

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Wenger Furniture & Appliances Co. (“Wenger Furniture”), with Vinocur and Wenger Furniture 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. Wenger Furniture 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 § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Vinocur alleges that Wenger Furniture manufactures, sells, and distributes for sale in California, chairs with vinyl/PVC upholstery containing the phthalate 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 Wenger Furniture failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from its chairs with vinyl/PVC upholstery.

### 1.3 Product Description

The products covered by this Settlement Agreement are the chairs with vinyl/PVC upholstery sold as the *Urban Styles Furniture Loreda Chair, #1612* (“PRODUCTS”).

### 1.4 Notice of Violation

On May 21, 2015, Vinocur served Wenger Furniture and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Wenger Furniture violated Proposition 65 when it failed to warn its customers and

consumers in California of the health hazards associated with exposures to DEHP from the PRODUCTS. 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**

Wenger Furniture denies the material, factual, and legal allegations contained in the Notice, and Wenger Furniture represents that it has complied with all laws with respect to the PRODUCTS. Nothing in this Settlement Agreement shall be construed as an admission by Wenger Furniture 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 Wenger Furniture of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Wenger Furniture. This Section shall not, however, diminish or otherwise affect Wenger Furniture'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 September 8, 2015.

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

### **2.1 Reformulated PRODUCTS**

Commencing on the Effective Date and continuing thereafter, Wenger Furniture agrees to only purchase for sale, distribute for sale or sell, in California: (a) "Reformulated PRODUCTS" or (b) PRODUCTS that are sold with a clear and reasonable health hazard warning, pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated PRODUCTS" shall mean PRODUCTS containing less than or equal to 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched during use) when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a

solid substance.

## **2.2 Clear and Reasonable Warnings; Supplier Notification**

Wenger agrees that, as of the Effective Date, all PRODUCTS that it sells and/or distributes in California which do not qualify as Reformulated PRODUCTS will bear a clear and reasonable warning pursuant to this Section. Wenger further agrees that the warning 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 of use. For purposes of this Settlement Agreement, a clear and reasonable warning for the PRODUCTS shall consist of a warning affixed to the packaging, label, tag, or directly to a PRODUCT sold in California and containing one of the following statements:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm).

or

**WARNING:** This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm).

or

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

If Wenger chooses the warning option, it shall contact the supplier of the PRODUCTS in writing and instruct the supplier to utilize its best efforts to sell them only Reformulated PRODUCTS in the future.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Wenger Furniture agrees to pay \$1,000. The parties agree this payment shall be allocated in accordance with California Health and Safety Code §§ 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. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the civil penalty payment made under this Settlement Agreement to OEHHA. Within five days of the Effective Date, Wenger Furniture shall make the payment of \$1,000 and shall deliver its payment in a single check made payable to “Laurence Vinocur, Client Trust Account.” As set forth in Paragraph 1.5 above, compliance with this paragraph or any other part of this Settlement Agreement does not constitute an admission by Wenger Furniture of any fact, finding, conclusion, issue of law, or violation of law.

### **3.2 Attorneys’ Fees and Costs**

The Parties reached an accord as to any compensation allegedly due to Vinocur and Vinocur’s counsel. Vinocur and his counsel assert and Wenger denies that Vinocur is entitled to attorney’s fees pursuant to general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. As a compromise of this issue, within five days of the Effective Date, Wenger Furniture agrees to make the first of four installment payments of \$3,500 in the form of a check made payable to “The Chanler Group” for fees and costs incurred investigating, bringing this matter to the attention of Wenger Furniture’s management, and negotiating a settlement. Wenger Furniture shall thereafter, on October 15, 2015, November 15, 2015, and December, 15, 2015, respectively, make the final three installment payments of \$3,500 each by delivering a check on or before each of the above dates, made payable to “The Chanler Group” at the address contained in Section

3.3 below. The Parties acknowledge that Vinocur and Vinocur’s counsel offered to leave their fees and costs, as an ancillary matter, to be resolved by an arbitrator, after all other terms of the Agreement had been resolved, but they did not agree to pay for the arbitration. As set forth in Paragraph 1.5 above, compliance with this paragraph or any other part of this Settlement Agreement does not constitute an admission by Wenger Furniture of any fact, finding, conclusion, issue of law, or violation of law.

### **3.3 Payment Address**

All payments under 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 Wenger Furniture**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Wenger Furniture, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of him himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against Wenger Furniture, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Wenger Furniture directly or indirectly distributes or sells PRODUCTS , including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to DEHP contained in the PRODUCTS that were manufactured, distributed, sold, and/or offered for sale by Wenger Furniture in California before the Effective Date, as alleged in the notice of violation. In further consideration of the promises and agreements herein contained, Vinocur, as an individual and *not* on behalf of

the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all Vinocur's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Vinocur may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, but not exclusively, investigation fees, expert fees, and attorney's fees arising under Proposition 65 before the Effective Date against Wenger Furniture and Releasees.

#### **4.2 Wenger Furniture's Release of Vinocur**

Wenger Furniture, 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, up through the Effective Date.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed 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 Wenger Furniture 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 Wenger Furniture:

Martin Wenger, President  
Wenger Furniture & Appliances Co.  
4552 Whittier Boulevard  
Los Angeles, CA 90022

For Vinocur:

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

With a copy to:

Nancy J. W. Brown  
Barbanel & Treuer, P.C.  
1925 Century Park East, Suite 350  
Los Angeles, CA 90067

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 s§ 25249.7(f).

**10. MODIFICATION**

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

**11. AUTHORIZATION**

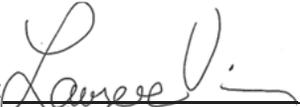
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 9/10/15

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

By:   
LAURENCE VINO CUR

By: \_\_\_\_\_  
Martin Wenger, President  
WENGER FURNITURE & APPLIANCE CO

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

**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_ Date: 9-4-15

By: \_\_\_\_\_ By: Martin Wenger  
LAURENCE VINOUCR Martin Wenger, President  
WENGER FURNITURE & APPLIANCE  
CO.