

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Anthony E. Held Ph.D., P.E. (“Held”) and Charcoal Companion International (“CCI”), with Held and CCI each individually referred to as a “Party” and collectively as the “Parties.” Held 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 in consumer products. CCI 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 CCI sold or distributed for sale in California, vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the health hazard warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical that is known to cause cancer.

#### 1.3 Product Description

The products covered by this Settlement Agreement with vinyl/PVC gloves that contain DINP that are manufactured, sold and/or distributed for sale in California by CCI. All such vinyl/PVC gloves containing DINP are referred to collectively hereinafter as the “Products.”

#### 1.4 Notice of Violation

On January 30, 2015, Held served CCI and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that CCI violated Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to DINP in the Products. 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

CCI denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in 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 CCI of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by CCI of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by CCI. This Section shall not, however, diminish or otherwise affect CCI’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 July 15, 2015.

## 2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS

### 2.1 Reformulated Products

Commencing the Effective Date, and continuing thereafter, CCI shall only purchase for sale or manufacture for sale in California, (a) "Reformulated Products", or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain a maximum DINP concentration of 1,000 parts per million (0.1%) in any component analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to measure DINP content in a solid substance.

### 2.2 Clear and Reasonable Warnings

CCI agrees that as of the Effective Date and continuing thereafter, all Products it sells and/or distributes in California (except for those Products already in the stream of commerce, as provided in Section 2.3, below) which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. CCI further agrees that the warning will be prominently placed with such conspicuousness when 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 of use. The parties agree and understand that any warning placed on the bottom of a box, carton, or other packaging shall not be deemed reasonable under this Settlement Agreement.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing one of the following statements:

**WARNING:** This product contains DINP, a chemical known to the State of California to cause cancer.

Or

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects (or other reproductive harm).

### 2.3 Grace Period for Products in CCI's Inventory

CCI represents that it currently provides a health hazard warning for the products. All products sold or distributed for sale by CCI prior to the Effective Date without warning are subject to the releases provided by Sections 4.1 and 4.3 of this Settlement Agreement.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, within five days of the Effective Date, CCI agrees to pay \$3,000 in civil penalties in a single check made payable to Anthony E. Held, Client Trust Account.” The civil penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Held. Held’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment to OEHHA.

#### **3.2 Reimbursement of Held’s Attorneys’ 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 Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, CCI agrees to pay \$17,750 in the form of a check payable to “The Chanler Group” for all fees and costs incurred by Held investigating, bringing this matter to the attention of CCI’s management, and negotiating a settlement in the public interest.

#### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

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

#### **4.1 Held’s Release of CCI**

This Settlement Agreement is a full, final, and binding resolution between Held and CCI, of any violation of Proposition 65 that was or could have been asserted by Held, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against CCI and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom CCI directly or indirectly distributes or sells Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), alleging a failure to warn about exposures to DINP in Products that CCI sold or distributed for sale prior to the Effective Date.

In further consideration of the promises and agreements contained herein, Held, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, 3

finances, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DINP from Products sold or distributed for sale by CCI before the Effective Date. The releases provided by Held under this Settlement Agreement are provided solely on Held's behalf and not on behalf of the public in California.

#### **4.2 CCI's Release of Held**

CCI, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Held and his attorneys and other representatives, for any and all actions taken or statements made by Held and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **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, then CCI may provide notice to Held of the 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. NOTICE**

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

For CCI:

Chuck Adams, CEO  
Charcoal Companion Inc.  
1250 9<sup>th</sup> Street  
Berkeley, CA 94710

with a copy to CCI's counsel:

Daniel Rapaport, Esq.  
Wendel Rosen Black & Dean LLP  
1111 Broadway, 24<sup>th</sup> Floor  
Oakland, CA 94607-4036

For Held:

Attn: Prop 65 Controller  
2560 Ninth Street  
Parker Plaza Suite 214  
Berkeley, CA 94710

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

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7. **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.

8. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Held and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

9. **MODIFICATION**

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

10. **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:**

Date: 7/7/2015

By: *Anthony E. Held*  
ANTHONY E. HELD, PH.D., P.E.

**AGREED TO:**

Date: *July 2, 2015*

By: *CA*  
Chuck Adams, CEO  
CHARCOAL COMPANION, INC.

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