

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and Boss Pet Products, Inc.

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Laurence Vinocur (“Vinocur”), and Boss Pet Products, Inc. (“Boss”) with Vinocur and Boss collectively referred to as the “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. Vinocur alleges that Boss 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 sections 25249.5 *et seq.* (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Boss manufactures, imports, sells, and/or distributes for sale in California certain pet waste disposal products containing di(2-ethylhexyl)phthalate (“DEHP”) without a Proposition 65 warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are pet waste tools with vinyl/PVC grips containing DEHP, including, but not limited to, *PDQ Dog Waste Tool Kit, Item # 51114, UPC #0 83929 01379 5*, that are manufactured, imported, distributed, sold and/or offered for sale by Boss in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about September 29, 2016, Vinocur served Boss, Boss Holdings, Inc. (“BHI”) and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Boss and BHI violated Proposition 65 when they failed to warn their customers in

California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

This Settlement Agreement of disputed claims is entered into to avoid potentially expensive and time consuming litigation. Boss denies the material, factual and legal allegations contained in the Notice and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission by Boss of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Boss of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Boss. This Section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 28, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are defined as those Products whose accessible components (i.e., any component that can be touched or handled during reasonably a foreseeable use) contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) 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

As of the Effective Date, Boss shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or Products containing appropriate Proposition 65 warnings as described in Section 2.3 below.

2.3 Product Warnings

Commencing on the Effective Date, Boss shall provide clear and reasonable warnings containing the language set forth in subsections 2.3(a) and (b) for all Products sold in California that do not qualify as Reformulated Products. Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

(a) Retail Store Sales.

(i) Product Labeling. Boss shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states (language in brackets optional):

[California Proposition 65] **WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

Or, in the event that Boss has reason to believe that the Products contain a Proposition 65 listed chemical in addition to DEHP, one of the following warnings may be used:

[California Proposition 65] **WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

[California Proposition 65] **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Mail Order Catalog and Internet Sales. In the event that Boss sells Products via mail order catalog and/or over the internet to end use consumers located in California, after the Effective Date, that are not Reformulated Products, Boss shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.3(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

[California Proposition 65] **WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

Or, in the event that Boss has reason to believe that the Products contain a Proposition 65 listed chemical in addition to DEHP, one of the following warnings may be used

[California Proposition 65] **WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.:

[California Proposition 65] **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Boss may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the

following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

[California Proposition 65] **WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

Or, in the event that Boss has reason to believe that the Products contain a Proposition 65 listed chemical in addition to DEHP, one of the following warnings may be used:

[California Proposition 65] **WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog contain chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

[California Proposition 65] **WARNING:** Certain products identified with this symbol ▼ and offered for sale in this catalog can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Boss must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** Any internet warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

[California Proposition 65] **WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

Or, in the event that Boss has reason to believe that the Products contain a Proposition 65 listed chemical in addition to DEHP, one of the following warnings may be used:

[California Proposition 65] **WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

[California Proposition 65] **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, a designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

[California Proposition 65] **WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer, and birth defects and other reproductive harm.

Or, in the event that Boss has reason to believe that the Products contain a Proposition 65 listed chemical in addition to DEHP, one of the following warnings may be used:

[California Proposition 65] **WARNING:** This product contains chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm.

[California Proposition 65] **WARNING:** This product can expose you to chemicals, including DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the claims referred to in this Settlement Agreement, Boss shall pay \$2,500 in civil penalties in accordance with this Section. Vinocur agrees that these civil penalties completely satisfy the requirements of Health & Safety Code 25249.7(b)(2) pertaining to Products manufactured prior to the Effective Date. Each penalty payment will be allocated in accordance with California

Health & Safety Code sections 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Vinocur. By the Effective Date, Boss shall issue a check payable to “Laurence Vinocur, Client Trust Account” in the amount of \$625, and a check made payable to “OEHHA” in the amount of \$1,875, delivered to the address in Section 3.3 below. Vinocur’s counsel shall have sole responsibility for remitting the proper portion of Boss’ penalty payment(s) under this Settlement Agreement to OEHHA.

3.2 Reimbursement of Attorneys’ 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 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Boss expressed a desire to resolve Vinocur’s fees and costs. The Parties then negotiated a resolution of 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, Boss shall reimburse Vinocur and his counsel \$21,000. Boss payment shall be delivered to the address in Section 3.3, by the Effective Date, in the form of a check payable to “The Chanler Group.” Boss’ reimbursement shall cover all fees and costs of any kind incurred by Vinocur investigating, bringing this matter to the Boss’ attention, and negotiating a settlement of the matter in the public interest.

3.3 Payment Address

All payments required by this Settlement Agreement shall be delivered to the following address:

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 Proposition 65 Claims

Vinocur acting on his own behalf and on behalf of his current agents, representatives, attorneys, successors, and assignees (collectively, "Releasors"), and *not* on behalf of the public, releases Boss, BHI, their parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Boss directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations or alleged violations of Proposition 65 based on unwarned exposures to DEHP from Products manufactured, imported, distributed or sold through the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products, as set forth in the Notice. The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured or supplied the Products to Boss.

4.2 Vinocur's Individual Releases of Claims

Vinocur, on behalf of himself and on behalf of the other Releasors, and *not* in his representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Vinocur of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in Products manufactured, imported, distributed, or sold by Boss prior to the Effective Date. The Parties further understand and agree that this Section 4.2 release shall not extend upstream to any entities that manufactured or supplied the Products to Boss. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Boss Products.

Vinocur, on behalf of himself and on behalf of the other Releasors, and *not* in his representative capacity, further provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, liabilities, and demands of any nature, character of kind, known or unknown, suspected or unsuspected, as such claims relate to the Products manufactured, distributed and/or sold by Boss prior to the Effective Date. Vinocur further acknowledges that he is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Vinocur, on behalf of himself and on behalf of the other Releasors, and *not* in his representative capacity, expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on her by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters herein.

4.3 Boss Release of Vinocur

Boss, on behalf of itself, 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 (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

Boss further acknowledges that it is familiar with Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Boss, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters herein.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

6. 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 or to bind any of the Parties.

7. MUTUAL DRAFTING

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel.

Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement

Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

8. 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 if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then Boss shall 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 Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Boss from any obligation to comply with any pertinent state or federal toxics control law.

9. NOTICE

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

For Boss:

James F. Sanders
Vice President & General Counsel
Boss Pet Products, Inc.
Boss Holdings, Inc.
1221 Page Street
Kewanee, IL 61443

With a Copy to Boss' counsel:

James Robert Maxwell, Esq.
Rogers Joseph O'Donnell, PC.
Robert Dollar Building
311 California Street, 10th Floor
San Francisco, CA 94104

For 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.

10. 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.

11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Vinocur agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

12. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties. Any Party seeking to modify this Settlement Agreement or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify or enforce the Settlement Agreement.

13. **AUTHORIZATION**

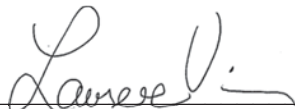
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 4/20/2017

Date: _____

By:  _____
Laurence Vinocur

By: _____
James F. Sanders,
Vice President & General Counsel
Boss Pet Products, Inc.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

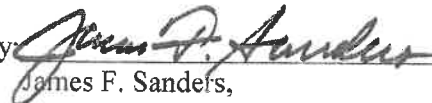
AGREED TO:

Date: _____

By: _____
Laurence Vinocur

AGREED TO:

Boss Pet Products, Inc.
Date: 4/21/2017

By: 
James F. Sanders,
Vice President & General Counsel
Boss Pet Products, Inc.