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19 K & M INTERNATIONAL, INC.

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE CITY AND COUNTY OF SAN FRANCISCO  
22 UNLIMITED CIVIL JURISDICTION

23 ANTHONY E. HELD, Ph.D., P.E.,  
24 Plaintiff,

25 v.

26 K & M INTERNATIONAL, INC., and DOES  
27 1-150, inclusive,

28 Defendants.

Case No. CGC-09-493479

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

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

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

21 **4.1 Attorney Fees and Costs**

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

AGREED TO:

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

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

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

Date: 07/12/2010  
THE CHANLER GROUP

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