

1 JAMES KAWAHITO (SBN 234851)
2 KAWAHITO LAW GROUP APC
3 222 N. Pacific Coast Hwy. Suite 2222
4 El Segundo, CA 90245
5 Telephone: (310) 746-5300
6 Facsimile: (310) 593-2520
7 Email: jkawahito@kawahitolaw.com

8 Attorneys for Plaintiff EnviroProtect, LLC

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**
12

13 ENVIROPROTECT, LLC, in the public
14 interest,

15 Plaintiff,

16 vs.

17 D&C INTERNATIONAL, INC., a California
18 Corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.
21
22
23
24
25
26
27
28

Case Number: CGC-20-585451

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

HEALTH AND SAFETY CODE § 25249.6

1. INTRODUCTION

1.1. EnviroProtect, LLC and D&C International, Inc.

This Consent Judgment is entered into by and between plaintiff EnviroProtect, LLC ("EP" or "Plaintiff") and defendant D&C International, Inc. ("D&C" or "Defendant") with D&C and EP each individually referred to as a "Party" and collectively as the "Parties."

1.2. Plaintiff

EP is a limited liability company duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.3. Defendant

Plaintiff 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 and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.4. General Allegations

EP alleges that D&C has manufactured, sold, and/or distributed for sale in California, certain products described more specifically below containing Di-(2-ethylhexyl) phthalate ("DEHP"), a chemical listed by the State of California under Proposition 65, without providing a required Proposition 65 warning. DEHP shall be referred to hereinafter as the "Listed Chemical."

1.5. Product Description

D&C's 10pc Blender Collection, D&C Style No. 19275, Ross SKU # 400198320292, which was imported, sold and/or distributed for sale in California by D&C ("Covered Products").

1.6. Notice of Violation

On March 25, 2020, EP served D&C, Ross Stores, Inc. ("Ross"), and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice") alleging that D&C and Ross violated Proposition 65. The Notice alleged that D&C and Ross failed to warn its customers and consumers in California that the Covered Products contain DEHP.

1
2
3 **1.7. Complaint**

4 On July 17, 2020, Plaintiff, who was and is acting in the interest of the general public in
5 California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the
6 County of San Francisco against D&C and Does 1 through 50, alleging violations of Health &
7 Safety Code §25249.6 based on the alleged exposures to DEHP contained in the Covered Products
8 sold by D&C.

9 **1.8. No Admission**

10 The Parties enter into this Settlement Agreement as a full and final settlement of all claims
11 that were raised or that could have been raised in the Notice, arising out of the facts and/or
12 conduct alleged therein. D&C denies the material, factual and legal allegations contained in EP's
13 Notice and the Complaint, and maintains that all products, including but not limited to the
14 Covered Products, that it has sold and distributed in California have been and are in compliance
15 with all applicable laws, and are completely safe for their intended use. Nothing in this
16 Settlement Agreement shall be construed as an admission by D&C of any fact, finding,
17 conclusion, issue of law, or violation of law, nor shall compliance with this Settlement
18 Agreement constitute or be construed as an admission by D&C of any fact, finding, conclusion,
19 issue of law, or violation of law, such being specifically denied by D&C. However, this section
20 shall not diminish or otherwise affect D&C's obligations, responsibilities, and duties hereunder.

21 **1.9. Consent to Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that: (1) this Court has
23 jurisdiction over D&C as to the allegations contained in the Complaint; 2) that venue is proper in
24 the County of San Francisco; and 3) that this Court has jurisdiction to enter and enforce the
25 provisions of this Consent Judgment.

26 **1.10. Effective Date**
27
28

1
2
3 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date on
4 which the Court approves this Consent Judgment, including any unopposed tentative ruling
5 granting approval of this Consent Judgment.

6 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS AND WARNINGS**

7 **2.1. Reformulation Standard and Schedule**

8 1.1 Commencing on the Effective Date, and continuing thereafter, Covered Products
9 that are imported, manufactured and/or sold or offered for sale or purchase for sale in or into
10 California, shall be deemed to comply with Proposition 65, and be exempt from any Proposition
11 65 warning requirements with respect to DEHP if they meet the standard of "Reformulated
12 Products." "Reformulated Products" shall mean Covered Products with accessible components
13 containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible
14 component when analyzed pursuant to Environmental Protection Agency testing methodologies
15 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state
16 agencies for the purpose of determining DEHP content in a solid substance ("Reformulation
17 Standard"). Covered Products, manufactured prior to the Effective Date and currently in the
18 channels of distribution with distributors and retailers may continue to be sold-through by D&C
19 and Releasees. However, as of the Effective Date, D&C and the Releasees, as defined in Section
20 5.1, may not distribute or sell new Covered Products in California that are not Reformulated
21 Products or do not contain the warnings set forth in Paragraph 2.3

22 **2.2. Warning Option**

23 Covered Products that do not meet the warning exemption standard set forth in Section 2.1
24 above shall be accompanied by a warning as described in Section 2.3 below. This warning shall
25 only be required as to Covered Products that Defendant manufactures, sells or ships to consumers,
26 retailers, or distributors located in California after the Effective Date, and not to Covered Products
27 currently in the channels of distribution with distributors and retailers. No Proposition 65 warning
28 for DEHP shall be required as to any Covered Products that are already in the stream of commerce
as of the Effective Date.

2.3. Warning Language

Covered Products manufactured after the Effective Date for sale in California that do not qualify as Reformulated Products shall contain a Proposition 65 warning affixed to the packaging, labeling, or directly on each Product. The warning shall state either:

⚠ [California Proposition 65] WARNING: This product can expose you to chemicals including DEHP, which are known to the State of California to cause cancer, and birth defects or other reproductive harm. www.P65Warnings.ca.gov.

⚠ [California Proposition 65] WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

The warning shall be prominently displayed 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 is reasonably likely to understand the Covered Products the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, D&C shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Consent Judgment, as long as such warning text and methods of transmission comply with OEHHA regulations.

2.4. Accessible Component

The term "Accessible Component" shall mean any component of the Covered Product that can be touched by a person during reasonably foreseeable use

3. MONETARY PAYMENTS

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

1
2
3 D&C shall pay a total civil penalty of \$3,000, to be apportioned in accordance with
4 California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the
5 State of California's Office of Environmental Health Hazard Assessment ("OEHHHA") and the
6 remaining 25% of the penalty remitted to EP. D&C shall issue two separate checks for the penalty
7 payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of
8 California's Office of Environmental Health Hazard Assessment ("in Trust for OEHHHA") in the
9 amount of \$2,250, representing 75% of the total civil penalty; and (b) one check to "Kawahito
10 Law Group in Trust for Center for Advanced Public Awareness, Inc.," in the amount of \$750,
11 representing 25% of the total civil penalty. Two separate 1099s shall be issued for the above
12 payments: The first 1099 shall be issued to OEHHHA, P.O. Box 4010, Sacramento, CA 95814
13 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall
14 furnish a W2 at least five calendar days before payment is due.

15 The payments shall be delivered to EP's counsel at the following address within ten days
16 of the Effective Date of this Consent Judgment:

17 James Kawahito, Esq.
18 Kawahito Law Group APC
19 222 N. Pacific Coast Hwy., Suite 2222
20 El Segundo, CA 90245

21 **4. REIMBURSEMENT OF ATTORNEYS' FEES AND COSTS**

22 The Parties acknowledge that EP and its counsel offered to resolve this dispute without
23 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee
24 reimbursement issue to be resolved after the material terms of the Consent Judgment had been
25 settled. The Parties reached an accord on the compensation due to EP and its counsel under
26 general contract principles and the private attorney general doctrine codified at California Code of
27 Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this
28 Consent Judgment. D&C shall reimburse EP and its counsel in the total amount of \$29,000 for all
attorney's fees, investigative and consulting costs, and all other expenses of any kind incurred by

1
2 EP as a result of investigating, bringing this matter to the attention of D&C, negotiating this
3 Consent Judgment, drafting the Complaint, and preparing the necessary briefing to obtain Court
4 approval of the Consent Judgment. D&C shall make the check payable to "Kawahito Law Group
5 APC" and shall deliver payment within ten days of the Effective Date to:
6

7 James Kawahito, Esq.
8 Kawahito Law Group APC
9 Attn. EP v. D&C
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245

10 To allow for the issuance of a timely payment pursuant to the above, EP shall provide
11 D&C with a completed IRS Form W-9 for the Kawahito Law Group APC upon request.

12 **5. RELEASE OF CLAIMS**

13 **5.1. Release of D&C**

14 This Consent Judgment is a full, final and binding resolution and judgment between EP, on
15 behalf of itself and "in the public interest" as that phrase is understood pursuant to Health &
16 Safety Code Section 25249.7, and its past and current agents, representatives, attorneys,
17 successors and/or assignees (the "Releasors"), on the one hand, and D&C, its parent, subsidiaries,
18 affiliated entities that are under common ownership, directors, officers, employees, licensors,
19 licensees, and each entity to whom D&C directly or indirectly distributes or sells the Covered
20 Products, including but not limited to Ross and other downstream retailers, distributors,
21 wholesalers, customers, marketplace hosts, franchisers, cooperative members, licensors, licensees,
22 and the successors and assigns of any of them ("Releasees"), on the other hand, of any violation of
23 Proposition 65 that was or could have been asserted by EP on behalf of itself and the public
24 interest, as defined above, against D&C or the Releasees based on the alleged failure to warn
25 about alleged exposures to DEHP contained in the Covered Products that were manufactured,
26 imported, distributed, sold and/or offered for sale by D&C (either directly or through any of the
27 Releasees) in California before the Effective Date, or which were in the stream of commerce prior
28

1
2
3 to the Effective Date. Compliance with the terms of this Consent Judgment constitutes
4 compliance with Proposition 65 by Defendant with respect to the alleged or actual failure to warn
5 about exposures to DEHP from Covered Products manufactured, imported, sold or distributed for
6 sale by Defendant after the Effective Date.

7 The Parties further intend this Consent Judgment to provide, to the fullest extent allowed
8 by law, res judicata and collateral estoppel protection for D & C and each of the Releasees against
9 any and all claims relating to the allegations of violations of Proposition 65 in the Notice, whether
10 brought by EP in its own capacity or in the public interest, as defined above, or by an entity in
11 privity with EP.

12 **5.2 EP's Individual Release of Claims**

13 EP, in its individual capacity only and *not* in its representative capacity, and on behalf of
14 its past and current agents, principals, attorneys, predecessors, successors, assignees and heirs
15 hereby also provides a release to D&C and the Releasees, which shall be effective as a full and
16 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
17 attorneys' fees, damages, losses, claims, liabilities and demands of any nature, character or kind,
18 whether known or unknown, suspected or unsuspected, arising out of the Covered Products
19 manufactured, imported, distributed or sold by D&C before the Effective Date. EP further
20 acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

21 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
22 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
23 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
24 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
25 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
26 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

27 EP, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or
28 assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or
which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state

1
2
3 or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive
4 such rights or benefits pertaining to the released matters herein.

5 **5.2. D&C's Release of EP**

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

12 **6. COURT APPROVAL**

13 This Consent Judgment is not effective until it is approved and entered by the Court and
14 shall be null and void if, for any reason, it is not approved and entered by the Court.

15 **7. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
17 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
18 not be adversely affected.

19 **8. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed,
22 preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products,
23 then D&C may provide Plaintiff with written notice of any asserted change in the law, and shall
24 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
25 that, the Covered Products are so affected.

26 **9. JOINT PREPARATION**

27 The Parties have jointly participated in the preparation of this Consent Judgment and this
28 Consent Judgment is the result of the joint efforts of the Parties. Accordingly, any uncertainty or

1
2
3 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
4 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
5 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
6 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
7 this regard, the Parties hereby waive California Civil Code § 1654.

8 **10. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.
12 No supplementation, modification, waiver, or termination of this Consent Judgment shall be
13 binding unless executed in writing by the Party to be bound thereby. No waiver of any of the
14 provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the
15 other provisions hereof whether or not similar, nor shall such waiver constitute a continuing
16 waiver unless set forth in writing between the Parties.

17 **11. NOTICES**

18 Unless specified herein, all correspondence and notice required to be provided pursuant to
19 this Consent Judgment shall be in writing and, with courtesy copies to counsel delivered by email,
20 sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested;
21 or (c) a recognized overnight courier on any Party by the other at the following addresses:

22 For D&C: Christine Chan,
23 D & C International, Inc.
24 6625 N. Calle Eva Miranda, Ste. B
Irwindale, CA 91702

25 with a copy to: Steve Tsai
26 Law Offices of Steve Tsai, ALC
27 Olen Spectrum Centre,
28 27 Mauchly, Suite 212,
Irvine, CA 92618

For EP: EnviroProtect, LLC.
3142 W. 59th Pl.
Los Angeles, CA 90043

with a copy to: James K. Kawahito
Kawahito Law Group APC
Attn. EP v. D&C
222 N. Pacific Coast Hwy., Suite 2222
El Segundo, CA 90245
jkawahito@kawahitolaw.com

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.

12. COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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.

13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7

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

14. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such approval, EP shall be responsible for preparing the motion to approve the Consent Judgment. D&C and their respective counsel agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include at a minimum, cooperating in Plaintiff's drafting and filing of any papers in support of the required motion for judicial approval.

15. MODIFICATION

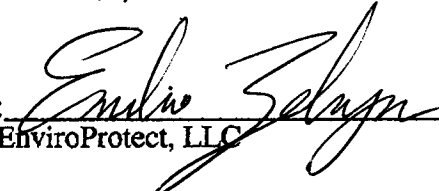
This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified consent judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen days in advance of its consideration by the Court. To the extent either party alleges a breach of this Consent Judgment, written notice shall be provided to the party in alleged breach and the Parties shall thereafter meet and confer for at least 30 days to try to informally resolve the dispute before either Party files a motion to enforce.

16. AUTHORIZATION

The undersigned are authorized to stipulate to, enter into, and execute this Consent Judgment on behalf of their respective parties, and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

Date: 7/27/20

By: 
EnviroProtect, LLC

AGREED TO:

Date: 7/27/20

By: 
D&C International, Inc.

1
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety
3 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.
4

5
6 Dated: _____

JUDGE OF THE SUPERIOR COURT