

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Evergreen Enterprises, Inc. (“Evergreen Enterprises”), with Vinocur and Evergreen Enterprises 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. Evergreen Enterprises 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 Evergreen Enterprises manufactures, sells, and distributes for sale in California vinyl/PVC inflatable balls containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are vinyl/PVC inflatable balls containing DEHP that are sold or distributed for sale in California by Evergreen Enterprises including, but not limited to, the *NFL Officially Licensed 24” Beach Ball* (“Covered Products”).

1.4 Notice of Violation

On April 27, 2016, Vinocur served Evergreen Enterprises, the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Evergreen Enterprises violated Proposition 65 when it failed to warn its customers

and consumers in California of the health risks associated with exposures to DEHP from the Covered Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Evergreen Enterprises denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has sold and distributed for sale in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Evergreen Enterprises 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 Evergreen Enterprises of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Evergreen Enterprises. This Section shall not, however, diminish or otherwise affect Evergreen Enterprises' obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 30, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, Evergreen Enterprises agrees to only manufacture for sale or purchase for sale in California "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products are defined as Covered Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use), when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

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, Evergreen Enterprises agrees to pay \$7,500 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (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 amount retained by Vinocur. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

3.1.1 Initial Civil Penalty

Within five days of the Effective Date, Evergreen Enterprises shall make an initial civil penalty payment of \$2,500, in the form of a single check made payable to “Laurence Vinocur, Client Trust Account.”

3.1.2 Final Civil Penalty

On October 30, 2016, Evergreen Enterprises will make a final civil penalty payment of \$5,000. Pursuant to title 11 Cal. Code Regs. § 3203(c), the final civil penalty will be waived in its entirety if, by October 15, 2016, an officer of Evergreen Enterprises provides Vinocur’s counsel with a signed declaration certifying that, as of the date of the declaration, all Covered Products sold or distributed for sale in California are Reformulated Products, and that Evergreen Enterprises will continue to offer only Reformulated Products in California in the future. The option to provide a declaration certifying complete reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

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 § 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, Evergreen Enterprises agrees to pay \$25,250 to Vinocur and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Evergreen Enterprises' management, and negotiating a settlement in the public interest. Evergreen Enterprises' payment shall be delivered in the form of a check payable to "The Chanler Group."

3.3 Payment Address

All payments required by 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 Evergreen Enterprises

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

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors and assignees, hereby waives any and all rights that he

may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Evergreen Enterprises and Releasees 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 with respect to the alleged or actual failure to warn about exposures to DEHP in Covered Products manufactured, distributed, sold or offered for sale by Evergreen Enterprises, before the Effective Date.

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

4.2 Evergreen Enterprises' Release of Vinocur

Evergreen Enterprises, on its own behalf and on behalf of 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 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 Covered 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 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 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then Evergreen Enterprises may provide written notice to Vinocur of any asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered 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 Evergreen Enterprises:

John Toler, President
Evergreen Enterprises, Inc.
5915 Midlothian Turnpike
Richmond, VA 23225

with a copy to:

Melissa A. Jones, Esq.
Stoel Rives LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814

For Vinocur:

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

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 § 25249.7(f), and will submit to the California Attorney General a signed copy of this Agreement.

10. **MODIFICATION**

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

11. **AUTHORIZATION**

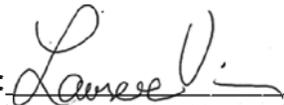
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 8/30/16

Date: 8.26.2016

By: 
LAURENCE VINOUCUR

By: 
John Toler, President
EVERGREEN ENTERPRISES, INC.