

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Penshurst Trading Inc. (“Penshurst”), with Vinocur and Penshurst 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. Penshurst 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 Penshurst manufactures, sells, and/or distributes for sale in California, napkin rings containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Vinocur alleges that Penshurst failed to provide the health hazard warning required by Proposition 65 for exposures to lead from its napkin rings.

#### 1.3 Product Description

The products that are covered by this Settlement Agreement are napkin rings containing lead including, but not limited to, the *Juliska Napkin Ring*, #02726, UPC #0810044 023374, manufactured, sold or distributed for sale in California by Penshurst (“Products”).

#### 1.4 Notice of Violation

On or about April 27, 2017, Vinocur served Penshurst and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Penshurst violated Proposition 65 when it failed to warn its customers and consumers in

California that its Products expose users 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.

### **1.5 No Admission**

Penshurst denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed 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 Penshurst 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 Penshurst of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Penshurst. However, this Section shall not diminish or otherwise affect Penshurst'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 July 29, 2017.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 100 parts per million ("ppm") (0.1%) lead 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)); *and* (b) yield no more than 1.0 microgram ("µg") of lead when analyzed pursuant to NIOSH Test Method No. 9100.

## **2.2 Reformulation Commitment**

Penshurst represents that it has ceased selling the Products in California. However, in the event that Penshurst intends to sell the Products in California in the future, as of the Effective Date, Penshurst shall only manufacture, import, distribute, sell or offer the Products for sale in the State of California if they are Reformulated Products pursuant to Section 2.1 above.

## **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, Penshurst agrees to pay \$2,500 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 remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") by Vinocur. Vinocur's counsel shall be responsible for remitting Penshurst's penalty payment(s) under this Settlement Agreement to OEHHA. On or before the Effective Date, Penshurst shall pay a civil penalty in the amount of \$2,500. Penshurst will provide its payment in a check in the amount of \$625.00 made payable to "Laurence Vinocur, Client Trust Account" and a check made payable to "OEHHA" in the amount of \$1,875.00 to be delivered to the address provided in Section 3.3 below.

### **3.2 Attorneys' Fees and Costs**

After reaching agreement on the civil penalty amount above, 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, Penshurst agrees to pay \$18,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Penshurst's management, and

negotiating a settlement. Penshurst's payment shall be due on the Effective Date, and delivered to the address in Section 3.3 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 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 *not* on behalf of the public, releases Penshurst, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom Penshurst directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead in the Products, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to lead 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, other than Penshurst, that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Penshurst.

### **4.2 Vinocur's Individual Releases of Claims**

Vinocur, in his individual capacity only 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 lead in the Products manufactured, imported, distributed, or sold by Penshurst 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 the Products, or any component parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof to Penshurst. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Penshurst's Products.

#### **4.3 Penshurst's Release of Vinocur**

Penshurst, 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.

#### **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. 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, as to Penshurst specifically as a result of a statutory exemption, or as to the Products, then Penshurst may

provide written notice to Vinocur of any asserted change in the law, or its applicability to Penshurst or the Products, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, Penshurst or 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 Penshurst:

Cindy A. Fino, HR Manager  
Penshurst Trading Inc.  
465 Canal Street  
Stamford, CT 06902

For Vinocur:

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

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**

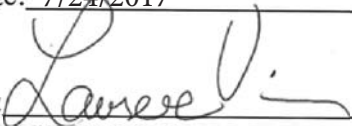
This Settlement Agreement may be modified only by written agreement of the Parties.

**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:**

Date: 7/24/2017

By:   
LAURENCE VINO CUR

**AGREED TO:**

Date: 7/21/17

By:   
Cindy A. Fino, Manager of Human Resources  
PENSURST TRADING INC.