

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between plaintiff Laurence Vinocur (“Vinocur”) and Groupe SEB USA (“Groupe SEB”), with Vinocur and Groupe SEB 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 contained in consumer products. Groupe SEB employs ten or more individuals 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Groupe SEB manufactured, distributed, sold, shipped or stored for sale in California, wrenches with vinyl/PVC tool grips that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause cancer, and birth defects or other reproductive harm. Vinocur alleges that Groupe SEB failed to provide consumers and other individuals exposed to DEHP from the vinyl grips of canning tools it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as canning tools with vinyl/PVC grips containing DEHP that are manufactured, sold, or distributed for sale in California by Groupe SEB including, but not limited to, the *Mirro Jar Wrench*, #9636000A, #2300016904, UPC #0 72009 96360 0 (collectively, the “Products”).

1.4 Notice of Violation

On April 27, 2016, Vinocur served Groupe SEB, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Groupe SEB violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Groupe SEB denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered for sale 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 Groupe SEB of any allegation, 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 Groupe SEB of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Groupe SEB. This Section shall not, however, diminish or otherwise affect Groupe SEB’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 December 31, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing on the Effective Date and continuing thereafter, Groupe SEB agrees to only manufacture for sale or purchase for sale in or into California, “Reformulated Products.” For purposes of this Settlement Agreement, “Reformulated Products” are defined as Products with a maximum of 1,000 parts per million DEHP content in any component analyzed pursuant to U.S. Environmental Protection Agency testing

methodologies 3580A and 8270C, or any other equivalent 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 section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Groupe SEB agrees to pay a total of \$3,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 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. Groupe SEB will deliver its payment within five business days of the Effective Date in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$2,250; and (b) Laurence Vinocur, Client Trust Account” in the amount of \$750. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

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 section 1021.5 for all work performed in this matter. Under these legal principles, within five business days of the Effective Date, Groupe SEB agrees to pay \$23,000 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Groupe SEB’s management, and negotiating a settlement that provides a significant public benefit. Groupe SEB’s 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. ISSUANCE OF 1099 FORMS

After the settlement funds required by Sections 3.1 and 3.2 have been transmitted to The Chanler Group at the address provided at Section 3.3 of this Settlement Agreement, Groupe SEB will issue three separate 1099 forms, as follows:

4.1 The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, PO Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount of \$2,250;

4.2 The second 1099 shall be issued to Vinocur in the amount of \$750 at the address indicated in Section 3.3; Vinocur's tax identification number shall be furnished upon request; and,

4.3 The third 1099 shall be issued to the Chanler Group (EIN: 94-3171522) in the amount of \$23,000 at the address indicated in Section 3.3.

5. CLAIMS COVERED AND RELEASED

5.1 Vinocur's Release of Groupe SEB

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Groupe SEB, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf, or on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Groupe SEB, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, predecessors, successors, assignees, attorneys, and each entity to whom Groupe SEB directly or indirectly distributes, ships or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, including Placerville Hardware,

franchisees, cooperative members, and licensees and their owners, directors, officers, agents, principals, employees, attorneys, insurers, accountants, predecessors, successors, and assignees (collectively, “Releasees”), for any and all claims based on the failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale in California by Groupe SEB 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 on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, 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 Groupe SEB and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys’ fees for claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale by Groupe SEB, 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 in California.

5.2 Groupe SEB’s Release of Vinocur

Groupe SEB, 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, Vinocur’s attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. 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.

7. 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 Products, then Groupe SEB may provide written notice to Vinocur of the 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 Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required by 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 Groupe SEB:

Gregory C. Cairo, President
Groupe SEB USA
5 Wood Hollow Road, 2nd Floor
Parsippany, NJ 07054

Robert J. Parks, Esq.
Buchanan Ingersoll Rooney LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101

For Vinocur:

The Chanler Group
Attn: Prop 65 Coordinator
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.

9. 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.

10. 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).

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, understand, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 12/28/2016

Date: December 9, 2016

By: 
LAURENCE VINOUCUR

By: 
Gregory C. Cairo, President
GROUPE SEB USA