

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Smith News Company, Inc. (“Smith”), with Vinocur and Smith 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. Smith 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 Smith manufactures, sells, and/or distributes for sale in California, balls with vinyl/PVC covers that contain the toxic chemical di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Smith failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from balls with vinyl/PVC covers.

1.3 Product Description

The products that are covered by this Settlement Agreement are balls with vinyl/PVC covers containing DEHP, including, but not limited to, *Baseball, San Francisco, UPC #0 85464 52049 3*, that are manufactured, sold and/or distributed for sale in California by Smith (hereinafter the “Products”).

1.4 Notice of Violation

On or about October 24, 2014, Vinocur served Smith and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”)

that provided the recipients with notice of alleged violations of Proposition 65 by Smith for failing to warn its customers and consumers in California that the Products it sold exposed users to 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

Smith 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 Smith 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 Smith of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Smith. However, this Section shall not diminish or otherwise affect Smith's obligations, responsibilities, and duties under this Settlement Agreement. Smith asserts that for years it has been selling Reformulated Products, as defined in Section 2.1 below.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 15, 2015.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Reformulation Commitment

As of the Effective Date all Products manufactured, imported, distributed, sold and/or offered for sale in the State of California by Smith shall be Products that qualify as Reformulated Products as defined in Section 2.1, or shall contain health hazard warnings as described in Section 2.3. The warning requirements in section 2.3 shall not apply to any Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California before the Effective Date.

2.3 Product Warnings

Commencing on or before the Effective Date, Smith shall provide clear and reasonable warnings as set forth in subsections 2.3(a) for all Products that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) **Product Labeling.** Smith shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

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

(ii) **Point-of-Sale Warnings.** Alternatively, Smith may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Such instruction sent to Smith's customers shall be sent by certified mail, return receipt requested.

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products chemicals, including DEHP, a phthalate chemical, known to the State of California to cause cancer, birth defects and other reproductive harm:
[list products for which warning is required]

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(B)

In settlement of all the claims referred to in this Settlement Agreement, Smith has been assessed a total of \$7,500 in civil penalties. The 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”) by Vinocur.

3.1.1 Initial Civil Penalty

On or before the Effective Date, Smith shall provide its Initial Penalty payment to “Laurence Vinocur, Client Trust Account” in the amount of \$2,500. All penalty payments shall be delivered to the address listed in Section 3.3 below.

3.1.2 Final Civil Penalty

On or before December 31, 2015, Smith shall pay a final civil penalty in the amount of \$5,000. The final civil penalty shall be waived in its entirety, however, if an Officer of

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

Smith provides Vinocur with written certification that as of the date of such certification and continuing into the future, all Products manufactured, imported, distributed, sold and offered for sale in California by Smith are Reformulated Products. Vinocur must receive any such certification on or before December 15, 2015, and time is of the essence.

Unless waived, the final civil penalty shall be remitted to Vinocur, who shall deliver 75% to OEHHA, as provided by California Health & Safety Code § 25249.12(d). Unless waived, Smith shall provide its payment in to: “Laurence Vinocur, Client Trust Account” in the amount of \$5,000. All penalty payments shall be delivered to the addresses listed in Section 3.3 below.

3.2 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, Smith 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. Smith shall pay \$22,500 for fees and costs incurred as a result of investigating, bringing this matter to Smith’s attention, and negotiating a settlement in the public interest. Smith shall make the check payable to “The Chanler Group” and shall deliver payment on or before the Effective Date, to the address listed in Section 3.3.1 below.

3.3 Payment Procedures

3.3.1 Issuance of Payments

All payments owed to OEHHA, Vinocur, and his counsel, pursuant to Sections 3.1 and 3.2 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. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Smith

This Settlement Agreement is a full, final and binding resolution between Vinocur and Smith, of any violation of Proposition 65 that was or could have been asserted by Vinocur and his past and current agents, representatives, attorneys, successors, and/or assignees, against Smith, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Smith directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products manufactured, distributed, sold or offered for sale by Smith in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur, and 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, but exclusive of fees and costs on appeal, if any, arising under Proposition 65 with respect to exposures to

DEHP from Products manufactured, distributed, sold and/or offered for sale by Smith before the Effective Date.

Vinocur, and his attorneys, representatives, successors, and/or assignees, represents and warrants that, as of the date of his execution of this Settlement Agreement, other than the violations alleged in the Notice as to the Products described in this Settlement Agreement, he has no current knowledge or information based on any investigation or otherwise that Smith is currently manufacturing, distributing, shipping, selling or offering for sale in California any product(s) that Vinocur believes is causing a violation of Proposition 65, and that Vinocur has no present intention of filing suit or issuing a 60-Day Notice to Smith with respect to any other listed chemical under Proposition 65 with respect to any products manufactured, distributed or sold by Smith, including but not limited to, the Products.

4.2 Smith's Release of Vinocur

Smith, on behalf of itself, 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, otherwise 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 of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining 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 Smith 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 notices 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 Smith:

Kenneth Glaser, President
Smith News Company, Inc.
460 9th Street
San Francisco, CA 94103

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: April 7, 2015

Date: _____

By: 
LAURENCE VINO CUR

By: _____
Kenneth Glaser, President
SMITH NEWS COMPANY, INC.

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.

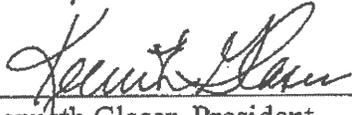
AGREED TO:

Date: _____

By: _____
LAURENCE VINOUCUR

AGREED TO:

Date: April 8, 2015

By: 
Kenneth Glaser, President
SMITH NEWS COMPANY, INC.