

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Spootiques, Inc. (“Spootiques”), with Vinocur and Spootiques individually referred to as a “Party” and collectively 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. Spootiques 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, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Spootiques manufactured and/or manufactures, imported and/or imports, sold and/or sells, and/or distributed and/or distributes for sale in the state of California, beer mugs with exterior designs containing lead without first providing the clear and reasonable exposure warning required by Proposition 65. Lead is listed pursuant to Proposition 65 as a chemical that is known to the state of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are beer mugs with exterior designs containing lead that are manufactured, sold, imported and/or distributed for sale in California by Spootiques, including, but not limited to, the *Beer Mug, Marilyn Monroe, #15946 (#7 58606 39375 9)*. Referred to collectively herein as the “Products”.

1.4 Notice of Violation

On or about November 21, 2012, Vinocur served Spootiques and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), a document that informed the recipients of Vinocur’s allegation that Spootiques violated Proposition 65 by failing to warn

its customers and consumers in California that the Products expose users to 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

Spoontiques denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, sold, imported and/or distributed for sale in California, including the Products, have been, and are, in compliance with all applicable laws. Spoontiques alleges that it no longer manufactures, imports, sells or distributes the Products. Nothing in this Settlement Agreement shall be construed as an admission by Spoontiques 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 Spoontiques of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Spoontiques. This section shall not, however, diminish or otherwise affect Spoontiques' obligations, responsibilities, and/or duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 8, 2013.

2. INJUNCTIVE RELIEF

Commencing on the Effective Date and continuing thereafter, Spoontiques shall only manufacture for sale, purchase for sale, or distribute for sale in California, Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing a maximum of 100 parts per million (ppm) lead content in any accessible component (i.e., any component that may be touched or handled during a reasonably foreseeable use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, and that yields a result of no more than 1.0 micrograms of lead when analyzed pursuant to the NIOSH 9100 testing protocol, and that yields no detectable lead (.9 ppm) for the

lip and rim area, (the top 20 mm of the glass), or on the interior of the mug where there is beverage contact.

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

In settlement of all the claims referred to in this Settlement Agreement, Spootiques shall pay a total of \$12,000 in civil penalties in accordance with 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 as follows:

3.1 Initial Civil Penalty

Spootiques shall pay an initial civil penalty in the amount of \$4,000 within five (5) calendar days of the Effective Date. Spootiques 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 below.

3.2 Final Civil Penalty

Spootiques shall pay a final civil penalty of \$8,000 on or before December 1, 2013. The final civil penalty shall be waived in its entirety, however, if, no later than November 15, 2013, an officer of Spootiques provides Vinocur with written certification that, as of the date of such certification and continuing into the future, Spootiques has met the reformulation standard specified in Section 2 above, such that all Products manufactured, imported, distributed, sold and offered for sale in California by Spootiques are Reformulated Products. Vinocur must receive any such certification on or before November 15, 2013. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence.

Spootiques shall issue two separate checks for its final civil penalty payments to: (a) “OEHHA” in the amount of \$6,000; and (b) “The Chanler Group in Trust for Laurence Vinocur” in the amount of \$2,000.

3.3 Payment Procedures

3.3.1. 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 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

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address set forth above in 3.3.1(a), as proof of payment to OEHHA.

3.3.2 Issuance of 1099 Forms. After each penalty payment, Spontiques shall issue separate 1099 forms for each payment to Vinocur, whose address and tax identification number shall be furnished upon request after this Settlement Agreement has been fully executed by the Parties, and OEHHA at the addresses listed in Section 3.3.1 above.

4. REIMBURSEMENT OF 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. Spoontiques 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 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. Spoontiques shall pay \$23,700 for fees and costs incurred as a result of investigating, bringing this matter to Spoontiques' attention, and negotiating a settlement in the public interest. Spoontiques shall issue a separate 1099 for fees and costs (EIN: 94-3171522), shall make the check payable to "The Chanler Group" and shall deliver payment within five (5) calendar days of the Effective Date to the address listed in Section 3.3.1 above.

5. CLAIMS COVERED AND RELEASED

5.1 Vinocur's Release of Spoontiques

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Spoontiques of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Spoontiques, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Spoontiques directly or indirectly distributes or sells the Products including, without limitation, its owners, parent companies, corporate affiliates, subsidiaries, successors, assigns, downstream distributors, wholesalers, customers, purchasers, users, retailers, franchisees, cooperative members, auctioneers, dealers, licensors, licensees, and their respective officers, directors, attorneys, representatives, insurers, shareholders, agents, employees, and sister and parent entities ("Releasees"), for unwarned exposures to lead from the Products manufactured,

imported, sold or distributed for sale in California by Spoontiques prior to the Effective Date. The Parties further agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or to any distributors or suppliers who sold Products or any component parts thereof to Spoontiques.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and on behalf of 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 now has or may have in the future against Spoontiques and Releasees, including, without limitation, all actions and causes of action, in law or equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for exposures to lead from Products manufactured, imported, sold, or distributed for sale in California by Spoontiques prior to the Effective Date.

Vinocur, in his individual capacity and *not* his representative capacity, expressly waives any and all rights and benefits which he now has, or in the future may have, with respect to exposures to lead from the Products manufactured, imported, distributed, sold or offered for sale by Spoontiques before the Effective Date, as set forth in the Notice, under California Civil Code § 1542, which provides as follows:

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

5.2 Spoontiques' Release of Vinocur

Spoontiques, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims that it may have 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. In addition, Spoontiques 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Spoontiques, on behalf of itself and its agents, attorneys, representatives, successors and assigns, 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 statutes or common law principle of similar effect, to the fullest extent that it may lawfully waive such right 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 of Vinocur and his attorneys and other representatives notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the Notice and/or the alleged failure to warn about exposure to lead in the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Spoontiques or its owners, parent companies, corporate affiliates, successors, or assigns may request in writing that Vinocur draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Vinocur and Spoontiques agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment

in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, Spoontiques agrees to reimburse Vinocur and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$13,000, exclusive of fees and cost on appeal, if any. Within fourteen (14) calendar days of receiving a monthly invoice from Vinocur's counsel for work performed under this section, Spoontiques agrees to remit payment to the address provided in section 3.3.1(a).

7. 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.

8. 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, then Spoontiques may provide written notice to Vinocur of any asserted change in the law, and have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Products are so affected.

9. NOTICES

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

For Spootiques, Inc.:

Kenneth Sawyer, President
Spootiques, Inc.
111 Island Street
Stoughton, MA 02072

with a copy to:

Lauren M. Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center, Suite 1800
San Francisco, CA 94111

For Vinocur:

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

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

10. 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.

11. POST-EXECUTION ACTIVITIES

Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

12. MODIFICATION

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

13. AUTHORIZATION

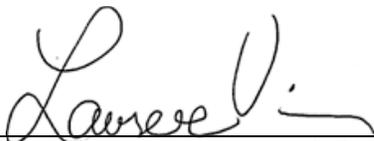
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: July 29, 2013

Date: _____

By: 

Laurence Vinocur

By: _____
Kenneth Sawyer, President
Spontiques, Inc.

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: _____

Date: 7-30-13

By: _____
Laurence Vinocur

By: 
Kenneth Sawyer, President
Spoontiques, Inc.