

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Gaiam, Inc. (“Gaiam”), with Vinocur and Gaiam each referred to individually 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 improve human health by reducing or eliminating hazardous substances in consumer and commercial products. Gaiam 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 and Safety Code section 25249.6 et seq. (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Gaiam manufactures, imports, sells and/or distributes for sale in California, upholstered fitness benches with foam padding containing tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) without providing the health hazard warning required by Proposition 65. TDCPP is a flame retardant chemical used in both soft and rigid polyurethane foam, plastics and fabric backings. On October 28, 2011, California listed TDCPP pursuant to Proposition 65 as a known carcinogen. TDCPP became subject to the “clear and reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

1.3 Product Description

The products covered by this Settlement Agreement are upholstered fitness benches with foam padding that are sold or distributed for sale in California by Gaiam (“Products”), regardless of who manufactured or produced the product for Gaiam. This includes, but is not limited to, the *Reebok Toning Fitness Bench, SKU 05-55127, UPC #0 18713 55127 6* (“Exemplar Product”), identified as a non-exclusive exemplar on Vinocur’s 60-day notice of violation.

1.4 Notice of Violation

On July 11, 2014, Vinocur served Gaiam, and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") alleging that Gaiam violated Proposition 65 by failing to warn its customers and consumers in California that the Products expose users to TDCPP. To the best of the Parties' knowledge, no public enforcer has commenced or is otherwise prosecuting the allegations set forth in the Notice.

1.5 No Admission

Gaiam denies the material, factual, and legal allegations contained in the Notice and maintains that all products it has manufactured, imported, distributed and/or sold in California, including the Products, have been in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Gaiam 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 Gaiam of any fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Gaiam's obligations, responsibilities, or duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, "Effective Date" shall mean May 15, 2015.

2. INJUNCTIVE REQUIREMENTS

Commencing on the Effective Date and continuing thereafter, Gaiam agrees that it will only manufacture for sale or purchase for sale in California, Products that contain "No Detectable Amount" of TDCPP (the "Listed Chemical Flame Retardant") in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence or absence of, or to measure the amount of, the Listed Chemical Flame Retardant in a solid substance. "No Detectable Amount," for the purposes of this Settlement Agreement, shall mean the Product's foam padding contains no more than 25 parts per million of the Listed Chemical Flame Retardant when tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or

equivalent methodologies utilized by a laboratory accredited by the State of California or a federal agency.

To the extent it has not already done so, within thirty days of the Effective Date, Gaiam shall notify each of its vendors of Products or foam padding used in Products of the above requirements regarding the Listed Chemical Flame Retardant. In addition, and also to the extent it has not already done so, Gaiam agrees to require each such vendor provide it with written certification that the Products or foam padding that it supplies to Gaiam comply with the content limits established by this Settlement Agreement for Listed Chemical Flame Retardant.

3. MONETARY PAYMENTS

3.1 Civil Penalties

Pursuant to Health & Safety Code § 25249.7(b), and in settlement of all of the claims alleged in the Notice and referred to in this Settlement Agreement, Gaiam shall pay \$15,500 in civil penalties, consisting of the initial and final civil penalty referenced in Sections 3.1.1 and 3.1.2, respectively. 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 funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty retained by Vinocur. Vinocur’s counsel shall be responsible for remitting Gaiam’s penalty payment(s) under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty. Within five business days of the execution of this Settlement Agreement, Gaiam shall make an initial civil penalty payment of \$5,500.

3.1.2 Final Civil Penalty. Subject to the remainder of this Section 3.1.2, on or before April 15, 2015, Gaiam shall pay a final civil penalty of \$10,000. Notwithstanding anything to the contrary expressed or implied herein (including, without limitation, in paragraph 3.1 above), Vinocur agrees that the final civil penalty will be waived in its entirety if on or before April 1, 2015, Gaiam provides Vinocur’s counsel with written certification that commencing on the date of the certification and continuing thereafter, Gaiam will only ship for sale or distribute for sale in California Products that contain No Detectable Amount of the Listed Chemical Flame

Retardant in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies utilized by a laboratory accredited by the State of California or a federal agency. The specific form of the written certification to be provided by Gaiam is attached hereto as Exhibit A. The option to provide written certification of the Product formulation in lieu of making the final civil penalty payment required by this Settlement Agreement is a material term, and with regard to such term, time is of the essence.

3.2 Representations

Gaiam represents that to the best of Gaiam's knowledge the sales and inventory information regarding the Product provided to Vinocur is truthful. Gaiam acknowledges that Vinocur has relied on that information to determine the civil penalties assessed under this Settlement Agreement. If, within nine months of the Effective Date, Vinocur discovers and presents to Gaiam evidence demonstrating that the preceding representations were materially inaccurate, then Gaiam and Vinocur shall meet and confer for no less than 30 days in an effort to address and/or correct the facts surrounding Vinocur's contentions as to the accuracy of its representations. Should the 30-day period conclude without the Parties having resolved Vinocur's contentions, then Vinocur may file a formal legal claim including, but not limited to, a claim for damages for breach of contract. Vinocur acknowledges that he and his counsel have also performed their own independent investigation regarding the allegations in the Notice, including the allegation that the Product contains TDCPP and Vinocur and his counsel have relied on their own independent analysis in entering into this Settlement Agreement.

3.3 Reimbursement of Fees and Costs

Under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, the Parties negotiated Gaiam's reimbursement of Vinocur's attorneys' fees and costs. Under their agreement, Gaiam agrees to pay Vinocur the additional sum of \$23,000 within five business days of the execution of this Settlement Agreement, for all work performed through the mutual execution of this Settlement

Agreement, including all fees and costs incurred as a result of investigating, bringing this matter to Gaiam's attention, and negotiating a settlement in the public interest.

3.4 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Proposition 65 Claims

Vinocur, acting on his own behalf and on behalf of his attorneys and other representatives, hereby releases Gaiam, its licensors Reebok International Limited and Reebok International Ltd. (individually and collectively, "Reebok"), each of Gaiam's and Reebok's respective parents, subsidiaries, licensees and affiliated entities under common ownership with such party, each of Gaiam's and Reebok's respective directors, officers, shareholders, agents, employees, agents, licensees, attorneys, and successors and assigns, each upstream manufacturer from whom Gaiam receives a Product¹ and each entity to whom Gaiam directly or indirectly distribute or sell Products, including, but not limited, to Reebok, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 alleging a failure to warn about exposures to TDCPP in the Products, to the extent imported, distributed, sold and/or offered for sale in the State of California by Gaiam or as otherwise set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notice.

¹ The release as to upstream manufacturers shall include only Products, imported or distributed by Gaiam for sale or use in California and shall not include any Products imported or distributed by any other entity.

Vinocur, on his own behalf and on behalf of his attorneys and other representatives, also provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP in Products sold or distributed for sale by Gaiam.

Vinocur acknowledges that he 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.

Vinocur, in his individual capacity only, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights 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 notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

The releases provided by this Section 4.1 are expressly limited to those claims that arise under Proposition 65, as such claims relate to Gaiam's alleged failure to warn about exposures to or identification of the TDCPP contained in the Products, as such claims are identified in the Proposition 65 60-Day Notice to Gaiam and to the extent that any alleged violations occur prior to the Effective Date.

The releases provided by this Section 4.1 are solely on Vinocur's behalf, and not on behalf of the public in California.

4.2 Gaiam's Release of Vinocur

Gaiam, on behalf of itself, its past and current agents, representatives, attorneys, successors, and 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 or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

Gaiam 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 them in this matter, and/or with respect to the Products.

Gaiam 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.

Gaiam 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 statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights 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 notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

5. SEVERABILITY

If, subsequent to the Parties' execution of this Settlement Agreement, any term is held 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, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Gaiam may provide written notice to Vinocur of its 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 Gaiam from any obligation to comply with any pertinent state or federal law or regulation.

7. NOTICE

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) overnight courier to any party by the other party at the following addresses:

To Gaiam:

Gaiam, Inc.
833 West South Boulder Road
Louisville, CO 80027
Attention: CEO

To Vinocur:

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

With a copy to:

Richard B. Benenson, Esq.
Brownstein Hyatt Farber Schreck, LLP
410 Seventeenth Street
Suite 2200
Denver, CO 80202

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 as valid as an original, and all of which, when taken together, shall constitute one and the same document.

9. **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 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:

Dated: March 5, 2015

By: 

Laurence Vinocur

AGREED TO:

Dated: 3-10-2015

Gaiam, Inc.

By: 

An Authorized Signatory.

Name: JOHN SACKSON

Title: VP

EXHIBIT A
CERTIFICATION

Reference is made to the Settlement Agreement (the "Agreement"), dated as of January __, 2015, by and between Laurence Vinocur and Gaiam, Inc. (the "Company"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Pursuant to Section 3.1.2 of the Agreement, as of the date indicated below, the Company hereby certifies that:

The Company will only ship for sale or distribute for sale in California Products that contain No Detectable Amount of the Listed Chemical Flame Retardant in any foam padding tested pursuant to U.S. EPA testing methodologies 3545, 3550C and 8270C, or equivalent methodologies utilized by a laboratory accredited by the State of California or a federal agency.

Dated:

By:



Name:

Title: