

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Parties**

This Settlement Agreement is entered by and between Laurence Vinocur (“Vinocur”) and U.S. Wire & Cable Corporation (“U.S. Wire”), with Vinocur and U.S. Wire 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. U.S. Wire 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 U.S. Wire manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC cords containing Diisononyl Phthalate (“DINP”), and that it does so without Providing a Proposition 65 warning. DINP is listed pursuant to Proposition 65 as a chemical known to cause cancer.

### **1.3 Product Description**

For purposes of this Settlement Agreement, “Products” are defined as vinyl/PVC cords containing DINP that are manufactured or distributed for sale into California by U.S. Wire, and those in its supply chain, including but not limited to the *Randor Portable GFCI Cord Set, Part 64006321, UPC # 6 39890 063217* identified in Vinocur’s Notice.

#### **1.4 Notice of Violation**

On April 13, 2018, Vinocur served U.S. Wire, the California Attorney General, and all other requisite public enforcers with a 60-Day Notice of Violation (“Notice”). The Notice alleges that U.S. Wire violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DINP 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**

U.S. Wire denies the material, factual, and legal allegations in the Notice, insofar as the Products are concerned, and maintains that all the products that it has manufactured, imported, sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws, including, but not limited to, Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by U.S. Wire 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 U.S. Wire of any allegation, fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by U.S. Wire. This Section shall not, however, diminish or otherwise affect U.S. Wire’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 June 13, 2018.

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

### **2.1 Commitment to Reformulate or Warn**

Commencing on the Effective Date and continuing thereafter, U.S. Wire shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are either (a) Reformulated Products as defined by Section 2.2; or (b) offered with a clear and reasonable warning pursuant to Section 2.3, below.

### **2.2 Reformulated Products Defined**

For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain 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 state or federal agencies to determine DINP content in a solid substance. “Reformulated Products” are further defined as those Products that yield: (a) concentrations of less than 0.1 percent (1,000 parts per million) each of DEHP, butyl benzyl phthalate (BBP), di-n-butyl phthalate (DBP), di-isodecyl phthalate (DIDP), and Di-n-hexyl Phthalate (DnHP) (collectively, the “Additional Listed Phthalates,”) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance; (b) less than 100 parts per million (“ppm”) lead when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies 3050B and 6010B.

### 2.3 Clear and Reasonable Warnings

Commencing on the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by U.S. Wire that are not Reformulated Products, U.S. Wire will only offer such Products with a clear and reasonable warning in accordance with this Section and/or Title 27 California Code of Regulations section 25600, et seq., as amended from time to time.<sup>1</sup> U.S. Wire further agrees that any warning used will be prominently placed in relation to the Products 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. For purposes of this Settlement Agreement, a legible warning transmitted according to the above criteria, and affixed directly to a Product or its accompanying labeling or packaging containing one of the following statements shall be deemed clear and reasonable:

**WARNING:** This product can expose you to chemicals [including] [lead,] [DINP,] [and] [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](http://www.P65Warnings.ca.gov)<sup>2</sup>

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<sup>1</sup> Products that were acquired or supplied to third parties (including Airgas) by U.S. Wire prior to the Effective Date, which contain some attempt to transmit health hazard warnings to the end user shall be deemed exempted from the requirements of Section 2 and are permitted to be sold through as previously manufactured, packaged and labeled.

<sup>2</sup> The bracketed language shown above is semi-optional subject to the following: Given the variable nature of the chemical content of the feedstock used for the PVC jacketing on the Products, U.S. Wire may elect to use one or more of the bracketed references to the chemicals shown above; however, if U.S. Wire elects to use only the reference to DINP, it shall end the sentence in question immediately following the word “cancer” and

or



**WARNING:** This product can expose you to chemicals [including] [lead,] [DINP,] [and] [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](http://www.P65Warnings.ca.gov).<sup>3</sup>

If U.S. Wire sells Products via an internet website to customers located in California, the warning requirements of this section, where applicable, shall be satisfied if the foregoing warning appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed prior to purchase during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent to or immediately following the display, description, price, or checkout listing of the Product, provided the warning statement appears elsewhere on the same web page in a manner that clearly associates it with the product(s) to which the warning applies.

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

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

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delete the subsequent term “and birth defects or other reproductive harm” from the warning statement.

<sup>3</sup> The preceding footnote shall also govern this warning statement. In addition, if the yellow color shown as background for the designated symbol in the warning statement shown above is not otherwise used on a Product’s packaging, U.S. Wire may show the same designated symbol as black on white or black on the color used as background on the Product’s packaging provided that such packaging’s background is not itself black.

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice and referred to in this Settlement Agreement, U.S. Wire agrees to pay \$2,200 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 paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by Vinocur. U.S. Wire will deliver its payment within ten days of the Effective Date in two checks made payable to: (a) “OEHHA” in the amount of \$1,650; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$550. Vinocur’s counsel shall be responsible for timely delivering OEHHA’s portion of the penalty payment. Vinocur shall provide to U.S. Wire a completed Internal Revenue Service form W-9 for Vinocur and a completed Internal Revenue Service form W-9 for The Chanler Group five days before the Effective Date.

### **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 and as related to the Products. U.S. Wire agrees to pay \$23,800 to Vinocur and his counsel for all fees and costs incurred in association with such work. U.S. Wire’s payment shall be delivered within ten days of the Effective Date in a check made 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  
Berkeley, CA 94710

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Vinocur's Release of U.S. Wire**

This Settlement Agreement is a full, final, and binding resolution between Vinocur, in his individual capacity and not on behalf of the public, and U.S. Wire, 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, representatives, and assignees, against U.S. Wire or its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, representatives, predecessors, successors, assignees (“Releasees”), and each downstream entity to whom U.S. Wire directly or indirectly distributes, ships, or sells the Products. Such downstream entities include, without limitation, Airgas, U.S. Wire’s distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, representatives, predecessors, successors, and assignees (collectively, “Downstream Releasees”), for any and all claims based on the alleged or actual failure to warn about exposures to DINP in Products manufactured, sold, or distributed for sale by U.S. Wire before the Effective Date, as alleged in the Notice.

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, representatives, and assignees hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against U.S. Wire, Flexon, Releasees, and Downstream 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 Additional Listed Phthalates and lead in Products manufactured, sold, or distributed for sale by U.S. Wire before the Effective Date.

As between Vinocur and U.S. Wire, U.S. Wire's compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DINP and Additional Listed Phthalates from the Products.

#### **4.2 U.S. Wire's Release of Vinocur**

U.S. Wire, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Vinocur, Vinocur's attorneys, and other representatives, for any action taken or statement made, whether in the course of investigating claims, seeking to enforce Proposition 65 against U.S. Wire or any of its affiliates or divisions 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. If Proposition 65 is repealed or otherwise rendered inapplicable by reason of law generally, or as to the Products, then U.S. Wire 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, 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 U.S. Wire:

David Rauch, President  
U.S. Wire & Cable  
Corporation  
366 Frelinghuysen Ave  
Newark, NJ 07114

with a copy to:

Robert Falk, Esq.  
Jeremiah Levine, Esq.  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Floor

San Francisco, CA 94105-2482

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 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 RE: 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. ENFORCEMENT OF SETTLEMENT AGREEMENT**

Only the Parties may enforce this Settlement Agreement. Either Party may enforce the terms and conditions of this Settlement Agreement by filing suit in a California Superior Court. The prevailing party shall be entitled to its reasonable attorneys' fees and costs as they are afforded to him under California law. No action to enforce this Settlement Agreement, however, may be commenced or maintained unless the Party seeking

enforcement notifies the other of the basis for any claimed or alleged breach or violation of this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than 30 days in an effort to resolve the alleged breach informally before filing any brief or pleading alleging a breach or violation of this Settlement Agreement.

**12. AUTHORIZATION**


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

**AGREED TO:**

**AGREED TO:**

Date: 6/23/18

Date: 6/13/18

By:   
Laurence Vinocur

By:   
David Rauch, President  
U.S. Wire Industries