

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Zak Designs, Inc. (“Zak”) and Laurence Vinocur (“Vinocur”), with Vinocur and Zak collectively referred to as the “Parties.” Vinocur is an individual residing in the State of California who states that he seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Zak 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 Zak manufactured, imported, distributed, shipped and/or sold in the State of California mugs with exterior designs containing lead above the allowable state limits without the requisite Proposition 65 warning. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

#### 1.4 Notices of Violation

On or about September 29, 2016, Vinocur served Zak and certain requisite public enforcement agencies with a 60-Day Notice of Violation (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Zak’s failure to warn consumers that the Products (as defined below) exposed users in the State of California to lead. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### 1.3 Product Description

The “Products” that are covered by this Settlement Agreement are limited to *“Trolls Crazy Hair Don’t Care!” Mug, TROC-1591, 12209-1, UPC #7 07226 81025 2*, manufactured, imported, distributed, shipped, sold and/or offered for sale in the State of California by Zak as set forth in the Notice.

### **1.5 No Admission**

Zak denies all factual and legal allegations contained in Vinocur's Notice and those set forth in Sections 1.1 and 1.2 of this Settlement Agreement, and maintains that all of the products that it has sold and/or offered for sale in the State of California, including the Products, have been and are in compliance with all federal, state, or local laws. Nothing in this Settlement Agreement shall be construed as an admission by Zak of any fact, finding, conclusion of law, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Zak of any fact, finding, conclusion of law, issue of law or violation of law. However, this Section shall not diminish or otherwise affect Zak'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 the date this Settlement Agreement is signed by all Parties.

## **2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION STANDARD**

### **2.1 Reformulated Products**

Commencing ninety (90) days after the Effective Date, and continuing thereafter, all Products manufactured, imported, distributed, shipped, sold or offered for sale in California shall be "Reformulated Products." For purposes of this Settlement Agreement, Reformulated Products are Products that: (a) contain no more than 90 parts per million ("ppm") (0.09%) lead in any exterior decorations when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B and 6010B or equivalent methodologies utilized by federal or state agencies for the purpose of determining lead content in a solid substance (e.g., ASTM C738-94 (2016)); (b) yield no more than 1.0 microgram (" $\mu$ g") of lead when analyzed pursuant to NIOSH Test Method No. 9100 as applied to exterior decorations of the Product; and (c) a Reformulated Products shall yield a result of non-detect (defined as no more than 25 ppm (0.025%) by weight of lead) for any decorations located in the upper 20 millimeters of a Product, i.e., the "Lip-and-Rim" area of the vessel, or the decorative materials located on the

interior surface of the Product (i.e., the beverage-containing portion) when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in a solid substance (e.g., ASTM C927-80 (2014)).

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, Zak shall pay a civil penalty in the amount of \$2,500 within five (5) days of the Effective Date by issuing two separate checks payable as follows: (a) “OEHHA” in the amount of \$1,875; and (b) “Laurence Vinocur Client Trust Account” in the amount of \$625. Each penalty payment will be allocated in accordance with California Health & Safety Code § 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 remitted to Laurence Vinocur. Zak shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

#### **3.2 Reimbursement of Attorney’s 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 issue to be resolved after the material terms of the agreement had been settled. Vinocur then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Vinocur and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this agreement. Zak shall pay \$21,000 for fees and costs incurred as a result of investigating, bringing this matter to Zak’s attention, and negotiating a settlement in the public interest. Zak shall tender a check payable to “The Chanler Group,” within five (5) days of the Effective Date. Zak shall be liable for payment of interest, at a rate of

10% simple interest, for all amounts due and owing under this Section that are not received within two business days of the due date.

### **3.3 Payment Procedures**

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

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

## **4. RELEASE OF ALL CLAIMS**

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

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Zak of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, as an individual and *not* on behalf of the public, his past and current agents, representatives, attorneys, successors and/or assignees, against Zak, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Zak directly or indirectly distributes or sells the Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers ("Releasees"), based on the alleged failure to warn about potential exposures to lead contained in the Products distributed, sold and/or offered for sale by Zak in the State of California before the Effective Date as set forth in the Notice. Vinocur agrees on behalf of himself and his past and current agents, representatives, attorneys, successors and/or assigns, that compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to lead in the Products.

In further consideration of the promises and agreements herein contained, Vinocur on behalf of himself as an individual and *not* on behalf of the public, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may

have against Zak and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to lead in the Products distributed, sold and/or offered for sale by Zak before the Effective Date.

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

Zak waives any and all claims against Vinocur, 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 enforcement of Proposition 65 against it in this matter and/or with respect to the Products.

#### **4.3 Mutual Release of Known and Unknown Claims**

Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, and not in his representative capacity, and Zak, each provide a general release which shall be effective as a full and final accord and satisfaction, as a bar to all Claims of any nature, character or kind, known or unknown, suspected or unsuspected, or arising under Proposition 65 with respect to the Products. Vinocur and Zak each acknowledge their respective familiarity with Section 1542 of the California Civil Code, which provides:

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, in his individual capacity only and not in his representative capacity, and Zak each expressly waives and relinquishes any and all rights and benefits which they may have under, or which may have been conferred on them by the provisions of Civil Code§ 1542 to the fullest extent that they may each lawfully waive such rights.

**5. 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 as to the Products and/or lead, then Zak shall provide written notice to Vinocur of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

**6. NOTICES**

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

For Zak:

Scott D. Meyer  
VP & General Counsel  
PO Box 19188  
Spokane, WA 99219-9188

For Vinocur:

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

With a copy to:

Matthew I. Kaplan  
Tucker Ellis LLP  
515 S. Flower St., 42<sup>nd</sup> Floor  
Los Angeles, CA 90071

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.

**7. COUNTERPARTS; FACSIMILE/PDF SIGNATURES**

This Settlement Agreement may be executed in one or more counterparts or 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. The exchange of this Agreement and of signature pages by facsimile transmission or electronic mail attachment

shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Signatures by scanned and e-mailed image or facsimile transmission shall have the same force and effect as original signatures as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1-1633.17.

**8. 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, exist or shall be deemed to exist or to bind any of the Parties.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION**

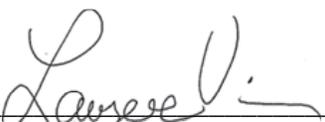
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

Date: 3/8/2017

Date: \_\_\_\_\_

By:  \_\_\_\_\_  
Laurence Vinocur

By: \_\_\_\_\_  
Irv Zakheim, C.E.O.  
Zak Designs, Inc.

shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Signatures by scanned and e-mailed image or facsimile transmission shall have the same force and effect as original signatures as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1-1633.17.

**8. 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, exist or shall be deemed to exist or to bind any of the Parties.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(b)**

Vinocur agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(b).

**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 terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: \_\_\_\_\_

Date: MARCH 13, 2017

By: \_\_\_\_\_

Laurence Vinocur

By:  \_\_\_\_\_

Iry Zakheiat, CEO.  
Zak Designs, Inc.