

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Jay Import Company, Inc. (“Jay Import”), with Vinocur and Jay Import 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. Jay Import 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 Jay Import manufactures, sells, and distributes for sale in California, (a) chairs with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate (“DEHP”); (b) coasters containing DEHP; and (c) tableware with exterior designs containing Lead. Lead and DEHP are each listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Jay Import failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its chairs and coasters, and for exposures to Lead from its tableware products.

1.3 Product Description

The products that are covered by this Settlement Agreement are:

(a) chairs with vinyl/PVC upholstery containing DEHP including, but not limited to, the *American Atelier Living Wynona Black Chair with Clear Back Legs/Modern Accent Chair, Item No. 1230006*;

(b) coasters containing DEHP including, but not limited to, the *American Atelier*

At Home Coaster Set, #1720025, #8823520025, UPC #0 88235 20025 9; and

(c) tableware with exterior designs containing Lead including, but not limited to, (i) bowls such as the *American Atelier At Home Bowl, No. 1245 8 20012803 1 023*; (ii) beverage dispensers such as the *Seas Ji Glass Words Beverage Dispenser Style 21009, UPC No. 8 86926 39122 0*; and (iii) glassware such as the shot glasses offered in connection with the *Game Night Tipsy Land Board Game, Item No. 326304-GB*; the *Party Starters Pour in a Row Game, Item No. 326210-GB*, and the *Stylesetter Shoots & Ladders Drinking Game with Shot Glasses, Item No. 326255-JP*.

All of the tableware containing Lead and coasters and chairs with vinyl components or upholstery containing DEHP are referred to collectively hereinafter as the “Products.”

1.4 Notices of Violation

On July 11, 2014, Vinocur served Jay Import and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Jay Import violated Proposition 65 when it failed to warn its customers and consumers in California that its coaster products expose users to DEHP.

On August 28, 2014, Vinocur served Jay Import and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Supplemental Notice”), alleging that Jay Import violated Proposition 65 when it failed to warn its customers and consumers in California that its chairs with vinyl/PVC upholstery expose users to DEHP.

On March 13, 2015, Vinocur served Meijer Companies Ltd. (“Meijer”) and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Meijer Notice”), alleging that Meijer violated Proposition 65 when it failed to warn its customers and consumers in California that its glass beverage dispensers expose users to Lead.

On August 28, 2015, Vinocur served Jay Import, Meijer, and the requisite public enforcement agencies with a “Second Supplemental 60-Day Notice of Violation”

(“Second Supplemental Notice”) alleging, in addition to the allegations made in the prior notices, that Meijer and Jay Import violated Proposition 65 when they failed to warn their customers and consumers in California that tableware and beverage dispensers sold in California by Jay Import and Meijer expose users to Lead.

The Notice, Supplemental Notice, Meijer Notice, and Second Supplemental Notice are referred to collectively hereinafter as the “Notices.” No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notices.

1.5 No Admission

Jay Import denies the material, factual, and legal allegations contained in the Notices 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 Jay Import 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 Jay Import of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Jay Import. This Section shall not, however, diminish or otherwise affect Jay Import’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 March 1, 2016.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on the Effective Date and continuing thereafter, Jay Import agrees to only manufacture for sale or purchase for sale in or into California: (a) “Reformulated Products;” or (b) Products that are sold with a clear and reasonable warning pursuant to subsection 2.3.

2.2 Reformulated Products

For purposes of this Settlement Agreement, "Reformulated Products" shall mean (a) coasters and chairs with vinyl components or upholstery that contain no more than 1,000 parts per million ("ppm") (0.1%) DEHP ("Reformulated Coaster and Chair Products") in any component analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C; and (b) tableware with exterior decorations containing Lead ("Reformulated Tableware Products") in a maximum concentration of 90 ppm when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C and no more than 1.0 micrograms of Lead when sampled and analyzed according to the NIOSH 9100 testing protocol. In addition to the above test methodologies the Parties may use equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP or Lead content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for all Products other than Reformulated Products, Jay Import agrees to provide a clear and reasonable health hazard warning in accordance with this Section. Jay Import further agrees that any warning utilized will be prominently placed with such conspicuousness when compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. For purposes of this Settlement Agreement, a clear and reasonable warning shall consist of a warning affixed to the packaging, label, tag or exterior of a Product sold in California containing one of the following statements:

WARNING: This product contains DEHP, a chemical known to the state of California to cause birth defects or other reproductive harm.

WARNING: This product contains Lead, a chemical known to the state of California to cause birth defects or other reproductive harm.

WARNING: This product contains DEHP and Lead, chemicals known to the State of California to cause birth defects or other reproductive harm.

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 Notices or referred to in this Settlement Agreement, Jay Import agrees to pay \$8,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% paid to Vinocur. Jay Import shall deliver its payment within five days of the Effective Date in a check payable to "Laurence Vinocur, Client Trust Account." Vinocur's counsel shall be responsible for delivering OEHHA's portion of any penalty payment made under this Settlement Agreement.

3.2 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, Jay Import agrees to pay \$39,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Jay Import's management, and negotiating a resolution of this matter through this Settlement Agreement. Jay Import's reimbursement of attorneys' fees shall be delivered in 16 installments of \$2,568.75 each to be delivered in a check payable to "The Chanler

Group” on the first of each month April 1, 2016 through and including July 1, 2017.

In the event that Jay Import remits any installment of the fee reimbursement payments required by this subsection on a date that is more than 10 days after the payment due date, all unpaid amounts due under this Settlement Shall become immediately due and owing.

3.3 Payment Address

All payments made 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

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur’s Release of Jay Import

This Settlement Agreement is a full, final and binding resolution between Vinocur and Jay Import, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Jay Import, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Jay Import directly or indirectly distributes or sells Products (including, but not exclusively, Meijer Companies, Ltd., Meijer, Inc., and Bed Bath & Beyond Inc), its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees (“Releasees”), based on the failure to warn about exposures to DEHP and/or Lead in Products sold or distributed for sale by Jay Import before the Effective Date, as alleged in the Notices.

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 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, 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 and pertaining to the alleged or actual failure to warn about DEHP and/or Lead in Products sold or distributed for sale by Jay Import before the Effective Date.

The releases provided by Vinocur under this Settlement Agreement are provided solely on Vinocur's behalf and not on behalf of the public in California.

4.2 Jay Import's Release of Vinocur

Jay Import, 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 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 held by a court to be unenforceable, 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 Jay Import 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 Jay Import:

Michael Jay
Jay Import Company, Inc.
41 Madison Avenue, Floor 12
New York, NY 10010

with a copy to:

Donald S. Burris, Esq.
Burris, Schoenberg & Walden, LLP
12121 Wilshire Boulevard, Suite 800
Los Angeles, CA 90025

For Vinocur:

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

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

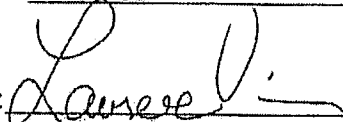
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 2-18-16

Date: 3/17/2016

By: 
LAURENCE VINO CUR

By: 
Michael Jay
JAY IMPORT COMPANY, INC.