

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and Illinois Industrial Tool, Inc.**

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Illinois Industrial Tool, Inc., (Illinois Tool) with Vinocur and Illinois Tool 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. Illinois Tool 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 Illinois Tool manufactures, imports, sells and/or distributes for sale in California, PVC goggles 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 PVC goggles containing DEHP including, but not limited to, the *IIT Goggle & Face Mask Kit, #91401, UPC #0 39593 91401 2*, manufactured, imported, or purchased for resale by Illinois Tool and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about August 29, 2018, Vinocur served Illinois Tool and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Illinois Tool 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**

Illinois Tool 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 Illinois Tool 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 Illinois Tool 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 October 17, 2019.

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

**2.1 Injunctive Relief**

Commencing on the Effective Date and continuing thereafter, Illinois Tool shall only manufacture for sale, import for sale, and purchase for resale in California Products that are Reformulated Products as defined by Section 2.2. Any Products, that are not Reformulated Products, which Illinois Tool sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution, after the Effective Date, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, Illinois Tool sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Illinois Tool shall also provide warnings for such Products as specified in Sections 2.3 through 2.6. Nothing in this Agreement shall be interpreted to supersede or otherwise differ from the requirements set forth in Title 27 California Code of Regulations § 25600, *et seq.* (Proposition 65).

## **2.2 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.

## **2.3 Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Illinois Tool shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* 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 Product to which the warning applies.

(a) **Warning.** The warning may 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.** Illinois Tool may alternatively use the following short-form warning 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)

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

**2.4 Product Warnings**

Illinois Tool 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, Illinois Tool prints new catalogs and sells Products via mail order through such catalogs to customers located in California, Illinois Tool shall provide a warning for each Product in accordance with Title 27 California Code of Regulations § 25602(c).

**2.6 Internet Warnings**

If, after the Effective Date, Illinois Tool sells Products via the internet to customers located in California, Illinois Tool shall provide warnings for each Product in accordance with Title 27 California Code of Regulations § 25602(b).

**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, Illinois Tool agrees to pay a total of \$1,000 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.

Illinois Tool will deliver its civil penalty payment to the address in Section 3.3. Illinois Tool shall provide two checks made payable to: (a) "OEHHA" in the amount of \$750; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$250. Thereafter, Vinocur's counsel shall send OEHHA's portion of the penalties paid by Illinois Tool to OEHHA.

### **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, Illinois Tool expressed a desire to resolve Vinocur's fees and costs. The Parties then negotiated a resolution of the compensation due to Vinocur's 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, Illinois Tool shall reimburse Vinocur's counsel \$6,000. Illinois Tool will deliver its payment to the address in Section 3.3 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 Illinois Tool'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  
2550 Ninth Street, Suite 205  
Berkeley, CA 94710

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

##### **4.1 Vinocur's Release of Illinois Tool**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual, and Illinois Tool, 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 Illinois Tool, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Illinois Tool 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 Illinois Tool 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 in the public interest, 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 DEHP in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Illinois Tool, before the Effective Date (collectively, Claims), against Illinois Tool and Releasees.

##### **4.2 Illinois Tool's Release of Vinocur**

Illinois Tool, 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.

#### **4.3 California Civil Code Section 1542**

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 Illinois Tool on behalf of itself only, 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 acknowledge that the claims released in Sections 4.1 and 4.2 above may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 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.

Vinocur and Illinois Tool each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

#### **4.4 Deemed Compliance with Proposition 65**

As noted in Section 4.1, compliance by Illinois Tool with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to DEHP in the Products.

#### **4.5 Public Benefit**

It is Illinois Tool's understanding that the commitments it has agreed to herein, and actions to be taken by Illinois Tool under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure section 1021.5, California

Health & Safety Code § 25249 et seq., and Cal. Admin. Code tit. II, section 3201. As such, it is the intent of Illinois Tool that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Illinois Tool's alleged failure to provide a warning concerning exposure to DEHP with respect to the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Illinois Tool is in material compliance with this Settlement Agreement.

**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 Illinois Tool 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 Illinois Tool 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: (a) personally delivered; (b) sent by first-



class (registered or certified mail) return receipt requested; or (c) sent by overnight courier, to one party by the other party at the following addresses:

For Illinois Tool:

Christopher Sheean, Esq.  
Swanson, Martin & Bell, LLP  
330 N. Wabash, Suite 3300  
Chicago, IL 60611

For Vinocur:

Proposition 65 Coordinator  
The Chanler Group  
2550 Ninth Street, Suite 205  
Berkeley, CA 94710

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.

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**11. AUTHORIZATION**

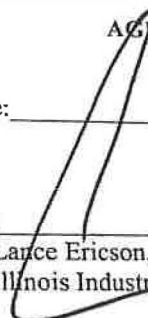
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


**AGREED TO:**

Date: 10/30/19

By:   
Laurence Vinocur

**AGREED TO:**

Date:  10/20/19

By:   
Lance Ericson, President  
Illinois Industrial Tool, Inc.

63796

70-2390/719

**GREAT LAKES WHOLESALE GROUP**

16410 S JOHN LANE CROSSING, UNIT 400  
LOCKPORT, IL 60441-4216  
PH: 708-597-6000

FIFTH THIRD BANK

CHECK ARMOR  
FRAUD PROTECTION

PAY

\*SEVEN HUNDRED FIFTY AND XX / 100

DATE

CHECK AMOUNT

10/31/2019

\*\*\*\*\*750.00\*

TO THE  
ORDER  
OF

OEHHA

AUTHORIZED SIGNATURE

⑈063796⑈ ⑆071923909⑆ 1700002031⑈

GREAT LAKES WHOLESALE GROUP

63796

Photo Safe Deposit®  
Details on Back.

| DATE                        | INVOICE NO.   | COMMENT  | AMOUNT | DISCOUNT     | NET AMOUNT |
|-----------------------------|---------------|--|--------|--------------|------------|
| 10/31/2019                  | LAURENCE VINO | CUR<br>Laurence Vinocur - Client Trust Account | 750.00 | 0.00         | 750.00     |
| <b>RECEIVED NOV 04 2019</b> |               |  |        |              |            |
| Check: 063796               | 10/31/2019    | OEHHA  |        | <b>TOTAL</b> | 750.00     |

LAP