

1 Josh Voorhees, State Bar No. 241436  
Harris A. Weinstein, State Bar No. 282166  
2 THE CHANLER GROUP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
6 ANTHONY E. HELD, PH.D., P.E.

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UNLIMITED CIVIL JURISDICTION  
11

12  
13 ANTHONY E. HELD, PH.D., P.E.,

14 Plaintiff,

15 v.

16 KINDLER, INC.; KINCO  
INTERNATIONAL; KINCO, LLC; and DOES  
17 1-150, inclusive,

18 Defendants.  
19

Case No. RG13705863

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.*)

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between plaintiff, Anthony E. Held, Ph.D.,  
4     P.E., (“Held” or “Plaintiff”) on one hand, and defendant Kinco, LLC, dba Kinco International  
5     (“Kinco” or “Defendant”), on the other hand. Held and Kinco each are individually referred to as a  
6     “Party” and collectively as the “Parties.”

7             **1.2 Plaintiff**

8             Held is an individual residing in California who seeks to promote awareness of exposures to  
9     toxic chemicals and improve human health by reducing or eliminating hazardous substances  
10    contained in consumer products, who has brought this action and is settling this action “in the public  
11    interest” pursuant to California Health and Safety Code § 25249.7(d) and Title 11, California Code  
12    of Regulations, §§ 3000 *et seq.*

13            **1.3 Defendant**

14            Plaintiff alleges that Kinco employs ten or more persons and is a “person in the course of  
15    doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
16    Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

17            **1.4 General Allegations**

18            Held alleges that Defendant sold vinyl/PVC gloves containing di(2-ethylhexyl)phthalate  
19    (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed  
20    pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or  
21    other reproductive harm.

22            **1.5 Product Description**

23            The products that are covered by this Consent Judgment are gloves with vinyl/PVC coating,  
24    dots or other components that are imported, manufactured, sold, and/or distributed for sale in  
25    California, by, or on behalf of, Defendant including, but not limited to, the *Kinco PVC Coated Work*  
26    *Gloves, Style: 7184G, UPC #0 35117 71846 3* (collectively “Covered Products”).

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**1.6 Notice of Violation**

On or about August 16, 2013, Held served Kinco and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Defendant and others were in violation of Proposition 65 for failing to warn their customers and consumers in California that Covered Products expose users to DEHP.

**1.7 Complaint**

On December 6, 2013, Held filed the instant action (“Complaint”), naming Kinco and others as defendants for the alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice. This Consent Judgment is intended to achieve a full and final resolution of all claims that were made or could have been made in the Complaint or that arise from the Notice.

**1.8 No Admission**

Kinco and all associated persons and entities deny the material, factual, and legal allegations contained in the Notice and Complaint, and they maintain that all of the products that they have sold and distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall the existence of this Consent Judgment or anything involving it be relevant to or admissible in any legal proceeding or dispute other than one to enforce or modify this Consent Judgment. This Section shall not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this Consent Judgment.

**1.9 Jurisdiction**

Solely for purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1           **1.10 Effective Date**

2           For purposes of this Consent Judgment, the term “Effective Date” means the date that the  
3 Court enters this Consent Judgment as judgment of the Court as contemplated by this Consent  
4 Judgment.

5           **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

6           **2.1 Reformulation Standards**

7           “Reformulated Products” are defined as those Covered Products containing DEHP in  
8 concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.  
9 Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies  
10 selected by Kinco that are utilized by federal or state government agencies for the purpose of  
11 determining DEHP content in a solid substance and suitable for the material being tested.

12           **2.2 Reformulation Commitment**

13           No later than ten days after the Effective Date all Covered Products manufactured, purchased  
14 and/or imported by Defendant for sale in the State of California shall qualify as Reformulated  
15 Products as defined in Section 2.1 above, or shall carry appropriate Proposition 65 warnings as  
16 defined in Section 2.3 below.

17           **2.3 Product Warnings**

18           Although denying any legal obligation to do so, Kinco asserts it began taking reasonable  
19 steps shortly after receipt of the Notice to label Covered Products intended for sale in California with  
20 language that complies with Title 27, California Code of Regulations, § 25603. For all Covered  
21 Products, other than Reformulated Products, Kinco shall provide clear and reasonable warnings as  
22 set forth in subsections 2.3(a) and (b) after inventories of product with existing warnings are  
23 exhausted. Each warning shall be prominently placed with such conspicuousness as compared with  
24 other words, statements, designs, or devices as to render it likely to be read and understood by an  
25 ordinary individual under customary conditions before purchase or use in conformity with OEHHA  
26 regulations in effect at the time this Consent Judgment is executed, and each warning shall be  
27 provided in a manner reasonably calculated to provide notice to the consumer as to which *specific*  
28 Product the warning applies, so as to minimize the risk of consumer confusion. In each of the

1 warnings stated in this Section 2.3, the word "WARNING" may be preceded by "CALIFORNIA,"  
2 "PROP 65," or "CALIFORNIA PROPOSITION 65" at the seller's option.

3 (a) **Retail Store Sales.**

4 (i) **Product Labeling.** No later than one month after the Effective Date,  
5 Kinco shall affix or cause to be affixed a warning to the packaging, labeling, or directly on each  
6 Product that Kinco intends to be sold in retail outlets in California by Kinco or any person selling the  
7 Covered Products, that states:

8 **WARNING:** This product contains DEHP, a chemical known  
9 to the State of California to cause birth defects  
and other reproductive harm.

10 (ii) **Point-of-Sale Warnings.** As an alternative to subparagraph (i)  
11 above, Kinco may provide warning signs in the form below to its customers in California with  
12 instructions to post the warnings in close proximity to the point of display of the Covered  
13 Products. Such instruction sent to Kinco's customers shall be sent by certified mail, return receipt  
14 requested.

15 **WARNING:** This product contains DEHP, a chemical known  
16 to the State of California to cause birth defects  
and other reproductive harm.

17 Where more than one Product is sold in proximity to other like items or to those that do not  
18 require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement  
19 shall be used:<sup>1</sup>

20 **WARNING:** The following products contain DEHP, a  
21 chemical known to the State of California to  
22 cause birth defects and other reproductive harm:  
*[list products for which warning is required]*

23 (b) **Mail Order Catalog and Internet Sales.** In the event that Kinco makes  
24 direct sales of Covered Products via mail order catalog and/or the internet, to customers located in

25 \_\_\_\_\_  
26 <sup>2</sup> For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Covered  
27 Product and another similar product are offered for sale close enough to each other that the  
28 consumer, under customary conditions of purchase, could not reasonably determine which of the two  
products is subject to the warning sign.

1 California, after the Effective Date, that are not Reformulated Products, Kinco shall provide  
2 warnings for such Covered Products as provided in this paragraph. Warnings given in the mail order  
3 catalog or on the internet shall identify the *specific* Covered Product to which the warning applies as  
4 further specified in Sections 2.3(b)(i) and (ii), and shall be provided in the next mail order catalog  
5 printed and shall be provided on the internet no longer than thirty days after the Effective Date.

6 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
7 catalog distributed by Kinco shall be in the same type size or larger than the Covered Product  
8 description text within the catalog. The following warning shall be provided on the same page and  
9 in the same location as the display and/or description of the Covered Product:

10 **WARNING:** This product contains DEHP, a chemical known  
11 to the State of California to cause birth defects  
and other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same location  
13 as the display and/or description of the Covered Product, Kinco may utilize a designated symbol to  
14 cross reference the applicable warning and shall define the term “designated symbol” with the  
15 following language on the inside of the front cover of the catalog or on the same page as any order  
16 form for the Covered Product(s):

17 **WARNING:** Certain products identified with this symbol  
18 ▼ and offered for sale in this catalog contain  
19 DEHP, a chemical known to the State of  
California to cause birth defects and other  
reproductive harm.

20 The designated symbol must appear on the same page and in close proximity to the display  
21 and/or description of the Covered Product. On each page where the designated symbol appears,  
22 Kinco must provide a header or footer directing the consumer to the warning language and definition  
23 of the designated symbol.

24 (ii) **Internet Website Warning.** A warning shall be given in conjunction with  
25 the sale by Kinco of the Covered Products via the internet, which warning shall appear either: (a) on  
26 the same web page on which a Covered Product is displayed; (b) on the same web page as the order  
27 form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one  
28 or more web pages displayed to a purchaser during the checkout process. The following warning

1 statement shall be used and shall appear in any of the above instances adjacent to or immediately  
2 following the display, description, or price of the Covered Product for which it is given in the same  
3 type size or larger than the Covered Product description text:

4                   **WARNING:** This product contains DEHP, a chemical known  
5   to the State of California to cause birth defects  
6   and other reproductive harm.

7                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
8 display, description, or price of the Covered Product for which a warning is being given, provided  
9 that the following warning statement also appears elsewhere on the same web page, as follows:

10                   **WARNING:** Products identified on this page with the  
11   following symbol ▼ contain DEHP, a  
12   chemical known to the State of California to  
13   cause birth defects and other reproductive  
14   harm.

### 12   3.    **MONETARY SETTLEMENT TERMS**

#### 13    3.1   **Civil Penalty Payments**

14                   Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in  
15 this Consent Judgment, Defendant has been assessed \$10,000 in civil penalties. Each civil penalty  
16 payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with  
17 seventy-five percent (75%) of the funds paid to the California Office of Environmental Health  
18 Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Held. Each  
19 penalty payment shall be made within two business days of the date it is due and be delivered to the  
20 addresses listed in Section 3.3 below. Kinco shall be liable for payment of interest, at a rate of 10%  
21 simple interest, for all amounts due and owing under this Section that are not received within two  
22 business days of the due date.

#### 23                   **3.1.1 Initial Civil Penalty**

24                   Within five days of the mutual execution of this Consent Judgment, Kinco shall issue  
25 a check for its initial civil penalty payment in the amount of \$5,000 to “Duane Morris LLP”. Duane  
26 Morris LLP shall provide The Chanler Group with written confirmation within five days of receipt  
27 that the funds have been deposited in a trust account. Within five days of the Effective Date, Duane  
28 Morris LLP shall issue two separate checks for the initial civil penalty payment to: (a) “OEHHA” in

1 the amount of \$3,750; and (b) "Anthony E. Held, Ph.D., P.E., Client Trust Account" in the amount  
2 of \$1,250.

### 3 **3.1.2 Final Civil Penalty**

4 On or before December 31, 2014, Kinco shall make a final civil penalty payment of  
5 \$5,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Held agrees that the  
6 final civil penalty payment shall be waived in its entirety if, no later than November 15, 2014, an  
7 authorized representative of Defendant provides Held with written certification that as the date of  
8 such certification and continuing into the future, all of the Covered Products manufactured,  
9 purchased, distributed, sold and/or imported by Defendant for sale in California are Reformulated  
10 Products as defined by Section 2.1. The option to certify reformulation in lieu of the final civil  
11 penalty payment required by this Section is a material term, and with regard to such term, time is of  
12 the essence.

### 13 **3.2 Reimbursement of Fees and Costs**

14 The parties acknowledge that Held and his counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
17 other settlement terms had been finalized, Defendant expressed a desire to resolve Held's fees and  
18 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Held and  
19 his counsel under general contract principles and the private attorney general doctrine codified at  
20 California Code of Civil Procedure section 1021.5 for all work, fees and costs incurred by or on  
21 behalf of Held investigating, bringing this matter to the attention of Defendants and public officials,  
22 negotiating a settlement in the public interest, obtaining the Court's approval of this Consent  
23 Judgment and otherwise incurred (and yet to be incurred) relative to the Notice, this action and this  
24 Consent Judgment, but not including any fees or costs that may be incurred by Held and his counsel  
25 on appeal, if any. Kinco shall, within five days of the mutual execution of this Consent Judgment by  
26 the Parties, issue a check payable to "Duane Morris LLP" in the amount of \$34,000 to be held in  
27 trust by Duane Morris LLP for The Chanler Group. Duane Morris LLP shall provide The Chanler  
28 Group with written confirmation within five days of receipt that the funds have been deposited in a



1 trust account. Within five days of the Effective Date, Duane Morris LLP shall issue a check payable  
2 to "The Chanler Group" to the address found in Section 3.3.1(a), below.

3 **3.3 Payment Procedures**

4 **3.3.1 Payment Addresses**

5 (a) All payments and tax documentation for Held and his counsel shall be  
6 delivered to:

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

12 (b) All payments and tax documentation for OEHHA shall be delivered directly  
13 to OEHHA (Checks with memo line "Prop 65 Penalties") at one of the following addresses, as  
14 appropriate:

15 For United States Postal Service Delivery:

16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 P.O. Box 4010  
20 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery or Courier:

22 Mike Gyurics  
23 Fiscal Operations Branch Chief  
24 Office of Environmental Health Hazard Assessment  
25 1001 I Street  
26 Sacramento, CA 95812-4010

27 **3.3.2 Proof of Payment to OEHHA**

28 Defendant shall provide Held's counsel with a copy of the checks sent to OEHHA  
enclosed with the payments to Held and his counsel sent to the address in Section 3.3.1(a).

**4. CLAIMS COVERED AND RELEASED**

**4.1 Held's Public Release of Proposition 65 Claims**

Held, acting on his own behalf and in the public interest, releases Kinco, Kindler, Inc., all  
other companies and persons named in the Notice, each entity to whom Kinco directly or indirectly  
distributes or sells Covered Products, including, but not limited, to downstream distributors,

1 wholesalers, customers, retailers, marketers, advertisers, shippers, order fulfillers, franchisors and  
2 franchisees, cooperative members, licensors and licensees, all of their respective parent, subsidiary  
3 and affiliated entities with related ownership or control, and all of their directors, officers,  
4 members, shareholders, owners, agents, employees, attorneys, predecessors in interest and  
5 successors in interest (“Releasees”) for any and all actual or alleged violations arising under  
6 Proposition 65 involving DEHP in Covered Products manufactured, imported, acquired for  
7 distribution, distributed or sold, either directly or indirectly, by or on behalf of Kinco prior to the  
8 Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment  
9 constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

10 **4.2 Held’s Individual Release of Claims**

11 Held, in his individual capacity only and *not* in his representative capacity, also provides a  
12 release to Defendant and Releasees which shall be effective as a full and final accord and  
13 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,  
14 damages, losses, claims, liabilities and demands of Held of any nature, character or kind, whether  
15 known or unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in  
16 the Covered Products produced, imported, acquired for distribution, distributed or sold prior to the  
17 Effective Date.

18 **4.3 Kinco’s Release of Held**

19 Kinco, on its own behalf, and on behalf of past and current agents, representatives,  
20 successors, and assigns, hereby waives any and all claims against Held and his attorneys and other  
21 representatives, for any and all actions taken or statements made by Held and his attorneys and  
22 other representatives, whether in the course of investigating claims, otherwise seeking to enforce  
23 Proposition 65 against it in this matter, or with respect to the Covered Products.

24 **4.4 No Other Known Claims or Violations**

25 Held and Held’s counsel affirm that they are not presently aware of any actual or alleged  
26 violations of Proposition 65 by Kinco or Kindler, Inc. other than those that are fully resolved by this  
27 Consent Judgment. This Paragraph does not, however, provide a release for any unknown, actual or  
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1 alleged violations involving other substances and/or product categories, if any, nor does it limit or  
2 expand the scope of the release provided by Paragraphs 4.1 and 4.2 for Covered Products

3 **4.5 Dismissal of Other Defendants**

4 Within ten days of an order entered by the Court granting approval of this Consent Judgment,  
5 Held shall file a Request for Dismissal without prejudice as to all defendants except Kinco, including  
6 but not limited to Kindler, Inc. and all DOE defendants.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall  
9 be null and void if, for any reason, it is not approved and entered by the Court within one year after  
10 it has been fully executed by the Parties. If this Consent Judgment is not approved by the Court, (a)  
11 this Consent Judgment and any and all prior agreements between the Parties merged herein shall  
12 terminate and become null and void, and the action shall revert to the status that existed on the  
13 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof,  
14 or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions,  
15 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this  
16 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether  
17 to modify the terms of the Consent Judgment and to resubmit it for approval.

18 **6. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the state of California  
20 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or  
21 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then Kinco  
22 may provide written notice to Held of any asserted change in the law, and shall have no further  
23 obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered  
24 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Kinco  
25 from any obligation to comply with any pertinent state or federal toxics control laws.

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1     **7. NOTICE**

2           Unless specified herein, all correspondence and notice required by this Consent Judgment  
3 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,  
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Kinco:

6           Robert Potter, CFO  
7           Kinco, LLC  
8           4286 NE 185<sup>th</sup> Drive  
9           Portland, OR 97230

10          with a copy to:

11          Paul S. Rosenlund, Esq.  
12          Duane Morris LLP  
13          Spear Tower, One Market Plaza, Suite 2200  
14          San Francisco, CA 94105

15 For Held:

16          The Chanler Group  
17          Attn: Proposition 65 Coordinator  
18          2560 Ninth Street  
19          Parker Plaza, Suite 214  
20          Berkeley, CA 94710

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

23     **8. COUNTERPARTS; FACSIMILE SIGNATURES**

24           This Consent Judgment may be executed in counterparts and by facsimile or portable  
25 document format (PDF) signature, each of which shall be deemed an original, and all of which,  
26 when taken together, shall constitute one and the same document.

27     **9. POST EXECUTION ACTIVITIES**

28           Held shall comply with the reporting form requirements referenced in Health and Safety  
Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In  
furtherance of obtaining such approval, Held and Defendant agree to mutually employ their  
reasonable best efforts, and that of their counsel, to support the entry of this agreement as a  
judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of

1 this Section, "best efforts" shall include, at a minimum, cooperating on the drafting and filing of the  
2 necessary moving papers, and supporting the motion for judicial approval.

3 **10. ENFORCEMENT OF CONSENT JUDGMENT**

4 Either Party may, by motion, application for an order to show cause before the Alameda  
5 County Superior Court, or any other available remedy at law before this Court, enforce the terms and  
6 conditions contained in this Consent Judgment. A Party may file such a motion, action or  
7 application only after that Party first provides 30 days' notice to the Party allegedly failing to comply  
8 with the terms and conditions of this Consent Judgment. Upon a Party providing notice of purported  
9 failure to comply with the terms and conditions of this Consent Judgment, the parties shall attempt to  
10 resolve such Party's failure to comply in an open and good faith manner for a period of no less than  
11 30 days.

12 Should Plaintiff prevail on any motion, application for an order to show cause before the  
13 Alameda County Superior Court, or any other available remedy at law to enforce or redress a  
14 violation of this Consent Judgment, Plaintiff shall be entitled to his reasonable attorneys' fees and  
15 costs incurred as a result of such motion, application, or other remedy at law. Should Kinco prevail  
16 on any motion application for an order to show cause or other proceeding, Kinco may be awarded its  
17 reasonable attorneys' fees and costs as a result of such motion or application upon a finding by the  
18 court that Plaintiff's prosecution of the motion or application lacked substantial justification. For  
19 purposes of this Consent Judgment, the term substantial justification shall carry the same meaning as  
20 used in the Civil Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

21 **11. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and  
23 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any  
24 Party, and the entry of a modified consent judgment by the Court.

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**12. AUTHORIZATION**

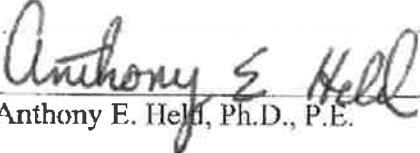
The undersigned are authorized to execute this Consent Judgment and have read, understood, and agree to all of the terms and conditions contained herein.

**AGREED TO:**

**AGREED TO:**

Date: October 21, 2014

Date: 10/15/14

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

By:   
Travis Kindler, CEO  
KINCO, LLC dba KINCO INTERNATIONAL