

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between plaintiff Laurence Vinocur (“Vinocur”), on the one hand, and Militti Sales & Promotions, L.L.C. (“Militti”) on the other, with Vinocur and Militti 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. Militti 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 Militti manufactures, sells, and distributes for sale in California, earphones with vinyl cords or other components 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

For purposes of this Settlement agreement “Products” are defined as earphones with vinyl/PVC cords or other components containing DEHP that are manufactured, sold, or distributed for sale in California by Militti including, but not limited to, the *yby Head Buds Stereo Earbuds, UPC #6 87110 11144 6*.

1.4 Notice of Violation

On April 27, 2016, Vinocur served Militti, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Militti 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 Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Militti denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, sold, or distributed 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 Militti 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 Militti of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by Militti. This Section shall not, however, diminish or otherwise affect Militti'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 1, 2016.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

Commencing December 1, 2016 and continuing thereafter, Militti agrees to only manufacture for sale, purchase for sale, or distribute for sale in California, "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing no more than 1,000 parts per million (0.1%) DEHP in any accessible component (i.e., any component that may be touched or handled during use) when analyzed pursuant to U.S. 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.

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, Militti agrees to pay \$6,000 in civil penalties. Each 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. Vinocur’s counsel shall be responsible for delivering any penalty payment(s) made under this Settlement Agreement to OEHHA.

3.1.1 Initial Civil Penalty

Within five days of the Effective Date, Militti shall make an initial civil penalty payment of \$2,000. Militti shall provide its payment in a two checks made payable to (a) “OEHHA” in the amount of \$1,500; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$500.

3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation

On January 6, 2017, Militti will make a final civil penalty payment of \$4,000. Pursuant to title 11 Cal. Code Regs. section 3203(c), the final civil penalty will be waived in its entirety if, by December 15, 2016, an officer Militti provides Vinocur’s counsel with signed declaration certifying that, as of the date of such certification, all Products that Militti is selling, shipping, or distributing for sale in California, are Reformulated Products, and that Militti will continue to offer only Reformulated Products in California in the future. The option to provide a declaration certifying early 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 section 1021.5 for all work performed in this matter. Under these legal principles, Militti agrees to pay \$12,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Militti's management, and negotiating a settlement that provides public benefit. Militti's payment shall be delivered in the form of a check payable to "The Chanler Group."

3.3 Payment Timing; Payment Address

With the exception of the final civil penalty required by Section 3.1.2, all payments required under this Settlement Agreement are due within five days of the Effective Date, and 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 Militti

This Settlement Agreement is a full, final, and binding resolution between Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees and Militti, of any violation of Proposition 65 asserted by Vinocur, or that could have been asserted, against Militti and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Militti directly or indirectly distributes or sells the Products, including, but not limited, to its downstream distributors, wholesalers, customers (including, without limitation, Grocery Outlet, Inc.), retailers, franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about

exposures to DEHP in Products manufactured, sold or distributed for sale in California by Militti before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur further waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action against Militti and Releasees, and he releases all claims arising under Proposition 65 and alleging a failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by Militti, before the Effective Date including, but not exclusively, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees of any nature, character or kind.

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.

4.2 Militti's Release of Vinocur

Militti, 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 or his attorneys or other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against Militti in this matter, or with respect to the 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 Products, Militti may provide written notice to Vinocur of such 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.

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 Militti:

Larry Militti, President
Militti Sales & Promtions, L.L.C.
P.O. Box 45216
Omaha, NE 45216

with a copy to:

William D. Wick, Esq.
Wactor & Wick LLP
180 Grand Avenue, Suite 950
Oakland, CA 94612

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

AGREED TO:

AGREED TO:

Date: 9/6/2016

Date: 9/6/2016

By: 

LAURENCE VINO CUR

By: 

Larry Militti, President
MILITTI SALES & PROMOTIONS, L.L.C.