of Covered Product**

**IT IS ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, that the emission level of a covered product is zero, or that the VOC level of a covered product is zero, unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that:

- A. The covered product's emission is zero micrograms per meter cubed and the covered product's VOC content is zero grams per liter; or
- B. The covered product does not emit or produce more than a trace level of emission.

For purposes of this Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

**II. Prohibited Misleading and Unsubstantiated Representations  
Regarding Environmental and Health Claims**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered

## Decision and Order

product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

- A. The emission of the covered product;
- B. The VOC level of the covered product;
- C. The odor of the covered product;
- D. Any other health benefit or attribute of, or risk associated with exposure to, the covered product, including those related to VOC, emission, or chemical composition; or
- E. Any other environmental benefit or attribute of the covered product, including those related to VOC, emission, or chemical composition,

unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

### **III. Notice to Dealers and Distributors**

**IT IS FURTHER ORDERED** that Respondent deliver as soon as practicable, but in no event later than 60 days after the effective date of this Order, a notice in the form shown in Attachment A to all of Respondent’s dealers and distributors, and all other entities to which Respondent provided point-of-sale advertising, including product labels, for any covered product identified in Attachment A. The notice required by this paragraph

## Decision and Order

must not include any document or other enclosures other than those referenced in Attachment A.

**IV. Prohibited Misleading Certification Marks**

**IT IS FURTHER ORDERED** that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any misrepresentation, expressly or by implication, regarding certifications, including:

- A. The fact that, or degree to which, a third party has, evaluated a product, package, service, practice, or program based on its environmental benefits or attributes; or
- B. That a certification is endorsed by an independent person or organization.

**V. Disclosure of Material Connection**

**IT IS FURTHER ORDERED** that Respondent and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any product, package, certification, service, practice, or program, must not make any representation, in any manner, expressly or by implication, about any user or endorser of such product, package, certification, service, practice, or program unless Respondent discloses, clearly and conspicuously, and in close proximity to the representation any unexpected material connection, when one exists, between such user or endorser and (1) Respondent, or (2) any other individual or entity affiliated with the product or service. For purposes of this Provision, "unexpected material connection" means any relationship that might materially affect

## Decision and Order

the weight or credibility of the testimonial or endorsement and that would not reasonably be expected by consumers.

**VI.Means and Instrumentalities**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product, must not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact, including but not limited to any representation prohibited by Provisions I, II, IV, or V above. For purposes of this Provision, "means and instrumentalities" means any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product, in or affecting commerce.

**VII.Acknowledgments of the Order**

**IT IS FURTHER ORDERED** that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.
- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this

## Decision and Order

Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days after delivery, a signed and dated acknowledgment of receipt of this Order.

**VIII. Compliance Report and Notices**

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. Sixty days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each provision of this Order, including a discussion of all of the changes Respondent made to comply with the Order and a copy of the notice sent to dealers and distributors; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.
- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in any designated point of contact or the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or

## Decision and Order

affiliate that engages in any acts or practices subject to this Order.

- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re ICP Construction, Docket No. C4648.

### **IX. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job

## Decision and Order

title or position; dates of service; and (if applicable) the reason for termination;

- C. Records of all consumer complaints concerning the subject matter of the Order, including complaints involving representations covered by Parts I, II, IV, or V of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. For 5 years from the date of the last dissemination of any representation covered by this Order:
  - 1. All materials that were relied upon in making the representation; and
  - 2. All tests, analyses, research, studies, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

**X. Compliance Monitoring**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under



## Decision and Order

penalty of perjury, and produce records for inspection and copying.

- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**XI. Order Effective Dates**

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on April 24, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

- A. Any provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this provision.

## Decision and Order

If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

**Attachment A: Notice to Dealers and Distributors**

[on Respondent letterhead]

[insert date]

**IMPORTANT NOTICE ABOUT \_\_\_\_\_  
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name]

[insert addressee address used in the ordinary course of business]

Dear Dealer or Distributor,

In response to a complaint from the Federal Trade Commission, ICP Construction Inc., formerly known as California Products Corp., d/b/a Muralo Paints, has agreed not to make claims that its paints contain No VOCs (volatile organic compounds) or other harmful emissions, unless we can substantiate that the level is actually zero or otherwise comply with the settlement terms. We request that you immediately stop using existing \_\_\_\_\_ advertising and marketing materials that represent the emission level of any paint is zero, or that the VOC level of any paint is zero.

## Decision and Order

In addition, our in-house ECO ASSURE certification mark did not adequately identify it as a self-certification or the specific characteristics of the certification.

We have included placards that you must display clearly and prominently next to the paint containers and at the point of sale to eliminate any misrepresentation to consumers. Enclosed are illustrations of how to properly place the placards. The placards must be displayed until you have sold all paint containers bearing the problematic claims.

We will make revised marketing materials available to you shortly. Should you have any questions about compliance with this notice, please contact \_\_\_\_\_. In addition, you can obtain further information about the settlement by visiting [www.ftc.gov](http://www.ftc.gov) and searching for “ICP Construction.”

Sincerely,  
[name]  
[title]

**(first placard)****LABEL UPDATE:  
ICP Construction’s “ZERO VOC” Paints**

All “Zero VOC” (volatile organic compound) paints emit chemicals during the painting process and while drying. Some of these chemicals can be harmful to people, especially to sensitive groups such as babies, pregnant women, and those suffering from asthma or allergies. \_\_\_\_\_ paints emit chemicals for at least two weeks. Inside a home, these chemicals can stay in the air for even longer.

Analysis to Aid Public Comment

**(second placard)**  
**LABEL UPDATE:**  
**ICP Construction's "Eco Assurance" Certification**

ICP Construction's Eco Assurance seal is our company's promise that this product meets or exceeds certain industry environmental standards, including Green Seal and LEED Green Building requirements, while still keeping the highest performance properties you've come to expect from our products.

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from ICP Construction Inc., formerly known as California Products Corp., d/b/a/ Muralo Paints, a corporation ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves respondent's marketing, sale, and distribution of purportedly "VOC-free" paints. "VOC" is the abbreviation for volatile organic compounds. VOC-free includes claims such as "zero VOCs," "0 VOCs," and "No VOCs." According to the FTC complaint, respondent made unsubstantiated representations that its paints: (1) are VOC-free; (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such

## Analysis to Aid Public Comment

as babies; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as babies. The FTC also alleges that respondent used its ECO ASSURANCE seal without adequately disclosing that respondent awarded the seal to its own product. Consumers likely interpret the seal as a claim that an independent third party certified the product. The FTC further alleges that respondent provided independent retailers with promotional materials containing the same claims it made to consumers. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains five provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits emission-free and VOC-free claims unless both content and emission are actually zero or at trace level. The orders define “emission” to include all emissions (not just VOC that causes smog). This definition reflects the Commission’s Enforcement Policy Statement and consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emission found in indoor air, not just VOC that affect outdoor air quality. The order defines “trace level of emission” to mean (1) no intentionally added VOC, (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health, and (3) emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under normal conditions in the typical residential home without interior architectural coating. Part II prohibits misleading representations regarding emission, VOC level, odor, and any general environmental and health benefit of paints. The order requires competent and reliable scientific evidence to substantiate these representations. Parts IV and V prohibit respondent from misrepresenting third-party certifications and failing to adequately disclose a material connection. Part VI prohibits respondent from providing third parties with the means and instrumentalities to make false, unsubstantiated, or otherwise misleading representations of material fact regarding paints, including any representation prohibited by Parts I, II, IV, or V.

## Analysis to Aid Public Comment

To correct existing unsubstantiated zero-VOC claims and deceptive certification claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to post placards next to paint cans and at point of sale.

Parts VII through XI are reporting and compliance provisions. Part VII mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VIII requires that respondent submit compliance reports to the FTC within sixty (60) days of the order's issuance and submit additional reports when certain events occur. Part IX requires that respondent must create and retain certain records for five (5) years. Part X provides for the FTC's continued compliance monitoring of respondent's activity during the order's effective dates. Part XI is a provision "sunsetting" the order after twenty (20) years, with certain exceptions.

If the Commission finalizes the agreement's proposed order, it plans to propose harmonizing with this order the consent orders issued in the PPG Architectural Finishes, Inc. (Docket No. C-4385) and The Sherwin-Williams Company (Docket No. C-4386) matters. Specifically, the Commission plans to issue orders to show cause why those matters should not be modified pursuant to Section 3.72(b) of the Commission Rules of Practice, 16 C.F.R. § 3.72(b).

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

## Complaint

## IN THE MATTER OF

**YOLO COLORHOUSE, LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

*Docket No. C-4649; File No. 162 3082*  
*Complaint, April 24, 2018 – Decision, April 24, 2018*

This consent order addresses YOLO Colorhouse, LLC's marketing, sale, and distribution of purportedly "VOC-free" paints. The complaint alleges that respondent made unsubstantiated representations that its paints: (1) are free of volatile organic compounds ("VOCs"); (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as children; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as children. The consent order prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels, and requires the respondent to send letters to its dealers and distributors, instructing them to put stickers on paint cans to obscure allegedly unsubstantiated emission and VOC claims.

*Participants*

For the *Commission: Robert M. Frisby, Megan Gray, Katherine Johnson, and Alejandro Rosenberg.*

For the *Respondent: Michael Cohen and Anne M. Talcott, Schwabe Williamson & Wyatt.*

**COMPLAINT**

The Federal Trade Commission, having reason to believe that YOLO Colorhouse, LLC, a limited liability company, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent YOLO Colorhouse, LLC ("YOLO") is a limited liability company with its principal office or place of business at 519 NE Hancock St. # B, Portland, Oregon 97212.

## Complaint

2. Respondent has manufactured, advertised, labeled, offered for sale, sold, and distributed paint products to consumers, including Colorhouse Paints.

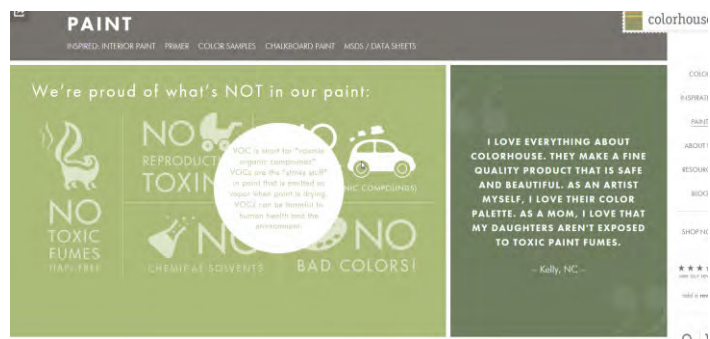
3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade Commission Act.

### YOLO’s Colorhouse Paints

4. Respondent distributes Colorhouse Paints directly to consumers through its showroom and website (<http://www.colorhousepaint.com>), and through independent retailers.

5. Respondent and its independent retailers have disseminated or have caused to be disseminated advertisements, packaging, and other promotional materials for Colorhouse Paints to consumers, including the attached Exhibits A-B. These materials contain the following statements and depictions:

- a. “Our products have NO VOCs, NO toxic fumes/HAPs-free, NO reproductive toxins, and No chemical solvents or other stinky stuff.”
- b. “We’re proud of what is not in our paint – NO VOCs. VOCs are the ‘stinky stuff’ in paint that is emitted as vapor when paint is drying. VOCs can be harmful to human health and the environment.”



(website material, Exhibit A)



## Complaint

- c. A video entitled “Paint for the People and the Planet,” showing a community of people, including a toddler, painting together and on each other. (Exhibit B)

**Count I**  
**Unsubstantiated Claims**

6. In connection with the advertising, promotion, offering for sale, or sale of Colorhouse Paints, Respondent has represented, directly or indirectly, expressly or by implication, that:

- a. Colorhouse Paints are VOC-free;
- b. Colorhouse Paints are VOC-free during or immediately after painting;
- c. Colorhouse Paints will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as children; and
- d. Colorhouse Paints will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as children.

7. The representations set forth in Paragraph 6 were not substantiated at the time the representations were made.

**Count II**  
**Means and Instrumentalities**

8. Respondent has distributed promotional materials, including the statements and depictions contained in Exhibits A-B to independent retailers. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

**Violations of Section 5**

## Complaint

9. The acts and practices of Respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

**THEREFORE**, the Federal Trade Commission, this twenty-fourth day of April 2018, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

The screenshot displays the Colorhouse website interface. At the top, a navigation bar includes 'PAINT' and sub-links for 'INSPIRED: INTERIOR PAINT', 'PRIMER', 'COLOR SAMPLES', 'CHALKBOARD PAINT', and 'MUGS / DATA SHEETS'. The Colorhouse logo is in the top right corner. A sidebar on the right contains navigation links: 'COLOR', 'INFORMATION', 'ABOUT US', 'RESOURCES', 'BLOG', 'SHOP NOW', a star rating, and a 'VIEW THIS PAGE' button.

The main content area features a green header with the text: "We're proud of what's NOT in our paint:". Below this are six icons representing the absence of: NO TOXIC FUMES (WATER-BASED), NO REPRODUCTIVE TOXINS, NO VOCs (VOLATILE ORGANIC COMPOUNDS), NO CHEMICAL SOLVENTS, and NO BAD COLORS!. A testimonial from Kaly, NC, states: "I LOVE EVERYTHING ABOUT COLORHOUSE. THEY MAKE A FINE QUALITY PRODUCT THAT IS SAFE AND BEAUTIFUL. AS AN ARTIST MYSELF, I LOVE THEIR COLOR PALETTE. AS A MOM, I LOVE THAT MY DAUGHTERS AREN'T EXPOSED TO TOXIC PAINT FUMES." A "VIEW THIS PAGE" button is located below the testimonial.

The next section is titled "INSPIRED: INTERIOR PAINT" and features an image of a paint can. The text describes the paint as low-odor, having superior coverage and durability, and being 100% acrylic. It lists three sheens: Flat, Eggshell, and Semi-Gloss. The text also notes the absence of VOCs, toxic fumes/MPs, lead, reproductive toxins, and chemical solvents. A "VIEW THIS PAGE" button is present below the text.

Below the product description is a table of key features:

Icon	Feature	Description
Stopwatch	DRY TIME	Dry to touch in 30-60 minutes; recoat after 2-4 hours.
Paintbrush	COVERAGE	Covers 250-400 square feet per gallon.
Water tap	CLEAN UP	Wash tools with warm soapy water. Scrape excess paint before washing.
House icon	STORAGE	Store in a dry area. Protect from freezing.

The final section is a green banner with a testimonial: "AWESOME! I CAN'T WAIT TO PAINT SOMETHING ELSE! PAINT CHIPS WERE EXCELLENT GUIDES, AND THE PAINT WAS SO LOW-ODOR I NEVER ONCE GOT A HEADACHE EVEN IN A SMALL ENCLOSED ROOM. THE COLORS ARE MAGNIFICENT AND ALL WE HAD HOPED FOR." A "VIEW THIS PAGE" button is located below the testimonial.

Complaint

**COLORHOUSE PRIMER**

Colorhouse Inspired Multi-Purpose Primer has excellent hide and adhesion. Our Primer is designed for many surfaces like new wallboard, raw wood, cured masonry and galvanized metal. For more application info click [here](#).

Colorhouse Multi-Purpose Primer contains NO VOCs (volatile organic compounds), NO toxic fumes/HAPs-free, NO reproductive toxins, and NO chemical solvents.

Qty:  Value: \$

---

**FAN DECKS**

colorhouse

ADD TO CART

**COLORSPOT  
8 OZ. SAMPLES**

EXPLORE COLORS

BRING THE WORLD MORE COLORFUL AND LESS VOLATILE

---

**CHALKBOARD PAINT**

Colorhouse Chalkboard paint turns any interior surface into a chalkboard! We encourage you to write on your walls with our durable chalkboard finish. Like all Colorhouse paint, there are NO VOCs (volatile organic compounds), NO toxic fumes/HAPs-free, NO reproductive toxins, and NO chemical solvents. Available in 10 striking Colorhouse hues. For more information, [View Colorhouse Chalkboard PDS](#)

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**PRODUCT AND MSDS DATA SHEETS**

Technical information about our primer and paints.

**WARRANTY**

Colorhouse Inspired zero VOC paint and primer warranty.

**FAGE**

The answer to all your questions.

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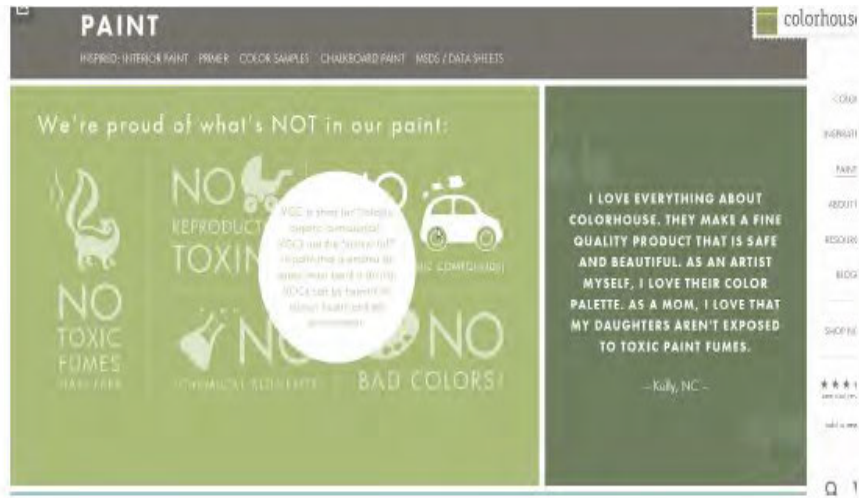
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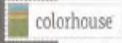
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Complaint



## Complaint

RESOURCES


PAINT CALCULATOR
FREE COLOR HELP
FAQS

## FAQS

All our answers to all your questions.

**Where can I buy Colorhouse paint?**

**What sheens does Colorhouse have and where do I use them?**

**Do you have a primer?**

**How can I sample your colors?**

**What makes your paint environmentally-friendly?**

**What is a VOC? Why are they bad? Why choose a Zero VOC paint?**

**What makes Colorhouse different from other low or zero VOC paints?**

Colorhouse paints are formulated with you and the environment in mind. We restrict over a 1000 chemical compounds. Our products have NO VOCs, NO toxic fumes/HAPs-free, NO reproductive toxins, and No chemical solvents or other stinky stuff!

**Why were VOCs added to paints in the first place? Why aren't VOCs in Colorhouse paint?**

**What is LEED? Does Colorhouse paint qualify for LEED Green Building points?**

**Why do you put mildewcide in Colorhouse paint?**

**Does Colorhouse paint work for chemically sensitive people?**

**What does "No Toxic Fumes" mean?**

No toxic fumes means that Colorhouse paints do not contain any hazardous air pollutants. These toxic chemicals are pollutants that can cause serious health effects and have adverse impact on our environment.

**Is Colorhouse a natural paint?**

**Is Colorhouse tested on animals/animal ingredients?**

**What ingredients are in Colorhouse?**

**How do I store or dispose of my leftover paint?**

**Does Colorhouse seal in VOCs?**

**Is Colorhouse primer a stain-blocking primer?**

**I am pregnant — can I paint?**

Our paints are zero VOC and are absent of the common toxic chemicals and toxic fumes found in conventional paints, such as: mutagens, hazardous air pollutants, ozone-depleting compounds, formaldehyde and phthalates. Our paints are a healthier option for the home, but if you have specific health concerns we always recommend speaking with your doctor.

**Can I paint with Colorhouse on the following surfaces: drywall, wood, concrete, furniture, floors, cabinetry and metal?**


**Does the color add VOCs?**

**Can another company's colors be mixed in Colorhouse?**

**Does Colorhouse offer color-choosing help?**

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[Contact](#)  
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[Sitemap](#)

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FORMATION

PAINT

ABOUT US

RESOURCES

BLOG

SHOP NOW

★★★★★

SEE ALL REVIEWS

REVIEWS

SEARCH

SHOP

CONTACT

HELP

THE COLOR

HOUSE

Complaint

**Exhibit B**

# Exhibit B

(video entitled "Paint for the People and the Planet")

## Decision and Order

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of certain acts and practices of the Respondent named above in the caption. The Commission’s Bureau of Consumer Protection (“BCP”) prepared and furnished to Respondent a draft Complaint. BCP proposed to present the draft Complaint to the Commission for its consideration. If issued by the Commission, the draft Complaint would charge the Respondent with violations of the Federal Trade Commission Act.

Respondent and BCP thereafter executed an Agreement Containing Consent Order (“Consent Agreement”). The Consent Agreement includes: 1) statements by Respondent that it neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decision and Order (“Order”), and that only for purposes of this action, Respondent admits the facts necessary to establish jurisdiction; and 2) waivers and other provisions as required by the Commission’s Rules.

The Commission considered the matter and determined that it had reason to believe that Respondent has violated the Federal Trade Commission Act, and that a Complaint should issue stating its charges in that respect. The Commission accepted the executed Consent Agreement and placed it on the public record for a period of 30 days for the receipt and consideration of public comments. The Commission duly considered the comments received from interested persons pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34. Now, in further conformity with the procedure prescribed in Commission Rule 2.34, the Commission issues its Complaint, makes the following Findings, and issues the following Order:

**Findings**

1. The Respondent is YOLO Colorhouse, LLC, a limited liability company with its principal office or place of business at 519 NE Hancock St. # B, Portland, Oregon 97212.



## Decision and Order

2. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondent, and the proceeding is in the public interest.

**ORDER****Definitions**

For purposes of this Order, the following definitions apply:

- A. “Covered product” means any architectural coating applied to stationary structures, portable structures, and their appurtenances.
- B. “Volatile Organic Compound” (“VOC”) means any compound of carbon that participates in atmospheric photochemical reactions, but excludes carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, and specific compounds that the EPA has determined are of negligible photochemical reactivity, which are listed at 40 C.F.R. Section 51.100(s).
- C. “Emission” means any compound that is emitted or produced during application, curing, or exposure of a covered product.
- D. “Trace” level of emission means:
  1. A VOC has not been intentionally added to the covered product;
  2. Emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health; and
  3. Emission of the covered product does not result in more than harmless concentrations of any compound higher than would be found under

## Decision and Order

normal conditions in the typical residential home without interior architectural coating.

- E. “Respondent” means YOLO Colorhouse, LLC, and its successors and assigns.

**I. Prohibited Misleading and Unsubstantiated Representations  
Regarding Emission and VOC Level of Covered Product**

**IT IS ORDERED** that Respondent, and Respondent’s officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, that the emission level of a covered product is zero, or that the VOC level of a covered product is zero, unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that:

- A. The covered product’s emission is zero micrograms per meter cubed and the covered product’s VOC content is zero grams per liter; or
- B. The covered product does not emit or produce more than a trace level of emission.

For purposes of this Provision, “competent and reliable scientific evidence” means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

## Decision and Order

**II. Prohibited Misleading and Unsubstantiated Representations  
Regarding Environmental and Health Claims**

**IT IS FURTHER ORDERED** that Respondent, and Respondent's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product must not make any representation, expressly or by implication, including through the use of a product name, regarding:

- A. The emission of the covered product;
- B. The VOC level of the covered product;
- C. The odor of the covered product;
- D. Any other health benefit or attribute of, or risk associated with exposure to, the covered product, including those related to VOC, emission, or chemical composition; or
- E. Any other environmental benefit or attribute of the covered product, including those related to VOC, emission, or chemical composition,

unless the representation is non-misleading, including that, at the time such representation is made, Respondent possesses and relies upon competent and reliable scientific evidence that is sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that the representation is true. For purposes of this Provision, "competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons and are generally accepted in the profession to yield accurate and reliable results.

## Decision and Order

**III. Notice to Dealers and Distributors**

**IT IS FURTHER ORDERED** that Respondent deliver as soon as practicable, but in no event later than 60 days after the effective date of this Order, a notice in the form shown in Attachment A to all of Respondent's dealers and distributors, and all other entities to which Respondent provided point-of-sale advertising, including product labels, for any covered product identified in Attachment A. The notice required by this paragraph must not include any document or other enclosures other than those referenced in Attachment A.

**IV. Means and Instrumentalities**

**IT IS FURTHER ORDERED** that Respondent, and its officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, or sale of any covered product, must not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact, including but not limited to any representation prohibited by Provision I or by Provision II above. For purposes of this Provision, "means and instrumentalities" shall mean any information, including, but not necessarily limited to, any advertising, labeling, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any covered product, in or affecting commerce.

**V. Acknowledgments of the Order**

**IT IS FURTHER ORDERED** that Respondent obtain acknowledgments of receipt of this Order:

- A. Respondent, within 10 days after the effective date of this Order, must submit to the Commission an acknowledgment of receipt of this Order.

## Decision and Order

- B. Respondent must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who participate in the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Provision titled Compliance Report and Notices. Delivery must occur within 10 days after the effective date of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.
- C. From each individual or entity to which Respondent delivered a copy of this Order, Respondent must obtain, within 30 days after delivery, a signed and dated acknowledgment of receipt of this Order.

**VI. Compliance Report and Notices**

**IT IS FURTHER ORDERED** that Respondent make timely submissions to the Commission:

- A. Sixty days after the issuance date of this Order, Respondent must submit a compliance report, sworn under penalty of perjury, in which Respondent must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Respondent; (2) identify all of Respondent's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (3) describe the activities of each business; (4) describe in detail whether and how Respondent is in compliance with each Provision of this Order, including a discussion of all of the changes the Respondent made to comply with the Order and a copy of the notice sent to dealers and distributors; and (5) provide a copy of each Acknowledgment of the Order obtained pursuant to this Order, unless previously submitted to the Commission.

## Decision and Order

- B. Respondent must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in any designated point of contact or the structure of Respondent or any entity that Respondent has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including the creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.
- C. Respondent must submit notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Respondent within 14 days of its filing.
- D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: In re YOLO Colorhouse, Docket No. C4649.

**VII. Recordkeeping**

**IT IS FURTHER ORDERED** that Respondent must create certain records and retain each such record for 5 years. Specifically, Respondent must create and retain the following records:

## Decision and Order

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints concerning the subject matter of the Order, including complaints involving representations covered by Parts I or II of the Order, whether received directly or indirectly, such as through a third party, and any response;
- D. A copy of each unique advertisement or other marketing material making a representation subject to this Order;
- E. For 5 years from the date of the last dissemination of any representation covered by this Order:
  - 1. All materials that were relied upon in making the representation; and
  - 2. All tests, analyses, research, studies, or other evidence in Respondent's possession, custody, or control that contradicts, qualifies, or otherwise calls into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations; and
- F. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission.

## Decision and Order

**VIII. Compliance Monitoring**

**IT IS FURTHER ORDERED** that, for the purpose of monitoring Respondent's compliance with this Order:

- A. Within 10 days of receipt of a written request from a representative of the Commission, Respondent must submit additional compliance reports or other requested information, which must be sworn under penalty of perjury, and produce records for inspection and copying.
- B. For matters concerning this Order, representatives of the Commission are authorized to communicate directly with Respondent. Respondent must permit representatives of the Commission to interview anyone affiliated with Respondent who has agreed to such an interview. The interviewee may have counsel present.
- C. The Commission may use all other lawful means, including posing through its representatives as consumers, suppliers, or other individuals or entities, to Respondent or any individual or entity affiliated with Respondent, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**IX. Order Effective Dates**

**IT IS FURTHER ORDERED** that this Order is final and effective upon the date of its publication on the Commission's website (ftc.gov) as a final order. This Order will terminate on April 24, 2038, or 20 years from the most recent date that the United States or the Commission files a complaint (with or without an accompanying settlement) in federal court alleging any violation of this Order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:



## Decision and Order

- A. Any provision in this Order that terminates in less than 20 years;
- B. This Order's application to any Respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this provision.

If such complaint is dismissed or a federal court rules that the Respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this provision as though the complaint had never been filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

Decision and Order

**Attachment A: Notice to Dealers and Distributors**

[on Respondent letterhead]

[insert date]

**IMPORTANT NOTICE ABOUT COLORHOUSE  
ADVERTISING AND MARKETING MATERIALS**

[insert addressee name]

[insert addressee address used in the ordinary course of business]

Dear Dealer or Distributor,

In response to a complaint from the Federal Trade Commission, YOLO Colorhouse, LLC has agreed to qualify its claims that its paints contain zero VOCs (volatile organic compounds) or other harmful emissions, to ensure that retailers and dealers avoid misleading consumers. We request that you immediately replace existing Colorhouse advertising and marketing materials with revised versions which include these qualifications. We have included appropriate materials for this purpose to affix to each can of Colorhouse paint in your possession. Enclosed are illustrations of how to properly place the stickers.

The requirement to affix stickers is only needed if you currently have our product in your inventory. Please note that you will not have to add any stickers to any paint ordered or shipped after the date of this letter.

We will make revised marketing materials available to you shortly. Should you have any questions about compliance with this notice, please contact [insert contact person]. In addition, you can obtain further information about the settlement by visiting [www.ftc.gov](http://www.ftc.gov) and searching for “YOLO Colorhouse.”

Sincerely,  
[name]  
[title]

## Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT**

The Federal Trade Commission (“FTC” or “Commission”) has accepted, subject to final approval, an agreement containing a consent order from YOLO Colorhouse, LLC, a limited liability company (“respondent”).

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement’s proposed order.

This matter involves respondent’s marketing, sale, and distribution of purportedly “VOC-free” paints. “VOC” is the abbreviation for volatile organic compounds. VOC-free includes claims such as “zero VOCs,” “0 VOCs,” and “No VOCs.” According to the FTC complaint, respondent made unsubstantiated representations that its paints: (1) are VOC-free; (2) are VOC-free during or immediately after painting; (3) will not emit any chemical or substance, including VOCs, that causes material harm to consumers, including sensitive populations such as children; and (4) will not emit any chemical or substance, including VOCs, during or immediately after painting, that causes material harm to consumers, including sensitive populations such as children. The FTC further alleges that respondent provided independent retailers with promotional materials containing the same claims it made to consumers. Thus, the complaint alleges that respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains three provisions designed to prevent respondent from engaging in similar acts and practices in the future. Part I prohibits emission-free and VOC-free claims unless both content and emissions are actually zero or at trace levels. The orders define “emission” to include all emissions (not just VOCs that cause smog). This definition reflects the Commission’s Enforcement Policy Statement and

## Analysis to Aid Public Comment

consumer expectations: consumers are likely concerned about the potential health effects from exposure to chemical emissions found in indoor air, not just VOCs that affect outdoor air quality. The order defines “trace level of emission” to mean (1) no intentionally added VOC, (2) emission of the covered product does not cause material harm that consumers typically associate with emission, including harm to the environment or human health, and (3) emission of the covered product does not result in more than harmless concentrations of and compound higher than would be found under normal conditions in the typical residential home without interior architectural coating. Part II prohibits misleading representations regarding emission, VOC levels, odor, and any general environmental and health benefit of paints. The order requires competent and reliable scientific evidence to substantiate these representations. Part IV prohibits respondent from providing third parties with the means and instrumentalities to make false, unsubstantiated, or otherwise misleading representations of material fact regarding paints, including any representation prohibited by Parts I or II.

To correct existing unsubstantiated zero emission and VOC claims, Part III requires the respondent to send letters to its dealers and distributors, instructing them to put stickers on paint cans to obscure allegedly unsubstantiated emission and VOC claims.

Parts V through IX are reporting and compliance provisions. Part V mandates that respondent acknowledge receipt of the order, distribute the order to certain employees and agents, and secure acknowledgments from recipients of the order. Part VI requires that respondent submit compliance reports to the FTC within sixty (60) days of the order’s issuance and submit additional reports when certain events occur. Part VII requires that respondent must create and retain certain records for five (5) years. Part VIII provides for the FTC’s continued compliance monitoring of respondent’s activity during the order’s effective dates. Part IX is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

If the Commission finalizes the agreement’s proposed order, it plans to propose harmonizing with this order the consent orders

Analysis to Aid Public Comment

issued in the PPG Architectural Finishes, Inc. (Docket No. C-4385) and The Sherwin-Williams Company (Docket No. C-4386) matters. Specifically, the Commission plans to issue orders to show cause why those matters should not be modified pursuant to Section 3.72(b) of the Commission Rules of Practice, 16 C.F.R. § 3.72(b).

The purpose of the analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

**AIR MEDICAL GROUP HOLDINGS, INC.,  
KKR NORTH AMERICA FUND XI (AMG) LLC,  
AND  
AMR HOLDCO, INC.**

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF  
SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND  
SECTION 7 OF THE CLAYTON ACT

*Docket No. C-4642; File No. 171 0217  
Complaint, March 6, 2018 – Decision, April 24, 2018*

This consent order addresses the \$2.4 billion acquisition by Air Medical Group Holdings, Inc., a wholly owned subsidiary of KKR North America Fund XI (AMG) LLC, of certain assets of AMR Holdco, Inc., a wholly-owned subsidiary of Envision Healthcare. The complaint alleges that the acquisition, if consummated would violate Section 7 of the Clayton Act and Section 5 of the FTC Act by substantially lessening competition for the provision of inter-facility air ambulance transport services in Hawaii. The consent order requires AMR to sell its inter-facility air ambulance transport services business, including the assets that support that business, to AIRMD, LLC d/b/a LifeTeam.

*Participants*

For the *Commission*: Sylvia Kundig and Joe Lipinsky.

For the *Respondents*: Peter Guryan and Richard Jamgochian,  
*Simpson Thacher & Bartlett*.

**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act and the Clayton Act, and its authority thereunder, the Federal Trade Commission (“Commission”), having reason to believe that Respondent Air Medical Group Holdings, Inc. has entered into a transaction with Respondent AMR Holdco, Inc.; that such transaction, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and that a proceeding in respect thereof would be in the public

## Complaint

interest, hereby issues this Complaint, stating its charges as follows:

**I. RESPONDENTS****AMGH**

1. Respondent Air Medical Group Holdings, Inc. (“AMGH”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located at 209 State Highway 121 Bypass, Suite 21, Lewisville, Texas 75067. Respondent AMGH’s ultimate parent company is KKR North America Fund XI (AMG) LLC, located c/o Kohlberg Kravis Roberts & Co. LP, 9 West 57th Street, Suite 4200, New York, New York 10019.

2. Respondent AMGH is one of the largest providers of air ambulance services in the United States, providing those services through a number of subsidiaries.

3. Respondent AMGH is, and at all times relevant herein has been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

4. Hawaii Life Flight Corporation (“HLF”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of Hawaii, with its principal place of business located at 150 Lagoon Drive, Honolulu, Hawaii 96819. HLF is a subsidiary of Respondent AMGH and provides inter-facility air ambulance transport services in the State of Hawaii.

5. HLF is, and at all times relevant herein has been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

**KKR North America Fund XI (AMG) LLC**

6. Respondent KKR North America Fund XI (AMG) LLC (“KKR”), is a limited liability company organized, existing, and

## Complaint

doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located, c/o Kohlberg Kravis Roberts & Co. LP, at 9 West 57th Street, Suite 4200, New York, New York 10019. Respondent KKR is the ultimate parent company of Respondent AMGH.

7. Respondent KKR is, and at all times relevant herein has been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.

**AMR Holdco, Inc.**

8. Respondent AMR Holdco, Inc. (“AMR”) is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located at 6363 S. Fiddlers Green Circle, 14th Floor, Greenwood Village, Colorado 80111. Respondent AMR is a subsidiary of Envision Healthcare Corporation, a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its principal place of business located at 6363 S. Fiddlers Green Circle, 14th Floor, Greenwood Village, Colorado 80111.

9. Respondent AMR is one of the largest providers of ground ambulance services in the United States, providing those services through a number of subsidiaries.

10. Respondent AMR operates American Medical Response (“AMRH”) in Hawaii. In addition to ground ambulance services, AMRH provides inter-facility air medical transport services in competition with HLF.

11. Respondent AMR and the corporate entities under its control are, and at all times relevant herein have been engaged in commerce, as “commerce” is defined in Section 1 of the Clayton Act as amended, 15 U.S.C. § 12, and Section 4 of the FTC Act, as amended, 15 U.S.C. § 44.



## Complaint

**II. THE PROPOSED ACQUISITION**

12. Respondent AMGH entered into a Stock Purchase Agreement (“Acquisition Agreement”) with Respondent AMR, dated August 7, 2017, pursuant to which AMGH would acquire the stock of AMR. The Agreement’s total estimated dollar value was \$2.4 billion.

13. The Proposed Acquisition to be effected through the Acquisition Agreement is subject to Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**III. THE RELEVANT MARKETS**

14. The relevant product market in which to analyze the effects of the Proposed Acquisition is inter-facility air ambulance transport services. Inter-facility air ambulance transport services involve the provision of air transportation services from one medical facility to another for medical and surgical care.

15. The relevant geographic market in which to analyze the effects of the proposed Acquisition is the State of Hawaii. In Hawaii, inter-facility air ambulance transport services involve transporting patients from one island to another, generally to Oahu.

**IV. MARKET STRUCTURE**

16. In the State of Hawaii, the market for inter-facility air ambulance transport services is highly concentrated. AMGH and AMRH are currently the only providers of the relevant services, and the combined firm would become the only provider following the proposed acquisition. Thus, the proposed acquisition would substantially increase concentration.

**V. ENTRY CONDITIONS**

17. New entry or expansion by existing firms in adjacent businesses would not be likely, timely, and sufficient, to defeat a post-acquisition price increase. Inter-facility air ambulance

## Complaint

transport services rely on reimbursement from third party payers, such as health maintenance organizations, preferred provider organizations, or government health care providers, such as the Veteran's Administration. A new entrant would require a guarantee of a sufficient volume of referrals and payments from third party payers to justify the economic risk of new entry. Sufficient guarantees are unlikely in the face of a small but significant and non-transitory increase in price. As a result, de novo or sponsored entry is unlikely.

**VI. EFFECTS OF THE MERGER**

18. The effects of the Proposed Acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by increasing the likelihood that Respondent AMGH and its subsidiary HLF would unilaterally exercise market power in the relevant market to raise prices and lower quality.

**VII. VIOLATIONS CHARGED**

19. The Proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

20. The Acquisition Agreement entered into by Respondent AMGH and Respondent AMR constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

**IN WITNESS WHEREOF**, the Federal Trade Commission, having caused this Complaint to be signed by the Secretary and its official seal affixed, at Washington, D.C., this sixth day of March, 2018, issues its complaint against Respondents.

By the Commission.

## Order to Maintain Assets

**ORDER TO MAINTAIN ASSETS  
[Public Record Version]**

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Air Medical Group Holdings, Inc. (“AMGH”), controlled by Respondent KKR North America Fund XI (AMG) LLC (“KKR”), of Respondent AMR Holdco, Inc. (“AMR”) (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

The Commission having thereafter considered the matter and having determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent AMGH is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 209

## Order to Maintain Assets

State Highway 121 Bypass, Suite 21, Lewisville, Texas 75067.

2. Respondent AMR is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 6363 S. Fiddlers Green Circle, 14th Floor, Greenwood Village, Colorado 80111.
3. Respondent KKR North America Fund XI (AMG) LLC, is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 9 West 57th Street, Suite 4200, New York, New York 10019.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

**I.**

**IT IS ORDERED** that, as used in this Order to Maintain Assets, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, which are incorporated herein by reference and made a part hereof, shall apply:

- A. “Assets To Be Divested” means the Air Ambulance Assets and Ground Ambulance Assets.
- B. “Decision and Order” means the:
  1. Proposed Decision and Order contained in the Consent Agreement in this matter until the issuance of a final and effective Decision and Order by the Commission; and

## Order to Maintain Assets

2. Final Decision and Order issued by the Commission following the issuance and service of a final Decision and Order by the Commission in this matter.
- C. “Orders” means the Decision and Order in this matter and this Order to Maintain Assets.

**II.**

**IT IS FURTHER ORDERED** that from the date this Order to Maintain Assets becomes final and effective:

- A. Respondents shall maintain the viability, marketability, and competitiveness of the Assets To Be Divested, and shall not cause the wasting or deterioration of any of the Assets To Be Divested. Respondents shall not cause the Assets To Be Divested to be operated in a manner inconsistent with applicable laws, nor shall they sell, transfer, encumber, or otherwise impair the viability, marketability, or competitiveness of the Assets To Be Divested.
- B. Respondents shall conduct or cause to be conducted the business of the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice (including regular repair and maintenance efforts) and shall use best efforts to preserve the existing relationships with suppliers, customers, employees, and others having business relations with the Assets To Be Divested in the regular and ordinary course of business, in accordance with past practice, making all payments required to be paid under any contract or lease, and providing sufficient working capital to operate at least at current rates of operation to meet all capital calls with respect to the Assets To Be Divested.
- C. Respondents shall not terminate the operation of any of the Assets To Be Divested and shall maintain the

## Order to Maintain Assets

books and Records of each of the Assets To Be Divested.

- D. Respondents shall continue to maintain the operation, inspection and maintenance schedule of each of the Assets To Be Divested at levels and intervals in the regular and ordinary course of business, in accordance with past practice, including: (1) providing funds sufficient to perform all routine maintenance and maintenance necessary to, and all replacements of, any assets related to the operation of the Assets To Be Divested; (2) providing support services at least at the level as was being provided as of the date the Consent Agreement was signed by Respondents; and (3) maintaining, and not terminating or permitting the lapse of, any permit or license necessary for the operation of any Asset To Be Divested.
- E. Respondents shall maintain the working conditions, staffing levels, and a work force of equivalent size, training, and expertise associated with each of the Assets To Be Divested, including:
1. Providing each employee of the Assets To Be Divested with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Assets To Be Divested;
  2. Using reasonable best efforts to retain employees at each of the Assets To Be Divested;
  3. When vacancies occur, replacing the employees in the regular and ordinary course of business, in accordance with past practice; and
  4. Not transferring any employees from any of the Assets To Be Divested.

## Order to Maintain Assets

**III.****IT IS FURTHER ORDERED** that:

- A. Respondents shall (i) not disclose (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Air Ambulance Business; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing its obligations or as permitted under the Orders or any Divestiture Agreement; or
  2. Complying with financial, regulatory, or other legal obligations, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Air Ambulance Assets or Ground Ambulance Assets, or as required by law.
- B. If disclosure or use of any Confidential Information is permitted to Respondents' employees or to any other Person under Paragraph III.A. of this Order to Maintain Assets, Respondents shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph III.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.
- C. Respondents shall enforce the terms of this Paragraph III. as to their employees or any other Person, and take such action as is necessary to cause each of its employees and any other Person to comply with the terms of this Paragraph III., including implementation of access and data controls, training of its employees, and all other actions that Respondents would take to

## Order to Maintain Assets

protect their own trade secrets and proprietary information.

**IV.****IT IS FURTHER ORDERED** that:

- A. Rex Fujichaku shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix A (“Monitor Agreement”) and Non-Public Appendix B (“Monitor Compensation”). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. No later than one day after the Acquisition Date, Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
  - 1. The Monitor shall (i) monitor Respondents’ compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
  - 2. Respondents shall (i) insure that the Monitor has full and complete access to all Respondents’ personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform her duties pursuant to this Order;



## Order to Maintain Assets

3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;
  4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
  5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every 30 days after the Acquisition Date for a period of one year, (ii) every 90 days thereafter until Respondents have completed all obligations required by Paragraph II. of this Order (including a final report when Respondents have completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.

## Order to Maintain Assets

- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.
- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:
1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
  2. Respondents shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

## Order to Maintain Assets

**V.**

**IT IS FURTHER ORDERED** that within 30 days after the date this Order to Maintain Assets is issued by the Commission, and every 30 days thereafter until Respondents have fully complied with this Order to Maintain Assets, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with the Order. Each Respondent shall submit at the same time a copy of its report concerning compliance with the Order to the Monitor. Each Respondent shall include in its reports, among other things that are required from time to time, a detailed description of its efforts to comply with the relevant paragraphs of the Orders, including:

- A. a detailed description of all substantive contacts, negotiations, or recommendations related to (i) the divestiture and transfer of all of the Assets To Be Divested, (ii) the maintenance of the Assets To Be Divested, and (iii) transitional services being provided by the relevant Respondent to the Acquirer; and
- B. a detailed description of the timing for the completion of such obligations.

*provided, however,* that, after the Decision and Order in this matter becomes final and effective, the reports due under this Order to Maintain Assets may be consolidated with, and submitted to the Commission on the same timing as, the reports required to be submitted by Respondents pursuant the Decision and Order.

**VI.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.;

## Order to Maintain Assets

- B. Any proposed acquisition, merger, or consolidation of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.; or
- C. Any other change in Respondents, including assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

**VII.**

**IT IS FURTHER ORDERED** that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request with reasonable notice to Respondents, with respect to any matter contained in this Order, Respondents shall permit any duly authorized representative of the Commission:

- A. Access, during office hours and in the presence of counsel, to all facilities, and access to inspect and copy all non-privileged books, ledgers, accounts, correspondence, memoranda, and other records and documents, in the possession or under the control of Respondents, related to compliance with the Consent Agreement and/or the Orders, for which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and
- B. Upon 5 days' notice to Respondents, and without restraint or interference from them, to interview officers, directors, or employees of Respondents, who may have counsel present.

**VIII.**

**IT IS FURTHER ORDERED** that this Order to Maintain Assets shall terminate on the earlier of:

- A. Three (3) days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the

## Order to Maintain Assets

provisions of Commission Rule 2.34, 16 C.F.R. § 2.34;  
or

- B. The later of:
1. the day after the divestitures pursuant to Paragraph II of the Decision and Order are accomplished, or
  2. three (3) days after the related Decision and Order becomes final.

By the Commission.

## Order to Maintain Assets

**Appendix A****Monitor Agreement****MONITOR AGREEMENT**

This Monitor Agreement (this "Agreement"), entered into this 16 day of February, 2018, by and among Bronster Fujichaku Robbins, A Law Corporation by its director, Rex Fujichaku (the "Monitor") and Air Medical Group Holdings, Inc. ("AMGH") (the Monitor and AMGH together, the "Parties") provides as follows:

WHEREAS the Federal Trade Commission (the "Commission"), in the Matter of Air Medical Group Holdings, Inc.'s proposed Acquisition of American Medical Response ("AMR"), File No. 171-0217, has accepted or will shortly accept for public comment an Agreement Containing Consent Orders incorporating a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Orders"), which, among other things, requires AMGH to divest AMR's Hawaii fixed wing air ambulance business and certain related assets (the "AMR Assets"), as defined in the Orders, and contemplates the appointment of a Monitor to monitor AMGH's compliance with its obligations under the Orders;

WHEREAS, the Commission is expected to accept the Agreement Containing Consent Orders and appoint Monitor pursuant to the Orders to monitor AMGH's compliance with the terms of the Orders, and Monitor has consented to such appointment;

WHEREAS, the Orders further provide that AMGH shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and AMGH, is not effective for any purpose, including but not limited to imposing rights and responsibilities on AMGH or Monitor under the Orders, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

**ARTICLE I**

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Orders, including but not limited to monitoring AMGH's compliance with the divestiture, asset maintenance obligations, and other related requirements of the Orders.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to AMGH's personnel,

## Order to Maintain Assets

books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to AMGH's compliance with the obligations of AMGH under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. AMGH shall cooperate with any reasonable request of Monitor. Monitor shall give AMGH reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with AMGH's operations. At the request of the Monitor, AMGH shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of AMGH who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

1.3 Compliance Reports. AMGH shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) business days after the date on which AMGH files such report with the Commission.

1.4 Confidentiality. Monitor shall:

(a) maintain the confidentiality of all confidential information provided to the Monitor by AMGH, the acquirer of the AMR Assets, any supplier or customer of AMGH, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to (i) persons employed by or working with Monitor pursuant to the Orders or (ii) persons employed at the Commission;

(b) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which AMGH will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(c) act in a fiduciary capacity for the benefit of the Commission;

(d) maintain a record and inform the Commission of all third parties (other than representatives of the Commission) to whom Confidential Information has been disclosed;

(e) for a period of five (5) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information relating thereto; and

(f) upon the termination of the Monitor's duties under this Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that AMGH provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by

## Order to Maintain Assets

the staff. In response to a request by AMGH to return or destroy materials that AMGH provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with AMGH's request. Notwithstanding the foregoing, the Monitor shall not be required to return or destroy confidential information contained in an archived computer back-up system for its disaster recovery and/or security purposes, and it may retain a copy of confidential information, subject to the terms of this Agreement, in accordance with its internal record retention procedures for legal or regulatory purposes. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor for ten (10) years after termination of this Agreement. For the avoidance of doubt, the expiration of the ten year period following the termination of this Agreement shall not abrogate the duties under this Section 1.4 which prevent the Monitor's disclosure of any Confidential Information.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, AMGH, or any director, officer, employee, agent, consultant or affiliate of the Monitor or AMGH, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

**ARTICLE II**

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of AMGH, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Orders. Prior to engaging any such parties and prior to commissioning additional work to be performed by a party who has already been so engaged, Monitor shall notify AMGH of its intention to do so, and provide an estimate of the anticipated costs.

2.2 Monitor Compensation. AMGH shall pay Monitor in accordance with the fee schedule and procedure attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the acquirer of the AMR Assets, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time.

(a) In addition, AMGH shall pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to the first paragraph in Article II.

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social



### Order to Maintain Assets

security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Monitor's Indemnification; Limitation on Liability. AMGH shall indemnify and hold harmless Monitor and its employees and agents against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from Monitor's gross negligence or willful misconduct. Monitor shall not be liable hereunder for any amount in excess of the fees paid to it, except in the event of Monitor's gross negligence, willful misconduct or fraud. Monitor shall not be liable hereunder for any incidental, consequential, special or punitive damages, regardless of whether it has been informed of the possibility thereof.

2.4 Disputes. In the event of a disagreement or dispute between AMGH and Monitor concerning AMGH's obligations under the Orders, and, in the event that such disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

2.5 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of its duties under this Agreement, Monitor shall promptly inform AMGH and the Commission of any such conflict or potential conflict.

### ARTICLE III

3.1 Termination. This Agreement shall terminate the earlier of: (a) the expiration or termination of the Orders; (b) AMGH's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to AMGH and to the Commission, upon resignation of the Monitor; or (d) when the Monitor completes its Final Report pursuant to the Decision and Order; provided, however, that the Commission may require that AMGH extend this Agreement as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, AMGH shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of the State of New York, including all matters of construction, validity and performance. The Orders shall govern this

## Order to Maintain Assets

Agreement and any provisions herein which conflict or are inconsistent with the Orders may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require AMGH to disclose any material or information that is subject to a legally recognized privilege or that AMGH is prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by AMGH or Monitor without the consent of AMGH and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

Order to Maintain Assets

**MONITOR**

Bronster Fujichaku Robbins, A Law Corporation

\_\_\_\_\_  
Rex Fujichaku  
Director

**Respondent**

Air Medical Group Holdings, Inc.

  
\_\_\_\_\_  
Frederick Buttrell  
CEO

Order to Maintain Assets

**MONITOR**

**Respondent**

Bronster Fujichaku Robbins, A Law Corporation

Air Medical Group Holdings, Inc.



\_\_\_\_\_  
Rex Fujichaku  
Director

\_\_\_\_\_  
Frederick Buttrell  
CEO

Decision and Order

**Non-Public  
Appendix B**

**Monitor Compensation Agreement**

**[Redacted From the Public Record Version, But Incorporated  
By Reference]**

**DECISION**

The Federal Trade Commission (“Commission”) initiated an investigation of the proposed acquisition by Respondent Air Medical Group Holdings, Inc. (“AMGH”), controlled by Respondent KKR North America Fund XI (AMG) LLC (“KKR”), of Respondent AMR Holdco, Inc. (“AMR”) (collectively, “Respondents”). The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

Respondents and the Bureau of Competition executed an agreement (“Agreement Containing Consent Order” or “Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and Order to Maintain Assets.

## Decision and Order

The Commission considered the matter and determined that it had reason to believe that Respondents have violated the said Acts, and that a complaint should issue stating its charges in that respect. The Commission accepts the executed Consent Agreement and places it on the public record for a period of 30 days for the receipt and consideration of public comments. Now, in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission issues its Complaint, makes the following jurisdictional findings, and issues the following Decision and Order (“Order”):

1. Respondent AMGH is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 209 State Highway 121 Bypass, Suite 21, Lewisville, Texas 75067.
2. Respondent AMR is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its corporate office and principal place of business located at 6363 S. Fiddlers Green Circle, 14<sup>th</sup> Floor, Greenwood Village, Colorado 80111.
3. Respondent KKR North America Fund XI (AMG) LLC is a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware, with its office and principal place of business located at 9 West 57<sup>th</sup> Street, Suite 4200, New York, New York 10019.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the Respondents and the proceeding is in the public interest.

## Decision and Order

**ORDER****I.**

**IT IS HEREBY ORDERED** that, as used in this Order, the following definitions shall apply:

- A. “AMGH” means Air Medical Group Holdings Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by Air Medical Group Holdings, Inc. (including AMR, after the Acquisition), and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “AMR” means AMR Holdco, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by AMR Holdco, Inc., including but not limited to Air Hawaii, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “AirMD” means AirMD, LLC, a limited liability company organized, existing, and doing business under, and by virtue of, the laws of the State of Kansas, with its corporate office and principal place of business located at 3445 N. Webb Road, Wichita, Kansas 67226.
- D. “KKR” means KKR North America Fund XI (AMG) LLC, its directors, officers, employees, agents, representatives, successors, and assigns; and the subsidiaries, divisions, groups, and affiliates in each case controlled by KKR North America Fund XI (AMG) LLC, including but not limited to AMGH, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

## Decision and Order

- E. “Commission” means the Federal Trade Commission.
- F. “Acquirer” means (i) AirMD or (ii) any other Person that acquires the Air Ambulance Assets and Ground Ambulance Assets pursuant to this Order.
- G. “Acquisition” means the proposed acquisition described in the Stock Purchase Agreement by and among Air Medical Group Holdings, Inc., and AMR Holdco Inc., dated August 7, 2017.
- H. “Acquisition Date” means the date the Acquisition is consummated.
- I. “Air Ambulance Assets” means all of Respondents’ right, title, and interest in and to all property and assets, wherever located, relating to the Air Ambulance Business, including, but not limited to:
1. the AMR Aircraft;
  2. the AMR Air Property Leases;
  3. all Contracts and all outstanding offers or solicitations to enter into any Contract (and all rights thereunder and related thereto), to the extent transferable, and at the Acquirer’s option;
  4. all Equipment;
  5. all consents, licenses, registrations, or permits issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, if any, and all pending applications therefor or renewals thereof, to the extent assignable;
  6. all data and Records, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records,



## Decision and Order

equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, notices, orders, inquiries, correspondence, and other similar documents and Records; and

## 7. Business Records.

*Provided, however,* that Air Ambulance Assets does not include Excluded Assets.

- J. “Air Ambulance Business” means the business conducted by Respondent AMR related to fixed wing inter-facility air medical transports originating and terminating in the State of Hawaii, including ground ambulances used in support of such fixed wing inter-facility air medical transports.
- K. “Air Ambulance Employee” means any individual (i) employed by Respondent AMR on a full-time, part-time, or contract basis at any time as of, and after, August 8, 2017, the date of the announcement of the Acquisition and, (ii) whose job responsibilities relate primarily to the Air Ambulance Business.
- L. “AirMD Acquisition Agreement” means the asset purchase agreement between AMR Holdco, Inc., and AirMD, LLC, dated February 23, 2018, including related ancillary agreements, amendments, schedules, exhibits, and attachments, thereto, that have been approved by the Commission to accomplish the requirements of this Order.
- M. “AMR Aircraft” means all of Respondent AMR’s right, title, and interest in the 3 airplanes bearing registration numbers:
  - 1. N911ZC;
  - 2. N911ZD; and

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## 3. N911ZE.

- N. “AMR Air Property Leases” mean (i) Rental Agreement, dated as of March 14, 2013, for the property located at 35 Kolopua Place, Wailuku, Hawaii 96793, (ii) Parking Permit No. PP-14-M003, dated May 21, 2014, by and between the State of Hawaii Department of Transportation, Airports Division and Air Ambulance Specialists, Inc., (iii), Parking Permit No. PP-14-M001, dated January 3, 2014, by and between the State of Hawaii Department of Transportation, Airports Division and Air Ambulance Specialists, Inc., (iv) Parking Permit No. PP-15-S292, dated June 30, 2015, by and between the State of Hawaii Department of Transportation, Airports Division and Air Ambulance Specialists, Inc., (v) Rental Agreement, dated as of July 7, 2014, by and between Lori Hara and Jordan Hara and AMR, (vi) Sublease, dated as of February 1, 2014, by and between Castle & Cooke Homes Hawaii, Inc. d/b/a Castle & Cooke Aviation Honolulu and International Life Support, Inc. d/b/a AMR Air Hawaii, as amended by the First Amendment, effective as of July 1, 2015, the Second Amendment, effective as of July 1, 2016, the Third Amendment, effective as of February 14, 2017, and the Fourth Amendment, effective as of July 1, 2017, (vii) Parking Permit No. PP-14-M004, dated September 22, 2014, by and between the State of Hawaii Department of Transportation, Airports Division and Air Ambulance Specialists, Inc., (viii) Indenture of Sublease, dated June 1, 2014, by and between Pacific Aviation Services, Inc. and AMR Air Ambulance.
- O. “AMR Non-Air Business” means all businesses conducted by Respondent AMR, including the business conducted by Respondent AMR related to 911 and private ground ambulance-related services in the State of Hawaii (excluding the Air Ambulance Business and Ground Ambulance Assets).

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- P. “Business Records” means all information, books and Records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.
- Q. “CON” means a certificate of need reviewed by the Hawaii State Health Planning and Development Agency, or any other agency in the State of Hawaii.
- R. “Confidential Business Information” means all information owned by, or in the possession or control of, Respondents, that is not in the public domain and that is related to the Air Ambulance Assets or Ground Ambulance Assets. For avoidance of doubt, Confidential Business Information does not include any information related to any Excluded Assets.
- S. “Contract” means any agreement, contract, lease, license agreement, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding with third parties.
- T. “Direct Cost” means cost not to exceed the cost of labor, material, travel, and other expenditures to the

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extent the costs are directly incurred to provide Support Services. “Direct Cost” to an Acquirer for its use of any of Respondents’ employees’ labor shall not exceed the then-current average wage rate for such employee, including benefits.

- U. “Divestiture Agreement” means (i) the AirMD Acquisition Agreement or (ii) any other agreement between Respondents (or a Divestiture Trustee) and an Acquirer that receives the prior approval of the Commission to divest the Air Ambulance Assets and Ground Ambulance Assets, including all related ancillary agreements, schedules, exhibits, and attachments thereto that have received the Commission’s prior approval.
- V. “Divestiture Date” means the date on which Respondents (or the Divestiture Trustee) close the transaction to divest the Air Ambulance Assets to an Acquirer.
- W. “Divestiture Trustee” means the Person appointed by the Commission pursuant to Paragraph VI. of this Order.
- X. “Equipment” means all tangible personal property of every kind owned or leased by Respondents in connection with the operation of the Air Ambulance Assets, including, but not limited to all: support vehicles, medical equipment, computers, office furniture, office supplies, parts, tools, supplies, and all other items of equipment or tangible personal property of any nature or other systems used in the operation of the Air Ambulance Assets, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

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- Y. “Excluded Assets” means:
1. working capital, including cash, prepaid expenses and accounts receivable accrued or prepaid by or owned by Respondents prior to the date of completion of the Acquisition;
  2. real property (excluding the AMR Air Property Leases);
  3. Equipment relating to and used predominantly by the AMR Non-Air Business prior to the Acquisition;
  4. Business Records relating to both the operation of the Air Ambulance Business and the AMR Non-Air Business prior to the Acquisition; provided however, that Respondents shall provide copies of those portions of Business Records that relate to the Air Ambulance Business;
  5. patient care records;
  6. sales and marketing materials relating to both the operation of the Air Ambulance Business and the AMR Non-Air Business prior to the Acquisition; *provided, however,* Respondents shall provide copies of those portions of sales and marketing materials that relate to the Air Ambulance Business;
  7. Intellectual Property owned or licensed (as licensor or licensee), including all trademarks;
  8. AMR’s electronic medical records charting hardware and software infrastructure;
  9. inventory of medical supplies;
  10. all National Provider Identifier, Medicare, Medicaid, and other provider billing numbers; and

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## 11. State of Hawaii aeromedical license.

- Z. “Ground Ambulance Assets” means the following 4 ground ambulances, or other ambulances of similar type and in the same condition as each existed on the Acquisition Date:
1. Ford Type II Ambulance 2013 VIN No. 1FDSS3ES7DDA75187;
  2. Ford Type II Ambulance 2007 VIN. No. 1FDSS34P47DA94877;
  3. Ford Type III Ambulance 2002 VIN. No. 1FDWE35F92HA61194; and
  4. Ford Type III Ambulance 2009 VIN No. 1FDWE35P89DA66946.
- AA. “Intellectual Property” means all intellectual property, including (i) all patents, patent applications and inventions and discoveries that may be patentable; (ii) all registered and unregistered copyrights in both published works and unpublished works; (iii) all know-how, trade secrets, and confidential or proprietary information in customer lists, software, technical information, data, process technology, plans, drawings, and blue prints; and (iv) all rights in internet web sites and internet domain names.
- BB. “Monitor” means the Person appointed by the Commission pursuant to Paragraph V. of this Order.
- CC. “Order to Maintain Assets” means the Order to Maintain Assets incorporated into and made a part of the Consent Agreement.
- DD. “Person” means any individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust,

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unincorporated association, joint venture or other entity or a governmental body.

- EE. “Record” means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium.
- FF. “Support Services” means administrative and technical services and training related to the operation of the Air Ambulance Business as of the Divestiture Date, including but not limited to, such services and training relating to call in-take and dispatch services, integration of billing and collection systems, any integration of Intellectual Property, and mechanical and maintenance support.

**II.****IT IS FURTHER ORDERED** that:

- A. No later than 10 days after the Acquisition Date, Respondents shall divest: (1) the Air Ambulance Assets, and (2) an option to acquire the Ground Ambulance Assets, absolutely and in good faith, to AirMD pursuant to the AirMD Acquisition Agreement.
- B. No later than 4 years from the Divestiture Date, at the option of AirMD, Respondents shall divest up to 4 of the Ground Ambulance Assets, absolutely and in good faith, to AirMD pursuant to the AirMD Acquisition Agreement.

*Provided, however,* if, in consultation with the Monitor, the Acquirer reasonably determines that any of the Ground Ambulance Assets identified in this Order has been altered or its condition deteriorated in any material way, Respondents shall substitute the ambulance with, and transfer to the Acquirer, any other ground ambulance of Respondents, located in the State of Hawaii, that is in the same condition and

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equivalent in type, make, model, age, mileage, and wear and tear, as the substituted ambulance identified in Paragraph I.Z., as of the Acquisition Date.

- C. If Respondents have divested the Air Ambulance Assets and Ground Ambulance Assets to AirMD prior to the date this Order becomes final, and if, at the time the Commission determines to make this Order final, the Commission notifies Respondents that:
1. AirMD is not acceptable as the acquirer of the Air Ambulance Assets and Ground Ambulance Assets, then Respondents shall immediately rescind the AirMD Acquisition Agreement, and shall divest the Air Ambulance Assets and Ground Ambulance Assets, no later than 120 days from the date this Order is issued, absolutely and in good faith, at no minimum price, to a Person that receives the prior approval of the Commission and in a manner that receives the prior approval of the Commission; or
  2. The manner in which the divestiture of the Air Ambulance Assets and Ground Ambulance Assets to AirMD was accomplished is not acceptable, the Commission may direct Respondents, or appoint a Divestiture Trustee, to effect such modifications to the manner of divestiture of the Air Ambulance Assets and Ground Ambulance Assets as the Commission may determine are necessary to satisfy the requirements of this Order.
- D. No later than the Divestiture Date, Respondents shall secure all consents, assignments, and waivers from all Persons that are necessary for the divestiture of the Air Ambulance Assets; *provided, however,* that Respondents may satisfy this requirement by certifying that the Acquirer has executed appropriate agreements directly with each of the relevant Persons; and *provided further* that in the event Respondents are unable to obtain any consent, assignment, or waiver required by this Paragraph, Respondents shall (i)



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provide such assistance as the Acquirer may reasonably request in its efforts to obtain the consent or (ii) with the acceptance of the Acquirer and the prior approval of the Commission, Respondents may substitute equivalent assets or arrangements.

- E. For a period of 4 years after the Divestiture Date, Respondents shall:
1. Not file or include in any communication, or influence any other party to file or include in any communication, formally or informally, directly or indirectly, objections to or negative comments about, any application or appeals therefrom, filed by Acquirer, for a ground ambulance CON in Hawaii, *provided, however*, that any such CON application is for the purpose of providing ground ambulance services in connection with and in support of inter-facility air medical transports relating to the Air Ambulance Assets;
  2. In any filing, submission, or communication by Respondents, formally or informally, directly or indirectly, in response to any request for information or other communication relating to Acquirer's CON Application, Respondents shall support any such CON Application described in Paragraph II.E.1.; and
  3. Provide reasonable assistance to, and a letter in support of, Acquirer, with respect to the CON application process and the submission by Acquirer of any such CON Application described in Paragraph II.E.1.
- F. Respondents shall:
1. At the request of Acquirer and in a manner that receives the prior approval of the Commission, for a period of 12 months from the Divestiture Date, provide Support Services sufficient to enable the

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Acquirer to operate the Air Ambulance Assets in substantially the same manner that Respondents have operated such assets prior to the Acquisition;

2. At the request of Acquirer and in a manner that receives the prior approval of the Commission, for a period of 12 months from the date Respondents divest any or all of the Ground Ambulance Assets to Acquirer, provide Support Services sufficient to enable the Acquirer to operate the Ground Ambulance Assets in substantially the same manner that Respondents have operated such assets prior to the Acquisition; and
3. Provide the Support Services required by this Paragraph at substantially the same level and quality as such services were provided by Respondents prior to the Acquisition.

*Provided, however,* that Respondents shall not require any Acquirer to pay compensation for Support Services that exceeds the Direct Cost of providing such goods and services.

- G. Notwithstanding any provision of this Order, Respondents shall permit any trademarks owned by Respondents, any abbreviation thereof, or any name, logo, or lettering which is similar, which are affixed on an aircraft on the Divestiture Date, to remain so affixed in the operation of the Air Ambulance Assets by the Acquirer for a period of up to 6 months from the Divestiture Date.
- H. Notwithstanding any provision of this Order, Respondents shall permit any trademarks owned by Respondents, any abbreviation thereof, or any name, logo, or lettering which is similar, which are affixed on the Ground Ambulance Assets at the time of divestiture of each of the Ground Ambulance Assets, to remain so affixed in the operation of the Ground Ambulance Assets for a period of up to 6 months from the date

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Respondents divest each of the Ground Ambulance Asset(s).

- I. Respondents shall cooperate with and assist Acquirer to evaluate and retain any and all Air Ambulance Employees necessary to operate the Air Ambulance Business in substantially the same manner as Respondents prior to the divestiture, including but not limited to:
  1. Not later than 20 days after Respondents sign the Consent Agreement, Respondents shall (i) identify all Air Ambulance Employees, (ii) allow Acquirer to inspect the personnel files and other documentation of all Air Ambulance Employees, to the extent permissible under applicable laws, and (iii) allow Acquirer an opportunity to interview any Air Ambulance Employee;
  2. Respondents shall (i) not offer any incentive to any Air Ambulance Employee to decline employment with Acquirer, (ii) remove any contractual impediments that may deter any Air Ambulance Employee from accepting employment with Acquirer, including but not limited to, any non-compete or confidentiality provision of employment or other contracts with Respondents that would affect the ability of such employee to be employed by Acquirer, and (iii) not otherwise interfere with the recruitment, hiring, or employment of any Air Ambulance Employee by Acquirer;
  3. Respondents shall (i) vest all current and accrued pension benefits as of the date of transition of employment with Acquirer for any Air Ambulance Employee who accepts an offer of employment from Acquirer and (ii) provide each Air Ambulance Employee with reasonable financial incentive as necessary to accept offers of employment with Acquirer; and

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4. For a period of 2 years after the Air Ambulance Assets are divested, Respondents shall not solicit the employment of any employee that is employed by Acquirer; *provided, however*, that a violation of this provision will not occur if: (i) the individual's employment has been terminated by Acquirer, (ii) Respondents hire an individual who responds to an advertisement for employees in newspapers, trade publications, or other media not targeted specifically at the employees, or (iii) Respondents hire employees who apply for employment with Respondents, so long as such employees were not solicited by Respondents in violation of this paragraph.
- J. The purpose of the divestiture is to ensure the continuation of the Air Ambulance Business as an ongoing viable business engaged in the same business in which the assets were engaged at the time of the announcement of the Acquisition, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint in this matter.

**III.****IT IS FURTHER ORDERED** that:

- A. From the date Respondents sign the Consent Agreement until the Respondents divest the Air Ambulance Assets and Ground Ambulance Assets to Acquirer, Respondents shall:
  1. Maintain each of the Air Ambulance Assets and Ground Ambulance Assets in substantially the same condition (except for normal wear and tear) as they existed at the time Respondents signed the Consent Agreement;
  2. Take such actions that are consistent with the past practices of Respondent AMR in connection with

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each Air Ambulance Asset and Ground Ambulance Asset, and that are taken in the ordinary course of business and in the normal day-to-day operations of the Air Ambulance Assets and Ground Ambulance Assets;

3. Keep available the services of the current officers, employees, and agents of Respondent AMR; and maintain the relations and goodwill with suppliers, payors, physicians, landlords, patients, employees, agents, and others having business relations with the Air Ambulance Assets and Ground Ambulance Assets;
  4. Preserve the Air Ambulance Assets and Ground Ambulance Assets as ongoing businesses and not take any affirmative action, or fail to take any action within Respondents' control, as a result of which the viability, competitiveness, and marketability of the Air Ambulance Assets or Ground Ambulance Assets would be diminished; and
  5. Not object to sharing with the Acquirer the payor and supplier contract terms relating to the Air Ambulance Assets and Ground Ambulance Assets: (i) if the payor or supplier consents in writing to such disclosure upon a request by the Acquirer, and (ii) if the Acquirer enters into a confidentiality agreement with Respondents not to disclose the information to any third party.
- B. The purposes of this Paragraph III is to: (1) preserve the Air Ambulance Assets and Ground Ambulance Assets as viable, competitive, and ongoing businesses until they are transferred to Acquirer, (2) prevent interim harm to competition pending the relevant divestitures and other relief, and (3) help remedy any anticompetitive effects of the Acquisition as alleged in the Commission's Complaint.

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**IV.****IT IS FURTHER ORDERED** that:

- A. Respondents shall (i) keep confidential (including as to Respondents' employees) and (ii) not use for any reason or purpose, any Confidential Business Information received or maintained by Respondents relating to the Air Ambulance Assets; *provided, however,* that Respondents may disclose or use such Confidential Business Information in the course of:
1. Performing its obligations or as permitted under this Order, or the Divestiture Agreement; or
  2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Air Ambulance Business, or as required by law.
- B. If disclosure or use of any Confidential Business Information is permitted to Respondents' employees or to any other Person under Paragraph IV.A. of this Order, Respondents and Respondents' employees shall not use or share, directly or indirectly, any Confidential Business Information with any of Respondent's employees who operate, manage, or market, Respondents' air ambulance business that competes with the divested assets and business and shall limit such disclosure or use (i) only to the extent such information is required, (ii) only to those employees or Persons who require such information for the purposes permitted under Paragraph IV.A., and (iii) only after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

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**V.****IT IS FURTHER ORDERED** that:

- A. Rex Fujichaku shall serve as the Monitor pursuant to the agreement executed by the Monitor and Respondents and attached as Appendix B (“Monitor Agreement”) and Non-Public Appendix C (“Monitor Compensation”). The Monitor is appointed to assure that Respondents expeditiously comply with all of their obligations and perform all of their responsibilities as required by this Order.
- B. No later than one day after the Acquisition Date, Respondents shall transfer to the Monitor all rights, powers, and authorities necessary to permit the Monitor to perform his duties and responsibilities, pursuant to the Order and consistent with the purposes of the Order.
- C. Respondents shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:
  - 1. The Monitor shall (i) monitor Respondents’ compliance with the obligations set forth in this Order and (ii) act in a fiduciary capacity for the benefit of the Commission;
  - 2. Respondents shall (i) ensure that the Monitor has full and complete access to all Respondents’ personnel, books, records, documents, and facilities relating to compliance with this Order or to any other relevant information as the Monitor may reasonably request, and (ii) cooperate with, and take no action to interfere with or impede the ability of, the Monitor to perform her duties pursuant to this Order;
  - 3. The Monitor (i) shall serve at the expense of Respondents, without bond or other security, on

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such reasonable and customary terms and conditions as the Commission may set, and (ii) may employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

4. Respondents shall indemnify the Monitor and hold him harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of his duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Monitor's gross negligence or willful misconduct; and
  5. Respondents may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however,* that such agreement shall not restrict the Monitor from providing any information to the Commission.
- D. The Monitor shall report in writing to the Commission (i) every 30 days after the Acquisition Date for a period of one year, (ii) every 90 days thereafter until Respondents have completed all obligations required by Paragraph II. of this Order (including a final report when Respondents have completed all such obligations), and (iii) at any other time as requested by the staff of the Commission, concerning Respondents' compliance with this Order.
- E. The Commission may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a



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confidentiality agreement related to Commission materials and information received in connection with the performance of the Monitor's duties.

- F. If at any time the Commission determines that the Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve, the Commission may appoint a substitute Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld:
1. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of the substitute Monitor within 5 days after notice by the staff of the Commission to Respondents of the identity of any substitute Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor; and
  2. Respondents shall, no later than 5 days after the Commission appoints a substitute Monitor, enter into an agreement with the substitute Monitor that, subject to the approval of the Commission, confers on the substitute Monitor all the rights, powers, and authority necessary to permit the substitute Monitor to perform her duties and responsibilities pursuant to this Order on the same terms and conditions as provided in this Paragraph V.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Order.

**VI.**

**IT IS FURTHER ORDERED** that:

- A. If Respondents have not fully complied with the divestiture and other obligations as required by

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Paragraph II. of this Order, the Commission may appoint a Divestiture Trustee to divest the Air Ambulance Assets and Ground Ambulance Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order.

- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the relevant assets in accordance with the terms of this Order. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the Respondents to comply with this Order.
- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Within 10 days after appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to

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effect the relevant divestiture or other action required by the Order.

- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Order, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the relevant assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed, and to take such other action as may be required to divest the Divestiture Assets.
  2. The Divestiture Trustee shall have 12 months from the date the Commission approves the trust agreement described herein to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve 12 month period, the Divestiture Trustee has submitted a plan of divestiture or believes that the divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed Divestiture Trustee, by the court.
  3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall

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cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays in divestiture caused by Respondents shall extend the time for divestiture under this Paragraph VI in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however*, if the Divestiture Trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the Divestiture Trustee shall divest to the acquiring entity selected by Respondents from among those approved by the Commission; *provided further, however*, that Respondents shall select such entity within 5 days of receiving notification of the Commission's approval.
5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The

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Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed Divestiture Trustee, by the court, of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of the Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a Commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee. For purposes of this Paragraph VI.E.6., the term "Divestiture Trustee" shall include all Persons retained by the Divestiture Trustee pursuant to Paragraph VI.E.5. of this Order.
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.
8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 60 days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

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9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VI.
- H. The Divestiture Trustee appointed pursuant to this Order may be the same Person appointed as the Monitor pursuant to the relevant provisions of this Order.
- I. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

**VII.****IT IS FURTHER ORDERED** that:

- A. The Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof, and any failure by Respondents to comply with the terms

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of the Divestiture Agreement shall constitute a violation of this Order; provided, however, that the Divestiture Agreement shall not limit, or be construed to limit, the terms of this Order. To the extent any provision in the Divestiture Agreement varies from or conflicts with any provision in the Order such that Respondents cannot fully comply with both, Respondents shall comply with the Order.

- B. Respondents shall not modify, replace, or extend the terms of the Divestiture Agreement after the Commission issues the Order without the prior approval of the Commission, except as otherwise provided in Commission Rule 2.41(f)(5), 16 C.F.R. § 2.41(f)(5).

**VIII.****IT IS FURTHER ORDERED** that:

- A. Respondents shall:
1. notify Commission staff via email at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) of the Acquisition Date no later than 5 days after the Acquisition Date, and;
  2. submit the complete Divestiture Agreement to the Commission at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov) no later than 30 days after the Divestiture Date.
- B. Respondents shall submit verified written reports (“compliance reports”) in accordance with the following:
1. Respondents shall submit:
    - a. an interim compliance report 30 days after the Order is issued, every 30 days thereafter until Respondents have fully complied with the provisions of Paragraph II.A. of this Order, and

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every 60 days thereafter until Respondents have fully complied with the provisions of Paragraph II.B. of this Order;

- b. an annual compliance report one year after the date this Order is issued, and annually for the next 3 years on the anniversary of that date; and
  - c. additional compliance reports as the Commission or its staff may request;
2. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and has complied with this Order, including, as applicable:
- a. the status of the divestiture and transfer of the required assets; and
  - b. a description of all substantive contacts regarding any CON application by Acquirer.
- C. Respondents shall verify each compliance report with a notarized signature or sworn statement of the Chief Executive Officer or other officer or employee specifically authorized to perform this function, or self-verified in the manner set forth in 28 U.S.C. § 1746. Respondents shall submit an original and 2 copies of each compliance report as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a), including a paper original submitted to the Secretary of the Commission and electronic copies to the Secretary at [ElectronicFilings@ftc.gov](mailto:ElectronicFilings@ftc.gov) and to the Compliance Division at [bccompliance@ftc.gov](mailto:bccompliance@ftc.gov). In addition, Respondents shall provide a copy of each compliance report to the Monitor if the Commission has appointed one in this matter.



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**IX.**

**IT IS FURTHER ORDERED** that Respondents shall notify the Commission at least 30 days prior to:

- A. Any proposed dissolution of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.;
- B. Any proposed acquisition, merger, or consolidation of Respondents KKR North America Fund XI (AMG) LLC or Air Medical Group Holdings, Inc.; or
- C. Any other change in Respondents, including assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

**X.**

**IT IS FURTHER ORDERED** that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and five days' notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of Respondents and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of Respondents related to compliance with this Order, which copying services shall be provided by Respondents at the request of the authorized representative of the Commission and at the expense of Respondents; and

## Decision and Order

- B. To interview officers, directors, or employees of Respondents, who may have counsel present, regarding such matters.

**XI.**

**IT IS FURTHER ORDERED** that this Order shall terminate on April 24, 2028.

By the Commission.

**Non-Public Appendix A  
Divestiture Agreement**

**[Redacted From the Public Record Version, But Incorporated  
By Reference]**

Decision and Order

## **Appendix B Monitor Agreement**

### **MONITOR AGREEMENT**

This Monitor Agreement (this "Agreement"), entered into this 16 day of February, 2018, by and among Bronster Fujichaku Robbins, A Law Corporation by its director, Rex Fujichaku (the "Monitor") and Air Medical Group Holdings, Inc. ("AMGH") (the Monitor and AMGH together, the "Parties") provides as follows:

WHEREAS the Federal Trade Commission (the "Commission"), in the Matter of Air Medical Group Holdings, Inc.'s proposed Acquisition of American Medical Response ("AMR"), File No. 171-0217, has accepted or will shortly accept for public comment an Agreement Containing Consent Orders incorporating a Decision and Order and an Order to Hold Separate and Maintain Assets (collectively, the "Orders"), which, among other things, requires AMGH to divest AMR's Hawaii fixed wing air ambulance business and certain related assets (the "AMR Assets"), as defined in the Orders, and contemplates the appointment of a Monitor to monitor AMGH's compliance with its obligations under the Orders;

WHEREAS, the Commission is expected to accept the Agreement Containing Consent Orders and appoint Monitor pursuant to the Orders to monitor AMGH's compliance with the terms of the Orders, and Monitor has consented to such appointment;

WHEREAS, the Orders further provide that AMGH shall execute an agreement, subject to the prior approval of the Commission, conferring all the rights and powers necessary to permit Monitor to carry out its duties and responsibilities pursuant to the Orders;

WHEREAS, this Agreement, although executed by Monitor and AMGH, is not effective for any purpose, including but not limited to imposing rights and responsibilities on AMGH or Monitor under the Orders, except for those obligations under the confidentiality provisions herein, until it has been approved by the Commission; and

WHEREAS, the Parties to this Agreement intend to be legally bound, subject only to the Commission's approval of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

All capitalized terms used in this Agreement and not specifically defined herein shall have the respective definitions given to them in the Orders.

### **ARTICLE I**

1.1 Powers of the Monitor. Monitor shall have all of the powers and responsibilities conferred upon Monitor by the Orders, including but not limited to monitoring AMGH's compliance with the divestiture, asset maintenance obligations, and other related requirements of the Orders.

1.2 Access to Relevant Information and Facilities. Subject to any demonstrated legally recognized privilege, Monitor shall have full and complete access to AMGH's personnel,

## Decision and Order

books, documents, records kept in the normal course of business, facilities and technical information, and such other relevant information as Monitor may reasonably request, related to AMGH's compliance with the obligations of AMGH under the Orders in this matter. Documents, records and other relevant information are to be provided in an electronic format if they exist in that form. AMGH shall cooperate with any reasonable request of Monitor. Monitor shall give AMGH reasonable notice of any request for such access or such information and shall attempt to schedule any access or requests for information in such a manner as will not unreasonably interfere with AMGH's operations. At the request of the Monitor, AMGH shall promptly arrange meetings and discussions, including tours of relevant facilities, at reasonable times and locations between the Monitor and employees of AMGH who have knowledge relevant to the proper discharge of its responsibilities under the Orders.

1.3 Compliance Reports. AMGH shall provide Monitor with copies of all compliance reports filed with the Commission in a timely manner, but in any event, no later than five (5) business days after the date on which AMGH files such report with the Commission.

1.4 Confidentiality. Monitor shall:

(a) maintain the confidentiality of all confidential information provided to the Monitor by AMGH, the acquirer of the AMR Assets, any supplier or customer of AMGH, or the Commission ("Confidential Information"), and shall use such information only for the purpose of discharging its obligations as Monitor and not for any other purpose, including, without limitation, any other business, scientific, technological, or personal purpose. Monitor may disclose Confidential Information only to (i) persons employed by or working with Monitor pursuant to the Orders or (ii) persons employed at the Commission;

(b) require any consultants, accountants, attorneys, and any other representatives and/or assistants retained by Monitor to assist in carrying out the duties and responsibilities of Monitor to execute a confidentiality agreement, which AMGH will provide if requested, that requires such third parties to treat Confidential Information with the same standards of care and obligations of confidentiality to which the Monitor must adhere under this Agreement;

(c) act in a fiduciary capacity for the benefit of the Commission;

(d) maintain a record and inform the Commission of all third parties (other than representatives of the Commission) to whom Confidential Information has been disclosed;

(e) for a period of five (5) years after the termination of this Agreement, maintain the confidentiality of all other aspects of the performance of its duties under this Agreement and not disclose any Confidential Information relating thereto; and

(f) upon the termination of the Monitor's duties under this Agreement, the Monitor shall consult with the Commission's staff regarding disposition of any written and electronic materials (including materials that AMGH provided to the Monitor) in the possession or control of the Monitor that relate to the Monitor's duties, and the Monitor shall dispose of such materials, which may include sending such materials to the Commission's staff, as directed by

## Decision and Order

the staff. In response to a request by AMGH to return or destroy materials that AMGH provided to the Monitor, the Monitor shall inform the Commission's staff of such request and, if the Commission's staff do not object, shall comply with AMGH's request. Notwithstanding the foregoing, the Monitor shall not be required to return or destroy confidential information contained in an archived computer back-up system for its disaster recovery and/or security purposes, and it may retain a copy of confidential information, subject to the terms of this Agreement, in accordance with its internal record retention procedures for legal or regulatory purposes. Nothing herein shall abrogate the Monitor's duty of confidentiality, which includes an obligation not to disclose any non-public information obtained while acting as a Monitor for ten (10) years after termination of this Agreement. For the avoidance of doubt, the expiration of the ten year period following the termination of this Agreement shall not abrogate the duties under this Section 1.4 which prevent the Monitor's disclosure of any Confidential Information.

For the purpose of this Agreement, information shall not be considered confidential or proprietary to the extent that it is or becomes part of the public domain (other than as the result of any action by the Monitor or by any employee, agent, affiliate or consultant of the Monitor), or to the extent that the recipient of such information can demonstrate that such information was already known to the recipient at the time of receipt from a source other than the Monitor, AMGH, or any director, officer, employee, agent, consultant or affiliate of the Monitor or AMGH, when such source was not known to recipient after due inquiry to be restricted from making such disclosure to such recipient.

## ARTICLE II

2.1 Retention and Payment of Counsel, Consultants, and other Assistants. Monitor shall have the authority to employ, at the cost and expense of AMGH, such attorneys, consultants, accountants, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities pursuant to the Orders. Prior to engaging any such parties and prior to commissioning additional work to be performed by a party who has already been so engaged, Monitor shall notify AMGH of its intention to do so, and provide an estimate of the anticipated costs.

2.2 Monitor Compensation. AMGH shall pay Monitor in accordance with the fee schedule and procedure attached as Confidential Appendix A for all reasonable time spent in the performance of the Monitor's duties, including all monitoring activities related to the efforts of the acquirer of the AMR Assets, all work in connection with the negotiation and preparation of this Agreement, and all reasonable and necessary travel time.

(a) In addition, AMGH shall pay: (i) all out-of-pocket expenses reasonably incurred by Monitor in the performance of its duties under the Orders; and (ii) all reasonable fees of, and disbursements reasonably incurred by, any advisor appointed by Monitor pursuant to the first paragraph in Article II.

(b) The Monitor shall have full and direct responsibility for compliance with all applicable laws, regulations and requirements pertaining to work permits, income and social

## Decision and Order

security taxes, unemployment insurance, worker's compensation, disability insurance, and the like.

2.3 Monitor's Indemnification; Limitation on Liability. AMGH shall indemnify and hold harmless Monitor and its employees and agents against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from Monitor's gross negligence or willful misconduct. Monitor shall not be liable hereunder for any amount in excess of the fees paid to it, except in the event of Monitor's gross negligence, willful misconduct or fraud. Monitor shall not be liable hereunder for any incidental, consequential, special or punitive damages, regardless of whether it has been informed of the possibility thereof.

2.4 Disputes. In the event of a disagreement or dispute between AMGH and Monitor concerning AMGH's obligations under the Orders, and, in the event that such disagreement or dispute cannot be resolved by the Parties, either party may seek the assistance of the individual in charge of the Commission's Compliance Division.

2.5 Conflicts of Interest. In the event that, during the term of this Agreement, Monitor becomes aware it has or may have a conflict of interest that may affect, or could have the appearance of affecting, performance by Monitor or persons employed by, or working with, Monitor, of any of its duties under this Agreement, Monitor shall promptly inform AMGH and the Commission of any such conflict or potential conflict.

**ARTICLE III**

3.1 Termination. This Agreement shall terminate the earlier of: (a) the expiration or termination of the Orders; (b) AMGH's receipt of written notice from the Commission that the Commission has determined that Monitor has ceased to act or failed to act diligently, or is unwilling or unable to continue to serve as Monitor; (c) with at least thirty (30) days advance notice to be provided by Monitor to AMGH and to the Commission, upon resignation of the Monitor; or (d) when the Monitor completes its Final Report pursuant to the Decision and Order; provided, however, that the Commission may require that AMGH extend this Agreement as may be necessary or appropriate to accomplish the purposes of the Orders. If this Agreement is terminated for any reason, the confidentiality obligations set forth in this Agreement will remain in force, as will the provisions of Articles 2.2 and 2.3 of this Agreement.

3.2 Monitor's Removal. If the Commission determines that Monitor ceases to act or fails to act diligently and consistent with the purpose of the Orders, AMGH shall, upon written request of the Commission, terminate this Agreement and appoint a substitute Monitor, subject to Commission approval and consistent with the Orders.

3.3 Governing Law. This Agreement and the rights and obligations of the Parties hereunder shall in all respects be governed by the substantive laws of the State of New York, including all matters of construction, validity and performance. The Orders shall govern this

### Decision and Order

Agreement and any provisions herein which conflict or are inconsistent with the Orders may be declared null and void by the Commission and any provision not in conflict shall survive and remain a part of this Agreement.

3.4 Disclosure of Information. Nothing in this Agreement shall require AMGH to disclose any material or information that is subject to a legally recognized privilege or that AMGH is prohibited from disclosing by reason of law or an agreement with a third party.

3.5 Assignment. This Agreement may not be assigned or otherwise transferred by AMGH or Monitor without the consent of AMGH and Monitor and the approval of the Commission. Any such assignment or transfer shall be consistent with the terms of the Orders.

3.6 Modification. No amendment, modification, termination, or waiver of any provision of this Agreement shall be effective unless made in writing, signed by all Parties, and approved by the Commission. Any such amendment, modification, termination, or waiver shall be consistent with the terms of the Orders.

3.7 Approval by the Commission. This Agreement shall have no force or effect until approved by the Commission, other than the Parties' obligations under the confidentiality provisions herein.

3.8 Entire Agreement. This Agreement, and those portions of the Orders incorporated herein by reference, constitute the entire agreement of the Parties and supersede any and all prior agreements and understandings between the Parties, written or oral, with respect to the subject matter hereof.

3.9 Duplicate Originals. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

3.10 Section Headings. Any heading of the sections is for convenience only and is to be assigned no significance whatsoever as to its interpretation and intent.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

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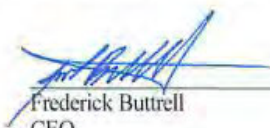
**MONITOR**

Bronster Fujichaku Robbins, A Law Corporation

\_\_\_\_\_  
Rex Fujichaku  
Director

**Respondent**

Air Medical Group Holdings, Inc.

  
\_\_\_\_\_  
Frederick Buttrell  
CEO



Decision and Order

**MONITOR**

**Respondent**

Bronster Fujichaku Robbins, A Law Corporation

Air Medical Group Holdings, Inc.



\_\_\_\_\_  
Rex Fujichaku  
Director

\_\_\_\_\_  
Frederick Buttrell  
CEO

Analysis to Aid Public Comment

**Non-Public Appendix C**  
**Monitor Compensation Agreement**

**[Redacted From the Public Record Version, But Incorporated  
By Reference]**

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC  
COMMENT**

**I. Introduction**

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Orders (“Consent Agreement”) with KKR North America Fund XI (AMG), LLC, Air Medical Group Holdings, Inc., (“AMGH”), and AMR Holdco, Inc. (“AMR”). The Consent Agreement is intended to remedy the anticompetitive effects that likely would result from AMGH’s proposed acquisition of AMR (the “Acquisition”). Under the terms of the Consent Agreement, AMR must sell its inter-facility air medical transport services business in Hawaii. The Acquisition, if consummated, would result in the consolidation of the only two inter-facility air medical transport service providers in Hawaii.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make final the Decision and Order (“Order”).

## Analysis to Aid Public Comment

**II. The Parties****A. AMGH**

AMGH is wholly owned by KKR North America Fund XI (AMG) LLC. It is likely the largest provider of air ambulance services in the United States with 270 operating locations in 38 states. AMGH operates as Hawaii Life Flight in Hawaii.

**B. AMR**

AMR is a wholly-owned subsidiary of Envision Healthcare and is the largest national ground ambulance provider in the United States, but also provides air ambulance services in several locations. In Hawaii, it provides both ground ambulance services and inter-facility air ambulance transport services. To provide inter-facility air ambulance transport services, AMR partners with LifeTeam, an air ambulance provider located in the Midwest, which has the necessary FAA licenses and certifications, and provides the pilots and maintenance for the fixed-wing aircraft. AMR handles the marketing, medical personnel, and billing for the services provided.

**III. The Proposed Acquisition**

Under an agreement executed on August 7, 2017, AMGH will acquire 100 percent of the voting stock of AMR in a deal valued at approximately \$2.4 billion.

The Commission's Complaint alleges that the Acquisition, if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, by substantially lessening competition for the provision of inter-facility air ambulance transport services in Hawaii.

**IV. The Relevant Market and Structure of the Markets**

The Commission's Complaint alleges that the relevant product market in which to analyze the Acquisition is the provision of inter-facility air ambulance transport services. These services

## Analysis to Aid Public Comment

consist of air ambulance services that transfer patients between medical facilities on different islands, including from medical facilities with low acuity or limited patient treatment capabilities to those that can provide the appropriate medical and surgical care. The Commission's Complaint alleges that the relevant geographic market in which to analyze the effects of the Acquisition is the State of Hawaii.

The Commission's Complaint alleges that the Acquisition will increase concentration in an already highly concentrated market. AMGH and AMR are the only two providers of inter-facility air ambulance transport services in Hawaii.

**V. Effects of the Transaction**

According to the Commission, the effect of the Acquisition, if consummated, may be substantially to lessen competition and tend to create a monopoly in inter-facility air ambulance transport services, and increase the likelihood of the unilateral exercise of market power. The Acquisition would increase the likelihood that consumers, third-party payers, or government health care providers would be forced to pay higher prices or experience degradation in service or quality.

**VI. Entry Conditions**

The Commission's Complaint alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the Acquisition. The primary barrier to entry is the lack of sufficient volume of referrals and payments from third party payers to justify the economic risk of new entry, even if the parties imposed a small but significant non-transitory increase in price (SSNIP).

**VII. The Proposed Consent Agreement**

The proposed Consent Agreement remedies the anticompetitive concerns raised by the Acquisition by requiring AMR to sell its inter-facility air ambulance transport services business, including the assets that support that business, to AIRMD, LLC, dba LifeTeam. LifeTeam is a large, established

## Analysis to Aid Public Comment

company with experience in the industry. It is also the current operator of the FAA certified aircraft used by AMR for inter-facility air ambulance transport services in Hawaii, and thus very familiar with AMR's assets and operations in Hawaii. Under the proposed Consent Agreement, AMR will divest to LifeTeam the four-fixed wing aircraft it uses to fly patients inter-island, support LifeTeam's application for a Certificate of Need with the State of Hawaii to operate ground ambulances, and offer LifeTeam the option to purchase up to four ground ambulances from AMR. LifeTeam would use the ground ambulances to support its air ambulance transport service to transfer patients to and from medical facilities and the aircraft it operates.

The proposed Consent Agreement also contains an Order to Maintain Assets that will issue at the time the proposed Consent Agreement is accepted for public comment. The Order to Maintain Assets requires Respondents to operate and maintain the divestiture assets in the normal course of business through the date that the Respondents complete divestiture of the assets, thereby maintaining the economic viability, marketability, and competitiveness of the assets. The Order to Maintain Assets also authorizes the Commission to appoint an independent third party as a monitor to oversee the Respondents' compliance with the requirements of the proposed Consent Agreement.

The purpose of this analysis is to facilitate public comment on the proposed Consent agreement, and the Commission does not intend this analysis to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.