

REC'D AUG 25 2010

1 Clifford A. Chanler, State Bar No. 135534
2 Laurence D. Haveson, State Bar No. 152631
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
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9 Attorneys for Plaintiff
10 ANTHONY HELD, PH.D., P. E.

ENDORSED
FILED
San Francisco County Superior Court

OCT 13 2010

CLERK OF THE COURT
BY: MARTA VALLEJO
Deputy Clerk

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14
15 UNLIMITED CIVIL JURISDICTION
16

17 ANTHONY E. HELD, Ph.D., P.E.,

18 Plaintiff,

19 v.

20 K & M INTERNATIONAL, INC., and DOES 1
21 through 150, inclusive,

22 Defendants.

Case No. CGC-09-493479

~~PROPOSED~~ JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT

Date: October 13, 2010
Time: 9:30 a.m.
Dept.: 301
Hon. Peter J. Busch

1 In the above-entitled action, Plaintiff ANTHONY HELD, Ph.D., P.E. and Defendant K & M
2 INTERNATIONAL, INC. having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment (“Consent
4 Judgment”) entered into by the parties, and following issuance of an order approving this Proposition
5 65 settlement agreement on October 13, 2010:

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety
7 Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is entered in accordance with
8 the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the
9 Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10
11 **IT IS SO ORDERED.**

12 **OCT 13 2010**

13 Dated: _____

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
Laurence D. Haveson, State Bar No. 152631
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6 Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.

7 Lisa Halko, State Bar No. 148873
Sarah Asplin, State Bar No. _____
8 GREENBERG TRAUERIG LLP
1201 K Street, 11th Floor
9 Sacramento, CA 95814
Telephone: (916) 442-1111
10 Facsimile: (916) 448-1709

11 Attorneys for Defendant
K & M INTERNATIONAL, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE CITY AND COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURISDICTION
15

16 ANTHONY E. HELD, Ph.D., P.E.,
17 Plaintiff,

18 v.

19 K & M INTERNATIONAL, INC., and DOES
20 1-150, inclusive,

21 Defendants.

Case No. CGC-09-493479

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

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1 **1. INTRODUCTION**

2 **1.1 Anthony E. Held, Ph.D., P.E., and K & M International, Inc.**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Dr.
4 Held”) and K & M International, Inc. (“K&M”), with Dr. Held and K&M collectively referred to as
5 the “Parties.”

6 **1.2 Plaintiff**

7 Dr. Held is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 K&M employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
13 Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Dr. Held alleges that K&M has sold in the State of California children’s vinyl bags containing
16 di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65, as a chemical known
17 to the State of California to cause birth defects and other reproductive harm. DEHP is referred to
18 herein as the “Listed Chemical.”

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as children’s vinyl bags
21 containing the Listed Chemical including, but not limited to, *Wild Republic Animal Value Bag, Item*
22 *#56240 (#0 92389 56240 8)*. All such items shall be referred to herein as the “Products.”

23 **1.6 Notice of Violation**

24 On November 28, 2008, Dr. Held served K&M and various public enforcement agencies with
25 a document entitled “60-Day Notice of Violation” that provided K&M and such public enforcers with
26 notice that alleged that K&M was in violation of Proposition 65 for failing to warn consumers and
27 customers that the Products exposed users in California to the Listed Chemical. To the best of the
28 Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the 60-

1 Day Notice of Violation (“Notice”).

2 **1.7 Complaint**

3 On October 16, 2009, Dr. Held, who was and is acting in the interest of the general public in
4 California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for the City and
5 County of San Francisco alleging that K&M violated Proposition 65 based on the alleged exposures to
6 the Listed Chemical contained in the Products offered for sale in California by K&M.

7 **1.8 No Admission**

8 K&M denies the material, factual, and legal allegations contained in Dr. Held’s Notice and
9 maintains that all products that it has sold in California, including the Products, have been, and are, in
10 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
11 K&M of any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent
12 Judgment constitute or be construed as an admission by K&M of any fact, finding, conclusion, issue
13 of law, or violation of law, such being specifically denied by K&M. However, this section shall not
14 diminish or otherwise affect the obligations, responsibilities and duties of K&M under this Consent
15 Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the parties stipulate that this Court has
18 jurisdiction over K&M as to the allegations contained in the Complaint, that venue is proper in the
19 City and County of San Francisco, and that this Court has jurisdiction to enter and enforce the
20 provisions of this Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean July 1, 2010.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1 Reformulation Commitment**

25 Commencing on the Effective Date, K&M shall not ship, sell or offer to be shipped for sale in
26 California any Product that is not “DEHP Free”. For purposes of this Consent Judgment, DEHP Free
27 shall mean Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million
28 (“ppm”)) when analyzed pursuant to any methodology utilized by federal or state agencies for the

1 purpose of determining DEHP content in a solid substance.

2 **3. MONETARY PAYMENTS**

3 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b)**

4 Pursuant to Health & Safety Code § 25249.7(b), K&M shall pay \$2,000 in civil penalties in
5 settlement of this claim. This payment shall be apportioned in accordance with California Health &
6 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
7 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% remitted to Dr. Held
8 as provided by California Health & Safety Code § 25249.12(d).

9 K&M shall issue two separate checks for each of these payments pursuant to § 25192: (a) one
10 check made payable to "The Chanler Group in Trust for the OEHHA" in the amount of \$1,500,
11 representing 75% of the total; and (b) one check to "The Chanler Group in Trust for Anthony Held" in
12 the amount of \$500, representing 25% of the total. Two separate 1099s shall be issued for the above
13 payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN:
14 68-0284486) in the amount of \$1,500. The second 1099 shall be issued in the amount of \$500 to Dr.
15 Held, whose address and tax identification number shall be furnished, upon execution of this
16 Agreement. The payments shall be delivered no later than July 16, 2010, to the following address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

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

23 **4.1 Attorney Fees and Costs**

24 The Parties acknowledge that Dr. Held and his counsel offered to resolve this dispute without
25 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
26 issue to be resolved after the material terms of the agreement had been settled. K&M then expressed
27 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
28 The Parties then attempted to (and did) reach an accord on the compensation due to Dr. Held and his
counsel under general contract principles and the private attorney general doctrine codified at
California Code of Civil Procedure ("C.C.P.") § 1021.5, for all work performed through the mutual

1 execution of this agreement. K&M, on behalf of itself and those in its chain of distribution, shall
2 reimburse Dr. Held and his counsel a total of \$18,000 for fees and costs incurred as a result of
3 investigating, bringing this matter to K&M's attention, and litigating and negotiating a settlement in
4 the public interest. K&M shall issue a separate 1099 for fees and costs (EIN: 94-3171522) and shall
5 make the check payable to "The Chanler Group". Payment shall be delivered no later than July 16,
6 2010 to the following address:

7 The Chanler Group
8 Attn: Proposition 65 Controller
9 2560 Ninth Street
10 Parker Plaza, Suite 214
11 Berkeley, CA 94710

12 **5. RELEASE OF ALL CLAIMS**

13 **5.1 Dr. Held's Release of K&M**

14 In further consideration of the promises and agreements herein contained, and for the
15 payments to be made pursuant to Sections 3 and 4 above, Dr. Held on behalf of himself, his past and
16 current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the
17 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of
18 legal action and releases all claims including, without limitation, all actions, and causes of action, in
19 law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
20 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
21 nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), that were
22 brought or could have been brought against K&M or any of its parents, subsidiaries or affiliates, and
23 all of their customers, distributors, wholesalers, retailers, licensors, licensees, employees, officers,
24 agents, or any other person in the course of doing business, and the successors and assigns of any of
25 them, who may use, maintain, manufacture, distribute, advertise, market or sell Products, and the
26 officers, directors, managers, employees, members, shareholders, agents, insurers and representatives
27 of each of them (collectively "Releasees") in this matter. This release is limited to, but is intended to
28 be a full, final, and binding resolution of, those Claims that arise under Proposition 65, as against
K&M, and the Releasees, as such Claims relate to K&M's alleged failure to warn about exposures to
the Listed Chemical contained in the Products. K&M's compliance with this Settlement Agreement

1 shall constitute compliance with Proposition 65 for K&M and the Releasees with respect to the Listed
2 Chemical in such items after the Effective Date.

3 Dr. Held also, on behalf of himself and his agents, attorneys, representatives, successors and
4 assigns, in his individual capacity only and *not* in his representative capacity, provides a general
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities and demands of Dr. Held of any nature, character or kind, known or unknown, suspected or
8 unsuspected, arising out of the subject matter of this dispute. Dr. Held acknowledges that he is
9 familiar with Section 1542 of the California Civil Code, which provides as follows:

10 A general release does not extend to claims which the creditor does not know or
11 suspect to exist in his or her favor at the time of executing the release, which if
12 known by him or her must have materially affected his or her settlement with the
13 debtor.

14 Dr. Held, in his individual capacity only and *not* in his representative capacity, on behalf of
15 himself and his agents, attorneys, representatives, successors and assigns, expressly waives and
16 relinquishes any and all rights and benefits which he may have under, or which may be conferred on
17 him by the provisions of Section 1542 of the California Civil Code as well as under any other state or
18 federal statute or common law principle of similar effect, to the fullest extent that he may lawfully
19 waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the
20 release hereby given shall be and remain in effect as a full and complete release notwithstanding the
21 discovery or existence of any such additional or different claims or facts arising out of the released
22 matters.

23 The Parties further understand and agree that this release shall not extend upstream to any
24 entities that manufactured the Products for K&M or any component parts thereof or to any distributors
25 or suppliers who sold the Products or any component parts thereof to K&M.

26 **6. COURT APPROVAL**

27 This Consent Judgment is not effective until it is approved and entered by the Court and shall
28 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
has been fully executed by all parties, in which event any monies that have been provided to Dr. Held,

1 or his counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days
2 after receiving written notice from K&M that the one-year period has expired.

3 **7. SEVERABILITY**

4 If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent
5 Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining
6 shall not be adversely affected.

7 **8. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
10 otherwise rendered inapplicable by reason of law generally, or as to the Products specifically, then
11 K&M shall provide written notice to Dr. Held of any asserted change in the law, and shall have no
12 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
13 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve K&M from
14 any obligation to comply with any pertinent state or federal toxics control laws.

15 **9. NOTICES**

16 Unless specified herein, all correspondence and notices required to be provided pursuant to
17 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
18 registered or certified mail, return receipt requested; or (ii) overnight courier on any party by the other
19 party at the following addresses:

20 For K&M:

21 Lisa Halko, Esq.
22 Greenberg Traurig LLP
23 1201 K Street, Suite 1100
24 Sacramento, CA 95814

25 For Dr. Held:

26 Proposition 65 Coordinator
27 The Chanler Group
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

3 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

4 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall
5 be deemed an original, and all of which, when taken together, shall constitute one and the same
6 document.

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

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

10 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

11 The parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion
12 is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
13 approval, Dr. Held and K&M and their respective counsel agree to mutually employ their best efforts
14 to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
15 Judgment by the Court in a timely manner. For purposes of this paragraph, best efforts shall include,
16 at a minimum, cooperating on the drafting and filing of any papers in support of the requisite motion
17 for judicial approval.

18 **13. MODIFICATION**

19 This Consent Judgment may be modified only: (1) by written agreement of the parties and
20 upon entry of a modified consent judgment by the Court thereon; or (2) upon a successful motion of
21 any party and entry of a modified consent judgment by the Court.

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14. **AUTHORIZATION**

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

AGREED TO: **APPROVED**
By Tony Held at 8:50 am, Jul 12, 2010

Date: _____
By: Anthony E. Held
ANTHONY E. HELD, Ph.D., P.E.

AGREED TO:
Date: _____

By: Vishnu Chandran
Vishnu Chandran, President
K&M INTERNATIONAL INC.

APPROVED AS TO FORM:

Date: 07/12/2010

THE CHANLER GROUP

APPROVED AS TO FORM:

Date: 07/07/2010

GREENBERG TRAURIG LLP

By: Clifford A. Chanler
Clifford A. Chanler
Attorneys for Plaintiffs
ANTHONY E. HELD, Ph.D., P.E.

By: Lisa Halko Sarah W. Asplin
Lisa Halko
Sarah W. Asplin
Attorneys for Defendant
K&M INTERNATIONAL INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT