

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Michael DiPirro (“DiPirro”) and Kingsbridge International, Inc. (“Kingsbridge”), with DiPirro and Kingsbridge individually referred to as a “Party” and collectively as the “Parties.” DiPirro 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. Kingsbridge 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

DiPirro alleges that Kingsbridge manufactures, imports, sells, or distributes for sale, in the state of California, shelf liners containing Diisononyl phthalates (“DINP”) without first providing the clear and reasonable exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical that is known to the State of California to cause cancer (hereinafter “Listed Chemical”).

1.3 Product Description

The products covered by this Settlement Agreement are shelf liners containing the Listed Chemical that are manufactured, sold, or distributed for sale in California by Kingsbridge, including, but not limited to, *Household Shelf Liner, Stock No. 44657-WL (#0 13308 44657 9)* (“Products”).

1.4 Notice of Violation

On or about July 27, 2016, DiPirro served Kingsbridge, among others, and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of DiPirro’s allegation that Kingsbridge violated Proposition 65 by failing to warn its customers and consumers in California that the Products

expose users to the Listed Chemical. 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

Kingsbridge 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 Settlement Agreement shall be construed as an admission by Kingsbridge of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kingsbridge of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Kingsbridge. This section shall not, however, diminish or otherwise affect Kingsbridge's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean November 15, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

In order to waive the second civil penalty under Section 3.2, on or before May 1, 2017 Kingsbridge shall only manufacture for sale, distribute for sale, or sell in California, Products that are reformulated ("Reformulated Products"). For purposes of this Consent Judgment, Reformulated Products are Products that meet the Reformulation Standards of Section 2.2 below.

2.2 Reformulation Standard

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products containing no more than 1,000 parts per million (0.1%) DINP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DINP content in a solid substance.

2.3 Product Warnings. Commencing on the Effective Date, for all Products that contain the Listed Chemical and are not Reformulated Products, and are distributed for sale in California by Kingsbridge, Kingsbridge shall provide a clear and reasonable warning on each Product as set forth below.¹ Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion. The text of the warning shall be printed in black ink on a light background, in a font that is easy to read and legible, but in no case less than in 10 point font.

For Products that are not Reformulated Products manufactured prior to August 1, 2018, Kingsbridge may use one of the following warnings, at Kingsbridge's option. For Products that are not Reformulated Products manufactured after July 31, 2018, Kingsbridge shall use the warning language under "Option 3" below, which shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as shown below (the symbol may be black on white if the color yellow is otherwise not used on the Product's packaging). Either option of the warning statement below may be expanded at Kingsbridge's option to refer to chemicals that have been listed under Proposition 65 as known to the State of California to cause reproductive harm if such chemicals are present:

OPTION 1:

WARNING: This product contains DINP, a phthalate chemical
known to the State of California to cause cancer.

OPTION 2:

¹ These warning requirements shall not apply to Products that Kingsbridge has distributed prior to the Effective Date and such previously-distributed Products may be sold through by Kingsbridge's direct and indirect customers as previously manufactured, packaged and labeled.

WARNING: This product contains a chemical known to the State of California to cause cancer.

OPTION 3:



WARNING: This product can expose you to chemicals, including DINP, known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

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

3.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

Kingsbridge shall make an initial civil penalty payment of \$3,000.00, in accordance with this section, on or before the Effective Date. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3 below. The penalty payment shall be delivered to the address listed in Section 3.3 below.

3.2 Second Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

On or before May 1, 2017, Kingsbridge shall pay a second civil penalty of \$6,000.00. The second civil penalty shall be waived in its entirety if an officer of Kingsbridge certifies in writing that as of May 1, 2017, Kingsbridge will only distribute for sale into California Reformulated Products as set forth in Section 2.2 above. Such certification must be received Bush & Henry on or before May 1, 2017. The second civil penalty payment shall, if not waived pursuant to the above, be apportioned in accordance with California Health & Safety Code § 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and the remaining 25% of the penalty remitted to DiPirro in accordance with Section 3.3.

3.3 Payment Procedures. Payments shall be delivered to the offices of Bush & Henry, 3270 Mendocino Avenue, Suite 2E, Santa Rosa, CA 95403, and shall be in the form of three checks for the following amounts made payable to:

- (a) “Bush & Henry, Attorneys at Law” in the amount of \$2,250.00 for payment to OEHHA. Bush & Henry agree to forward such funds to OEHHA in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver to the offices of Bush & Henry a certified or cashier’s check made payable to “Office of Environmental Health Hazard Assessment.”
- (b) “Bush & Henry, Attorneys at Law” in the amount of \$750.00 as payment to Michael DiPirro. Bush & Henry agree to forward such funds in a timely manner. Alternatively, at Defendant’s option, it can choose to deliver to the offices of Bush & Henry a certified or cashier’s check made payable to “Michael DiPirro.”
- (c) “Bush & Henry, Attorneys at Law” in the amount of \$24,500, as payment for attorneys’ fees and costs pursuant to Section 4 below.

For any payment that is returned for insufficient funds, payment must be made by a cashier’s check within ten (10) calendar days of notification of insufficient funds, plus a 10% service fee.

3.4 Issuance of W-9 and 1099 Forms. DiPirro’s counsel shall provide Kingsbridge with W-9 forms for the three payees listed below within 3 business days after this Agreement has been fully executed by the Parties. By no later than December 31, 2016, Kingsbridge shall then provide DiPirro’s counsel with a separate 1099 form for each of its payments under this Agreement made out to:

- (a) “Office of Environmental Health Hazard Assessment”, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) for civil penalties paid;
- (b) “Michael DiPirro,” whose address and tax identification number shall be furnished upon request after this Agreement has been fully executed by the Parties for his portion of the civil penalties paid; and
- (c) “Bush & Henry, Attorneys at Law, PC,” for fees and costs reimbursed

pursuant to Section 4.

4. REIMBURSEMENT OF FEES AND COSTS

The parties acknowledge that DiPirro and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Kingsbridge then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to DiPirro and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. Kingsbridge shall pay \$24,500 for fees and costs incurred as a result of investigating, bringing this matter to Kingsbridge's attention, and negotiating a settlement in the public interest. Kingsbridge shall issue a separate 1099 for fees and costs (EIN: 81-1257634), shall make the check payable to "Bush & Henry, Attorneys at Law" and shall deliver payment on or before the Effective Date to the address listed in Section 3.3 above.

5. CLAIMS COVERED AND RELEASED

5.1 DiPirro's Release of Kingsbridge

This Settlement Agreement is a full, final, and binding resolution between DiPirro and Kingsbridge of any violation of Proposition 65 that was or could have been asserted by DiPirro, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Kingsbridge, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Kingsbridge directly or indirectly distributes or sells the Products, including, but not limited to CVS Health Corporation, and CVS Pharmacy, Inc. ("Releasees"), for unwarned exposures to the Listed Chemical from the Products manufactured, or distributed for sale in California, by Kingsbridge prior to the Effective Date.

In further consideration of the promises and agreements herein contained, DiPirro, 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 Kingsbridge 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 exposures to Proposition 65 listed chemicals from Products manufactured, or distributed for sale in California, by Kingsbridge prior to the Effective Date.

5.2 Kingsbridge's Release of DiPirro

Kingsbridge, 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 DiPirro 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 DiPirro 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.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement 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 Settlement 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 Kingsbridge may provide written notice to DiPirro of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any party by the other party at the following addresses:

For Kingsbridge International, Inc.:

Robert L. Falk, Esq.
Morrison & Foerster
425 Market Street
San Francisco, CA 94105-2482

For DiPirro:

Bush & Henry, Attorneys at Law, PC
3270 Mendocino Avenue, Suite 2E
Santa Rosa, CA 95403

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 Settlement 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

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

11. MODIFICATION

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

12. **AUTHORIZATION**

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

AGREED TO:

Date:

10/26/16

By:

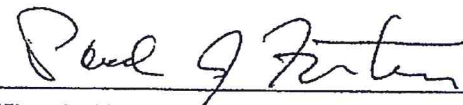

Michael DiPirro

AGREED TO:

Date:

OCTOBER 24th, 2016

By:


Kingsbridge International, Inc.
Print Name: PAUL J. FOSTER
Title: OWNER