

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Dunn-Edwards Corporation (“Dunn-Edwards”) and Anthony Held, Ph.d., P.E. (“Held”), with Held and Dunn-Edwards collectively referred to as the “Parties.” Held is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Dunn-Edwards 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”).

#### 1.2 General Allegations

Held alleges that Dunn-Edwards has manufactured, distributed and/or sold in the State of California tools with vinyl/PVC grips containing concentrations of di(2-ethylhexyl)phthalate (“DEHP”) above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

#### 1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined as tools with vinyl/PVC grips containing DEHP including, but not limited to, *Xtreme Pro 4” Wall Stripper, WPS-4, UPC #8 39631 00198 4*, manufactured, imported and/or distributed for sale in the State of California by Dunn-Edwards.

#### 1.4 Notice of Violation

On or about June 4, 2014, Held served Dunn-Edwards and various public enforcement agencies with a “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Dunn-Edwards’s failure to warn consumers that the Products exposed users in the State of California to DEHP. To the best of the

Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

#### **1.5 No Admission**

Dunn-Edwards denies all factual and legal allegations contained in Held's Notice, and maintains that all of the products it has sold and/or offered for sale in the State of California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Dunn-Edwards 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 Dunn-Edwards of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Dunn-Edwards'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 the date this Settlement Agreement is signed by all Parties.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

### **2.1 Reformulation Standard**

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP, di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP") in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar nationally recognized accrediting organization (such laboratory referred hereinafter as an "Accredited Lab") pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP, DBP or BBP content in a solid substance. By entering into this Settlement

Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Dunn-Edwards by laws other than Proposition 65, nor do the Parties intend this Settlement Agreement to affect any defenses available to Dunn-Edwards under laws other than Proposition 65.

## 2.2 Vendor Notification Requirement

To the extent that it has not already done so, on the Effective Date, Dunn-Edwards shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products that will be sold or offered for sale to California citizens and shall instruct each Vendor to use reasonable efforts to provide Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. For purposes of this Settlement Agreement, the term "Vendor(s)" means a person or entity that manufactures, imports, distributes, sells, or otherwise supplies the Products or component parts of the Products to Dunn-Edwards, its parents, assignees, subsidiaries and/or affiliated entities under common ownership.

## 2.3 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Dunn-Edwards shall provide clear and reasonable warnings that state:

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

Dunn-Edwards may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual consumers within the State of California and institutional customers with nationwide distribution. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion.

### **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Dunn-Edwards shall pay a total of \$32,000 in accordance with this Section. Held shall allocate each penalty payment in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Held, as follows:

#### **3.1 Initial Civil Penalty**

Dunn-Edwards shall issue an initial civil penalty in the amount of \$8,000 within ten (10) days of the Effective Date payable to “Anthony Held, Client Trust Account.” All penalty payments shall be delivered to the address listed in Section 3.5 below. Dunn-Edwards shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section 3 that are not received within two business days of the due date.

#### **3.2 Final Civil Penalty**

Dunn-Edwards shall pay a final civil penalty of \$24,000 on or before June 1, 2015. The final civil penalty shall be waived in its entirety if an officer of Dunn-Edwards provides Held with written certification that Dunn-Edwards has met and continues to meet the Reformulation Standard specified in Section 2.1 above such that all Products distributed, shipped, sold or offered for sale in State of California as of the date of the certification and continuing into the future are Reformulated Products. Held must receive any such certification on or before May 15, 2015; time is of the essence.

Unless waived in its entirety, Dunn-Edwards shall issue payment for the final civil penalty payable to “Anthony Held, Client Trust Account.” Dunn-Edwards shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

#### **3.3 Representations**

Dunn-Edwards represents that the sales data and other information concerning its Product sales information, knowledge of DEHP, prior reformulation and/or warning efforts, that it

provided to Held in negotiating this Settlement Agreement was truthful to its knowledge at the time of execution of this Settlement Agreement and a material factor upon which Held relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within twelve months of the Effective Date, Held discovers and presents to Dunn-Edwards, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then Dunn-Edwards shall have 30 days to meet and confer regarding Held's contention. Should this 30 day period pass without any such resolution between Held and Dunn-Edwards, Held shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

#### **3.4 Reimbursement of Fees and Costs**

The parties acknowledge that Held and his 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. Held 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 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 § 1021.5, for all work performed through the mutual execution of this agreement. Dunn-Edwards shall pay \$27,000 for fees and costs incurred as a result of investigating, bringing this matter to Dunn-Edwards's attention, and negotiating a settlement in the public interest. Dunn-Edwards shall tender a check payable to "The Chanler Group," within ten (10) days of the Effective Date.

#### **3.5 Payment Procedures**

All payments owed to Held and his attorneys pursuant to Sections 3.1, 3.2 and 3.4, 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

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#### **4. RELEASE OF ALL CLAIMS**

##### **4.1 Held's Release of Dunn-Edwards**

This Settlement Agreement is a full, final, and binding resolution between Held and Dunn-Edwards of any violation of Proposition 65 that was or could have been asserted by Held on behalf of herself, his past and current agents, representatives, attorneys, successors and/or assignees, against Dunn-Edwards, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Dunn-Edwards directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers ("Releasees"), based on the alleged failure to warn about potential exposures to DEHP contained in the Products sold and/or offered for sale by Dunn-Edwards in the State of California before the Effective Date as set forth in the Notice.

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 rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Dunn-Edwards and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products sold and/or offered for sale by Dunn-Edwards before the Effective Date.

##### **4.2 Dunn-Edwards's Release of Held**

Dunn-Edwards waives any and all claims against Held, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

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**5. 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 DEHP, then Dunn-Edwards 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.

**6. NOTICES**

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

For Dunn-Edwards:

Karl Altergott, President  
Dunn-Edwards Corporation  
4885 East 52<sup>nd</sup> Place  
Los Angeles, CA 90058

With a copy to:

Michael Gallagher, Esq  
Bassi Edlin Huie & Blum LLP  
333 S Hope Street, 35th Floor  
Los Angeles, CA 90071

For Held:

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

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

**7. COUNTERPARTS; FACSIMILE/PDF 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.

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**8. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

Held agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

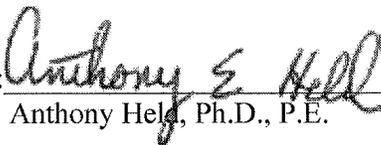
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: January 22, 2015

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

By:   
Anthony Held, Ph.D., P.E.

By: \_\_\_\_\_  
Karl Altergott, President  
Dunn-Edwards Corporation

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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:**

**AGREED TO:**

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

Date: 1-23-15

By: \_\_\_\_\_

Anthony Held, Ph.D., P.E.

By:  \_\_\_\_\_

Karl Altergott, President  
Dunn-Edwards Corporation