SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and K & S Precision Metals Co.

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and K & S Precision Metals Co. (K & S) with Vinocur and K & S collectively referred to as the "Parties." Vinocur 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. K & S 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, California Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Vinocur alleges that K & S manufactures, imports, sells and/or distributes for sale in California, vinyl tool pouches that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Vinocur alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl tool pouches containing DEHP including, but not limited to, the *K&S Precision Metals Needle Files, Stock No. 430, UPC # 6 14121 00430 6*, manufactured, imported, or purchased for resale by K & S and distributed, sold and/or offered for sale in the State of California, hereinafter the "Products."

1.4 Notice of Violation

On or about October 24, 2018, Vinocur served K & S and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that K & S 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

K & S denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed 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 K & S of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by K & S of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 18, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on June 30, 2019 and continuing thereafter, K & S shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 2.2. Any Products, that are not Reformulated Products, which K & S sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution, after June 30, 2019, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after June 30, 2019, K & S sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, K & S shall also provide warnings for such Products by identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6. This Section 2, including subsections 2.2 through 2.6, shall not apply to those Products that have been manufactured and are already in the stream of commerce as of June 30, 2019.

2.2 Reformulation Standards

"Reformulated Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, K & S shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq*. 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) Warning. The warning shall consist of the following statement (Warning):

> ⚠ **WARNING**: This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. K & S may, but is not required to, use the following short-form warning as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

> ⚠ **WARNING:** Reproductive Harm – www.P65Warnings.ca.gov

(c) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

2.4 Product Warnings

K & S shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, "Product label" means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

2.5 Mail Order Catalog Warnings

In the event that, after the Effective Date, K & S prints new catalogs and sells Products via mail order through such catalogs to customers located in California, K & S shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Internet Warnings

If, after the Effective Date, K & S sells Products via the internet to customers located in California, K & S shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to

seek out the warning. The warning or a clearly marked hyperlink to the warning using the word "**WARNING**" given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, K & S agrees to pay a total of $1,600 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 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 amount retained by Vinocur.

K & S will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff's counsel on or before January 25, 2019. K & S shall provide two checks made payable to: (a) "OEHHA" in the amount of $1,200; and (b) "Laurence Vinocur, Client Trust Account" in the amount of $400. Thereafter, Vinocur's counsel shall send OEHHA's portion of the penalties paid by K & S to OEHHA.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Vinocur 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 the issue to be resolved after the material terms of the agreement had been settled.

Shortly after the other settlement terms had been finalized, K & S expressed a desire to resolve Vinocur's fees and costs. The Parties then negotiated a resolution of the compensation due to Vinocur 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, K & S shall reimburse Vinocur and his counsel $17,400. K & S will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by plaintiff's counsel on or before January 25, 2019, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to K & S's attention and negotiating a settlement of the matter.

3.3 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of K & S

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and K & S, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against K & S, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom K & S directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged

exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by K & S in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Vinocur's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Vinocur may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by K & S, before the Effective Date (collectively, Claims), against K & S and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to K & S. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve K & S's Products.

4.2 <u>K & S's Release of Vinocur</u>

K & S, on behalf of itself, its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Vinocur 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 Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then K & S shall provide written notice to Vinocur of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve K & S from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (a) personally delivered; (b) sent by first-class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For K & S:

Antoinette Kuberski, President
K & S Precision Metals Co.
6911 West 59th Street
Chicago, IL 60638

With a Copy to:

Michael Gleason
Hahn Loeser & Parks LLP
600 West Broadway, Suite 1500
San Diego, CA 92101

For Vinocur:

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

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

8. COUNTERPARTS; FACSIMILE AND SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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)

Vinocur agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. MODIFICATION

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

11. AUTHORIZATION

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

AGREED TO:

Date: 1/16/19

By: Laurence Vinocur

Laurence Vinocur

AGREED TO:

Date: 1-18-19

By: Walter J. Findysz

Antoinette Kuberski, President
K & S Precision Metals Co.

Walter J. Findysz
K&S Precision
Vice President