

## SETTLEMENT AGREEMENT

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and KidCo, Inc. (“KidCo”) with Vinocur and KidCo collectively referred to 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 contained in consumer and commercial products. KidCo 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 KidCo manufactured, imported, sold and/or distributed for sale in California, children’s travel beds with fabric containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 health hazard warnings. TDCPP is an additive flame retardant used in both soft and rigid polyurethane foam, plastics and fabric backings.

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(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Vinocur alleges that TDCPP escapes from foam padding and fabrics, leading to human exposures.

#### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as children’s travel beds with fabric containing TDCPP including, but not limited to, the *KidCo PeaPod, P3010, #0613, UPC #7 86441 43010 0* (“Products”) manufactured, imported, sold and/or distributed for sale in California by KidCo.

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

On July 30, 2014, Vinocur served KidCo, others, and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice of

alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers, and workers in California that the Products expose users to TDCPP.

To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

KidCo denies the material factual and legal allegations contained in Vinocur's Notice and maintains that all products it has manufactured, imported, distributed, and/or sold 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 KidCo 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 KidCo of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect KidCo's obligations, responsibilities, and duties under this Settlement Agreement.

## **2. DEFINITIONS**

### **2.1 California Customers**

"California Customer" shall mean any customer that KidCo reasonably understands is located in California, has a California warehouse or distribution center, or maintains a retail outlet in California that has made sales into California on or after October 28, 2012.

### **2.2 Detectable**

"Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent of .0025%) of TDCPP in any material, component, or constituent of a subject product, when analyzed by an 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.

### **2.3 Effective Date**

"Effective Date" shall mean November 15, 2014.

#### **2.4 Private Label Covered Products**

“Private Label Covered Products” means Products that bear a brand or trademark owned or licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of California.

#### **2.5 Reformulated Products**

“Reformulated Products” shall mean Products that contain no more than 25 ppm (equivalent of .0025%) of TDCPP in any material, component, or constituent of a subject product, when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3545 and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining TDCPP content in a solid substance.

#### **2.6 Reformulation Standard**

The “Reformulation Standard” shall mean containing no more than 25 ppm for TDCPP.

#### **2.7 Retailer**

“Retailer” means an individual or entity that offers a Product for retail sale to consumers in the State of California.

### **3. INJUNCTIVE RELIEF: REFORMULATION**

#### **3.1 Reformulation Commitment**

Commencing on the Effective Date, KidCo shall not manufacture or import for distribution or sale to California Customers, or cause to be manufactured or imported for distribution or sale to California Customers, any Products that are not Reformulated Products. Prior to execution of this Settlement an officer of KidCo provided Plaintiff’s counsel with a written certifications representing that all Products manufactured, sold, and/or distributed for sale by or on behalf of KidCo after the Effective Date will be Reformulated Products, that all Products (Products beyond the Exemplar) manufactured, sold, and/or distributed for sale by or behalf of KidCo after the Effective Date will be Reformulated Products, and that Products manufactured, sold, and/or distributed for sale by or on behalf of KidCo after the Effective Date will not contain tris (2,3-dibromopropyl) phosphate (“TDBPP”) in excess of 25 parts per million.

### **3.2 Vendor Notification/Certification**

On or before the Effective Date, KidCo shall provide written notice to all of its then-current vendors of the Products, instructing each such vendor to use reasonable efforts to provide it with only Reformulated Products. In addressing the obligation set forth in the preceding sentence, KidCo shall not employ statements that will encourage a vendor to delay compliance with the Reformulation Standard. KidCo shall subsequently obtain written certifications, no later than February 15, 2015, 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 KidCo for at least two years after their receipt and shall be made available to Vinocur upon request.

### **3.3 Products No Longer in KidCo's Control**

On or before the Effective Date, KidCo shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each California Customer and/or Retailer to which it supplied the *KidCo PeaPod, P3010, #0613, UPC #7 86441 43010 0* ("Exemplar Product") after October 28, 2012 to a location in California; and (2) any California Customer and/or Retailer that KidCo understands or knows had any inventory for resale in California of Exemplar Products as of the notice date. The Notification Letter shall advise the recipient that the Exemplar Product "is alleged to contain TDCPP, a chemical known to the State of California to cause cancer," and request that the recipient return all units of the Exemplar Product held for sale in California, or to California Customers, to KidCo or destroyed, at KidCo's sole expense. The Notification Letter shall require a response from the recipient within 20 days confirming whether the Exemplar Product will be labeled or returned to KidCo. KidCo shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Vinocur's written request.

#### **4. MONETARY PAYMENTS**

##### **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, KidCo shall pay the penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 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 remitted to “Laurence Vinocur, Client Trust Account.” Each penalty payment shall be made within two business days of the date it is due and be delivered to the addresses listed in Section 4.5 below. KidCo shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

**4.1.1 Civil Penalty.** On or before fifteen (15) days after the Effective Date, KidCo shall make a civil penalty payment in the amount of \$5,500.

##### **4.2 Representations**

KidCo represents that the sales data and other information concerning its size, knowledge of TDCPP, and prior reformulation and/or warning efforts, it provided to Vinocur was truthful to its knowledge and a material factor upon which Vinocur has relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this Settlement Agreement. If, within nine months of the Effective Date, Vinocur discovers and presents to KidCo, evidence demonstrating that the preceding representation and warranty was materially inaccurate, then KidCo shall have 30 days to meet and confer regarding Vinocur’s contention. Should this 30 day period pass without any such resolution between Vinocur and KidCo, Vinocur shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract. KidCo further represents that in implementing the requirements set forth in Sections 3.1 and 3.2 of this Settlement Agreement, it will voluntarily employ commercial best efforts to achieve reformulation of its Products on a nationwide basis and not employ statements that will encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for sale to California Consumers.

#### **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

If Vinocur provides notice and appropriate supporting information to KidCo that levels of TDCPP in excess of the Reformulation Standard have been detected in one or more Products that are (a) distributed or sold in California after the Effective Date and (b) labeled or otherwise marked in an identifiable manner as manufactured or imported by KidCo after the Effective Date, KidCo may elect to pay a stipulated penalty to relieve any further potential liability under Proposition 65 or sanction under this Settlement Agreement as to Products containing TDCPP sourced from the vendor in question. The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm for TDCPP and \$3,000 if the violation level is between 100 ppm and 249 ppm for TDCPP, this being applicable for any amount in excess of the Reformulation Standards but under 250 ppm for TDCPP. 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. KidCo under this Section must provide notice and 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), test results, and a letter from a company representative or counsel attesting to the information provided, to Vinocur within 30 calendar days of receiving test results from Vinocur's counsel. In the event that Vinocur's test results vary from those provided by KidCo and KidCo's test result demonstrate less than 25 ppm for TDCPP, the parties shall agree to test the Products by a third independent laboratory to be mutually agreed upon. The expenses of the third laboratory shall be borne by the party whose test results are the furthest from those of the third laboratory. The results of the third laboratory shall be deemed conclusive. If such test results demonstrate less than 25 ppm for TDCPP, then no penalty will be owed.

#### **4.4 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 reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, KidCo expressed a desire to resolve the fee and cost issue. KidCo then agreed to pay 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, including the fees and costs incurred as a result of investigating, bringing this matter to KidCo's attention, and negotiating a settlement in the public interest. In addition, the negotiated fee and cost figure expressly includes the anticipated significant amount of time Vinocur's counsel will incur to monitor various provisions in this agreement over the next two years. KidCo, more specifically, agreed to pay Vinocur's counsel the amount of \$25,500. KidCo further agreed to tender and shall tender its full required payment under this Section to a trust account at The Chanler Group (made payable "In Trust for The Chanler Group") within fifteen (15) days of the Effective Date.

#### **4.5 Payment Procedures**

##### **4.5.1 Issuance of Payments.**

(a) All payments owed to Vinocur and his counsel, pursuant to Sections 4.1 and 4.4 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, pursuant to Section 4.1, 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 Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

#### **4.5.2 Proof of Payment to OEHHA**

A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 4.5.1(a) above, as proof of payment to OEHHA.

### **5. CLAIMS COVERED AND RELEASED**

#### **5.1 Vinocur's Release of Proposition 65 Claims**

Vinocur, acting on his own behalf, and not on behalf of the public, releases KidCo, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom KidCo directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to 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 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 KidCo, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to KidCo, except that entities upstream of KidCo that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for sale in California, or to California Customers, by the Retailer in question.

#### **5.2 Vinocur's Individual Releases of Claims**

Vinocur, in his individual capacity only and *not* in his representative capacity, 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 Vinocur 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 the Products manufactured, imported, distributed, or sold by KidCo prior to the Effective Date. The

Parties further understand and agree that this Section 5.2 release shall not extend upstream to any entities that manufactured the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to KidCo, except that entities upstream of KidCo that is a Retailer of a Private Labeled Covered Product shall be released as to the Private Labeled Covered offered for sale in California by the Retailer in question. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve KidCo's Products.

### **5.3 KidCo's Release of Vinocur**

KidCo, 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.

## **6. 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 KidCo 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. Nothing in this Settlement Agreement shall be interpreted to relieve KidCo from any obligation to comply with any pertinent state or federal law or regulation.

## **7. 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) overnight courier to any party by the other party at the following addresses:

To KidCo:

Ken Kaiser, President  
KidCo, Inc.  
1013 Technology Way  
Libertyville, IL 60048

To Held:

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

With a copy to:

Scott W. Pink  
DLA Piper LLP (US)  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95746

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.

**8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or 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.

**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 & Safety Code section 25249.7(f).

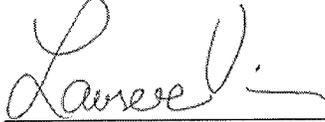
**10. MODIFICATION**

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:

By:   
\_\_\_\_\_  
Laurence Vinocur

AGREED TO:

By: \_\_\_\_\_  
Ken Kaiser, President  
KidCo, Inc.

Date: November 6, 2014

Date: \_\_\_\_\_

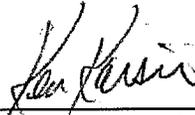
11. **AUTHORIZATION**

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:

By: \_\_\_\_\_  
Laurence Vinocur

By:  \_\_\_\_\_  
Ken Kaiser, President  
KidCo, Inc.

Date: \_\_\_\_\_

Date: 11/4/14