

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and C & D Visionary, Inc.**

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and C & D Visionary, Inc. (C&D) with Vinocur and C&D collectively referred to as the “Parties.” Vinocur is an individual residing in 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. C&D 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 §§ 25249.5 *et seq.* (Proposition 65).

### **1.2 General Allegations**

Vinocur alleges that C&D manufactures, imports, sells and/or distributes for sale in California, vinyl zipper pulls and vinyl appliquéés that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Vinocur alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are limited to vinyl zipper pulls and vinyl appliquéés containing DEHP known as the *Marvel Comics Zipper Pull, #1213057, ZPL-MDL-0001* and the *6 Pieces Appliquéés, P-4318-S, UPC #6 44256 28656 8* that are manufactured, imported, distributed, sold and/or offered for sale by C&D in the State of California, hereinafter the “Products.”

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

On or about July 25, 2018, Vinocur served C&D and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that C&D violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to DEHP. 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**

C&D denies the material, factual and legal allegations contained in the Notice and maintains that all 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 C&D of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by C&D of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. C&D maintains that it began applying clear and reasonable warnings to the packaging of the Products on November 1, 2018.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean April 22, 2019. The Parties shall sign the Settlement Agreement on or before the Effective Date.

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

#### **2.1 Reformulation Standards**

"Reformulated Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (CPSC)

methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.


## **2.2 Injunctive Relief**

Commencing on the Effective Date and continuing thereafter, C&D shall only manufacture for sale, purchase for sale, or import for sale in California Products that are Reformulated Products as defined by Section 2.1, or Products that are labeled with a clear and reasonable warning as set forth under Sections 2.3 through 2.6.

## **2.3 Clear and Reasonable Warnings**


Commencing on or before the Effective Date, C&D shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section and/or Title 27 California Code of Regulations § 25600, *et seq.*, as amended from time to time. 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 and shall be provided in a manner such that it is clearly associated with the specific Products to which the warning applies.

(a) **Warning.** The warning shall consist of the following statement (Warning):

 **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** C&D may, but is not required to, use either of the following short-form warnings as set forth in this subsection 2.3(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.5 and 2.6, as follows:

 **WARNING:** Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

 **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

## **2.4 Product Warnings**

C&D shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

## **2.5 Mail Order Catalog Warnings**

In the event that, after the Effective Date, C&D prints catalogs and sells Products via mail order through such catalogs to customers located in California, C&D shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

## **2.6 Internet Warnings**

If, after the Effective Date, C&D sells Products via the internet to customers located in California, C&D shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. Warnings given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on

the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content. C&D may also comply with this Section by providing the warning using a clearly marked hyperlink that includes the word “**WARNING**” on the same web page and in the same location as the display and/or description of the Product.

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

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

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, C&D agrees to pay a total of \$2,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (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.

In accordance with Section 3.3, C&D will deliver its payment, in two checks made payable to: (a) “OEHHA” in the amount of \$1,500; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$500. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

#### **3.2 Reimbursement of 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 the agreement had been settled. Shortly after the other settlement terms had been finalized, C&D expressed a desire to resolve

Vinocur's fees and costs. The Parties then negotiated a resolution of 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 agreement, C&D shall reimburse Vinocur and his counsel \$18,500 in accordance with the schedule set forth in Section 3.3. C&D's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to C&D's attention and negotiating a settlement of the matter.

### **3.3 Timing of Payments**

C&D shall make three equal payment installments to satisfy the total sum of \$20,500 due under the Settlement Agreement. These payments shall be made without interest. The first of these payments shall be due on May 1, 2019, and the next two payments shall be due on June 1, 2019, and July 1, 2019, as follows:

First Payment: \$6,833.33, which will include the full \$2,000 civil penalty provided in Section 3.1, and \$4,833.33 payable to "The Chanler Group."

Second Payment: \$6,833.33 payable to "The Chanler Group."

Third and Final Payment: \$6,833.34 payable to "The Chanler Group."

### **3.4 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 C&D**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and C&D, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, against C&D, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom C&D directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by C&D in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur as an individual and *not* on behalf of the public, on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of Vinocur's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Vinocur may have, including, without limitation, all actions, and causes of action, in law or in equity, notices of violation, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by C & D, before the Effective Date (collectively, Claims), against C & D and Releasees.

The Parties further understand and agree that this Section 4.1 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 C&D. Nothing

in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve C&D's Products.

#### **4.2 C&D's Release of Vinocur**

C&D, 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 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Products, then C&D shall 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. Nothing in this Settlement Agreement shall be interpreted to relieve C&D from any obligation to comply with any pertinent state or federal toxics control law.



**7. NOTICE**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For C&D:

David Silverman, President  
C & D Visionary, Inc.  
4911 Lankershim Blvd.  
North Hollywood, CA 91601

With a Copy to:

Lynn R. Fiorentino, Esq.  
Arent Fox LLP  
55 Second Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105

For Vinocur:

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

Any party, from time to time, may specify in writing to the other party 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 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

10. **MODIFICATION**

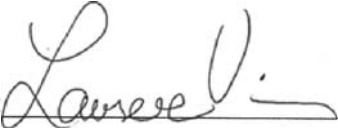
This Settlement Agreement may be modified only by a written agreement of the Parties.

11. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

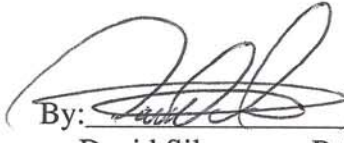
**AGREED TO:**

Date: 4/19/2019

By:   
Laurence Vinocur

**AGREED TO:**

Date: 4/19/19

By:   
David Silverman, President  
C & D Visionary, Inc.