

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Southern Exchange, L.P. ("Southern Exchange"), and Laurence Vinocur ("Vinocur"), with Vinocur and Southern Exchange collectively referred to as the "Parties." Vinocur is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Southern Exchange 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 § 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Vinocur alleges that Southern Exchange has manufactured, distributed and/or sold in the State of California vinyl rainwear containing concentrations of di(2-ethylhexyl)phthalate ("DEHP") above the allowable state limits without the requisite Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are defined as vinyl/PVC rainwear containing DEHP including, but not limited to, *Northwest Territory Lightweight Rain Poncho* (#0 49794 32728 3), manufactured, distributed and/or sold in the State of California by Southern Exchange, referred to hereinafter as the "Products."

1.4 Notices of Violation

On or about November 21, 2012, Vinocur served Southern Exchange and various public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on Southern Exchange's failure to warn consumers that the Products contained DEHP and exposed users in the State of California to DEHP. To the best of the Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1.5 No Admission

Southern Exchange denies all factual and legal allegations contained in Vinocur's Notice, and maintains that all of the Products it has sold and/or offered for sale in the State of California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Southern Exchange of any 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 Southern Exchange of any fact, finding, conclusion, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Southern Exchange'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, August 30, 2013.

2. REFORMULATION AND WARNINGS

2.1 Reformulation Standard

Reformulated Products are defined as Products containing concentrations less than 0.1 percent (1000 parts per million) of DEHP in each accessible component when analyzed pursuant

to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance. By entering into this Settlement Agreement, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon Southern Exchange by laws other than Proposition 65, nor do Parties intend for this Settlement Agreement to affect any defenses available to Southern Exchange under laws other than Proposition 65.

2.2 Vendor Notification Requirement

To the extent is has not already done so, within thirty (30) business days of the Effective Date, Southern Exchange shall provide the reformulation standard specified in Section 2.1 to each of its then-current Vendors of Products that will be sold or offered for sale to California citizens and shall instruct each Vendor to use reasonable efforts to provide Products that comply with the reformulation standard for Reformulated Products in Section 2.1 above. For purposes of this Settlement Agreement, the term "Vendor" means a person or entity that distributes, sells or otherwise supplies the Products or component parts of the Products to Southern Exchange, its parents, assignees, subsidiaries and/or affiliated entities under common ownership.

2.3 Warnings Required: Product Labeling

Commencing on the Effective Date, for all Products other than Reformulated Products, Southern Exchange shall provide clear and reasonable warnings that state:

WARNING: This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects or other reproductive harm.

Southern Exchange may affix this warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are sold or offered for sale to institutional or individual

consumers within the State of California. 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(s) the warning applies, so as to minimize the risk of consumer confusion.

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

In settlement of all the claims referred to in this Settlement Agreement, Southern Exchange shall pay a total of \$30,000 in penalties in accordance with Paragraphs 3.1 and 3.2 of this Section. Each 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 Vinocur.

3.1 Initial Civil Penalty

Southern Exchange shall pay an initial civil penalty in the amount of \$10,000 within five (5) business days of the Effective Date. Southern Exchange shall issue two separate checks made payable as follows: (a) "OEHHA" in the amount of \$7,500; and (b) "The Chanler Group in Trust for Laurence Vinocur" in the amount of \$2,500. All penalty payments shall be delivered to the addresses listed in Section 5.1.

3.2 Final Civil Penalty

Southern Exchange shall pay a final civil penalty in the amount of \$20,000, on or before January 20, 2014. However, all payments pursuant to this Section shall be waived in their entirety if, no later than January 6, 2014, an officer of Southern Exchange provides Vinocur with

written certification that, as of the date of such certification and continuing into the future, Southern Exchange has met the reformulation standard specified in Section 2.1, such that all Products manufactured, imported for sale, distributed and/or sold in the State of California by Southern Exchange, its parents, assignees, subsidiaries and affiliated entities under common ownership are Reformulated Products. The certificate required by this Section is a material term, and time is of the essence. If the certification is not timely received, Southern Exchange shall issue two separate checks for the final civil penalty made payable as follows: (a) "OEHHA" in the amount of \$15,000; and (b) "The Chanler Group in Trust for Laurence Vinocur" in the amount of \$5,000. All penalty payments shall be delivered to the addresses listed in Section 5.1.

4. PAYMENT IN LIEU OF FINAL CIVIL PENALTY

Southern Exchange shall also pay a payment in lieu of an additional final civil penalty in the amount of \$5,000 on or before January 20, 2014, to Silent Spring Institute ("Spring Institute") a not-for-profit institution, pursuant to California Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11 § 3202(b). Silent Spring will use such funds in one or more of the following ways: (a) to continue its work identifying the links between exposure to environmental chemicals including lead, DEHP and other phthalates such as di-n-butyl ("DBP") and butyl benzyl phthalate ("BBP") and reproductive and developmental harm, as well as educating the public about such potential exposures; (b) to conduct exposure and risk-based prioritization of chemicals listed under Proposition 65, or chemicals OEHHA has identified as candidates for listing, in order to identify exposures of potential public health significance; (c) to monitor compliance with the reformulation requirements of this and other, similar consent judgments addressing Proposition 65-listed chemical exposures; or (d) to conduct additional exposure measurements that evaluate the levels of chemical exposures to users of products that

contain lead, DEHP, DBP and BBP. However, the payment in lieu of final civil penalty pursuant to this Section shall be waived in its entirety if, no later than January 6, 2014, an officer of Southern Exchange provides Vinocur with written certification that, as of the date of such certification and continuing into the future, Southern Exchange has met the reformulation standard specified in Section 2.1, such that all Products manufactured, imported for sale, distributed and/or sold in the State of California by Southern Exchange, its parents, assignees, subsidiaries and affiliated entities under common ownership are Reformulated Products. The certificate required by this Section is a material term, and time is of the essence. If the certification is not timely received, Southern Exchange shall issue a check for the payment in lieu of final civil penalty made payable to Silent Spring in the amount of \$5,000. The payments shall be delivered to the address listed in Section 5.1(c).

5. PAYMENT PROCEDURES

5.1 Issuance of Payments. Payments shall be delivered as follows:

(a) All payments owed to Vinocur, pursuant to Sections 3.1 through 3.2, shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 3.1 through 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 5.1(a), as proof of payment to OEHHA.

(c) All payments owed to Silent Springs, pursuant to Section 4, shall be delivered directly to Silent Spring at the following address:

Silent Spring Institute
29 Crafts Street
Newton, Massachusetts 02458

With a copy of the check payable to Silent Spring mailed to The Chanler Group at the address set forth in 5.1(a), as proof of payment to Silent Spring.

5.2 Issuance of 1099 Forms. After each penalty payment, Southern Exchange shall issue a 1099 Form for the payment to (a) Vinocur, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, (b) OEHHA, who shall be identified as "California Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) in the 1099 Form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA 95814 and (c) Silent Spring Institute, 29 Crafts Street, Newton, Massachusetts 02458, whose information shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties.

6. REIMBURSEMENT OF ATTORNEY 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 this fee issue to be resolved after the material terms of the agreement had been settled. Vinocur 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 Vinocur's 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. Southern Exchange shall pay \$30,000 for fees and costs incurred as a result of investigating, bringing this matter to Southern Exchange's attention and negotiating a settlement in the public interest. Southern Exchange shall make the check payable to "The Chanler Group," shall issue a separate 1099 Form for fees and costs (EIN: 94-3171522) and deliver payment within five (5) business days of the Effective Date to the address listed in Section 5.1(a).

7. RELEASE OF ALL CLAIMS

7.1 Vinocur's Release of Southern Exchange

This Settlement Agreement is a full, final and binding resolution between Vinocur and Southern Exchange 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 Southern Exchange, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Southern Exchange directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees

and retailers ("Releasees"), based on the alleged failure to warn about potential exposures to DEHP contained in the Products sold and/or offered for sale by Southern Exchange in the State of California as set forth in the Notice before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur on behalf of himself, 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 Southern Exchange and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products sold and/or offered for sale by Southern Exchange before the Effective Date.

7.2 Southern Exchange's Release of Vinocur

Southern Exchange waives any and all claims against Vinocur, 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 enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

8. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Southern Exchange may send Vinocur a written request to draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment and to seek court approval of this Settlement Agreement in the form of a consent judgment pursuant to California Health & Safety Code § 25249.7, or as may be otherwise allowed by law. If

requested, Vinocur agrees to reasonably cooperate with Southern Exchange and to use his best efforts, and that of his counsel, to obtain approval of the Parties' settlement by a Superior Court in California and an entry of judgment in accordance with the terms set forth herein.

Pursuant to California Code of Civil Procedure §§ 1021 and 1021.5, Southern Exchange will reimburse Vinocur and his counsel for the reasonable fees and costs incurred in drafting and filing the complaint, converting this Settlement Agreement into a proposed consent judgment, and seeking judicial approval of the settlement, in an amount not to exceed \$15,000, exclusive of fees and costs that may be incurred on any appeal. Within thirty days after its receipt of monthly invoices from Vinocur for work performed under this Section, Southern Exchange will remit payment to The Chanler Group at the address set forth in Section 5.1.

9. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

10. 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 and/or DEHP, then Southern Exchange shall provide written notice to Vincour of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

11. NOTICES

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

For Southern Exchange:

Ronald Ramsey, President
Southern Exchange, L.P.
1332 Conrad Sauer Drive
Houston, TX 77043

with a copy to:

Kenneth D. Rhodes, Esq.
Looper, Reed & McGraw, P.C.
1300 Post Oak Blvd., Suite 2000
Houston, TX 77056

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.

12. COUNTERPARTS; FACSIMILE/PDF 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.

13. ENTIRE AGREEMENT

This Settlement 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.

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

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

15. MODIFICATION

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

16. AUTHORIZATION

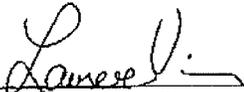
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

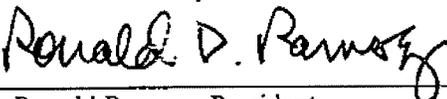
AGREED TO:

AGREED TO:

Date: August 27, 2013

Date: 8/27/13

By: 
Laurence Vinocur

By: 
Ronald Ramsey, President
Southern Exchange L.P.