

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Master Manufacturing Co., Inc. (“Master”), with Vinocur and Master collectively referred to as the “Parties.” Vinocur is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products. Master 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 Master has distributed and/or sold in the State of California vinyl shoulder cushions containing lead and di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 health hazard warnings.

Pursuant to Proposition 65, on February 27, 1987, California identified and listed lead as a chemical known to cause birth defects and other reproductive harm. Lead became subject to the “clear and reasonable warning” requirements of the act one year later on February 27, 1988. (Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).)

Similarly, on October 24, 2003, California identified and listed DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became subject to the “clear and reasonable warning” requirements of the act one year later on October 24, 2004. (Id.)

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl shoulder cushions that are distributed and/or sold in the State of California by Master including, but not limited to, *The ComfortMakers ShoulderCushion*, #99502 (#0 34238 99502 9). All such vinyl shoulder cushions are referred to collectively herein as the “Products.”

1.4 Notice of Violation

On or about November 21, 2012, Vinocur served Master and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of Vinocur’s allegation that Master was in violation of Proposition 65 for failing to warn its customers and consumers in the State of California that vinyl shoulder cushions sold by Master expose users to DEHP and lead. 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

Master denies the material, factual and legal allegations contained in Vinocur’s Notice, and maintains that all of the products that it has distributed and/or sold in the State of 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 Master 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 Master of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Master. This Section shall not, however, diminish or otherwise affect Master’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 May 31, 2013.

2. PRODUCT REFORMULATION STANDARDS

As of the Effective Date, Master shall only sell or distribute for sale in California Products which have been reformulated to: (a) yield less than 100 parts per million (“ppm”) of lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance; (b) yield a result of no more than 1.0 microgram of lead when analyzed pursuant to NIOSH Test Method 9100; *and* (c) contain less than or equal to 1000 ppm of DEHP when

analyzed pursuant to EPA 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.

3. MONETARY PAYMENTS

3.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Master shall pay a total of \$14,000 in civil penalties in accordance with this Section. Each penalty payment shall be apportioned in accordance with California Health & Safety Code § 25249.12 (c)(1) and (d), with seventy-five percent (75%) of the penalty amount to be remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining twenty-five percent (25%) of the amount to be remitted to Vinocur as follows:

3.1.1 Initial Civil Penalty.

On or before the Effective Date, Master shall pay an initial civil penalty of \$4,000. Master shall issue two separate checks to: (a) “OEHHA” in the amount of \$3,000; and (b) “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$1,000. All penalty payments shall be delivered to the addresses listed in Section 3.3.1.

3.1.2 Final Civil Penalty

On or before April 30, 2014, Master shall pay a final civil penalty of \$10,000. Unless waived, Master shall issue two separate checks for any remaining portion of the final civil penalty, with 75% of the funds remitted to OEHHA and 25% of the funds remitted to “The Chanler Group in Trust for Laurence Vinocur.” The Final Civil Penalty shall be waived in its entirety, if an officer of Master provides Vinocur with written certification confirming, that, as of the date of the letter certification, and continuing into the future, Master has met the reformulation standard specified in Section 2.1 as to all Products distributed, shipped, sold or offered for sale in the State of California. The certification to be provided by this Section is a material term. Vinocur must receive any such certification on or before April 15, 2014, and time is of the essence.

3.2 Reimbursement of Vinocur's 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, Master expressed a desire to resolve the fee and cost issue. The Parties then attempted to (and did) reach an accord on 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. Under these legal principles, within fifteen (15) days of the Effective Date, Master shall pay \$22,000 for fees and costs incurred as a result of investigating, bringing this matter to Master attention and negotiating a settlement in the public interest in one check payable to "The Chanler Group" and shall deliver payment to the address listed in Section 3.3.1(a).

3.3 Payment Procedures

3.3.1 Issuance of Payments.

(a) All payments owed to Vinocur and his counsel, pursuant to Sections 3.1 and 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 OEHHHA (EIN: 68-0284486), pursuant to Sections 3.1, shall be delivered directly to OEHHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

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

3.3.2 Proof of Payment. A copy of each check payable to OEHHA shall be mailed to The Chanler Group at the address set forth in Section 3.3.1(a), as proof of payment to OEHHA.

3.3.3 Tax Documentation. Master shall issue a separate 1099 form for each payment required by this Section 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) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 3.3.1(a).

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur’s Release of Master

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Master of any violation of Proposition 65 based on the alleged failure to warn about exposures to DEHP and lead contained in the Products distributed, sold and/or offered for sale by Master in California before the Effective Date 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 Master, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys (collectively “Master” for purposes of this Section 4.1) and each entity to whom Master directly or indirectly distributes or sells the Products including, but not limited to, Master’s downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers (“Releasees”).

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 arising under Proposition 65 only with respect to DEHP and lead in the Products distributed, sold and/or offered for sale by Master before the Effective Date and releases all claims including, without limitation, all actions, 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) (collectively "Claims") against Master and its Releasees limited to and arising under Proposition 65 with respect to DEHP and lead in the Products distributed, sold and/or offered for sale by Master before the Effective Date.

Vinocur and Master agree that all waivers and releases in this Section shall specifically not apply to any separate legal action arising under Proposition 65 that may, either presently or in the future, be alleged against Master or its Releasees, arising out of a separate "60-Day Notice of Violation" with respect to either DEHP and/or lead in any product that does not qualify as a Product as defined in Section 1.3 above, or any other chemical listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

4.2 Master's Release of Vinocur

Master 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.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Master 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 Master 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, Master 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 \$18,000, exclusive of fees and costs that may be incurred on any appeal. Within ten (10) days after its receipt of monthly invoices from Vinocur for work performed under this Section, Master will remit payment to The Chanler Group at the address set forth in Section 3.3.1(a).

6. 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.

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, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, DEHP, lead and/or TDCPP, then Master shall provide written notice to Vinocur 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. Nothing in this Settlement Agreement shall be interpreted to relieve Master from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

8. 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 Master:

Iris Rubinfeld, President
Master Mfg. Co., Inc.
9200 Inman Avenue
Cleveland, OH 44105

For Vinocur:

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

with a copy on behalf of Master to:

Alan Hirth, Esq.
Meyers, Roman
Eton Tower
28601 Chagrin Blvd., Ste. 500
Cleveland, Ohio 44122

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.

9. 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.

10. 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.

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11. 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).

12. MODIFICATION

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

13. AUTHORIZATION

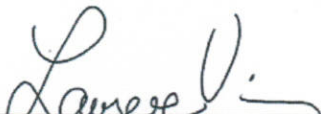
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: May 31, 2013

Date: 6/10/13

By: 
Laurence Vinocur

By: 
Iris Rubinfeld, President
Master Mfg. Co., Inc.