

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Feeney, Inc. and Laurence Vinocur**

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (“Vinocur”) and Feeney, Inc. (“Feeney”) with Vinocur and Feeney referred to individually as the “Party” and, collectively, 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. Feeney 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 Feeney manufactures, imports, sells and/or distributes for sale in California, vinyl tool grips 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 vinyl tool grips containing DEHP that are imported, distributed, sold and/or offered for sale by Feeney in the State of California, including, but not limited to, the *Cable Rail by Feeney Cable Cutter, Pt #2972-pkg, UPC #7 68846 02972 1* hereinafter the “Products.”

### **1.4 Notice of Violation**

On or about September 26, 2018, Vinocur served Feeney and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that Feeney 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**

Feeney 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 Feeney 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 Feeney 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 May 30, 2019.

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

Commencing on or before June 30, 2019, and continuing thereafter, Feeney agrees it will only manufacture, import, distribute, sell or offer for sale, in California, Products that are either: (a) reformulated to meet the reformulation standard, defined in Section 2.1, below; or (b) bearing an appropriate health hazard warning, pursuant to Section 2.2, below. These injunctive requirements apply to those Products manufactured, imported, distributed, sold or offered for sale after the Effective Date.


**2.1 Reformulated Products Defined**

"Reformulated Products" are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e., any component that may be touched during a reasonably foreseeable use) 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 Clear and Reasonable Warnings**

Commencing on or before the Effective Date and continuing thereafter, Feeney shall provide clear and reasonable warnings for all Products imported, distributed, sold, or provided for sale to customers in California that do not qualify as Reformulated Products, pursuant to Section 2.1, supra, or 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. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion. The warning shall consist of the following statement:

** WARNING:** This product can expose you to DEHP, which is 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).

Alternatively, Feeney may provide the foregoing warning in the form of warning signs provided to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products, in compliance with title 27 Cal. Code of regulations §§ 25601 *et seq.* For purposes of this Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

Feeney may, but is not required to, use the following short-form warning, subject to the additional requirements in Sections 2.3 and 2.4:

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

### **2.3 Product Warnings**

Feeney shall affix a warning to the Product label or otherwise directly to or on each Product provided for sale in California or Products sold via mail order catalogues or via the internet to customers located in California. For purposes of this Settlement 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 in no event smaller than the largest type size used for other consumer information on the Product. The warning shall consist of any of the foregoing warnings, described in Section 2.2, exclusive of the warning provided for Products sold prior to the Effective Date.

### **2.4 Mail Order Catalogue Warnings**

If, after the Effective Date, Feeney prints new mail order catalogues and sells Products that are not Reformulated Products to consumers located in California, Feeney shall provide one of the foregoing warnings for each Product, both on the Product label, in accordance with Section 2.3, and in the catalogue text, in a manner that clearly associates the warning with the specific Product being purchased, such that the customer or consumer does not have to search for the warning in the general catalogue content prior to purchase. In the event Feeney utilizes the short-form warning on its Product label, they may also utilize the short-form warning content in the catalogue text, pursuant to the requirements detailed in Section 2.3.

### **2.5 Internet Product Warnings**

If, after the Effective Date, Feeney sells Products via the internet to customers or

consumers located in California that do not meet the definition of Reformulated Products, Feeney agrees to provide a warning for such Products both on the Product label, in accordance with Section 2.3, and by prominently displaying the warning to the customer prior to checkout or during the purchase such that the customer does not have to seek out the warning in the general content of the website. Warnings given in conjunction with Products offered for sale via the internet shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for the Product; (c) on the same page as the price for the Product; or (d) on one or more web pages displayed to a purchaser prior to or during the checkout process. The warning shall appear in any of the preceding instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text. Feeney may use the short-form warning content for Products sold via the internet, if the warning provided on the Product or Product Label utilizes the short-form warning. Feeney may also comply with this Section by providing one of the foregoing warnings 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, Feeney agrees to pay a total of \$3,500 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.

Feeney will deliver its payment on or before the Effective Date, in two checks made payable to: (a) “OEHHA” in the amount of \$2,625; and (b) “Laurence Vinocur, Client Trust

Account” in the amount of \$875. 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 Parties finalized the other settlement terms, Feeney expressed a desire to resolve Vinocur’s fees and costs. The Parties 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 Settlement Agreement. Feeney agreed to reimburse Vinocur and his counsel \$23,500 for all fees and costs incurred by Vinocur in investigating, bringing this matter to Feeney’s attention and negotiating a settlement. Feeney’s payment shall be delivered to the address in Section 3.3, below, on or before the Effective Date, in the form of a check made payable to “The Chanler Group.”

**3.3 Payment Address**

All payments required by this Settlement Agreement shall be delivered to the following address:

Chanler Group  
Attn: Proposition 65 Controller  
The Chanler Group  
2550 Ninth Street  
Parker Plaza, Suite 205  
Berkeley, CA 94710

**4. CLAIMS COVERED AND RELEASED**

**4.1 Vinocur’s Release of Feeney**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Feeney, 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 Feeney, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Feeney 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, imported, distributed, sold and/or offered for sale by Feeney 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, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, investigation fees, expert fees, and attorneys' fees, arising under Proposition 65 with respect to DEHP in Products manufactured, imported, distributed, sold and/or offered for sale by Feeney, as alleged in the Notice, prior to the Effective Date (collectively, Claims), against Feeney 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 Feeney. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Feeney's Products.

#### **4.2 Feeney's Release of Vinocur**

Feeney, 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 Feeney 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 Feeney 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 Feeney:

Grissell Ralston, President/Corporation Administration  
Feeney, Inc.  
2603 Union Street  
Oakland, CA 94607



With a Copy to:

Hamilton W. Budge, Jr., Esq.  
Gardner Potter Budge LLC  
696 Country Club Road  
Eugene, OR 97401

For Vinocur:

Proposition 65 Coordinator  
The Chanler Group  
2550 Ninth Street  
Parker Plaza, Suite 205  
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:**

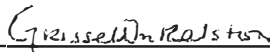
**AGREED TO:**

Date: 5/30/19

Date: 5-29-19

By:   
LAURENCE VINO CUR

FEENEY, INC.

By:   
GRISSELL RALSTON,  
President, Corporate  
Administration Corporate Administration