

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and Husqvarna Professional Products, Inc.

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Husqvarna Professional Products, Inc. (Husqvarna) with Vinocur and Husqvarna collectively referred to as the “Parties.” Vinocur is an individual residing in California who seeks to promote awareness of exposures to chemicals and to improve human health by reducing or eliminating chemicals contained in consumer products. Husqvarna employs ten or more persons and, it distributes and makes various products available for sale in California.

1.2 General Allegations

Vinocur alleges that Husqvarna sells and/or distributes for sale, including in California, gloves with vinyl components that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Vinocur alleges is required by the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (Proposition 65). DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

1.3 Product Description

The “Products” that are covered by this Settlement Agreement are defined a gloves with vinyl components, including but not limited to, Husqvarna Protective Gloves XP Professional # 584 95 51 02/M, UPC #7 05788 51694 0, which are distributed, sold and/or offered for sale directly or indirectly by Husqvarna or its corporate affiliates in the State of California.

1.4 Notice of Violation

On or about August 29, 2018, Vinocur served Husqvarna, Husqvarna Forest and Garden Co., Husqvarna U.S. Holdings, Inc., and Husqvarna Construction Products North America, Inc. and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice),

alleging that they violated Proposition 65 when they failed to warn their customers and consumers in California that the Products exposed 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

Husqvarna, on behalf of itself, and on behalf of Husqvarna Forest and Garden Co., Husqvarna U.S. Holdings, Inc., and Husqvarna Construction Products North America, Inc., denies the material, factual and legal allegations contained in the Notice, denies that it has knowingly and intentionally distributed or caused to be sold in California Products in violation of Proposition 65, and maintains that all products that it has sold and distributed in California, including Husqvarna Protective Gloves XP Professional # 584 95 51 02/M, UPC #7 05788 51694 0, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as; nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Husqvarna 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.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean January 31, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Standards

"Reformulated Products" are defined as Products containing DEHP, butyl benzyl phthalate (BBP), di-n-butyl phthalate (DBP), di-isodecyl phthalate (DIDP), diisononyl phthalate (DINP), and Di-n-hexyl Phthalate (DnHP) (collectively, all of the foregoing are further referred to herein as the "Listed Phthalates") in concentrations of less than 0.1 percent (1,000 parts per million) each, in each accessible vinyl or PVC 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 Reformulation Commitment

As of the Effective Date, Husqvarna shall not acquire Products for distribution or sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 or, if it or its supplier cannot assure such reformulation, contain clear and reasonable warnings as set forth in Section 2.3.

2.3 Clear and Reasonable Warnings

To the extent that Products acquired by Husqvarna after the Effective Date for potential distribution to or sale in California do not meet the standard for Reformulated Products set forth in Section 2.1 above, Husqvarna shall ensure that they are labeled with a clear and reasonable warning which shall consist of either the Warning or Alternative Warning described in subsections 2.3(a) or (b), respectively:

(a) Warning. The “Warning” shall consist of the statement:

 **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.

(b) Alternative Warning: Husqvarna may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (Alternative Warning) as follows:

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

A Warning or Alternative Warning provided pursuant to § 2.3 must print the word “**WARNING**” in all capital letters and in bold font, followed by a colon. The warning symbol to

the left of “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING**”. The Warning or Alternative Warning shall be affixed to or printed on the Products’ packaging or labeling and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.¹

3. MONETARY SETTLEMENT TERMS

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

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, Husqvarna agrees to pay a total of \$4,000 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.

Husqvarna will deliver its payment on or before the Effective Date, in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$3,000; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$1,000. 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

¹ Given the holding in *Baxter Healthcare Corporation v. Denton*, 120 Cal.App.4th 333 (2004), to the extent Husqvarna determines that the Products for which a DEHP warning is to be given do not contain other Proposition 65 chemical(s) listed solely for cancer effects, it may exercise its discretion to delete the references to “cancer and” in the Warning or Alternative Warning accordingly. To the extent Husqvarna determines that the Products do not contain DEHP, but do contain one or more other Listed Phthalates, Husqvarna may substitute one or more abbreviated names of the other Listed Phthalates that are present in the Products for DEHP in the Warning or Alternative Warning accordingly.

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, Husqvarna 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, Husqvarna shall reimburse Vinocur and his counsel \$21,000. Husqvarna's payment shall be delivered to the address in Section 3.3, within ten (10) days following the Effective Date, 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 Husqvarna's attention and negotiating a settlement of the matter.

3.3 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 Husqvarna

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public in California, and Husqvarna, 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 Husqvarna, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Husqvarna directly or indirectly distributes or sells the Products, including, but not limited, to downstream distributors, dealers, wholesalers, customers retailers (including, without limitation, Dixon Hardware & Lumber of Solano County, California), franchisees, cooperative members, and licensees (collectively, Releasees), based on

their alleged or actual failure to warn about exposures to DEHP contained in the Products that were distributed, sold, or authorized for sale in California by Husqvarna before the Effective Date, as alleged in the Notice. Vinocur agrees that compliance with this Settlement Agreement constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn about exposures to Listed Phthalates in the Products sold after the Effective Date.

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, 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 Listed Phthalates in the Products, distributed, sold and/or offered for sale by Husqvarna, before the Effective Date, against Husqvarna and Releasees.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Vinocur on behalf of himself only, on one hand, and Husqvarna, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties therefore acknowledge that the claims released by Vinocur pursuant to the above, may include unknown claims, and Vinocur nevertheless therefore waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads 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.

The Parties each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

The releases in this Settlement Agreement are specifically limited to the Products distributed, sold, or offered for sale by Husqvarna and specifically excludes any other products not falling within the definition of “Products” set forth in Section 1.3. Nothing in this Section affects Vinocur’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Husqvarna’s Products.

4.2 Husqvarna’s Release of Vinocur

Husqvarna, 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 Husqvarna 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. It is Husqvarna's understanding that the commitments it has agreed to herein, and actions to be taken pursuant to this Settlement Agreement, will confer a significant benefit to the general public, as set forth in California Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to the failure to provide a warning concerning exposure to DEHP in association with the Products, such private party action would not confer a significant benefit on the general public, provided that Husqvarna is in material compliance with this Settlement Agreement. However, nothing in this Settlement Agreement shall be interpreted to relieve Husqvarna from any obligation to comply with any pertinent state or federal 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 Husqvarna:

John Grupp
Associate General Counsel
Husqvarna Group
9335 Harris Corners Parkway, Suite 500
Charlotte, NC 28269

With a copy to:
Robert Falk
Morrison & Foerster LLP
425 Market St.
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. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

11. MODIFICATION

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

12. AUTHORIZATION

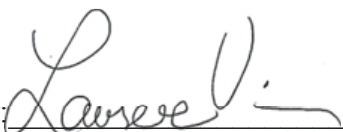
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 2/5/2019

Date: _____

By:  _____
Laurence Vinocur

By: _____
Name (printed):
for Husqvarna Professional Products, Inc.

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12. 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:

AGREED TO:

Date: _____

Date: 2/11/2019

By: _____
Laurence Vinocur

By: Dug Blase
Name (printed):
for Husqvarna Professional Products, Inc.
Gary Blase
Asst. Secretary
John L. Grupp
Asst. Secretary