

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and Mattel, Inc.**

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Mattel, Inc. and its subsidiaries (“Mattel”), with Vinocur and Mattel collectively referred to as the “Parties.” Vinocur is an individual residing in California. Mattel 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 §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.1 General Allegations**

Vinocur alleges that Mattel has manufactured, imported, sold and/or distributed for sale in California, vinyl/PVC headphone wraps containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

### **1.2 Product Description**

The products that are covered by this Settlement Agreement are defined as vinyl/PVC headphone wraps including, but not limited to, *Nabi Headphone Wrap + 3D Kinabis*, *Dreamworks Dragons*, *HPWP-HTTD1-01-FA13*, *UPC #8 40135 10056 1*, manufactured by or for Fuhu, Inc. (“Fuhu”) and distributed for sale and/or sold in California either prior or subsequent to the acquisition of certain of Fuhu’s assets by Mattel (hereinafter the “Headphone Wraps”).

### **1.3 Notice of Violation**

On April 27, 2016, Vinocur served Mattel and certain requisite public enforcement agencies with a “60-Day Notice of Violation” that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn its customers, consumers, and other individuals that the Headphone Wraps exposed users in California to DEHP. To the best of

the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the aforementioned 60-day notice ("Notice").

#### **1.4 No Admission**

Mattel denies the material factual and legal allegations contained in Vinocur's Notice and maintains that all products that it has manufactured, imported, distributed, and/or sold in California, including the Headphone Wraps, have been and are in compliance with Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Mattel 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 Mattel of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Mattel'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 the date on which this document has been executed by all Parties.

## **2. INJUNCTIVE RELIEF**

### **2.1 Existing Products**

By no later than the Effective Date, to the extent it has not already done so, Mattel shall have quarantined all Headphone Wraps remaining within its inventory, if any, and promptly arrange for their disposal or destruction in a manner compliant with all applicable laws and regulations, such disposal or destruction to occur within no more than sixty (60) additional days.

### **2.2 Future Manufacture, Distribution and Sales**

To the extent Mattel decides to distribute or sell Headphone Wraps in the future, it shall ensure their components which may be touched or mouthed are each manufactured with DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency ("EPA") 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.

### **2.3 Extended Commitment for Future Manufacture, Distribution and Sale**

To the extent Mattel decides to distribute or sell Headphone Wraps in the future, it shall also ensure their components which may be touched or mouthed are each manufactured with butyl benzyl phthalate (“BBP”), di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”), and di-n-hexyl phthalate (“DnHP”) having concentrations of less than 0.1 percent (1,000 parts per million) each when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance.<sup>1</sup>

## **3. MONETARY PAYMENTS**

### **3.1 Civil Penalties Pursuant To Health & Safety Code § 25249.7(b)**

In settlement of the claims referred to in this Settlement Agreement, Mattel has been assessed a total of \$2,000 in civil penalties in light of information it provided to Vinocur concerning the very limited California sales and revenues associated with the Headphone Wraps in the year prior to the issuance of the Notice and the prompt action it undertook to quarantine the remaining inventory of the Headphone Wraps. This amount also accounts for a penalty reduction associated with the commitments Mattel has made hereunder as set forth in Sections 2.1, 2.2 and 2.3 above.

In accordance with California Health & Safety Code § 25249.12(c)(1) and (d), on or before July 31, 2016, Mattel shall therefore provide civil penalty payments to address the violations addressed in the Notice in two checks as follows: (a) to “OEHHA” in the amount of \$1,500; and (b) to “Laurence Vinocur, Client Trust Account” in the amount of \$500. These

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<sup>1</sup> DEHP, BBP, DBP, DIDP, DINP, are DnHP, are collectively referred to herein as the “Listed Chemicals.”

payments shall be delivered to the address listed in Section 3.3 below by no later than July 31, 2016.

### **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, Mattel 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.

Mattel shall pay \$18,000 for fees and costs incurred as a result of investigating, bringing this matter to Mattel's attention through the Notice, and negotiating a settlement in the public interest. Mattel shall make the check for the payment required by this section payable to "The Chanler Group" and shall deliver payment on or before July 31, 2016, to the address listed in Section 3.3 below.

### **3.3 Payment Procedures**

All payments owed pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller (Vinocur v. Mattel)  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

Within ten business days of its receipt, Vinocur's counsel shall forward the check drawn to OEHHA to:

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

#### **4. CLAIMS COVERED AND RELEASED**

##### **4.1 Vinocur's Release of Mattel**

This Settlement Agreement is a full, final and binding resolution between Vinocur and Mattel of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, against Mattel, its directors, officers, employees, attorneys and each entity to whom Mattel directly or indirectly distributes or sells Headphone Wraps including, but not limited to, downstream distributors, wholesalers, customers, retailers (including, but not limited to Toys-R-Us and Amazon), franchisees, cooperative members and licensees ("Releasees"), based on DEHP in Headphone Wraps manufactured or distributed before the Effective Date. This release is provided in Vinocur's individual capacity and is not a release on behalf of the public.

In further consideration of and reliance on Section 2.3 above, Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights 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, causes of action in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses, investigation fees, expert fees and attorneys' fees, with respect to Listed Chemicals in Headphone Wraps manufactured or distributed before the Effective Date. This release is also provided in Vinocur's individual capacity and is not a release on behalf of the public.

##### **4.2 Mattel's Release of Vinocur**

Mattel, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur, his attorneys or other representatives, for any and all actions taken or statements made (or those that could have been taken or made) with respect to the Headphone Wraps by Vinocur, his attorneys or other representatives on or before the Effective Date, whether in the course of investigating claims,

seeking to enforce Proposition 65 against it in this matter or otherwise.

**5. SEVERABILITY**

If any of the provisions of this Settlement Agreement are held 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.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

*To Defendant, Mattel:*

Lee Papageorge  
Mattel, Inc.  
333 Continental Boulevard  
Mail Stop: M1-1518  
El Segundo, CA 90245

*with a copy to:*

Robert Falk  
Morrison & Foerster LLP  
425 Market Street  
San Francisco, CA 94105

*To Plaintiff, Laurence Vinocur:*

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

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**8. COUNTERPARTS; FACSIMILE AND SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall

constitute one and the same document. A facsimile or pdf signature shall be as valid as the original.

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 & Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a 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: 7/14/2016

Date: 7/18/16

By:   
Laurence Vinocur

By:   
Name: LEE PARAGORGE  
Title: ASSISTANT SECRETARY  
MATTEL, INC.