

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made this 1st day of February, 2009 by and between Christine Deubler ("Deubler" or "Plaintiff") and Ulta Salon, Cosmetics & Fragrance, Inc. ("Ulta" or "Defendant"). Deubler and Ulta are referred to individually as a "Party" and jointly as the "Parties."

WHEREAS, Deubler is an individual residing in California, who served Ulta and various public enforcement agencies with a Sixty Day Notice of Violation ("Notice") alleging that Ulta was in violation of Cal. Health & Safety Code section 25249.5 *et seq.* ("Proposition 65") for failure to provide warnings regarding alleged exposures to the Proposition 65-listed chemical, Di-n-butyl phthalate ("DBP"), in Ulta Nail Lacquer sold by Ulta in California (the "Products");

WHEREAS, on August 15, 2007, based on the Notice, Deubler filed a complaint (the "Complaint" or the "Action") in the public interest (entitled *Deubler v. Del Laboratories, Inc. et al.*, Los Angeles Superior Court No. BC376033) in which she asserted a single cause of action under Proposition 65 for alleged exposures to DBP in the Products without a warning;

WHEREAS, Ulta denies the allegations of the Notice and the Complaint, and specifically asserts that it never was subject to Proposition 65 because the levels of any DBP in the Products were well below the threshold limit requiring a warning, as determined by Ulta's expert;

WHEREAS, no evidence was introduced, nor were any rulings made by the Court, to the effect that the Products contained DBP in excess of the threshold limit requiring a warning;

WHEREAS, Ulta has reformulated the Products to be entirely free of DBP such that the current formulation of the product does not require a Proposition 65 warning;

WHEREAS, in order to avoid continued litigation, the Parties desire to enter into a full settlement of all claims that were or could have been raised in the Action based upon the facts alleged therein and to resolve the Action with finality;

NOW, THEREFORE, in consideration for the payments and releases given under this Agreement, and its other obligations, the Parties agree as follows:

1. **INJUNCTIVE RELIEF.** In the interest of the public, Ulta agrees to a permanent injunction wherein any Products that are manufactured by Ulta on or after February 1, 2009 for shipment to and sale in California shall not contain DBP. Notwithstanding the foregoing, on or after February 1, 2009, any Products sold or distributed for sale by Ulta in California shall not contain DBP, no matter when such Products may have been manufactured.

2. **RELEASE.**

2.1 Release by Deubler of Claims against Ulta. Deubler, on behalf of herself and her past and current agents, representatives, attorneys, contractors, investigators, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases and forever discharges any and all claims, including without limitation, all actions, and causes of action, suits, liabilities,

demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigative fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively, the "Claims"), against Ulta and its customers, distributors, wholesalers, resellers, licensors, licensees, auctioneers, retailers, purchasers and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Releasees") arising under Proposition 65 or any other statutory, common law or other claim.

2.2 Unknown Claims. Deubler waives and releases any and all Claims against the Releasees, and acknowledges that she has read and waives the provisions of California Civil Code Section 1542:

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

Deubler understands and acknowledges the significance of this waiver of Section 1542 of the Civil Code is that even if she discovers additional claims or causes of action, Deubler will not be able to enforce or prosecute those claims or causes of action. Furthermore, Deubler acknowledges that she intends these consequences even as to claims or causes of action that may exist as of the date of the release but which Deubler does not know exists, and which, if known, would materially affect Deubler's decision to execute this release, regardless of whether Deubler's lack of knowledge is a result of ignorance, oversight, error, negligence, or any other cause.

2.3 Release by Ulta of Claims against Deubler. Ulta waives all rights to institute any form of legal action and releases all claims against Deubler, or her attorneys or representatives, for any or all actions made by Deubler or her attorneys or representatives in the course of seeking enforcement of Proposition 65 in connection with this Action.

3. DISMISSAL OF ACTION. Within five (5) business days of Plaintiff's receipt of payment (as set forth in Paragraph 4 below), Deubler shall file with the Los Angeles Superior Court a request for dismissal of Ulta from the Action with prejudice.

4. REIMBURSEMENT OF ATTORNEYS' FEES AND EXPENSES. The Parties acknowledge that Plaintiff and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord under the private attorney general doctrine codified at Code of Civil Procedure §1021.5 for all work performed through the Court's approval of the Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure §1021.5, Defendant shall reimburse Plaintiff and her counsel for fees and costs, incurred as a result of investigating, bringing this matter to Defendant's attention, litigating and negotiating a settlement in the public interest, and seeking the Court's approval of this

Agreement. Based on the foregoing, Ulta agrees to reimburse Deubler in the amount of \$25,000 (Twenty-Five Thousand Dollars) for all attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made payable to Del Mar Law Group, LLP and delivered to the following address:

JL Sean Slattery, Esq.  
Del Mar Law Group, LLP  
2002 Jimmy Durante Blvd., Suite 100  
Del Mar, CA 92014

The payment shall be delivered to Plaintiff's counsel within ten (10) days after the fully executed Agreement is approved by the Court.

5. NO ADMISSION OF LIABILITY. Ulta denies the material factual and legal allegations contained in Plaintiff's Notice and Complaint and maintains that all Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Ulta of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or violation of law.

6. REPORTING. Deubler shall comply with all applicable reporting obligations related to the Products if required pursuant to Proposition 65 after this Agreement is executed by the Parties.

7. NOTICES. All correspondence required or given under this Agreement shall be provided by U.S. mail or overnight courier, and shall be sent as follows:

To Deubler:

JL Sean Slattery, Esq.  
Del Mar Law Group, LLP  
2002 Jimmy Durante Blvd., Suite 100  
Del Mar, CA 92014

To Ulta:

Lisa Bond, Esq.  
Richards Watson & Gershon  
355 South Grand Avenue, Suite 4000  
Los Angeles, CA 90071

8. INTEGRATION. The Parties have read this Agreement and have executed it freely and voluntarily. This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes any and all representations, promises, and understandings of any kind, whether oral or written. The Parties agree that this Agreement may not be altered, amended, modified, or otherwise changed except by a writing executed by the Parties.

9. DISPUTES. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Any action to enforce the terms of this Agreement shall be brought in the Superior Court for the County of Los Angeles, which the Parties agree shall have jurisdiction to enforce this Agreement. In any such dispute, the prevailing party shall be entitled to collect its reasonable attorneys' fees.

10. SUCCESSORS. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective Parties.

11. COUNTERPARTS. This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date(s) indicated below.

AGREED TO:

Date: 2-20-09

By: [Signature]

PLAINTIFF CHRISTINE DEUBLER

Print Name: CHRISTINE DEUBLER

AGREED TO:

Date: 2-19-09

By: [Signature]

DEFENDANT ULTA SALON,  
COSMETICS & FRAGRANCE, INC.

Print Name: Robert J. Futtman

Title: SVP, Gen'l Counsel & Secy.

APPROVED AS TO FORM:

Date: 2-20-2009

DEL MAR LAW GROUP, LLP

By: [Signature]

JL Sean Slattery  
Attorneys for Plaintiff  
CHRISTINE DEUBLER

APPROVED AS TO FORM:

Date: 2/19/09

RICHARDS WATSON & GERSON

By: [Signature]

Lisa Bond  
Attorneys for Defendant  
ULTA SALON, COSMETICS &  
FRAGRANCE, INC.