

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement (“Agreement”) is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and Kennedy International, Inc. (“Kennedy”), with Held and Kennedy 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 contained in consumer products. Kennedy 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Held alleges that Kennedy manufactures, imports, sells, or distributes for sale in the state of California, vinyl/PVC cosmetic/toiletry bags and ottomans with vinyl/PVC upholstery that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the clear and reasonable health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description. The products covered by this Agreement are vinyl/PVC cosmetic/toiletry bags and ottomans with vinyl/PVC upholstery or other components containing DEHP that are manufactured, sold, or distributed for sale in California by Kennedy, including, but not limited to, the *Karen Rhodes Collection Cosmetic Travel Set, Style# 26701, UPC #6 33125 26701 2*) and the *Simplify Storage Ottoman, Style# F-0625-CHOCO, UPC #6 33125 00626 0*). All such cosmetics/toiletry cases, and ottomans containing DEHP are referred to collectively hereinafter as “Products.”

1.4 Notice of Violation. On August 16, 2013, Held served Kennedy and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Kennedy violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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. Kennedy denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Kennedy of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by Kennedy of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Kennedy. This section shall not, however, diminish or otherwise affect Kennedy's obligations, responsibilities, and duties under this Agreement.

1.6 Effective Date. For purposes of this Agreement, the term "Effective Date" shall mean February 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulated Products. Commencing on the Effective Date, and continuing thereafter, Kennedy shall only manufacture for sale or purchases for sale in California, "Reformulated Products." For purposes of this Agreement, Reformulated Products are Products that contain a maximum DEHP concentration of 1,000 parts per million ("ppm") (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state and federal agencies to determine DEHP content in a solid substance.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), Kennedy shall pay \$6,000 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty paid to Held.

3.1.1 Initial Civil Penalty. Within five days of the Effective Date, Kennedy shall make an initial civil penalty payment of \$2,000. Kennedy shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,500; and (b) "The Chanler Group in Trust for Anthony E. Held" in the amount of \$500. The initial civil penalty payments are to be delivered to Held and OEHHA at the addresses provided in section 3.3.

3.1.2 Final Civil Penalty. On or before May 1, 2014, Kennedy will make a final civil penalty payment of \$4,000. Pursuant to title 11 California Code of Regulations section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than April 15, 2014, an officer of Kennedy certifies in writing to Held's counsel that, as of such date, one-hundred percent (100%) of the Products Kennedy sells or distributes for sale in California are Reformulated Products as defined by Section 2.1, and that Kennedy will continue to only offer Reformulated Products in California in the future. The option to certify timely reformulation in lieu of making the final civil penalty payment constitutes a material term of this Agreement, and time is of the essence. Unless waived, final civil penalty payments to Held and OEHHA shall be allocated according the Health and Safety Code section 25249.12(c)(1) and (d), and delivered to the payment addresses in Section 3.3 below.

3.2 Attorney 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, Kennedy shall pay \$15,000 for all fees and costs incurred investigating, bringing this matter to the attention of Kennedy's management, and negotiating a settlement in the public interest. Payment shall be tendered in five installments. Each installment will be delivered in a check made payable to "The Chanler Group in Trust" in the amount of \$3,000. The payments are due on the 15th of each month March through July, 2014.

3.3 Payment Procedures

3.3.1 Payment Address for Held and his Counsel. All payments and tax documentation for Held and his counsel shall be delivered to the following address:

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

3.3.2 Payment Addresses for OEHHA. All payments and tax documentation for OEHHA shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") to one of the following addresses, as appropriate:

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-U.S. Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. Kennedy agrees provide Held's counsel with a copy its payment(s) to OEHHA enclosed with its penalty payment to Held.

3.3.4 Tax Documentation. For the payments made under this Agreement, Kennedy agrees to provide a completed IRS 1099 form for each of the following payees:

- (a) "Anthony E. Held" whose address and tax identification number shall be provided after this Agreement is fully executed by the Parties;
- (b) "The Chanler Group" (EIN: 94-3171522) at the address provided in section 3.3.1; and

(c) “Office of Environmental Health Hazard Assessment” (EIN: 68-0284486),
1001 I Street, Sacramento, CA 95814.

4. **CLAIMS COVERED AND RELEASED**

4.1 Held’s Release of Kennedy. This Agreement is a full, final, and binding resolution between Held and Kennedy 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 Kennedy, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Kennedy directly or indirectly distributes or sells the Products, including, without limitation, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on unwarned exposures to DEHP from Products manufactured, sold or distributed for sale in California by Kennedy prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Held, on his own behalf and on behalf of 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 Kennedy and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold, or distributed for sale in California by Kennedy prior to the Effective Date.

4.2 Kennedy’s Release of Held. Kennedy, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have against Held and 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the

Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Agreement, Kennedy may request in writing that Held draft and file a complaint, incorporate the terms of this Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Held and Kennedy agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Kennedy agrees to reimburse Held and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$10,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving a monthly invoice from Held's counsel for work performed under this section, Kennedy will remit payment to the address provided in section 3.3.

6. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

7. GOVERNING LAW

The terms of this 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 Kennedy may provide written notice to Held of any asserted change in the law, and have no further obligations pursuant to this Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this 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 Kennedy International, Inc.:

Henry Guindi, President
Kennedy International, Inc.
25 Stults Road
Dayton, NJ 08810

For Held:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

This 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.

10. POST-EXECUTION ACTIVITIES

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

11. MODIFICATION

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

12. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: February 3, 2013

Date: 2/18/14

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

By: Henry Guindi
Henry Guindi, President
Kennedy International, Inc.