

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony Held (“Held”) and D & C International, Inc. (“D & C”), with Held and D & C each individually referred to as a “Party” and collectively as the “Parties.” Held represents he is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Held further represents that, after conducting his own investigation and upon receipt of certain documentation, he reasonably believes and alleges that D & C employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6, et seq. (“Proposition 65”). Ulta Salon Cosmetics & Fragrance, Inc. (“Ulta”) is a retailer that sold toiletry cases/bags distributed by D & C that are alleged to contain di(2-ethylhexyl)phthalate (“DEHP”), which Held contends are still being offered for sale in California, and is a person in the course of doing business for purposes of Proposition 65. In order to avoid the uncertainty of litigation, D & C desires to enter into a settlement agreement with Held.

### 1.2 General Allegations

Held alleges that D & C manufactures, distributes, and/or sells in the state of California toiletry cases/bags containing di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure warning required by Proposition 65. D & C denies this allegation. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### 1.3 Product Description

The products covered by this Settlement Agreement are toiletry cases/bags containing DEHP that are imported, manufactured, sold, or distributed for sale in California by D & C, including, but not limited to, the *Jasmine La Belle Cosmetics Crystal Nail Filer With Pouch* (#8

79596 00396 8) and the *Jasmine La Belle Cosmetics 5-pc Nail Kit (#8 79596 00407 1)* (collectively “Products”).

#### **1.4 Notices of Violation**

On or about April 8, 2011, Held served D & C and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Held’s allegation that D & C was in violation of Proposition 65 for failing to warn its customers and consumers in California that the Products expose users to DEHP. On or about October 11, 2011, Held served Ulta, D & C and certain requisite public enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”), a document that informed the recipients of Held’s allegation that D & C and Ulta were in violation of Proposition 65 for failing to warn their customers and consumers in California that the Products expose users to DEHP (collectively, “Notices”). To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission**

D & C denies the material, factual, and legal allegations contained in the Notices and maintains that all of the products it has imported, manufactured, sold or distributed for sale in California, including the noticed Products, have been, and are, in compliance with all laws. D & C also denies it is a person in the course of doing business for purposes of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by D & C of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by D & C of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by D & C. This section shall not, however, diminish or otherwise affect D & C’s obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean February 8, 2013.

**2. INJUNCTIVE RELIEF**

Commencing on the Effective Date and continuing thereafter, D & C shall only import, manufacture, sell or distribute for sale in California, Products containing a maximum of 1,000 parts per million (0.1%) DEHP content by weight in any accessible component analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

**3. MONETARY PAYMENTS**

**3.1 Payments Pursuant to Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code § 25249.7(b), D & C shall make two payments totaling \$10,000. Each payment shall be allocated according to California Health & Safety Code §§ 25249.12(c)(1) & (d), with seventy-five percent (75%) of the payment amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Held.

**3.1.1 Initial Payment**

D & C shall pay an initial payment in the amount of \$2,500 on or within two days of the Effective Date. D & C shall issue two separate checks to: (a) to “Office of Environmental Health Hazard Assessment” in the amount of \$1,875; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$625.

**3.1.2 Final Payment**

D & C shall pay a final payment, pursuant to Health & Safety Code § 25249.7(b), of \$7,500 on or before December 31, 2013. The final payment shall be waived in its entirety, however, if, no later than December 15, 2013, an officer of D & C provides Held with written certification that, as of the date of such certification and continuing into the future, D & C has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by D & C are Reformulated Products. Held must receive any such certification on or before December 15, 2013. The certification in lieu of a final payment provided by this Section is a material term, and time is of

the essence. D & C shall issue two separate checks for its final payment to: (a) “Office of Environmental Health Hazard Assessment” in the amount of \$5,625; and (b) “The Chanler Group in Trust for Anthony Held” in the amount of \$1,875.

### **3.2 Payment Procedures**

**3.2.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Held, pursuant to Section 3.1, shall be delivered to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

- (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1, shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyrics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.2.1(a), as proof of payment to OEHHA.

**3.2.2. Issuance of 1099 Forms.** After each payment pursuant to Section 3.1 above, D & C shall issue separate 1099 forms for D & C’s payments to: (a) the “Office of

Environmental Health Hazard Assessment” at the address listed in Section 3.2.1 above; and (b) “Anthony Held”, whose address and tax identification number shall be furnished, upon request, after this Settlement Agreement has been fully executed by the Parties.

### **3.3 Attorney Fees and Costs**

The Parties reached an accord on the compensation due to Held and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (“CCP”) § 1021.5 for all work performed in this matter. Under these legal principles, D & C shall pay \$31,000 for all fees and costs incurred investigating, bringing this matter to the attention of D & C, and negotiating a settlement in the public interest. D & C shall provide its payment in the form of a third check payable to “The Chanler Group,” issue a separate form 1099 for fees and costs (EIN: 94-3171522), and deliver payment on or before the Effective Date to Held’s counsel at the Payment Address provided in section 3.2.1 above.

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Held’s Release of D & C**

This Settlement Agreement is a full, final, and binding resolution between Held and D & C of any violation of Proposition 65 that was or could have been asserted by Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against D & C, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom D & C directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Ulta Salon, Cosmetics & Fragrance, Inc. (“Releasees”), based on the alleged failure to warn about exposures to DEHP contained in Products imported, manufactured, sold or distributed for sale by D & C in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Held on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all his rights to institute or participate in, directly or indirectly, any form of legal

action, and releases all claims that he may have against D & C and Releasees, including, without limitation, all actions and causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not limited to, investigation fees, expert fees, and attorneys' fees (but exclusive of fees and costs on appeal, if any) arising under Proposition 65 for unwarned exposures to DEHP in Products imported, manufactured, sold, or distributed for sale in California by D & C before the Effective Date.

#### **4.2 D & C's Release of Held**

D & C on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Held and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products before the Effective Date.

#### **5. POST-EXECUTION CONSENT JUDGMENT**

Within twelve months of the execution of this Settlement Agreement D & C may send Held a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek court approval of the settlement pursuant to Health and Safety Code § 25249.7, or as may be otherwise allowed by law. If requested, Held agrees to reasonably cooperate with D & C and to use his best efforts and that of his counsel to obtain approval of the Parties' settlement by a superior court in California and an entry of judgment in accordance with the terms set forth herein. Pursuant to Code of Civil Procedure §§ 1021 and 1021.5, D & C will reimburse Held and his counsel for the reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$5,000 exclusive of fees and cost that may be incurred on appeal. Within ten days after its receipt of a monthly invoice from Held's counsel for work performed under this section,

D & C will remit payment to The Chanler Group, at the address set forth in Section 3.3. Such additional fees shall be paid by D & C.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products and/or lead and/or DEHP, then D & C shall provide written notice to Held of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier to any Party by the other Party at the following addresses:

For D & C:

Dorothy Cao, Chief Executive Officer  
D & C International, Inc.  
12833 Schabarum Avenue  
Irwindale, CA 91706

with a copy to:

Steve T. Tsai, Esq.  
Law Offices of Steve Tsai, ALC  
27 Mauchly, Suite 212  
Irvine, CA 92618

For Held:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. POST-EXECUTION ACTIVITIES**

Held agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Within five business days of mutual execution of this Agreement, Held shall dismiss his complaint in the action Held v. Ulta Salon, Cosmetics & Fragrance, Inc. (Alameda County Case No. RG12634685) without prejudice and send a copy of the dismissal to counsel for D & C and counsel for Ulta. The Parties further acknowledge that they intend and agree that this Settlement Agreement shall be given full effect for purposes of precluding claims regarding the Products against D & C or the Releasees under Proposition 65.

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

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12. **AUTHORIZATION**

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

**AGREED TO:**

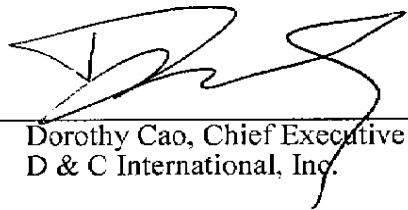
**APPROVED**  
By Tony Held at 6:41 pm, Feb 05, 2013

Date: \_\_\_\_\_

By: Anthony E Held  
Anthony Held

**AGREED TO:**

Date: 2/6/13

By:   
Dorothy Cao, Chief Executive Officer  
D & C International, Inc.