

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Symtek, Inc. (“Symtek”), with Vinocur and Symtek 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. Vinocur alleges that Symtek 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 Symtek manufactures, imports, distributes, sells, and/or offers for sale in California USB cords 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

The products covered by this Settlement Agreement are USB cords containing DEHP that are manufactured, imported, distributed, sold and/or offered for sale in California by Symtek, including, but not limited to, the *Symtek Tekpower USB Car Charger, TP-MFI-200, UPC #8 37147 00087 3* (“Products”).

1.4 Notice of Violation

On April 27, 2017, Vinocur served Symtek, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Symtek 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. To the best of the Parties’

knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Symtek denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it has sold and 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 Symtek 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 Symtek of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Symtek. This Section shall not, however, diminish or otherwise affect Symtek'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 November 15, 2017.

2. INJUNCTIVE RELIEF

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date, and continuing thereafter, Symtek shall not distribute or sell any Products directly to California consumers or to any downstream retailer, distributor, or wholesaler that it knows or has reason to believe will sell or offer Products for sale to California consumers, unless such product is: (a) a Reformulated Product, pursuant to Section 2.2; or (b) labeled with a clear and reasonable warning, pursuant to Section 2.3.

2.2 Reformulation Standard

For purposes of this Settlement Agreement, "Reformulated Products" are defined as Products containing DEHP in a maximum concentration of 1,000 parts per million (0.1%) in any accessible component (i.e., any component that may be touched during a reasonably foreseeable use), when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by state or federal agencies for the purpose of

determining DEHP content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for all Products manufactured, imported, distributed, sold or offered for sale in California by Symtek that do not qualify as Reformulated Products, as defined by Section 2.2, Symtek agrees it will only sell or distribute for sale in California Products bearing a clear and reasonable warning, in accordance with this Section or Proposition 65 and its implementing regulations, including those found at 27 Cal. Code Regs. § 25601 *et seq.* For purposes of this Settlement Agreement, a clear and reasonable warning shall be prominently placed with such conspicuousness, when 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 of 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. Symtek shall affix a warning directly to the Product or its accompanying labeling or packaging. A warning containing one of the following statements, which includes parenthetical language that Symtek may provide, at its option, shall be deemed clear:

WARNING: This product can expose you to chemicals, including DEHP, which is 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.

WARNING: “[*Cancer and*] Reproductive Harm-
www.P65Warnings.ca.gov”

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, within 10 calendar days of the date this agreement is fully executed by the Parties, Symtek agrees to pay \$1,500 in civil penalties.

The civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty paid to Vinocur. Symtek shall issue its payment in two checks for the following amounts: (a) "OEHHA" in the amount of \$1,125; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$375. Vinocur's counsel shall be responsible for delivering to OEHHA its portion of any penalty payment made under this Settlement Agreement.

3.2 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 this Settlement Agreement had been settled. After the Parties reached an agreement as to all other settlement terms, the Parties then reached 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 § 1021.5, for all work performed through the mutual execution of this Settlement Agreement. Under these legal principles, Symtek agrees to make two separate payments of \$6,000 to Vinocur and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Symtek's management, and negotiating a settlement in the public interest. The first payment shall be sent by certified mail within 30 days of the date this Settlement Agreement is fully executed by the Parties. The second payment shall be sent by certified mail within 60 days of the date this Settlement Agreement is fully executed by the parties. Symtek's payments shall be delivered 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 Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214

4. **CLAIMS COVERED AND RELEASED**

4.1 **Vinocur's Release of Symtek**

This Settlement Agreement is a full, final, and binding resolution between Vinocur, on his own behalf and not on behalf of the public, and Symtek, of any violation of Proposition 65 that was or could have been asserted by Vinocur on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against Symtek, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Symtek directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers (including, without limitation, CVS Health Corporation), franchisees, cooperative members, and licensees ("Releasees"), based on the failure to warn about exposures to DEHP in the Products manufactured, imported, distributed, sold or offered for sale in California by Symtek before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Symtek and Releasees, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, imported, distributed, sold or offered for sale by Symtek, before the Effective Date.

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.

4.2 Symtek's Release of Vinocur

Symtek, 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 and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it 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, then Symtek may 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.

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 Symtek:

Mark Mesrobian, President
Symtek, Inc.
1004 Boston Neck Road, Unit 5
Narragansett, RI 02882

with a copy to:

Julia R. Graeser, Esq.
Barg Coffin Lewis & Trapp, LLP
600 Montgomery Street, Suite 525
San Francisco, CA 94111

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 § 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: 11/7/2017

By: 
LAURENCE VINOCUR

AGREED TO:

Date: 11/7/17

By: 
Mark Mesrobian, President
SYMTEK, INC.