

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between Lawrence Vinocur (“Vinocur”) and Artsana USA, Inc. (“Artsana”), with Vinocur and Artsana 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. Artsana 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Vinocur alleges that Artsana has manufactured, distributed, and/or sold in the State of California upholstered infant carriers with polyurethane foam containing Tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”) and Tris(2-chloroethyl phosphate (“TCEP”). TDCPP and TCEP (together with tris(2,3-dibromopropyl)phosphate, “TDBPP”) here in referred to as the “Listed Chemicals”) are additive flame retardants used in both soft and rigid polyurethane foam, which is used as padding or cushioning in a variety of products, including upholstered infant carriers.

Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). Pursuant to Proposition 65, on April 1, 1992, California identified and listed TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable warning” requirements of the Act one year later on April 1, 1993. *Id.* Vinocur alleges that the Listed Chemicals escape from foam padding,

leading to human exposures.

Since December 2010, infant carriers have been exempt from California's flammability standard ("TB 117 Exemption"). 4 Cal. Code Regs. tit. 4, § 1374.2(c).

1.3. Product Description

This Settlement Agreement covers the following items that are or were manufactured, imported, distributed, and/or sold in the State of California by Artsana (collectively referred to herein as the "Products"):

- (a) Infant carriers with polyurethane foam; and
- (b) *Chicco UltraSoft Magic Premium Upholstered 2-Way Infant Carrier*, #10960 (#0 49796 60448 1) ("Exemplar Product").

1.4. Notice of Violation

On or about May 1, 2013, Vinocur served Artsana, Toys "R" Us, Inc. ("Toys R Us"), and the requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of Vinocur's allegation that Artsana and Toys R Us were in violation of Proposition 65 for failing to warn their customers and consumers in the State of California that the Products expose users to TDCPP and TCEP. 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

Artsana denies the material factual and legal allegations contained in the Notice and maintains that all of the products that it has manufactured, imported, 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 Artsana 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 Artsana of any fact, finding, conclusion of law, issue of law or violation of law, such being specifically denied by Artsana.

This Section shall not, however, diminish or otherwise affect Artsana's obligations, responsibilities, and duties under this Settlement Agreement.

2. DEFINITIONS

2.1. California Customers

"California Customer" shall mean any customer which Artsana reasonably understands is located in California, has a California warehouse or distribution center, maintains a retail outlet in California, or has made internet sales into California and to which Artsana sells, or has sold, the Products on or after January 1, 2011. The term California Customer does not include sales to individual consumers, except sales by Artsana directly to individual consumers located in California.

2.2. Detectable

"Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent of .0025%) of any one chemical in any material, component, or constituent of a subject product, when analyzed by a NVLAP- or other similarly-accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence, and measure the quantity, of TDCPP and/or, TCEP, and/or TDBPP in a solid substance.

2.3. Effective Date

"Effective Date" shall mean December 24, 2013.

2.4. Reformulated Products

"Reformulated Products" shall mean Products that contain no Detectable amount of TDCPP, TCEP, or TDBPP.

2.5. Reformulation Standard

The "Reformulation Standard" shall mean containing no more than 25 ppm each of TDCPP, TCEP, and TDBPP.

3. INJUNCTIVE RELIEF

3.1. Reformulation of Products

Commencing on the Effective Date, Artsana shall not manufacture or import for distribution or sale in the United States, or cause to be manufactured or imported for distribution or sale in the United States, any Products that are not Reformulated Products.

3.2. Vendor Notification/Certification

On or before January 17, 2014, Artsana shall provide written notice to all of its then-current vendors of the Products that will be sold or offered for sale in California, or to California Customers, (1) instructing each such vendor to provide only Reformulated Products for any sale to California Customers and (2) informing each such vendor of the TB 117 Exemption. In addressing the obligation set forth in the preceding sentence, Artsana shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. Artsana shall obtain written certifications, no later than April 1, 2014, from such vendors, and any newly engaged vendors, that the Products manufactured by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by the Artsana for at least two years after their receipt and shall be made available to Vinocur upon request.

3.3. Customer Notification

No later than ten days after execution of this agreement, Artsana will conduct an investigation of each of the persons listed below to determine whether any of them currently possess for sale to the public an Exemplar Product known by Artsana to contain Detectable amounts of TCEP or TDCCP (*i.e.*, Exemplar Products from SUN Nos. 05012 10982 and 05012 12843):

- (a) Each California Customer to which it, after October 28, 2011, supplied any Exemplar Product known by Artsana to contain Detectable amounts of TCEP or TDCPP (*i.e.*, Exemplar Products from SUN Nos. 05012 10982 and 05012 12843); and
- (b) Any store or establishment, including Toys R Us, that Artsana reasonably understands or believes aware of having sold an Exemplar Product that was manufactured prior to December 31, 2012, in

California after October 28, 2011, known by Artsana to contain Detectable amounts of TCEP or TDCPP (*i.e.*, Exemplar Products from SUN Nos. 05012 10982 and 05012 12843); and

- (c) Any store or establishment with customers in California that Artsana reasonably understands or believes has any inventory of the Exemplar Product that was manufactured prior to December 31, 2012, known by Artsana to contain Detectable amounts of TCEP or TDCPP (*i.e.*, Exemplar Products from SUN Nos. 05012 10982 and 05012 12843), as of the date of execution of this Settlement Agreement.

If the investigation reveals that any such party does currently possess for sale an Exemplar Product known by Artsana to contain Detectable amounts of TCEP or TDCPP (*i.e.*, Exemplar Products from SUN Nos. 05012 10982 and 05012 12843), Artsana shall issue within ten business days an express, written correspondence, electronic or otherwise, (“Notification Letter”) to such party. The Notification Letter shall (1) advise the recipient that the Exemplar Product “contains TDCPP and/or TCEP, chemicals known to the State of California to cause cancer,” and (2) inform the recipient of the existence of the TB 117 Exemption. The correspondence shall request such recipient to return all units of the Exemplar Product to Artsana at Artsana’s sole expense.

The Notification Letter shall require a response from the recipient within twenty days confirming that the Exemplar Product will be returned to Artsana. Artsana shall maintain records of all correspondence generated pursuant to this Section for two years from the date such correspondence is sent or received by Artsana, and shall promptly produce copies of such records upon written request by Vinocur.

4. MONETARY PAYMENTS

4.1. Civil Penalties Pursuant to Health & Safety Code Section 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Artsana shall pay a total of \$28,000 in civil penalties in accordance with this Section. Each penalty payment shall be apportioned in accordance with Health & Safety Code section 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. Artsana shall provide civil penalty payments in

two checks as follows: (a) to “OEHHA” and (b) to “The Chanler Group in Trust for Laurence Vinocur.” All penalty payments shall be delivered to the addresses listed in Section 4.3.1. The certifications in lieu of full payment required by this Section are material terms, and time is of the essence.

4.1.1. Initial Civil Penalty

Artsana shall pay an initial civil penalty of \$12,000 no later than ten business days after the Effective Date.

4.1.2. Final Civil Penalty

Artsana shall pay a final civil penalty of \$16,000 on or before January 31, 2014.

The Final Civil Penalty shall be waived in its entirety, if an officer of Artsana provides Vinocur with written certification, by January 17, 2014, confirming that all Exemplar Product that was manufactured prior to December 31, 2012, and which was supplied to a California Customer after October 28, 2011, is either no longer in the possession of and for sale by such California Customer or such California Customer has elected, pursuant to Section 3.3, to return all such Exemplar Product held for sale in California. The options to provide written certification in lieu of making a portion of a civil penalty payment constitutes a material terms of this Settlement Agreement, and with regard to such terms, time is of the essence.

4.1.3. Stipulated Penalties

If Vinocur provides notice and appropriate supporting information to Artsana that levels of any one or more Listed Chemicals in excess of the Reformulation Standard have been detected in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or imported after the Effective Date, Artsana may elect to pay a stipulated penalty to relieve any further potential liability under Proposition 65 or action to enforce the terms of this Settlement Agreement as to Products sourced from the Artsana vendor of that Product(s). Artsana shall have fourteen calendar days to respond to any notice issued by Vinocur pursuant to this Section. The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm each of any one or more

Listed Chemicals and \$3,000 if the violation level is between 100 ppm and 249 ppm each of any one or more Listed Chemicals.

To invoke the stipulated penalty, Artsana must provide to Vinocur, within thirty days of the date of election to pay a stipulated penalty, all of the following:

- a) Written notice of election to invoke the stipulated penalty;
- b) Appropriate supporting information relating to the purchase (e.g., vendor name and contact information including representative, purchase order, certification (if any) received from vendor for the exemplar or subcategory of products);
- c) Test results; and
- d) Written Certification from an Artsana officer or legal counsel attesting to the information provided by Artsana to Vinocur.

The stipulated penalties described in this section may be invoked no more than twice for any one Artsana vendor, and in no case may a stipulated penalty for a second exceedance of the Reformulation Standard by any one Artsana vendor at a level between 100 and 249 ppm each of one or more Listed Chemicals in any Product be available after July 1, 2014.

Exceedances of the Reformulation Standard at or above 250 ppm each of any one or more Listed Chemicals shall be subject to the full remedies provided pursuant to this Settlement Agreement and at law.

Nothing in this section shall be construed as a waiver of any rights or defenses of Artsana in the event that Artsana declines to elect to pay a stipulated penalty and an enforcement action or other is instituted. Artsana reserves all rights with respect thereto.

4.1.4. Sales Data

In connection with this Settlement Agreement, Artsana provided a written certification (the "Certification") describing relevant sales data and other information regarding the Products. Artsana, and any other entity released by this Settlement Agreement, understands that the sales data it provided to Vinocur in the Certification was a material factor upon which Vinocur has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code

section 25249.7 in this Settlement Agreement. To the best of Artsana's knowledge the sales data provided by Artsana to Vinocur is full and complete, and is a true and accurate reflection of any and all sales of the Products in California during the relevant period. Vinocur and his agents and representatives understand that the Certification contains confidential and proprietary information and shall not be made public or used in any way other than as necessary to enforce the terms of this Section 4.1.4 of the Settlement Agreement. Nothing in the Certification shall be construed as an admission by Artsana of any conclusion of law, issue of law or violation of law, or as a waiver of any applicable defense.

If, within nine months of the Effective Date, Vinocur discovers and presents to Artsana evidence that prior to execution of this Settlement Agreement the Product has been distributed by Artsana in sales volumes materially different than those identified by Artsana in the Certification prior to execution of this Settlement Agreement, then Artsana may be liable for an additional penalty amount as well as additional attorney fees expended by Vinocur in the public interest. In the event Vinocur believes there is evidence that the Product has been distributed by Artsana in sales volumes materially different than those identified by Artsana, Vinocur shall provide Artsana with a written demand for additional penalties and attorney fees under this Section. After service of such demand, Artsana shall have thirty days to meet and confer regarding the demand and submit such payment to Vinocur in accordance with the method of payment of penalties identified in this Section 4. Should this thirty day period pass without any such resolution between the Parties and payment of such additional penalties and fees, Vinocur shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of this contract, and the prevailing party shall be entitled to all reasonable attorney fees and costs relating to that action.

4.2. 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, Artsana 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 section 1021.5 for all work performed through the mutual execution of this agreement. Under these legal principles, Artsana shall pay \$38,000 for fees and costs incurred as a result of investigating, bringing this matter to Artsana's attention, and negotiating a settlement in the public interest. Artsana shall make the check payable to "The Chanler Group" and shall deliver payment no later than ten business days after the Effective Date, to the address listed in Section 4.3.1.1.

In the event that Vinocur is determined to be the prevailing party in a claim for Stipulated Penalties in Section 4.1.4 above, Vinocur shall further be entitled to reimbursement of his associated expense in an amount not to exceed \$5,000 regardless of the stipulated penalty level. Vinocur shall provide appropriate documentation for any associated expenses for which it seeks reimbursement pursuant to this Section. Within ten days of receipt of any invoice from Vinocur for work performed related to the invocation of a stipulated penalty, Artsana will remit payment to The Chanler Group at the address set forth in Section 4.3.1.1.

4.3. Payment Procedures

4.3.1. Issuance of Payments

4.3.1.1. Payments to Vinocur

All payments owed to Vinocur and his counsel, pursuant to Sections 4.1 and 4.2 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

4.3.1.2. Payments to OEHHA

All payments owed to OEHHA (EIN: 68-0284486), pursuant to Sections 4.1, shall be

delivered directly to OEHHA (Subject Line: “Proposition 65 Penalties”) at one of the following addresses, as appropriate:

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

4.3.2. 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 4.3.1.1., as proof of payment to OEHHA.

4.3.3. Tax Documentation

Artsana 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 3.3.1.1.

5. CLAIMS COVERED AND RELEASED

5.1. Vinocur’s Release of Artsana

Vinocur, acting on his own behalf only releases Artsana, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Artsana directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and

licensees (“Releasees”), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to TCEP and TDCPP in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to TCEP and TDCPP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Artsana, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Artsana. Nothing in this Section affects Vinocur’s rights to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Artsana’s Products.

5.2. Artsana’s Release of Vinocur

Artsana 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 and the Releasees in this matter and/or with respect to the Products.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the complete execution of this Settlement Agreement by the Parties, Artsana 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 section 25249.7, or as may be otherwise allowed by law. If requested, Vinocur agrees to reasonably cooperate with Artsana and to use his best efforts, and those 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 Code of Civil Procedure sections 1021 and 1021.5, Artsana 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 days after its receipt of monthly invoices from Vinocur for work performed under this Section, Artsana will remit payment to The Chanler Group at the address set forth in Section 4.3.1.1.

7. 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.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of 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, then Artsana 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 Artsana or any Releasee from any obligation to comply with any pertinent state or federal law, including all toxic control laws.

9. 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 Artsana:

Tom Gwiazdowski
Chicco USA | Artsana USA
1826 William Penn Way
Lancaster, PA 17601

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 Artsana to:

Morgan, Lewis & Bockius LLP
c/o Collie F. James, Esq.
5 Park Plaza, Suite 1750
Irvine, CA 92614

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.

10. 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. A facsimile or pdf signature shall be as valid as the original.

11. 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.

12. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(F)

Vinocur and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

13. MODIFICATION

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

14. AUTHORIZATION

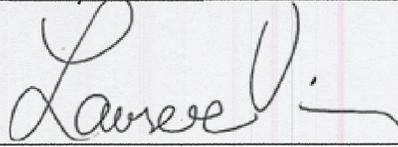
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

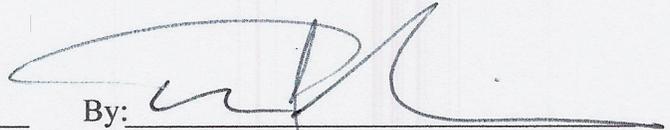
AGREED TO:

Date: January 23, 2014

Date: 30 Dec. '14

By: 

Laurence Vinocur

By: 

Tom Gwiazdowski
Chief Financial Officer
Artsana USA, Inc.