

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Precila Balabbo (“Balabbo”) and Davex Labs, LLC (“Davex”). Together, Balabbo and Davex are collectively referred to as the “Parties.” Balabbo is an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Balabbo alleges that Davex is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Balabbo alleges that Davex has exposed individuals to diethanolamine (“DEA”) from its sales of L’anza healing volume zero weight gels, UPC # 654050174060 without first providing users and consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. DEA is listed under Proposition 65 as a chemical known to the State of California to cause cancer.

**1.3 Product Description.** The products covered by this Settlement Agreement are L’anza healing volume zero weight gels, UPC # 654050174060 (the “Products”) that Davex has either imported, and/or distributed, and/or offered for sale and/or directly or indirectly sold in California.

**1.4 Notice of Violation.** On July 19, 2024, Balabbo served Ulta Salon, Cosmetics & Fragrance, Inc. (“Ulta”), Davex, and various public enforcement agencies with documents entitled “Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Davex and such others, including public enforcers, with notice that alleged that Davex was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to DEA. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Davex denies the material factual and legal allegations contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been 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 against interest by Davex of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by Davex of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Davex. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Davex maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date that both Parties are have notice that this Agreement is fully executed.


## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

**2.1 Reformulation of Products.** Commencing within ninety (90) days after the Effective Date, and continuing thereafter, and with the exception of any Products subject to § 2.5, Products that Davex directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) reformulated Products pursuant to § 2.2, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.3 and 2.4, below. For purposes of this Settlement Agreement, a “DEA Free Reformulated Product” is a Product that is in compliance with the standard set forth in § 2.2, below. The warning requirements set forth in §§ 2.3 and 2.4 shall not apply to any DEA Free Reformulated Product or to any Product manufactured prior to the Effective Date.

**2.2 DEA Free Reformulation Standard.** To qualify as a “DEA Free Reformulated Product” the Product must meet the following standard: DEA content that is not detectable (i.e., zero).

**2.3 Clear and Reasonable Warning.** Commencing within 90 days after the Effective Date, and continuing thereafter, except as set forth in § 2.2, and with the exception of any Products subject to § 2.5, a clear and reasonable exposure warning as set forth in this §§ 2.3 and 2.4 must be provided for all Products that Davex manufactures, imports, distributes, sells, or offers for sale in California that is not a DEA Free Reformulated Product. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 2.3(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of the statement:

 **WARNING:** This product can expose you to chemicals including diethanolamine (DEA), which is known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Alternative Warning:** Davex may, but is not required to, use the alternative short-form warning<sup>1</sup> as set forth in this § 2.3(b) (“**Alternative Warning**”) as follows:

 **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

**2.4 A Warning or Alternative Warning** provided pursuant to § 2.3 must print the word “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed to or printed on the Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process only if such electronic device or automatic process provides the **Warning** or **Alternative Warning** without the purchaser having to seek it out, provided that the **Warning** or **Alternative Warning** is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings. If “consumer information,” as that term is defined in Title 27, California Code of Regulations, Section 25600.1(c) as it may be amended from time to time, is provided in a foreign language, Davex shall provide the **Warning** or **Alternative Warning** in the foreign language in accordance with applicable warning regulations adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”).

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<sup>1</sup> An **Alternative Warning** on a Product manufactured and labeled after January 1, 2028 shall be provided in accordance with Title 27, California Code of Regulations, § 25603(b).

In addition to affixing the **Warning** or **Alternative Warning** to the Product's packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where Davex offers Products for sale to consumers in California. The requirements of this Section shall be satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word "**WARNING**," appears on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. To comply with this Section, Davex shall (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so, on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such sellers with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2. Third-party internet sellers of the Product that have been provided with written notice in accordance with Title 27, California Code of Regulations, Section 25600.2 are not released in Section 5 of this Agreement if they fail to meet the warning requirements of this Section.

**2.5 Compliance with Warning Regulations.** The Parties agree that Davex shall be deemed to be in compliance with Proposition 65 and this Settlement Agreement by either adhering to § 2 of this Settlement Agreement or by complying with warning regulations adopted by the State of California's OEHHA applicable to the Product and the exposures at issue.

**2.6 Grace Period for Existing Inventory of Products.** The injunctive requirements of Section 2 shall not apply to any Products that are already in the stream of commerce as of the Effective Date, which Products are expressly subject to the releases provided in Section 5.1. For the avoidance of doubt, any Products in the stream of commerce specifically include, but are not limited to, any Products in the process of manufacture.

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

In settlement of all the claims referred to in this Settlement Agreement, Davex shall pay \$4,000.00 as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Balabbo. The

Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below. For all amounts due and owing that are not sent within the payment times set forth below, Davex shall pay a late civil penalty payment fee equal to \$100/day to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d).

**3.1 Civil Penalty.** Within ten (10) business days of the Effective Date, Davex shall issue two (2) separate checks for the Civil Penalty payment: (a) one to “OEHHA” in the amount of \$3,000.00; and one to (b) “Precila Balabbo” in the amount of \$1,000.00. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Balabbo, pursuant to § 3.1 shall be delivered to the following payment address:

Evan J. Smith, Esquire  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004.

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

For United States Postal Service Delivery:

Mike Gyurics  
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 Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 “I” Street  
Sacramento, CA 95814.

(b) **Copy of Payments to OEHHA.** Davex agrees to provide Balabbo's counsel with a copy of the check payable to OEHHA, simultaneously with its penalty payment to Balabbo, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Davex agrees to provide a completed IRS 1099 for its payments to, and Balabbo agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

(i) "Precila Balabbo" whose address and tax identification number shall be provided within five (5) calendar days of the Effective Date;

(ii) "Brodsky Smith" (EIN: 23-2971061) at the address provided in Section 3.2(a)(i); and

(iii) "Office of Environmental Health Hazard Assessment" 1001 "I" Street, Sacramento, CA 95814.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that Balabbo and her counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to her. The Parties thereafter reached an accord on the compensation due to Balabbo and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the Effective Date. Under these legal principles, Davex shall reimburse Balabbo's counsel for fees and costs incurred as a result of investigating and bringing this matter to the attention of Davex, and negotiating a settlement in the public interest. Within ten (10) business days of the Effective Date, Davex shall send a check payable to "Brodsky Smith" in the amount of \$40,000.00 for delivery to the address identified in § 3.2(a)(i), above.

#### **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Davex and Downstream Customers and Entities.** This Settlement Agreement is a full, final and binding resolution between Balabbo, acting on her own behalf, and Davex, of any violation of Proposition 65 that was or could have been asserted by Balabbo or on

behalf of her past and current agents, representatives, attorneys, successors, and/or assigns (“Releasors”) for failure to provide warnings for alleged exposures to DEA from use of the Products, and Releasors hereby release any such claims against Davex and its parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and each entity to whom Davex directly or indirectly distributes or sells the Products, including but not limited to, downstream distributors, wholesalers, customers, retailers, including but not limited to Ulta, and its respective subsidiaries, affiliates and parents, franchisees, cooperative members and licensees (collectively, the “Releasees”), from all claims for violations of Proposition 65 before the Effective Date or 90 days after the Effective Date based on exposure to DEA from use of the Products. This release shall also cover any Products that were not yet sold but were in the stream of commerce, in inventory, or in the process of manufacture, prior to the Effective Date.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Balabbo, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys’ fees, expert fees, and investigation fees, and costs), damages, losses, liabilities and demands against any of the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to DEA from use of the Products.

**5.2 Davex’s Release of Balabbo.** Davex, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Balabbo, her attorneys and other representatives, for any and all actions taken or statements made by Balabbo and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to exposure to DEA from use of the Products through 90 days after the Effective Date.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Balabbo, on behalf of herself only, on the one hand, and Davex, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through 90 days after the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

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

Balabbo and Davex each respectively acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** The Parties agree that compliance by Davex with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEA from use of the Products.

**5.5. Public Benefit.** It is the Parties' understanding that the commitments Davex has agreed to herein, and the actions to be taken by Davex under this Settlement Agreement, including payment of a civil penalty, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Davex's failure to provide a warning concerning exposure to DEA prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Davex is in material compliance with this Settlement Agreement.



**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California.

**8. NOTICES**

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

For Davex:

Scott M. Voelz  
O'Melveny & Myers LLP  
400 S. Hope St., Ste. 1900  
Los Angeles, CA 90071

For Balabbo:

Evan J. Smith  
Brotsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

Either 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.

**9. COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .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. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**11. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties. In the event that the State of California's OEHHA promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Products and the chemical at issue, which are different than those set forth above, Davex shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that Proposition 65 warnings as to DEA in this product are no longer required, a lack of warning by Davex will not thereafter be a breach of this Agreement.

**12. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**12.1** A Party may enforce any of the terms and conditions of this Settlement Agreement only after that Party first provides sixty (60) days notice to the Party allegedly failing to comply with the terms and conditions of this Settlement Agreement and attempts to resolve such Party's failure to comply in an open and good faith manner.

**12.2 Notice of Violation.** Prior to bringing any proceeding to enforce the terms of this Settlement Agreement, Balabbo shall provide a written notice of violation ("NOV") to Davex that includes information sufficient for them to be able to understand and correct the violation, including but not limited to: (a) the name of the product, (b) specific dates when the product was sold in California, (c) the store, website, or other place at which the product was available for sale to

consumers, and (d) any other evidence or other support for the allegations in the NOV, including all test data obtained by Balabbo regarding the Product.

**12.3 Notice of Election Response.** Within thirty (30) days of receiving an NOV, Davex shall serve a Notice of Election (“NOE”) either contesting or not contesting the NOV.

**12.3.1 Non-Contested NOV.** Balabbo shall take no further action regarding the alleged violation against Davex if Davex serves a NOE that elects not to contest the NOV and meets one of the following conditions: (a) the Product was shipped by Davex for sale in California before the Effective Date, or (b) since receiving the NOV, Davex has taken corrective action by either taking all steps necessary to bring the sale of the Product into compliance under the terms of this Settlement Agreement, or requesting that its customers in California remove the Products identified in the NOV from sale in California and destroy or return the Products to Davex.

**12.3.2 Contested NOV.** If Davex serves a NOE electing to contest the NOV, the provisions of this Section 12.3.2 shall apply.

(a) Davex may request that the sample(s) of the Product tested by Balabbo be subject to confirmatory testing at an EPA or California accredited laboratory.

(b) If the confirmatory testing establishes that the Product does not contain DEA in excess of the levels allowed by this Settlement Agreement, Balabbo shall take no further action regarding the alleged violation. If the testing does not establish compliance as Reformulated Products, Davex may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 12.3.1.

(c) If Davex does not withdraw an NOE to contest the NOV to take action under 12.3.1 above, the Parties shall meet and confer for a period of no less than thirty (30) days before Balabbo may take action seeking to enforce the terms of this Settlement Agreement.

**12.4** In any proceeding brought by either Party to enforce this Settlement Agreement, the prevailing party shall be entitled to recover its reasonable attorney’s fees and costs

13. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

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

Date: 4/17/25

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

Precila Balabbo

By: [Signature]

Davex Labs, LLC

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Date:

4 / 17 / 25

Date:

\_\_\_\_\_

By:

  
Precila Balabbo

By:

\_\_\_\_\_  
Davex Labs, LLC