

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur, (“Vinocur”) and Guidecraft, Inc. (“Guidecraft”) with Vinocur and Guidecraft each individually referred to as a “Party” and collectively as the “Parties.” Vinocur is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating hazardous substances used in consumer products. Guidecraft 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 Guidecraft manufactures, sells, and/or distributes for sale in California, upholstered chairs with foam padding containing Tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”) and chairs with vinyl/PVC upholstery that contain the phthalate chemical di(2-ethylhexyl)phthalate (“DEHP”). TDCPP is listed pursuant to Proposition 65 as a chemical known to cause cancer, and DEHP is listed pursuant to Proposition 65 as chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Guidecraft failed to provide individuals in California with the health hazard warnings required by Proposition 65 for exposures to TDCPP from its chairs with foam padding and for exposures to DEHP from its chairs with vinyl PVC upholstery.

### 1.3 Product Description

The products covered by this Settlement Agreement are upholstered chairs with foam padding containing TDCPP and chairs with vinyl/PVC upholstery containing DEHP that are manufactured, sold and/or distributed for sale in California by Guidecraft, including, but not limited to, the *Retro Racers Upholstered Rocker, Item #G85808, #*

988082421644044415, #242169712 (collectively, "Products").

#### **1.4 Notice of Violation**

On March 26, 2014, Vinocur served Guidecraft and the requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Guidecraft violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to TDCPP and/or DEHP. 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**

Guidecraft denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in 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 Guidecraft 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 Guidecraft of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Guidecraft. This Section shall not, however, diminish or otherwise affect Guidecraft'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 December 15, 2014.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

### **2.1 Reformulation Commitment.**

Commencing on the Effective Date and continuing thereafter, Guidecraft shall only purchase for sale or manufacture for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 25 parts per million (ppm) (0.0025%) TDCPP and no more than

1,000 ppm (0.1%) DEHP content in any component analyzed pursuant to EPA testing methodologies 3580 and 8270C, or equivalent methodologies used by state or federal agencies for purposes of determining TDCPP and/or DEHP content in a solid substance.

## **2.2 Current Inventory.**

Any products in, or manufactured and en route to, Guidecraft's inventory as of the Effective Date, that do not qualify as Reformulated Products and that Guidecraft has reason to believe may be sold or distributed for sale in California, shall contain a clear and reasonable warning.

## **2.3 Product Warnings/Labeling.**

The following warnings, as appropriate, when measuring 3" x 5", with no less than 12 point font, affixed to the packaging, labeling, or directly on each Product, shall constitute a clear and reasonable warning, in compliance with paragraph 2.2 of this

Settlement Agreement:

**WARNING:** This product contains TDCPP, a flame retardant chemical known to the State of California to cause cancer.

or

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

or

**WARNING:** This product contains DEHP, a phthalate chemical known to the State of California to cause birth defects and reproductive harm, and TDCPP, a flame retardant chemical known to the State of California to cause cancer.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this settlement Agreement, Guidecraft agrees to pay \$15,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% of the penalty amount paid to

Vinocur.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, Guidecraft shall pay an initial civil penalty of \$3,500. Guidecraft will provide its payment in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2625; and (b) “Laurence Vinocur Client Trust Account” in the amount of \$875.

**3.1.2 Final Civil Penalty.** On January 15, 2015, Guidecraft shall pay a final civil penalty of \$12,000. The final civil penalty shall be waived in its entirety if, no later than December 31, 2014, an officer of Guidecraft provides Vinocur’s counsel with written certification that, as of the date of its certification, all of the Products it ships or distributes for sale in California are Reformulated Products as defined by Section 2, and that it will continue to only offer Reformulated Products in the future. The option to provide a written certification of reformulation in lieu of making the final civil penalty payment otherwise required by this Settlement Agreement is a material term, and time is of the essence.

### **3.2 Reimbursement of Vinocur’s Attorneys’ Fees and Costs**

The Parties reached an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Guidecraft agrees to pay \$26,000 in the form of a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to the attention of Guidecraft’s management, and negotiating a settlement in the public interest.

### **3.3 Payment Procedures**

**3.3.1 Payment Addresses.** Payments shall be delivered as follows:

(a) All payments required for Vinocur and his counsel under this Settlement Agreement shall be delivered to:

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

(b) All payments required for OEHHA under this Settlement Agreement shall be delivered directly to OEHHA (Memo line "Prop 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 Courier or Other Non-U.S. Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 9581

**3.3.2 Proof of Payment to OEHHA.**

Guidecraft agrees to provide Vinocur with a copy of each penalty check sent to OEHHA, enclosed with Guidecraft's penalty payment(s) to Vinocur.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Vinocur's Release of Guidecraft**

This Settlement Agreement is a full, final and binding resolution between Vinocur and Guidecraft, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, against Guidecraft, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Guidecraft directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers,

retailers (including, but not limited to, Target Corporation), franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the alleged failure to warn about exposures to DEHP and/or TDCPP in Products sold or distributed for sale by Guidecraft prior to the Effective Date, as alleged in the Notice.

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 any right to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including, without limitation, all actions and causes of action in law and in equity, all suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys’ fees, arising under Proposition 65 with respect to the failure to warn about exposures to DEHP and or TDCPP from Products sold or distributed for sale by Guidecraft before the Effective Date, as alleged in the Notice. The releases provided by Vinocur under this Settlement Agreement are provided solely on Vinocur’s behalf and are not releases on behalf of the public.

#### **4.2 Guidecraft’s Release of Vinocur**

Guidecraft on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims 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, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is found by a court to be unenforceable, the validity of the

remaining provisions shall not be adversely affected.

**6. 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 Guidecraft may 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.

**7. NOTICE**

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

For Guidecraft:

Jason Fein, President  
Guidecraft, Inc.  
66 Grand Avenue, Suite 207  
Englewood, NJ 07631

For Vinocur:

The Chanler Group  
Attn: Prop 65 Coordinator  
2560 Ninth St.  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

with a copy to Guidecraft's counsel:

Bruce Nye, Esq.  
Adams | Nye | Becht LLP  
222 Kearny Street, 7<sup>th</sup> Floor  
San Francisco, CA 94108-4521

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

**8. 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.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

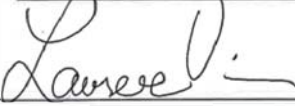
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.


**AGREED TO:**

**AGREED TO:**

Date: December 16, 2014

Date: December 4, 2014

By:   
Laurence Vinocur

By:   
Gary Bilezikian, President  
Guidecraft, Inc.