

**PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2021-02289)**

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Kennedy International, Inc. (“Kennedy”), with Davia and Kennedy each referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Davia

Davia is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Kennedy

Kennedy Corporation 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 §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Davia alleges that Kennedy is responsible for the design, manufacture, distribution and/or sale, in the State of California, of Laura Ashley branded luggage tag products with vinyl components that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed Chemical.”

1.5 Notice of Violation

On September 14, 2021, Davia served Kennedy, TJX Companies, Inc. (“TJX”) and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided

public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP found in the vinyl luggage tag products sold in California (AG Notice 2021-02289). This September 14, 2021, Notice of Violation shall hereafter be referred to as "Notice." Kennedy represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the luggage tag products as identified in the Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Kennedy. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Kennedy denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an admission by Kennedy of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Kennedy of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Kennedy. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Kennedy's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Kennedy as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in

full of the terms of the settlement.

2. DEFINITIONS

2.1 "Covered Product" shall mean all Laura Ashley branded luggage tag products with vinyl components distributed by Kennedy, including, but not limited to, Laura Ashley 2 Pc. Luggage Tag Set (6 33125 19669 5).

2.2 "Phthalate Free" Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP, di-n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

2.3 "Effective Date" shall mean March 1, 2022.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Kennedy's Control

No later than the Effective Date, Kennedy shall send a letter, electronic or otherwise ("Notification Letter") to the manager for any retail entity to which Kennedy has distributed or sold Covered Products since September 1, 2019, and to any operations manager for any ecommerce retail website that Kennedy understands or believes offers Covered Products for sale to consumers with a ship to address in California. The Notification Letter shall advise the recipient that Covered Products "have been tested for the presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and reproductive harm," and request that the recipient either pull all Covered Products from store displays and return its entire inventory of Covered Products to Kennedy or label the Covered Products remaining in inventory for sale in or to California with a label that complies with Section 3.3. The Notification Letter shall request a response from the recipient within 15 days, confirming that the

letter was received. Kennedy shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia's written request.

3.2 Product Reformulation Commitment

3.2.1 As a material term of this Agreement, Kennedy represents that the Covered Products are no longer offered for sale by Kennedy and they currently have no more inventory of Covered Products in their custody, possession or control. After the Effective Date, in such case as Kennedy decides to resume manufacture, distribution or sale of the Covered Products, Kennedy shall provide the Phthalate Free concentration standards of Section 2.2 to any vendors or manufacturers of any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to purchase and acquisition of any Covered Product from any such vendor, Kennedy shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free concentration standard in all materials comprising the Covered Product. Kennedy shall maintain copies of any such testing of Covered Products demonstrating compliance with this section and shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from the Effective Date. After the April 1, 2022, Kennedy shall not sell or otherwise distribute any Covered Product unless it is Phthalate Free.


3.3 Interim Covered Product Warnings

3.3.1 Should Kennedy discover or otherwise obtain any inventory of Covered Products that is not confirmed to be Phthalate Free, Kennedy shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Covered Product unless such Covered Product is shipped with product package label as set forth hereafter.


Each such warning utilized by Kennedy for any Covered Product shall be prominently placed either on the product, its labeling or its packaging 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 either be printed directly on the Covered Product consumer cardboard packaging or shall be affixed to the consumer cardboard packaging. Each warning shall include the yellow triangle with an internal exclamation point and state:

 **WARNING:** The vinyl materials of this product can expose you to chemicals, including DEHP, that are known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

or

 **WARNING:** Cancer and Reproductive Harm. - www.P65Warnings.ca.gov

3.4 Internet Ecommerce Covered Product Warnings

After the Effective Date, Kennedy shall not offer any Covered Product for sale via any ecommerce website owned, operated, managed or controlled by, or for the benefit of, Kennedy unless it is Phthalate Free.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this agreement, Kennedy shall pay a total of \$1,000 in civil penalties 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 Davia.

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Kennedy for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents

evidence to counsel for Kennedy that the Covered Products have been distributed in California in sales volumes materially different (more than 25%) than those identified by Kennedy prior to execution of this Agreement, and Kennedy does not provide Davia with competent and credible evidence to dispute this claim, then Kennedy shall be liable for an additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Kennedy with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Kennedy shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Kennedy and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement of Davia's Fees and Costs

The Parties acknowledge that Davia and her 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. Kennedy 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 Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Kennedy shall pay Davia's counsel the amount of \$17,000 for fees and costs incurred investigating, litigating and enforcing this matter.

4.4 Payment Procedures

Kennedy shall satisfy their obligation to pay civil penalties pursuant to Section 4.1 by

delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2021-02289"), in the amount of \$750 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2021-02289") in the amount of \$250.

Kennedy shall satisfy their obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2021-02289") in the amount of \$17,000.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address within 10 business days after execution of this Agreement:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Kennedy shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under this Section that are not received by Sheffer Law Firm within five business days of the due date for such payment.

While the obligations of this agreement are binding upon execution, the Release of Kennedy shall not become effective until after all monetary payments have been made by Kennedy and all funds have cleared.

Kennedy shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2021-02289") and "Susan Davia" (Memo line "Prop 65 Penalties, 2021-02289") in the amount agreed to by the Parties or ordered by the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Kennedy shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2021-02289") in the amount agreed upon by the Parties or ordered by the Court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

Sheffer Law Firm
Attn: Proposition 65 Controller
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Kennedy shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) business days of the due date for such payment.

4.5 Issuance of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Kennedy shall issue three separate 1099 forms, as follows:

- (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

5. RELEASES

5.1 DAVIA'S RELEASE OF KENNEDY

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Kennedy of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Kennedy and TJX, and each of their respective directors, officers, employees, attorneys, agents, parents, and subsidiaries ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold or offered for sale by Kennedy and TJX before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65

by Kennedy with regard to the alleged or actual failure to warn about exposure to DEHP from Covered Products manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as Kennedy remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia 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 limited to, investigation fees, expert fees, and attorneys' fees,-- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Kennedy and TJX before the Effective Date (collectively "claims"), against Kennedy and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Kennedy or Releasees before the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights

and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5.1.4 This section 5.1 release shall not extend upstream to any entities, other than Kennedy, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to Kennedy.

5.2 Kennedy's Release of Davia

The Release by Davia is mutual. Kennedy, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her 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. Kennedy acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

Kennedy expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar

effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. ENFORCEMENT

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation ("NOV") to Kennedy. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data obtained by Davia regarding each such Covered Product. Davia shall take no further action regarding any alleged violation nor seek any monetary recovery for herself, her agents or her counsel if, within 30 days of receiving such NOV, Kennedy demonstrates (1) that the Covered Product was manufactured distributed, sold or offered for sale by Kennedy before September 14, 2021; or (2) that Kennedy directed the retailer or distributor of the Covered Product to take corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; or (3) that the Covered Products are Phthalate Free.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail or electronic mail to the following:

For Kennedy:

Mendy Reich, Comptroller/CFO
Kennedy International, Inc.
1800 Water Works Road
Old Bridge, NJ 08857

With a copy to its counsel:

Todd Christopher Hunt
Law Office of Todd C. Hunt, APC
30721 Russell Ranch Road, Suite 140
Westlake Village, CA 91362
todd@toddhuntlaw.com

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941
gregs@sheffer-law.net

Any Party may modify the person and address to whom the notice is to be sent by sending each other Party notice by certified mail and/or other verifiable form of written communication.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)

Davia agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f).

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express

or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

13. ATTORNEY'S FEES

13.1 Should either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §§ 1021 and 1021.5.

13.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.



15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: April <u>11</u>, 2022</p>  <p>_____ Mendy Reich, Comptroller/CFO Kennedy International, Inc.</p>	<p>Dated: April <u>4</u>, 2022</p>  <p>_____ Susan Davia</p>
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