

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Dat’l Do-It, Inc. (“Dat’l Do-It”), with Vinocur and Dat’l Do-It 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 in consumer products. Vinocur alleges that Dat’l Do-It 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 Dat’l Do-It sells, and distributes for sale in California, boxes containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that Dat’l Do-It failed to provide individuals exposed to lead from straps affixed to its hot sauce packaging boxes with a warning regarding the health hazards associated with exposures to lead, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as boxes and other packaging with straps containing lead that are sold, or distributed for sale in California, by Dat’l Do-It including, but not limited to, the *Global Hot Sauce Collection (Box)*, UPC #0 44219 00940 9.

1.4 Notice of Violation

On June 29, 2017, Vinocur served Dat’l Do-It, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”),

alleging that Dat'l Do-It violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to lead 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

Dat'l -Do-It denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it 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 Dat'l Do-It 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 Dat'l Do-It of any fact, finding, conclusion, issue of law, or violation of law, the same being denied by Dat'l Do-It. This Section shall not, however, diminish or otherwise affect Dat'l Do-It'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 December 1, 2017.

2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS

2.1 Commitment to Provide Reformulated Products

Commencing 90 days from the Effective Date and continuing thereafter, Dat'l Do-It shall only purchase for sale or manufacture for sale in California "Reformulated Products" as defined by Section 2.2 or provide a warning as set forth in Section 2.3.

2.2 Reformulated Products Defined

For purposes of this Settlement Agreement, Reformulated Products are defined as Products that (a) contain lead in concentrations of no more than 90 parts per million ("ppm") (0.009%) in any component of the hot sauce packaging analyzed pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and

6010B; and (b) yield a result of no more than 1.0 micrograms of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol. In addition to the testing methodologies provided above, the Parties may use equivalent methodologies utilized by state or federal agencies for the purpose of determining lead content in a solid substance to analyze a Product for the purpose of determining whether it qualifies as a Reformulated Product under this Settlement Agreement.

2.3 Product Warnings


Commencing 90 days after the Effective Date, Dat'l Do-It shall provide clear and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all Products 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. Dat'l Do-It shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

WARNING: This product's packaging contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harms.

Or:

 **WARNING:** This product can expose you to [chemicals including] lead, 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.

Or:

⚠ WARNING: This product’s packaging can expose you to [chemicals including] lead, 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.

For products manufactured and/or distributed after August 30, 2018, only the second or third warning, above, shall be used.

(b) Mail Order Catalog and Internet Sales to Consumers. In the event that Dat’l Do-It sells Products via mail order catalog and/or the internet, to individual customers located in California that are not Reformulated Products, commencing no later than 90 days after the Effective Date, Dat’l Do-It 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:

⚠ WARNING: This product can expose you to [chemicals including] lead, 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.

Or:

⚠ WARNING: This product’s packaging can expose you to [chemicals including] lead, 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.

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, Dat’l Do-It 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):

⚠ WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog can expose you to [chemicals including] lead, 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.

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, Dat'l Do-It must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** A warning shall be given in conjunction with the sale of the Products via the internet to purchasers in California, which 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 or screens 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:

⚠ WARNING: This product can expose you to [chemicals including] lead, 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.

Or:

⚠ WARNING: This product's packaging can expose you to [chemicals including] lead, 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.

Alternatively, the 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:

⚠ WARNING: This product can expose you to [chemicals including] lead, 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.

Or:

⚠ WARNING: This product's packaging can expose you to [chemicals including] lead, 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.

3. MONETARY SETTLEMENT TERMS

3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)

In settlement of all the claims referred to in this Settlement Agreement, Dat'l Do-It shall pay a total of \$2,900 in civil penalties in accordance with this Section. Each civil penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) of the penalty retained by Vinocur.

Dat'l Do-It shall deliver its payment on or before December 15, 2017, in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$2,175; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$725.

Vinocur's counsel shall forward to the check made payable to OEHHA to OEHHA.

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.

Dat'l Do-It agrees to pay \$18,550 for all fees and costs incurred investigating, bringing this matter to the attention of Dat'l Do-It's management, and negotiating a settlement that provides a significant public benefit. Dat'l Do-It's payment shall be delivered in a single check made payable to "The Chanler Group" on or before December 15, 2017.

3.3 Payment Address

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

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

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Dat'l Do-It

This Settlement Agreement is a full, final, and binding resolution between Vinocur and Dat'l Do-It, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf, or on behalf of his past and current agents, representatives, attorneys, successors, and assigns, against Dat'l Do-It, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, shareholders, employees, agents, attorneys, and the predecessor, successors, and assigns of each; each entity to whom Dat'l Do-It directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers (including but not limited to Wal-mart Stores, Inc. and Walmart.com), franchisees, cooperative members, and licensees; and the manufacturers, importers and suppliers of the Products (collectively "Releasees"), for any violations arising under Proposition 65 for unwarned exposures to lead from Products manufactured, sold or distributed 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 on behalf of his past and current agents, representatives, attorneys, successors, and assignees, 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 Dat'l Do-It, 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 for claims arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to lead in Products manufactured, distributed, sold or offered for sale by Dat'l Do-It, before the Effective Date, as alleged in the Notice.

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 Dat'l Do-It's Release of Vinocur

Dat'l Do-It, 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, 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 Dat'l Do-It 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 Dat'l Do-It:

Mary Causey, President
Dat'l Do-It, Inc.
1750 Tree Boulevard, Suite 2
Saint Augustine, FL 32084

Lauren M. Michals, Esq.
Nixon Peabody LLP
One Embarcadero Center, 18th Floor
San Francisco, CA 94111
lmichals@nixonpeabody.com

For Vinocur:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth Street, 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 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:

AGREED TO:

Date: 11/30/2017

Date: 11-30-2017

By: 
LAURENCE VINO CUR

By: 
MARY CAUSEY, PRESIDENT
DAT'L DO-IT, INC.