

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1. Parties.** This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Leco Plastics Inc. (“Leco”), collectively referred to herein as “Parties.” Vinocur is an individual residing in 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 products. Leco employs ten or more persons, and each is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

**1.2. General Allegations.** Vinocur alleges that Leco manufactures, distributes and/or sells Vinyl/PVC cord protectors containing di(2-ethylhexyl)phthalate (“DEHP”) identified as FlexiRings, FL5020-B, UPC #6 00170 02462 4 (“Products”), which were sold in California. Vinocur also alleges that Leco violated the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* (“Proposition 65”), by knowingly and intentionally exposing individuals in California to DEHP contained in or on the Products.

**1.3. Notice of Violation.** Vinocur served Leco and the requisite public prosecutors with a document entitled “60-Day Notice of Violation,” dated September 15, 2015, (“Notice”) that provided the recipients with notice of the alleged violations of Proposition 65 based on the alleged failure to warn customers, consumers and users in the State of California that the Products expose users to DEHP.<sup>1</sup> To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.4. No Admission.** Leco denies the material, factual, and legal allegations contained in the Notice and maintains that it has not manufactured, imported, distributed, offered for sale and/or sold in the State of California any Products containing DEHP at levels that would require a warning under Proposition 65; that any Products that may have been manufactured, imported, distributed, offered for sale and/or sold in the State of California fully complied with the

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<sup>1</sup> Pursuant to Proposition 65, DEHP is listed as a chemical known to cause cancer, birth defects and other reproductive harm. DEHP is subject to the “clear and reasonable warning” requirements of Proposition 65, as well as to any exceptions thereto. 27 Cal. Code Regs. § 27001(b); Health & Safety Code §§ 25249.8, 25249.10(b). Vinocur’s Notice alleges that the types of harm from alleged exposure to DEHP in the Products are birth defects and other reproductive harm.

requirements of Proposition 65; and that it has never knowingly and intentionally exposed, or caused the exposure of, any individual in California to DEHP as a result of the Products for which it was required to give a warning under Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Leco of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Leco of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by Leco. Leco enters into this Settlement Agreement in New Jersey and, by entering into this Settlement Agreement, Leco does not admit that it is subject to the jurisdiction of the California courts for the claims alleged and resolved by this Settlement Agreement or that it has purposefully availed itself of the California forum for conducting business, whether with respect to the Products or in any other fashion. Leco enters into this Settlement Agreement for the sole purpose of avoiding costly litigation. This paragraph shall not, however, diminish or otherwise affect Leco's obligations, responsibilities, and duties under this Settlement Agreement.

**1.5. Effective Date.** For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 8, 2016.

## **2. INJUNCTIVE RELIEF**

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

**2.2. Reformulation Commitment.** Commencing on the Effective Date, Leco shall not ship to, distribute to, offer for sale in, sell in California, or sell to or distribute to others with actual knowledge they will be offered for sale or sold in California, Products unless such Products are Reformulated Products.

## **3. MONETARY SETTLEMENT TERMS**

**3.1. Civil Penalty** Pursuant to Health and Safety Code section 25249.7(b), Leco shall pay the civil penalties described herein, and each penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the

remaining 25% of the penalty paid to Vinocur, as follows: Within five business days of the Effective Date, Leco shall provide its civil penalty payment in two checks for the following amounts made payable to: (a) “Office of Environmental Health Hazard Assessment” in the amount of \$1,125; and (b) “Laurence Vinocur” in the amount of \$375. Vinocur shall provide to Leco a completed IRS Form W-9 prior to Leco preparing the check payable to Vinocur.

**3.2. Attorney 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 issue to be resolved after the material terms of the agreement had been settled. Leco then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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 § 1021.5, for all work performed through the mutual execution of this agreement. As a compromise of such claims, and without either party admitting or denying their validity, Leco shall reimburse Vinocur and his counsel \$13,000 for the fees and costs incurred in investigating, bringing this matter to the attention of Leco’s management, and negotiating a settlement.

Within five business days of the Effective Date, Leco shall provide payment in the form of a check for \$13,000 made payable to “Moscone Emblidge & Otis LLP.” Moscone Emblidge & Otis LLP shall provide to Leco a completed IRS Form W-9 to Leco preparing the check payable to Moscone Emblidge & Otis LLP.

**3.3. Payment Procedures.** Payments are to be delivered according to the following paragraphs.

**3.3.1 Payment Address for Vinocur.** All payments to Vinocur and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge & Otis LLP  
Attn: Proposition 65 Controller  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

**3.3.2 Payment Addresses for OEHHA.** All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (memo line: “Prop. 65 Penalties: AG Number 2015-00888”) at one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95812-4010

**3.3.3 Copy of Payments to OEHHA.** Leco agrees to provide Vinocur’s counsel with a copy of each check payable to OEHHA, simultaneously with its penalty payments to Vinocur, to be delivered to the address provided in paragraph 3.3.1.

**4. CLAIMS COVERED AND RELEASED**

**4.1. Vinocur’s Release of Leco.** This Settlement Agreement is a full, final, and binding resolution between Vinocur and Leco of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Leco, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity, except for Mono-Systems, Inc., to whom Leco directly or indirectly distributes or sells, or distributed or sold, the Products, including, without limitation, its “downstream” distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, excepting therefrom only MonoSystems, Inc., and any “upstream” entities that manufactured, distributed or supplied the Products or any component parts thereof for or to Leco (collectively, “Releasees”), based on unwarned exposures to DEHP in Products sold or distributed for sale in California prior to the Effective Date.

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 all rights, except as to Mono-Systems, Inc., to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from Products manufactured, sold, or distributed for sale in California by Leco or Releasees prior to the Effective Date.

**4.2. Leco's Release of Vinocur.** Leco, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, hereby waives any and all claims that it may have 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, otherwise seeking to enforce Proposition 65 against it and the Releasees in this matter, or with respect to the Products.

**4.3. No Downstream Release for Mono-Systems, Inc.** The Parties understand and agree that this release shall not extend downstream to Mono-Systems, Inc.

**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 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 Leco may provide written notice to Vinocur of any asserted change in the law, and 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 any Releasees, including Leco, from any obligation to comply with any pertinent state or federal law.

**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 Leco:

Barry Schwartz  
President  
Leco Plastics, Inc.  
130 Gamewell Street  
Hackensack, NJ 07601

with a copy to:

Peter McGaw, Esq.  
Archer Norris  
2033 North Main St., Ste. 800  
Walnut Creek CA 94596

For Vinocur:

Moscone Emblidge & Otis LLP  
Attn: Proposition 65 Controller  
220 Montgomery Street, Suite 2100  
San Francisco, CA 94104

Any Party may, from time to time, specify in writing to the other Party 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. POST-EXECUTION ACTIVITIES**

Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f) and will notify Leco, through its counsel, when such requirements have been met.

10. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist among the Parties or to bind any Party to any other Party.

11. **MODIFICATION**

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

12. **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: \_\_\_\_\_

Date: 8/4/16

By: \_\_\_\_\_

Laurence Vinocur

By:  \_\_\_\_\_

Barry Schwartz  
President  
Leco Plastics Inc.

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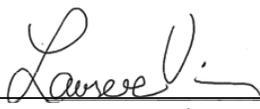
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 8/6/2016

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

By:   
Laurence Vinocur

By: \_\_\_\_\_  
Barry Schwartz  
President  
Leco Plastics Inc.