

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Homecare Products, Inc. (“Homecare”), with Vinocur and Homecare 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 contained in consumer products. Homecare employs ten or more individuals 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 and Safety Code section 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Homecare manufactured, imported, distributed, and/or sold bathing aid products in the State of California that incorporated vinyl/PVC basin, basin drain tubes and other components that contain di(2-ethylhexyl) phthalate (“DEHP”) and diisononyl phthalate (“DINP”). On January 1, 1988, DEHP was listed under Proposition 65 as a chemical known to the State of California to cause cancer. On October 24, 2003, DEHP was listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. On December 20, 2013, DINP was listed under Proposition 65 as a chemical known to the State of California to cause cancer. Vinocur alleges that Homecare failed to provide consumers and other individuals exposed to DEHP and DINP from the vinyl/PVC bathing aid products it sold in California with a clear and reasonable health hazard warnings he alleges are required by Proposition 65.

1.3 Product Description

The “Products” covered by this Settlement Agreement are defined as bathing aid products containing DEHP and/or DINP including, but not limited to, the *EZ-Access EZ-Shampoo Hair Washing Basin*, #12765; *EZ-Access EZ-Bathe Body Washing Basin (w/accessories)*, #11490; *EZ-Access EZ-Shampoo Hair Washing Basin (boxed)*, #11492; *EZ-Access EZ-Shampoo Inflatable Basin (Medline)*, #11494; *EZ-Access EZ-Shower Bedside Shower (boxed)*, #11496; *EZ-Access EZ-Bathe Body Washing Basin (w/o accessories)*, #11497; *EZ-Access EZ-Bathe Mini-Shower Assembly – Complete*, #15152, Homecare manufactured, imported and/or distributed for sale in California, or will manufacture, import and/or distribute for sale in California.

1.4 Notice of Violation

On June 29, 2017, Vinocur served Homecare, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Homecare violated Proposition 65 by failing 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

Homecare denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 Homecare of any allegation, 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 Homecare of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Homecare.

Nothing in this Settlement Agreement shall preclude Homecare from asserting any and all applicable defenses available to it in any future proceeding under Proposition 65 or otherwise. This Section shall not, however, diminish or otherwise affect Homecare'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 February 12, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION & WARNINGS

2.1 Reformulated Products

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as Products that contain DEHP and DINP 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 other methodology utilized by federal or state government agencies for the purpose of determining DEHP and DINP content in a solid substance.

2.2 Reformulation Commitment

On or before the Effective Date and continuing thereafter, Homecare agrees that all Products manufactured, imported, distributed, sold and/or offered for sale in California by Homecare shall be either (a) "Reformulated Products" pursuant to Section 2.1, above or (b) Products that are sold with a clear and reasonable warning pursuant to Section 2.3, below.


2.3 Product Warnings

All Products that do not qualify as Reformulated Products shall contain a warning in compliance with this section. 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 of purchase and use. For purposes of this Settlement Agreement, a clear and


reasonable warning for Products shall consist of a warning affixed to the packaging, label, tag, or directly to Products sold in California using language similar to the warning below:

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


or

 **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.

or

 **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, and DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

An on-product warning may use the following statement:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

In the event that Homecare claims the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, Homecare shall provide Vinocur with 30 days written notice of its intent to utilize any warning different from those set forth above. If Vinocur disagrees with Homecare's proposed use of a different warning, the parties shall meet and confer for a period of 30 days to resolve the

dispute, after which time each party shall be entitled to pursue any claims and assert any defenses to claims allowed under the law.

2.4 Notification to Certain Retailers

No later than the Effective Date, Homecare shall send a memorandum or letter, electronic or otherwise, to its primary sales contact/coordinator at any retailer that sells or offers to sell the Products to customers in California but that does not take physical possession of the Products, advising such individual(s), if applicable, that the Products contain DEHP and DINP and require a Proposition 65 warning before any such Product is sold to a California customer.

2.5 Products in Homecare's Inventory

Homecare represents that it currently provides a health hazard warning for the Products. All Products sold or distributed for sale by Homecare prior to the Effective Date without a warning are subject to civil fines assessed in Section 3.1 and the release provided by Sections 4.1 and 4.2 of this Settlement Agreement.

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, Homecare agrees to pay a total of \$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 paid to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount retained by Vinocur.

Homecare will deliver its payment on or before February 12, 2018 in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$1,875; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$625. Vinocur's counsel

shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

3.2 Reimbursement of Vincour's 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. Homecare agrees to pay \$18,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Homecare's management, and negotiating a settlement in the public interest. Homecare's payment shall be delivered in the form of a check payable to "The Chanler Group" on or before February 12, 2018.

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
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Homecare

This Settlement Agreement is a full, final, and binding resolution between Vinocur, in his individual capacity and not on behalf of the public, and Homecare, 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, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs, against Homecare, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Homecare directly or indirectly distributes, ships or

sells Products, including, but not limited to, its downstream distributors, wholesalers, customers, retailers including, but not limited to, Amazon.com, Inc. and its affiliates, franchisees, cooperative members, licensors, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP and DINP contained in the Products manufactured, sold, or distributed for sale by Homecare in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur, in his individual capacity and not on behalf of the public, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs 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 Homecare 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 any and all claims arising under Proposition 65 regarding the alleged or actual failure to warn about exposures to DEHP and DINP in Products manufactured, sold, or distributed for sale before the Effective Date by Homecare.

Vinocur acknowledges that he is familiar with Section 1542 of the California Civil Code, 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, as an individual and not on behalf of the public, expressly waives and relinquishes any and all rights and benefits which he may have under, or which may be

conferred on him by the provisions of Section 1542 of the California Civil Code 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 DEHP and DINP in Products manufactured, imported, distributed or sold by Homecare before the Effective Date.

4.2 Homecare's Release of Vinocur

Homecare, 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, Vinocur's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Homecare in this matter, or with respect to the Products.

4.3 Deemed Compliance with Proposition 65

Compliance by Homecare with this Settlement Agreement constitutes compliance with Proposition 65 with respect to alleged exposures to Proposition 65 chemicals DEHP and DINP from the Products.

4.4 Public Benefit

The Parties enter into this Settlement Agreement with the understanding that the commitments made herein, and actions to be taken by Homecare under this Agreement, confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5 and Cal. Admin. Code tit. 11, section 3201. As such, it is Homecare's intent by entering into this Agreement that to the extent any other private party initiates an action against Homecare alleging a violation of Proposition 65 with respect to failure to provide a clear and reasonable warning concerning exposure to DEHP and DINP from Products manufactured, distributed, sold or offered for sale by Homecare in California, and subject to Homecare's material compliance with this Settlement Agreement, such action by another private party would not confer a significant benefit on the general public as to those Products addressed under this Agreement.

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 applied to the Products, then Homecare may provide written notice to Vinocur of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, to the extent that the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required by 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 Homecare:

Glenda Everard, President
Homecare Products, Inc.
700 Milwaukee Avenue North
Algona, WA 98001

With a copy to:

Rohit Sabnis, Esq.
BURNHAM BROWN
P.O. Box 119
Oakland, CA 94604

For Vinocur:

The Chanler Group
Attn: Prop 65 Coordinator
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 AND 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, understand, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 1/30/2018

Date: 1/30/2018

By: 

LAURENCE VINOCUR

By: 

GLEND A EVERARD, PRESIDENT
HOMECARE PRODUCTS, INC.