

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered by Anthony E. Held, Ph.D., P.E. (“Held”) and, KHS America, Inc. (“KHS”), with Held and KHS 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. KHS employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 et seq. (“Proposition 65”).

### 1.2 General Allegations

Held alleges that KHS sells and distributes for sale in California, musical instruments with vinyl or other plastic handles or handgrips containing di(2-ethylhexyl) phthalate (“DEHP”), and that it does so without providing a Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

### 1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as musical instruments with vinyl or other plastic handles or handgrips containing DEHP that are manufactured, sold, or distributed for sale in California by KHS and/or other entities in its chain of distribution including, but not limited to, the *Hohner Performer 37 Melodica, S-37, UPC No. 0 48667 32666 8* identified in Held’s Notice, the *Hohner Performer 32 Melodica*, and all other similar Melodicas.

### 1.4 Notice of Violation

On November 20, 2017, Held served KHS, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges KHS violated Proposition 65 by failing to warn its customers and

consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

### **1.5 No Admission**

KHSA denies the material, factual, and legal allegations in the Notice, and maintains that all the products that it has manufactured, imported, 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 KHSA of any allegation, fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by KHSA of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by KHS. This Section shall not, however, diminish or otherwise affect KHS'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 April 6, 2018.

## **2. INJUNCTIVE RELIEF**

### **2.1 Commitment to Reformulate or Provide Warnings**

Commencing on the Effective Date and continuing thereafter, KHSA shall only sell or distribute for sale in California, Products that are either (a) Reformulated Products as defined by Section 2.2; or (b) offered with a clear and reasonable warning pursuant to Section 2.3, below.


### **2.2 Reformulated Products Defined**

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing no more than 1,000 parts per million DEHP content (0.1%) in any component analyzed pursuant to U.S. Environmental Protection Agency

testing methodologies 3580A and 8270C or equivalent methodologies used by state or federal agencies to determine DEHP content in a solid substance.

### **2.3 Clear and Reasonable Warnings**

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by KHSA that are not Reformulated Products, KHSA will only offer such Products with a clear and reasonable warning in accordance with this Section or Title 27 California Code of Regulations sections 25601, et seq. KHSA further agrees that any warning used will be prominently placed in relation to the Products with such conspicuousness when 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 of purchase or use. For purposes of this Settlement Agreement, a warning affixed directly to a Product or its packaging/labeling containing the following statement shall be deemed clear:

 **WARNING:** This product can expose you to chemicals, including DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [ww.P65Warnings.ca.gov](http://ww.P65Warnings.ca.gov)

If KHSA sells Products via an internet website to customers located in California, the warning requirements of this section shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, within fifteen (15) days of the Effective Date KHSA agrees to pay \$5,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Held. KHSA will deliver its payment in two checks payable to: (a) “OEHHA” in the amount of \$3,750; and (b) “Anthony E. Held, Client Trust Account” in the amount of \$1,250. Held’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment.

#### **3.2 Attorneys’ 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. KHSA agrees to pay \$22,500 to Held and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of KHS’s management, and negotiating a settlement that provides a significant public benefit. KHS’s payment shall be delivered within fifteen (15) days of the Effective Date in a check made payable to “The Chanler Group.”

#### **3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to:

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

#### 4. CLAIMS COVERED AND RELEASED

##### 4.1 Held's Release of KHS

This Settlement Agreement is a full, final, and binding resolution between Held, in his individual capacity and not on behalf of the public, and KHS, 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, principals, representatives, and assignees, against KHSA or its parents, subsidiaries, affiliated entities under common ownership (including without limitation, Hohner, Inc.), directors, officers, employees, agents, principals, representatives, predecessors, successors, assignees ("Releasees"), and each downstream entity to whom KHSA directly or indirectly distributes, ships, or sells the Products. Such downstream entities include, without limitation, KHS's distributors, wholesalers, customers, retailers (including, without limitation, Guitar Center), franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, representatives, predecessors, successors, and assignees (collectively, "Downstream Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by KHSA before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Held, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, representatives, and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against KHSA Releasees, and Downstream Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by KHSA before the Effective Date.

#### **4.2 KHS's Release of Held**

KHS, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Held and his attorneys and other representatives, for any action taken or statement made, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. 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.

#### **6. 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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products, then KHSA may provide written notice to Held of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement, to the extent that the Products are so affected.

#### **7. NOTICE**

Unless specified herein, all correspondence and notice required by this Settlement 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 KHS:

Jerry Goldenson, President  
KHS America, Inc.  
12020 Volunteer Boulevard  
Mount Juliet, TN 37122

Robert M. Steele, Esq.  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
Baker Donelson Center, Suite 800  
211 Commerce Street  
Nashville, TN 37201

For Held:

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

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

**8. 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.

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

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

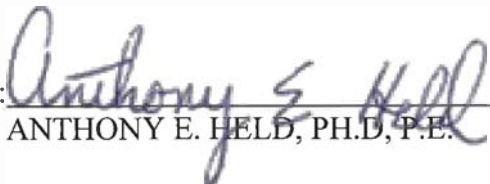
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agree to all the terms and conditions set forth herein.

**AGREED TO:**

**AGREED TO:**

Date: 4/4/2018

Date: 4/04/18

By:   
ANTHONY E. HELD, PH.D., P.E.

By:   
Jerry Goldenson, President  
KHS AMERICA, INC.